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UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

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In re:) Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,) Chapter 11
Debtors.) Jointly Administered
)

RESCAP LIQUIDATING TRUST'S OBJECTION TO PROOFS OF CLAIM NOS. 5275 AND 7464
FILED BY THE LAW OFFICES OF DAVID J. STERN, P.A.

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TO THE HONORABLE MARTIN GLENN UNITED STATES BANKRUPTCY JUDGE:

The ResCap Liquidating Trust (the "Liquidating Trust"), established pursuant to the terms of the Chapter 11 plan confirmed in the above captioned bankruptcy cases (the "Chapter 11 Cases") [Docket No. 6065], as successor in interest to the above captioned debtors (collectively, the "Debtors"), hereby submits this objection (the "Objection") seeking to expunge and disallow (i) proof of claim No. 5275 (the "Initial Claim") filed against Debtor GMAC Mortgage, LLC ("GMACM") by James Malphurs on behalf of The Law Office of David J. Stern, P.A. ("DJSPA" or "Claimant") as well as (ii) proof of claim No. 7464 (the "Amended Claim," together with the Initial Claim, the "Stern Claims") against GMACM filed by Jeffrey Tew on behalf of DJSPA, pursuant to section 502(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") on the grounds that the Stern Claims are without merit and do not include colorable claims against GMACM. Accordingly, the Liquidating Trust seeks entry of an order substantially in the form annexed hereto as Exhibit 1 (the "Proposed Order") granting the requested relief. In support of the Objection, the Liquidating Trust submits the Declaration of David Cunningham (annexed hereto as Exhibit 2-A, the "Cunningham Decl.") and the Declaration of John W. Smith T (annexed hereto as Exhibit 2-B, the "Smith T Decl.") and respectfully represents as follows:

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¹ The Liquidating Trust reserves all its rights to amend this Objection should any further bases come to light.

JURISDICTION, VENUE AND STATUTORY PREDICATE

- 1. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.
- 2. The statutory predicate for the relief requested herein is section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007(a).

PRELIMINARY STATEMENT

3. DJSPA was one of GMACM's highest-volume legal service providers in Florida, especially as it concerns pursuing foreclosures against delinquent borrowers. It filed a claim against GMACM in excess of \$6 million for alleged unpaid prepetition invoices. However, the Claimant's prepetition course of conduct nullifies its entitlement to any sums from GMACM, because its material breaches of the terms of the Master Services Agreement and related Statements of Work with GMACM absolve GMACM of any responsibility to DJSPA for any outstanding sums. Controlling law is clear that a party who materially breaches a contract cannot complain if the other party subsequently refuses to itself perform. The Master Services Agreement between GMACM and the Claimant contains numerous material promises by the Claimant that formed the foundation of the parties' relationship. For example, DJSPA contractually agreed that its ability to provide legal services would never be compromised by investigations, ethical violations, or loss of authorizations needed to represent GMACM. DJSPA also promised that it would always perform legal services in a diligent manner consistent with industry practices, utilizing personnel of proper training and skill; however, DJSPA repeatedly flouted these and other material obligations during its handling of GMACM matters. For example, as described more fully below, in 2009, DJSPA attorneys failed to give notice or provide any defense against a borrower's counterclaims, which led to a substantial default judgment being entered on a loan serviced by GMACM. In its order denying GMACM's request to vacate the award to the borrowers, the court found that there was a "complete breakdown of the system at the Stern Firm" and that "the Stern Firm was guilty of gross negligence." As described in greater detail herein, DJSPA's material breaches of the MSA (and related SOWs) were numerous and were committed over an extended period of time. The consequence of the Claimant's actions is that DJSPA should be barred from any recovery on the Stern Claims.

- 4. The \$6.1 million proof of claim at issue is comprised of four elements: (i) invoices related to loans owned by the Federal National Mortgage Association ("FNMA") allegedly totaling \$411,687.15; (ii) invoices related to loans owned by the Federal Home Loan Mortgage Corporation ("FHLMC") allegedly totaling \$271,820.73; (iii) invoices for services rendered on non-GSE loans allegedly totaling \$2,498,475.82; and (iv) sums purportedly due and owing for "curative work" discussed by DJSPA and GMACM in fall 2010 allegedly totaling \$2,979,500. For reasons discussed in greater detail herein, due to a prior stipulation of the parties in pending litigation, the Claimant agreed that it would not recover from GMACM damage categories (i) and (ii). In addition, a substantial portion of the alleged unpaid invoices are resubmissions by the Claimant of invoices previously rejected by GMACM, some of which date back to 2007. Those invoices are no more valid at this time than they were when first rejected by the Debtors. Moreover, DJSPA is not entitled to any payment for the "curative work" because the firm never fulfilled its agreed-upon services.
- 5. Even if not barred by the material antecedent breach doctrine, DJSPA is, at most, left with a general unsecured claim of \$1,339,590.78. *See* ¶¶ 68-71 *infra*. However, this figure does not account for the millions of dollars of GMACM's counterclaims and offsets, which include timeline penalties paid to FNMA and FHLMC, the costs to transfer thousands of loans to

new law firms in late 2010 once the Claimant lost its ability to handle FNMA and FHLMC-backed loans, as well as damages GMACM incurred arising from the Claimant's gross incompetence and blatant mishandling of loan files. Ultimately, the Liquidating Trust has no residual liability to DJSPA. In fact, DJSPA actually owes GMACM for all the damage it caused GMACM in the past four years due to its overwhelming malfeasance.

6. Therefore, the Stern Claims are entirely without merit and should be disallowed and expunged in their entirety.²

BACKGROUND

- 7. On May 14, 2012, each of the Debtors filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code. These Chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).
- 8. On May 16, 2012, the Court entered an order [Docket No. 96] appointing Kurtzman Carson Consultants LLC ("KCC") as the notice and claims agent in these Chapter 11 Cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these Chapter 11 Cases and (b) maintain the official Claims Register for the Debtors (the "Claims Register").
- 9. On August 29, 2012, this Court entered the Bar Date Order, which established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (the "General Bar Date") and prescribed the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the "Governmental Bar Date" and, together with the General Bar Date, as applicable, the "Bar

² At the appropriate time, the Liquidating Trust will file an appropriate proceeding before the Court in order to effectuate the release of the funds currently held in escrow to the Liquidating Trust.

- <u>Date</u>"). (Bar Date Order ¶¶ 2, 3). On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Docket No. 2093]. The Governmental Bar Date was not extended.
- 10. On March 21, 2013, this Court entered an order approving procedures for the filing of objections to proofs of claim filed in these Chapter 11 Cases [Docket No. 3294] (the "Procedures Order").
- 11. On December 11, 2013, the Court entered the Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors (the "Confirmation Order") approving the terms of the Chapter 11 plan, as amended (the "Plan"), filed in these Chapter 11 cases [Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred [Docket No. 6137].
- 12. The Plan provides for the creation and implementation of the Liquidating Trust, which, among other things, is "authorized to make distributions and other payments in accordance with the Plan and the Liquidating Trust Agreement" and is responsible for the wind down of the affairs of the Debtors' estates. *See* Plan, Art. VI.A-D; see also Confirmation Order ¶ 22. Pursuant to the Confirmation Order and the Plan, the Liquidating Trust was vested with broad authority over the post-confirmation liquidation and distribution of the Debtors' assets. *See* generally, Confirmation Order ¶¶ 26, 30, 48; Plan, Art. VI.
 - (1) GMAC Mortgage's Relationship With The Law Offices of David J. Stern, P.A.
- 13. DJSPA is a Florida law firm that held itself out as specialists in handling residential mortgage foreclosures, bankruptcy, evictions, the sale of real estate owned properties

by foreclosing lenders, and other foreclosure-related litigation in Florida. At all relevant times, David J. Stern ("Stern") was the principal of DJSPA.³ See Cunningham Decl. at ¶ 5.

- 14. GMACM retained DJSPA to provide legal services in connection with mortgage loans for Florida properties that GMACM was servicing on behalf of various financial institutions, including, but not limited to, FNMA and FHLMC. On January 17, 2007, GMACM formalized its pre-existing attorney-client relationship with DJSPA and entered into a Master Services Agreement ("MSA") and Statement of Work ("SOW"), which was amended and modified from time-to-time, and obligated DJSPA to handle residential mortgage foreclosures, bankruptcy, evictions, and the sale of real estate owned properties in the State of Florida. *See* Cunningham Decl. at ¶ 6. A copy of the MSA and the subsequent SOWs (entered into prior to the 2010 termination of the GMACM relationship) are collectively attached to the Cunningham Decl. as Exhibit A.
- 15. Among other things, pursuant to the MSA between DJSPA and GMACM, DJSPA⁴ agreed as follows:
 - 6.1 Company represents and warrants that the Services will be performed in a diligent and workmanlike manner in accordance with good industry practices, by individuals of suitable training and skill.
 - 6.2 Company represents and warrants that the Services and all Deliverables provided under this Agreement shall comply with and function in accordance with the requirements set forth in this Agreement and the Statement of Work.

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³ The Florida Secretary of State's website confirms that DJSPA was organized in 1993 and until 2011, Stern was the lone director and registered agent. As of 2014, Stern remains the sole director of the company. (*See* Smith T Decl. at ¶ 6).

⁴ DJSPA is designated as "Company" in the MSA and as the "Supplier" in the SOW.

6.4 Company represents and warrants that Company's actions and performance of the Services are and will be in full compliance with all applicable federal, state, and local requirements, including but not limited to, federal banking laws, federal consumer protection and privacy laws; all applicable state laws and regulations; any valid and effective order (including regulatory orders), verdict, judgment, consent decree or agreement.

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6.6 Company represents and warrants that it has, and will maintain throughout the Term of this Agreement, all licenses, franchises, permits, authorizations and approvals materially necessary for the lawful conduct of its business.

.

6.8 Company represents and warrants that there is no action, suit, claim, investigation or proceeding pending or, to the best of its knowledge, threatened against it that, if adversely decided, might adversely affect Company's ability to enter into this Agreement or performance of its obligations hereunder.

. . . .

8.1 **Place of Performance:** Performance by Company of the Services shall take place in the fifty (50) states of the United States of America or the District of Columbia (the "United States"). Company may perform any of the Services outside of the United States, and on such additional terms and conditions as may be acceptable to Client, only if expressly agreed to by Client in the Statement of Work or otherwise.

. . .

8.8 Company shall take appropriate measures to select, supervise and monitor the personnel performing Services. Company shall maintain current employment eligibility verification records, including necessary certification and documentation and insurance for its employees performing Services hereunder. Company will not conduct disciplinary actions with respect to Company personnel while on Client's premises, including but not limited to terminating employment of Company personnel.

. . . .

13.2 Indemnification. Each party (each an "Indemnitor") shall, at its own expense, defend, indemnify and hold harmless the other party and its employees, officers, directors, licensees, representatives, attorneys, parents, subsidiaries, successors, assigns and agents (each of the foregoing an "Indemnitee") from and against any and all liabilities, claims, actions, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising out of any third-party claims(s) for bodily injury to or death of any person or for damage, loss or destruction of tangible real property or tangible personal property caused by the negligent acts or omissions, recklessness or willful misconduct of Indemnitor and its employees, agents, and representatives. The Indemnitor will defend Indemnitee against such claims at Indemnitor's sole expense and pay all court awarded damages relating to such claims. The Indemnitee agrees to notify the Indemnitor in a timely manner in writing of the claim, and grant Indemnitor the right to control the defense and disposition of such claims provided that no settlement requiring any financial payment from Indemnitee or admission of liability by Indemnitee shall be made without Indemnitee's prior written approval.

. . . .

- 18.1 Company shall not assign, in whole or part, any of its obligations under this Agreement without Client's written consent. Company shall not subcontract any portion of its performance obligations under this Agreement without Client's prior written approval. Client's approval with respect to any subcontracting shall not relieve Company of its responsibility for the performance of its obligations under the Agreement.
- (Ex. A (MSA)). The MSA further provides that it is to be governed by Delaware law (id., at ¶ 19), that it was negotiated at arm's length, and that it is to be interpreted neutrally (id., at ¶ 21.9).
- 16. The MSA further incorporates GMACM's expectation guidelines (the "<u>Guidelines</u>"), which provide additional requirements that outside counsel are expected to meet in providing legal services on behalf of GMACM. (Ex. A (SOW), at ¶ VII).
- 17. According to the invoices submitted by DJSPA that purport to substantiate the Stern Claims, during the period from 2007 until November 2010, DJSPA performed legal work

on thousands of mortgage files serviced by GMACM. Certain support services for the legal work that was to be provided by DJSPA to GMACM were instead performed by one or more separately-incorporated entities in which Stern held a substantial personal interest and over which Stern maintained substantial control. One of these entities was DJS Processing, LLC, which was created by DJSPA to provide non-legal services needed to process foreclosure files and ancillary services for DJSPA.⁵

(2) Stern's Improper Business Practices

18. On August 10, 2010, the Florida Attorney General publicly announced an investigation into allegations of unfair and deceptive actions by DJSPA regarding its handling of foreclosure cases in Florida. Subsequent news reports were circulating, detailing more "questionable practices" by DJSPA. Among other things, sworn deposition testimony from employees of DJSPA became publicly available, describing unethical foreclosure-related practices engaged in by DJSPA, including widespread and improper practices in the preparation, execution and submission of assignments, affidavits of indebtedness and other papers in mortgage related cases that had been handled over the years by DJSPA in Florida. (*See, e.g.*, Smith T Decl. at ¶ 7, 9 (*citing* testimony of DJSPA employees Cheryl Sammons, Tammy Lou Kapusta and Kelly Scott)).

⁵ According to the Florida Secretary of State's website, DJSPA is the managing member of DJS Processing, LLC, which is a Delaware entity that was organized in 2009. (*See* Smith T Decl. at ¶ 6, *available at* http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2009%5C1005%5C0 0209278.Tif&documentNumber=M09000003832 (last visited April 23, 2015)).

These reports and many other details surrounding DJSPA's misconduct are detailed in publicly filed documents, including the investigation into Stern attorneys and several of the firm's administrators conducted by the Florida Bar; and in numerous related lawsuits. See Federal Home Loan Mortgage Corporation's Answer and Affirmative Defenses to Plaintiff's Amended Complaint and Defendant/Counter Plaintiff's Counterclaim at ¶¶ 18-39, The Law Offices of David J. Stern, P.A. v. Federal Home Loan Mortgage Corp., No. 11-CV-60623-RSR (S.D. Fla. Mar. 30, 2012 (ECF No. 63). (See Smith T Decl. at ¶¶ 7-8 & 12).

⁷ (See Smith T Decl. at ¶ 9).

- 19. These reports and related events, which were highly publicized, led FNMA, FHLMC and other mortgage service providers to terminate their relationships with DJSPA. FHLMC terminated its relationship with DJSPA by letter dated November 1, 2010, which meant that DJSPA was no longer authorized to participate in the designated counsel program with FHLMC. (*See* Smith T Decl. at ¶ 12 (*citing* FHLMC Suit, at Doc. 63-2)). On November 10, 2010, FNMA notified GMACM that FNMA had "terminated its relationship with the Law Offices of David J. Stern, P.A." and barred all loan servicers from referring "any future Fannie Mae matters to the Stern Firm." (*See* Cunningham Decl. at ¶ 14). Both FHLMC and FNMA required GMACM to transfer all matters to other approved firms and that such files should be the first priority for file set-up and review at the new firm(s). *Id*.
- 20. After confirming that DJSPA was the subject of a formal investigation by the Florida Attorney General, in connection with DJSPA's loss of approval to prosecute foreclosures of loans owned by FNMA and FHLMC, and because of the serious ethical cloud hanging over DJSPA, GMACM terminated its relationship with DJSPA in November 2010. (*See* Cunningham Decl. at ¶ 15).
- DJSPA. DJSPA refused to release any files to GMACM until GMACM placed funds allegedly owed to DJSPA into escrow. In light of GMACM's need to expeditiously transition its loan files to new law firms to be serviced, on November 5, 2010, GMACM agreed to enter into an Escrow Agreement with DJSPA, wherein the law firm of Bradley Arant Boult Cummings LLP ("BABC") agreed to serve as Escrow Agent and hold the sum of \$3 million in escrow while GMACM and DJSPA resolved their dispute over attorneys' fees and expenses. These funds remain in escrow with BABC at this time. (See Cunningham Decl. at ¶ 13). Section 2 of the

Escrow Agreement provides, in pertinent part, that "Upon receipt and approval of ... any Court Order from a Court of competent jurisdiction, after appeals have been exhausted, Escrow Agent shall remit the Attorney Fee & Expense Funds in accordance with any agreement or Court Order," (See Exh. D to Cunningham Decl.).8

GMACM subsequently transitioned its files to other law firms and directed these firms to review the recovered files and to take appropriate steps to attempt to remedy any errors committed by DJSPA. In connection with this review and through other developments, GMACM discovered that DJSPA had committed serious acts of malpractice in the handling of a number of GMACM matters, acts that pre-dated the termination of the relationship between GMACM and DJSPA. (*See* Smith T Decl. at ¶ 14). These instances of malpractice and negligence are described in greater detail below.

(3) Curative Work

- 23. During the time period of the Florida Attorney General's investigation of DJSPA, GMACM became aware of potentially improper or questionable affidavits that had been filed in connection with GMACM's mortgage loan files. On or about August 23, 2010, GMACM sent attorneys and staff to meet with Stern at DJSPA's offices to discuss the potential defects with affidavits of indebtedness (the "Affidavits") submitted in judicial foreclosures in Florida. GMACM thereafter immediately sought to address remediation of the Affidavits, including submitting corrected affidavits. (See Cunningham Decl. at ¶ 9).
- 24. On September 27, 2010, Stern sent a letter to GMACM (the "September 27 Letter") requesting flat fee billing for specific services that DJSPA proposed to provide to assist

⁸ The Liquidating Trust expressly reserves all rights with respect to the escrow maintained with BABC, including the right to challenge the validity of the escrow and the necessity to maintain it.

⁹ See ¶ 79 infra.

GMACM with completing remediation. (See Exh. B to the Cunningham Decl.). The September 27 Letter contemplated a specific flat fee for services for each population of foreclosure files that required affidavit remediation. (See id.). The scope of services varied depending on the procedural status of the foreclosure file. For example, for those matters in which a motion for entry of a foreclosure judgment was filed (but no hearing was pending), DJSPA was required to prepare and file a notice as well as filing an amended affidavit containing current judgment figures. By comparison, for those matters in which a foreclosure judgment was entered and a foreclosure sale conducted, DJSPA was required to file a motion with the court to reveal the defect in the affidavit as well as prepare a motion to cancel the foreclosure sale. (See Id.). On October 14, 2010, GMACM responded to DJSPA's billing proposal agreeing generally to the proposed rates so long as DJSPA met specific timing expectations. (See Exh. C to the Cunningham Decl. (the "GMACM Letter")). The GMACM Letter made clear, however, that DJSPA was only authorized to proceed with work on a portion of the files requiring remediation. (See Cunningham Decl. at ¶ 10).

As part of its ongoing remediation efforts at the time, GMACM had both its own employees as well as outside counsel on site at DJSPA's offices reviewing the loan files and the affidavits in need of remediation. Because the work provided by DJSPA was incomplete and untimely, GMACM's in-house personnel ultimately prepared the information (rather than using DJSPA) and thereafter, supplied DJSPA with a letter documenting the corrections made to each original affidavit. Therefore, the only "curative" services DJSPA provided were limited to pulling files, providing original or copies of affidavits and simply incorporating the changes needed to correct the affidavits, which was significantly less than the scope of curative services agreed to by GMACM. Furthermore, as a result of the files having to be transferred to other

firms due to DJSPA's misconduct, not one of the "corrected" affidavits that were drafted by DJSPA was ever used to remediate the subject foreclosure matters based upon the terms agreed to in the September 27 Letter. (*See* Cunningham Decl. at ¶ 12).

- 26. On or about February 25, 2011, DJSPA sent GMACM a letter demanding the sum of \$6,161,483.70 for unpaid legal services it purportedly provided to GMACM. When the demand went unsatisfied, DJSPA commenced a lawsuit against GMACM. (*See* Cunningham Decl. at ¶ 16).
- 27. On March 4, 2011, DJSPA sent correspondence to the judges of the various judicial circuits in which it was the firm of record concerning thousands of mortgage-related cases pending throughout Florida. The correspondence stated that the "firm suffered a tremendous reduction of both clients and personnel," requiring it to "withdraw from approximately 100,000 files statewide." The correspondence further stated that DJSPA would be "ceasing the servicing of clients with respect to all pending foreclosure matters in the State of Florida as of March 31, 2011." (See Smith T Decl. at ¶ 8 (citing Complaint at ¶ 100, The Florida Bar v. David James Stern, Florida Bar File Nos. 20-51,725(17I) (Fla. 2013)).

(4) Prepetition Litigation Between GMACM And DJSPA

- 28. On June 2, 2011, DJSPA filed a Complaint in Florida state court against GMACM alleging Breach of Contract (Count I), Open Account (Count II), and Account Stated (Count III) (the "Florida Lawsuit"). The Complaint seeks \$6,161,483.70, the amount DJSPA contends GMACM owes for legal work that DJSPA allegedly performed. (*See* Smith T Decl. at ¶11).
- 29. On July 11, 2011, GMACM removed the case to the U.S. District Court for the Southern District of Florida, and the case was assigned to U.S. District Judge Marcia G. Cooke. GMACM also answered and filed counter-claims against DJSPA alleging Legal Malpractice

(Count I), Breach of Contract (Count II), Breach of Fiduciary Duty (Count III), violations of Florida's Deceptive Unfair Trade **Practices** and and Act (Count IV). Misrepresentation/Suppression (Count V). More specifically, GMACM's contract claims/defenses are based upon the MSA and related SOWs. In its answer and counterclaims, GMACM asserted as a defense that DJSPA's material breaches of the MSA and SOW barred DJSPA's recovery. (See Smith T Decl. at ¶ 11).

- 30. GMACM's counterclaims against DJSPA in the Florida Lawsuit are based, in part, on DJSPA's negligence and breach of fiduciary responsibilities owed to GMACM. (*See* Smith T Decl. at ¶ 14 (*citing* GMACM Answer and Counterclaim)). For example, in one foreclosure matter assigned to DJSPA for handling in August 2009, DJSPA failed to communicate to GMACM that counterclaims had been filed by the borrowers on September 11, 2009. DJSPA neglected to answer or defend such counterclaims, with the result that a default judgment was entered against the loan investor on October 21, 2009 and made final on May 5, 2011 in the amount of \$469,470.27. DJSPA has acknowledged that it was obligated but failed to defend against the counterclaims or provide any notice to GMACM. (*See* Smith T Decl. at ¶ 14 (*citing* Deposition of Forrest McSurdy, at 20–21 & 72-74; and Transcript of Testimony of Forrest McSurdy, at 16-18 & 21)). 11
- 31. GMACM subsequently hired outside counsel to seek to have the judgment vacated. On February 26, 2013, the Florida Circuit Court for the Twentieth Judicial Circuit for

¹⁰ (Smith T Decl. at ¶ 14(a)). The case is entitled *Deutsche Bank Trust Co. Americas as Trustee for RALI 2007QS3* v. Barry F. Mack, et al., 09-7336-CA (20th Judicial Circuit for Collier County, Florida) (the "Mack Case"). GMACM was the servicer on the loan at issue in the Mack Case, which is the subject of contested Proof of Claim #386 filed on August 8, 2012 by Creditors Barry F. and Cheryl M. Mack, in the amount of \$32,850,000.00, against GMACM, of which \$30 million is on account of alleged punitive damages.

¹¹ DJSPA billed GMACM for its work on the Mack case. (See Smith T Decl. at ¶ 14 (citing McSurdy Depo., at 22:72–74)).

Collier County ("Florida Trial Court") vacated a portion of the judgment but affirmed \$321,970.77 of the original award. After receiving the evidence, including testimony from DJSPA, the trial court found "conclusively . . . that there was a complete breakdown of the system at the Stern Firm." (See Smith T Decl. at ¶14(a) (citing Final Order on Plaintiff's Motion to Set Aside Final Judgment and Set New Trial, entered Feb. 26, 2013) (the "Final Order")). The court ruled that "the Stern Firm was guilty of gross negligence" through its failure to defend the counterclaims beginning in September 2009 when the counterclaims were filed. (Final Order at 2). GMACM incurred considerable attorney's fees and expenses, as a result of DJSPA's malpractice, in opposing these rulings. (Exhibit S to Smith T Decl. at ¶14). DJSPA has at all times declined to defend or indemnify GMACM pursuant to its obligations under the MSA.

- 32. There are other matters presently known to GMACM that were assigned to DJSPA for handling and which DJSPA failed to handle competently. A summary of these matters and the damages incurred by GMACM is attached as Exhibit S to Smith T Decl.
- 33. On May 25, 2011, the parties mediated their dispute, but the mediation was unsuccessful. (See Smith T Decl. at ¶ 11).
- 34. Prior to the Petition Date, the parties engaged in initial written discovery and document productions but no depositions or other discovery occurred as of the Petition Date, at which time the Florida Lawsuit was judicially stayed and remains stayed. (*See* Smith T Decl. at ¶ 11).

(5) Proof of Claim No. 5275

35. The Claimant filed proof of claim number 5275 against GMACM in the amount of \$6,161,483.70 on account of outstanding sum purportedly due and owing as of February 2011. A copy is attached hereto as Exhibit 3. The Claim is premised on the Complaint filed in the

Circuit Court of the 17th Judicial District, In and For Broward County, Florida against GMACM on June 2, 2011, alleging Breach of Contract (Count I), Open Account (Count II), and Account Stated (Count III). There are multiple components to the Claim: alleged unpaid invoices for (a) "curative" work GMACM requested of the Claimant in 2010 (in the amount of \$2,979,500), (b) services rendered before GMACM terminated its relationship with the Claimant (in the amount of \$2,498,475.82), and (c) sums related to FNMA and FHLMC matters (in the amount of \$683,507.88).

(6) Proof of Claim No. 7464

36. On May 12, 2014, DJSPA filed Claim No. 7464, which amended Claim No. 5275. There were no substantive changes to Claim No. 5275. The only changes reflect new contact information for Jeffrey Tew, DJSPA's authorized agent.

RELIEF REQUESTED

37. The Liquidating Trust files this Objection pursuant to section 502(b) of the Bankruptcy Code to expunge and disallow each of the Stern Claims in their entirety and have the Court authorize the release of funds currently being held in escrow to the Liquidating Trust.

OBJECTION

- 38. A filed proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A properly completed proof of claim is *prima facie* evidence of the validity and amount of a claim. *See* FED. R. BANKR. P. 3001(f). A party in interest may object to a proof of claim, and once an objection is made, the court must determine whether the objection is well founded. *See* 4 COLLIER ON BANKRUPTCY ¶ 502.02[2] (16th ed. rev. 2012).
- 39. Although Bankruptcy Rule 3001(f) establishes the initial evidentiary effect of a filed claim, the burden of proof "[r]ests on different parties at different times." *In re Smith*, No. 12-10142, 2013 WL 665991, at *6 (Bankr. D. Vt. Feb. 22, 2013) (citation omitted). The

party objecting to the proof of claim "bears the initial burden of providing evidence to show that the proof of claim should not be allowed." In re MF Global Holdings, Ltd., Nos. 11-15059 (MG), 11-02790 (MG) (SIPA), 2012 WL 5499847, at * 3 (Bankr. S.D.N.Y. Nov. 13, 2012). If the objecting party produces "evidence equal in force to the prima facie case," then the objector can negate a claim's presumptive legal validity and shift the evidentiary burden back to the claimant. See Creamer v. Motors Liquidation Co., GUC Trust (In re Motors Liquidation Co.), No. 12 Civ. 6074 (RJS), 2013 WL 5549643, at *3 (S.D.N.Y. Sept. 26, 2013). If the objecting party satisfies its initial burden and the presumption of *prima facie* validity is overcome—e.g., the objecting party establishes that the proof of claim lacks a sound legal basis—the burden shifts to the claimant to support its proof of claim and demonstrate why the claim should be allowed. Id. (citing In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), aff'd sub nom., Peter J. Solomon Co. v. Oneida, Ltd., No. 09-cv-2229 (DC), 2010 WL 234827 S.D.N.Y. Jan. 22, 2010)) ("A proof of claim is prima facie evidence of the validity and amount of a claim, and the objector bears the initial burden of persuasion. The burden then shifts to the claimant if the objector produces evidence equal in force to the prima facie case . . . which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency.")). Once the burden is shifted back to the claimant, it must prove its claim by a preponderance of the evidence. Motors Liquidation Co., 2013 WL 5549643, at *3.

40. Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." 11 U.S.C. § 502(b)(1). Whether a claim is allowable "generally is determined by applicable nonbankruptcy law." *In re W.R. Grace & Co.*, 346 B.R. 672, 674 (Bankr. D. Del. 2006). "What claims of creditors are

valid and subsisting obligations against the bankrupt at the time a petition is filed, is a question which, in the absence of overruling federal law, is to be determined by reference to state law." *In re Hess*, 404 B.R. 747, 749 (Bankr. S.D.N.Y. 2009) (quoting *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 161 (1946)).

(a) DELAWARE LAW BARS ANY RECOVERY BY DJSPA

- (1) <u>Delaware Law Recognizes The First Material Breach Doctrine.</u>
- 41. Delaware courts have held that "[a]s a general rule, the party first guilty of a material breach cannot complain if the other party subsequently refuses to perform." *Edelstein v. Goldstein*, No. 09C-05-034 (DCS), 2011 WL 721490, at *5 (Del. Super. Ct. Mar. 1, 2011) (quoting Hudson v. D & V Mason Contractors, Inc., 252 A.2d 166 (Del. Super. Ct. 1969)); see Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc., No. 5886VCP, 2013 WL 3934992, at *2 (Del. Ch. July 24, 2013) (finding that the party who breached first was barred from recovery on the contract); see Asset Recovery Servs., Inc. v. Process Sys., Integration, Inc., No. CIV.A1999-10-124, 2002 WL 31999347, at *3 (Del. Ct. Com. Pl. Feb. 6, 2002); Commonwealth Constr. Co. v. Cornerstone Fellowship Baptist Church, Inc., No. 04L-10-101-RRC, 2006 WL 2567916, at *19 (Del. Super. Ct. Aug. 31, 2006) (excusing contractor who stopped work after the owner materially breached the contract by failing to pay the contractor for work completed). See also 17A Am. Jur. 2d Contracts § 606 (2015); 23 Williston on Contracts §§ 63:3, 63:8 (4th ed. 2014); 5 Brunner & O'Connor Construction Law § 18:16 (2014).
- 42. A Florida federal district court, sitting in diversity and hearing a contractual dispute based on Delaware law, has also recognized this rule. *Direct Mail Holding, LLC v. Bush*, No. 8:12-CV-145-T-30EAJ, 2012 WL 1344823, at *5 (M.D. Fla. Mar. 8, 2012) ("A party may be excused from its obligations under a contract by a material, antecedent breach of another party.").

43. The breach must be material, meaning it "go[es] to the essence of the contract [and not] only to a minor part of the consideration." 17A Am. Jur. 2d Contracts § 606; *see* 23 Williston on Contracts § 63:8. Delaware courts utilize several factors to determine whether a failure to render performance is material and thus justifying repudiation of the contract.

These factors include: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

BioLife Solutions, Inc. v. Endocare, Inc., 838 A.2d 268, 278 (Del. Ch. 2003) (quoting Restatement (Second) of Contracts § 241 (1981).

- 44. There is no legal significance to whether a later breaching party knew or did not know of the first party's material breach of the contract at the time of the later breach. 14 Williston on Contracts § 43:12 (4th ed. 2014) (*quoting H.D. Williams Cooperage Co. v. Scofield*, 115 F. 119, 121 (8th Cir. 1902) ("The legal effect of an act amounting to a breach of contract must be the same whether it is known or unknown to the opposite contracting party. Indeed, when it becomes known to the opposite party, he may in turn do some act that will operate as a waiver of the breach, which he cannot well do until he is aware of the breach.")). In fact, "[a]Il that the plaintiff must show is freedom from fault with respect to performance of dependent promises, counterpromises or conditions precedent." *Hudson*, 252 A.2d at 170 (citation omitted).
- 45. Several Delaware courts have applied the first material breach doctrine. *See Eureka VIII LLC v Niagara Falls Holdings LLC*, 899 A.2d 95, 117 (Del. Ch. 2006), *aff'd*, 918

A.2d 1171 (Del. 2007) (barring limited liability company member from recovery against another member because of prior "material[] breach" of LLC agreement); *Asset Recovery Servs., Inc.*, 2002 WL 31999347, at *3 (finding a material breach when a purchaser put a stop payment on a payment check and applying the first material breach doctrine). Delaware courts have applied this rule to disputes involving contracts for legal services. *See Edelstein*, 2011 WL 721490, at *5 ("As a general rule the party first guilty of a material breach of contract cannot complain if the other party subsequently refuses to perform." (internal quotations omitted)).

- As described herein, even without the benefit of full discovery, it is clear that DJSPA materially breached the Contract with GMACM in several material respects, including, for example, by allowing its attorneys to engage in widespread misconduct. As the evidence presented below demonstrates, the material breaches committed by DJSPA involve conduct dating back to the formation of the parties' contractual relationship. These material breaches comprise widespread ethical misconduct by DJSPA attorneys and staff resulting in bar investigations and, ultimately, disbarment; acts of negligence and malpractice in the handling of GMACM loan files; and other clear violations of the MSA and SOW, all of which materially impacted DJSPA's ability to provide competent legal services to GMACM to such a degree that GMACM could no longer work with DJSPA and was forced, at great expense to GMACM, to transfer thousands of loan files to new law firms. Consequently, the Stern Claims should be denied *in toto*.
 - (2) DJSPA Committed Numerous Material Breaches of the Contract with GMACM.
 - a. <u>Florida Attorney General/Florida Bar Investigation</u>.
- 47. The MSA states: "[DJSPA] represents and warrants that there is no action, suit, claim, investigation or proceeding pending or, to the best of its knowledge, threatened against it that, if adversely decided, might adversely affect [DJSPA's] ability to enter into this Agreement

or performance of its obligations thereunder." Id. at ¶ 6.8. The MSA also states that the "terms and conditions of this [MSA] shall be applicable to each Project and are incorporated by references into each Statement of Work." Id. at ¶ 1.

- 48. The Florida Attorney General launched an investigation into DJSPA, entitled *In re: Investigation of Law Offices of David J. Stern, P.A.*, AG#L10-3-1145, issuing a subpoena duces tecum on August 6, 2010. (*See* Smith T Decl. at ¶7(a)). The subpoena sought documents relating to various business practices of DJSPA's handling of mortgage foreclosure cases dating back to 2007. Shortly after issuing the subpoena, the Florida Attorney General deposed several DJSPA employees as part of its investigation. ¹³
- 49. At about the same time and prior to or contemporaneous with the termination of the relationship between DJSPA and GMACM -- numerous instances of unethical conduct led to bar grievance investigations being pursued against Stern, which were ultimately consolidated before the Supreme Court of Florida in a 2013 filing, *The Florida Bar v. David James Stern*, 2010-51,725(17I), et al. ("the <u>Florida Bar Investigations</u>"). (*See* Smith T Decl. at ¶8). The Florida Bar also conducted investigations into the actions of other DJSPA attorneys, including Gail Trenk and Miriam Mendieta, who was suspended from the practice of law in Florida in connection with her work at DJSPA. (*See* Smith T Decl. at ¶8(b) (*citing* Report of Referee, at 16) and ¶8(e) (*citing* Order of Suspension)). The Florida Bar also investigated DJSPA's paid consultants such as Jorge Luis Suarez who entered a guilty plea for a consent judgment in *The Florida Bar v. Jorge Luis Suarez*, Florida Bar File No. 2012-51,389(17I) (Fla. Jan. 14, 2014).

The Florida Court of Appeals subsequently ruled, on January 6, 2012, that the subpoena had been improvidently issued. (See Smith T Decl. at \P 7(a)).

Among those deposed were paralegals Tammy Kapusta on September 22, 2010; and Kelly Scott on October 4, 2010. (See Smith T Decl. at \P 7).

(See Smith T Decl. at ¶8 (citing Report of referee, at 19)). Suarez admitted to executing thousands of improper affidavits while performing work for DJSPA's clients at DJSPA's direction during the years 2006-10, in violation of numerous Rules Regulating the Florida Bar. (See Smith T Decl. at ¶8 (citing Conditional Guilty Plea For Consent Judgment, at 2-5)).

50. These investigations reached all aspects of DJSPA's mortgage foreclosure law practice covering legal work performed over many years for all of the firm's clients. The investigations uncovered numerous violations of the Florida rules of professional conduct governing DJSPA's attorneys and resulted in discipline of DJSPA attorneys, including Stern. The Florida Supreme Court disbarred Stern on January 7, 2014. (*See* Smith T Decl. at ¶8 (*The Florida Bar v. David James Stern*, Case No. SC13-643 (Fla. Jan. 7, 2014)). Consequently, there is no doubt that at the time they began, these investigations were likely to result in adverse decisions affecting DJSPA's ability to perform its obligations owed to GMACM, thereby breaching ¶ 6.8 of the MSA between DJSPA and GMACM.

b. <u>Losing FNMA/FHLMC Designation</u>.

51. The MSA also provides, in pertinent part, that "[DJSPA] represents and warrants that it has, and will maintain throughout the Term of this Agreement, all licenses, franchises, permits, authorizations and approvals materially necessary for the lawful conduct of its business." MSA at ¶6.6. Over the years, Stern and other attorneys working for DJSPA committed numerous violations of their obligations under the applicable Florida Rules of Professional Conduct that resulted in the loss of their licenses to practice in Florida. (*See* discussion *supra* at ¶¶ 49-50; Smith T Decl. at ¶8). In addition, the firm was denied permission to prosecute FHLMC and FNMA foreclosures in November 2010. (*See* Cunningham Decl. at ¶14 (*citing* FNMA Servicing Notice, Nov. 10, 2010); Smith T Decl. at ¶12). GMACM frequently represented FHLMC and FNMA in connection with mortgage loans guaranteed by those entities.

For example, in 2010, GMACM's inventory of Florida loans in foreclosure totaled 15,412. Of that loan population, there were 1,483 FHLMC loans and 2,995 FNMA loans. DJSPA handled the majority of GMACM's Florida loans in foreclosure. *See* Cunningham Decl. at ¶ 7. As a result, DJSPA's removal from the approved attorney network list of FHLMC and FNMA meant that DJSPA was no longer authorized to manage thousands of foreclosed loans for GMACM. In fact, Stern admits that within two weeks of FNMA and FHLMC disqualifying DJSPA, most, if not all, of the other servicers pulled their business from DJSPA. (*See* Smith T Decl. at ¶ 10 (*citing* Stern Depo., 186:22–25)). This constitutes a material breach of ¶ 6.6 of the MSA between DJSPA and GMACM, thereby barring DJSPA from recovery.

- c. <u>Failure to Provide Competent Legal Services in Accordance with Good Industry Practices.</u>
- 52. Paragraph 6.1 of the MSA requires DJSPA to provide services "in a diligent and workmanlike manner in accordance with good industry practices, by individuals of suitable training and skill." Paragraph 6.4 of the MSA further provides that DJSPA's actions and performance of the work will comply with all applicable federal, state and local requirements," which includes of course, the attorneys' professional obligations as set forth in the Florida Rules of Professional Conduct and the Rules Regulating the Florida Bar.
- 53. The Referee, who reviewed the considerable evidence compiled during the Florida Bar investigation into the numerous grievances against DJSPA, including the testimony of numerous attorneys and non-attorney supervisors at DJSPA, observed that the widespread incompetence and unethical conduct by DJSPA persisted between 2005 and 2009, and in some instances, extended as far back as 1999. (*See* Smith T Decl. at ¶ 8 (*citing* Report of Referee, at 16-17)).

- 54. For example, as recounted in the Florida Bar investigations, DJSPA's failure to appear for court-ordered hearings and conferences are described in an Order entered on October 20, 2009 by the Honorable Stanley H. Griffis III, in *BAC v. Noonan-Smith*, 2009CA000126 (Gilchrist Co. Cir. Ct.). Judge Griffis' order summarizes the fifteen previous lawsuits that the court had dismissed due to DJSPA's "failure to appear at court ordered hearings." (*See* Smith T Decl. at ¶ 8 (Complaint of the Florida Bar, at ¶¶ 66-69)). 14
- 55. On October 28, 2013, a Florida Bar Referee issued a Report as to the seventeen-count Complaint, concluding that "one attorney, David Stern, either in his capacity as the sole managing partner of his firm or in his individual capacity, created chaos on the courts of the State of Florida, *prejudicing the system as a whole.*" (*See* Smith T Decl. at ¶ 8 (Report of Referee, at p. 4 (emphasis added)). The Referee's lengthy and detailed report is, in all respects, damning of DJSPA's extensive and protracted misconduct, observing that all of the "mishandling and inaction are on the Stern firm." (*Id.* (*citing* Report of Referee, at p. 13)).
- 56. For example, there was unrefuted evidence, in the form of testimony from DJSPA employees, that before clients would come to audit the files being handled by the firm, DJSPA employees would "chang[e] the client code in the file and hid[e] [the files] from the client." (*See* Smith T Decl. at ¶ 7 (*citing* Deposition of Kelly Scott, 39:13–18)). Ms. Scott elaborated

If certain files weren't updated correctly and there was lack of process, they would change the client code in the file by – if it was Countrywide they would change it into a different client name with a sticker and print it out and then these files were transferred into a room where they would hide them and then keep them behind closed doors until the client would leave.

¹⁴ Similar lapses by DJSPA in other courts are recounted throughout the Complaint of the Florida Bar, including in 10 separate cases pending in Florida's Second Judicial Circuit between July 28, 2010 and September 10, 2010. (*See* Smith T Decl. at ¶ 8 (*citing* Complaint of the Florida Bar, at ¶ 94)). As described elsewhere further below, DJSPA's gross incompetence and malpractice are known to have occurred as to GMACM files. *See* discussion at ¶¶ 31-32 & 80 herein.

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(*Id.* at 39:21–25, 40:1–2).

- 57. Additionally, employees report that the signing and notarizing systems in the firm did not conform to good industry practices. It was determined that DJSPA submitted attorney affidavits to support the recovery of attorney's fees in mortgage foreclosure actions that "contain[ed] falsehoods" and were plagued by other "improprieties and irregularities." (See Smith T Decl. at ¶8 (citing Complaint of the Florida Bar, at ¶¶ 62-63)). With regards to notaries, Ms. Kapusta acknowledged, "[a]s far as notaries go...I don't think any notary actually used their own notary stamp. The team used them." (See Smith T Decl. at ¶7 (citing Kapusta Depo., 22:12–14)). When documents were ready for an authorized signature, documents would be placed on a conference table and twice each day, the authorized signer would come by and sign thousands of documents, without reading or reviewing them. (See Smith T Decl. at ¶7 (citing Scott Depo., 12-15)). Further, the execution and the notarization would not occur contemporaneously. (Id.) Witnesses who had not been present when the document was signed would sign their names as witnesses anyway. (Id.)
- As the Complaint in the Florida Bar investigation and the Report of the Referee demonstrate, the malfeasance perpetrated by DJSPA's staff, under Stern's direction and control, pervaded the culture of the firm throughout the period of time when DJSPA represented GMACM. (See Smith T Decl. at ¶8 (Complaint of the Florida Bar, at ¶¶ 34, 45-53, 56-62; Report of Referee, at 31)). The Referee found that Stern personally was guilty of numerous violations of the rules of professional conduct, much of which involved intentionally deceiving the clients of DJSPA about the status of their files. (Id.; Report of Referee, at 19-24, 31). The Referee recommended disbarment of Stern. (Id. at 29-33).

59. Although the Florida Bar investigation implicates the entirety of the DJSPA operation in its representation of all of its mortgage lender clients, GMACM is able to demonstrate numerous instances of misconduct perpetrated by DJSPA on GMACM matters thereby violating the MSA. Without the benefit of full discovery, the matters of which GMACM presently has knowledge involving negligence by DJSPA are summarized in Exhibit S to Smith T Decl. and are described elsewhere herein.

d. Failure to Provide Adequate Oversight and Suitable Training.

- 60. As noted above, Paragraph 6.1 of the MSA requires DJSPA to utilize "individuals of suitable training and skill." Paragraph 8.8 of the Contract requires DJSPA "to select, supervise and monitor the personnel performing" the work for GMACM.
- 61. Among other things, the Florida Bar Referee pointed out that the "root cause" of many of the problems behind the widespread misconduct of DJSPA was the firm's decision to handle an "excessive volume of files," a decision that was within "the exclusive authority of its sole managing partner, David Stern." (*See* Smith T Decl. at ¶ 8 (*citing* Report of Referee, at p. 13)). According to the Report, the inevitable result was that the firm failed to provide "proper support, mentoring, and supervision," such that firm "associates were being 'set up for failure." (*Id.* at 14 (emphasis supplied)). ¹⁵
- 62. In sworn deposition testimony, numerous DJSPA employees described the gross lack of training and supervision at DJSPA. Paralegals were trained by non-lawyers on how to

¹⁵ The Referee found that Stern was "the only partner and sole managing partner" who bore "ultimate responsibility for his firm," under Rule 4-5.3(c) of the Rules Regulating the Florida Bar. (*Id.* at 20). The Referee found "the lack of supervision" to be "massive" which represented "the culture of the firm, as to the low level of competence and ethics." (*Id.* at 31). She recommended that Stern be found guilty for violating, *inter alia*, Rules 4-5.1 and 4-5.3, which govern his duties to supervise others to act in conformance with the attorney's professional obligations. (*Id.* at 27-28).

prepare motions and defaults. (See Smith T Decl. at ¶ 7 (Depo. of Kelly Scott, at 54)). Ms. Kapusta acknowledged

[w]e had a lot of people that were hired in the firm that were just hired as warm bodies to do work. The training process was very stupid and ridiculous. The girls would come out on the floor not knowing what they were doing. Mortgages would get placed in different files. They would get thrown out. There was just no real organization when it came to original documents. (See Smith T Decl. at ¶7 (citing Depo. of Tammy Lou Kapusta, 44:2–11)).

These examples demonstrate the lack of care in selecting, training and supervising employees, which constitutes an obvious and material breach of the MSA.

63. The Florida Bar finding that DJSPA failed to train and supervise its personnel manifested itself in cases DJSPA handled for GMACM, including the Mack case. As the pleadings reflect, one of the DJSPA attorneys assigned to supervise the *Mack* case was Miriam L. Mendieta. (See Smith T Decl. at ¶ 14 (citing Answer to Complaint to Foreclose Mortgage, Affirmative Defenses and Counterclaims of Barry and Cheryl Mack)). Mendieta was suspended by the Supreme Court of Florida, which ruled that as a supervising attorney for the Law Offices of David J. Stern, P.A., Mendieta failed to exercise her authority to ensure that the actions of those she managed comported with Florida Bar rules. (See Smith T Decl. at ¶ 8 (citing Order of Suspension, The Florida Bar v. Miriam L. Mendieta, Case No. SC13-2424 (Fla. Feb. 10, 2014), available at http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=Dis ActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed %26MFL%3DMiriam%2520L%2520Mendieta%26ICN%3D201150538%26DAD%3DSuspensi on)). Those actions included a failure of attorneys she supervised to appear in court for conferences or hearings and inadequate oversight and handling of mortgage foreclosure files.

(*Id.*) This is exactly what happened in the *Mack* case in which counterclaims, default judgments, discovery requests, court notices, and numerous correspondence from opposing counsel went unanswered during the period from September 2009 until May 2011. (*See* Smith T Decl. at ¶ 14 (*citing* Final Order on Plaintiff's Motion to Set Aside Final Judgment and Set New Trial)).

e. Assigning Obligations Without Approval.

64. The MSA also states that "[DJSPA] shall not assign, in whole or part, any of its obligations under this Agreement without Client's written consent. [DJSPA] shall not subcontract any portion of its performance obligations under this Agreement without [GMACM's] prior written approval." *Id.* at ¶ 18.1. In 2009, Stern divested his "back office" operations into several separate publicly-traded entities, including DJSP Enterprises, which Stern exclusively used from that point to assist in the foreclosure processing. (*See* Smith T Decl. at ¶ 10 (citing Deposition of David J. Stern, *The Law Offices of David J. Stern, P.A. v. Bank of America, Corp.*, No. aa-21349-CIV-MORENO, dated Aug. 16, 2012 at 21)). As noted above, under the MSA, DJSPA was prohibited from assigning out such functions absent written approval by GMACM and, therefore, this too constitutes a material breach of the MSA between DJSPA and GMACM. Upon information and belief, GMACM never consented to allowing DJSPA to assign its obligations under the MSA to a third party. (*See* Cunningham Decl. at ¶ 8).

f. Offshoring of Work.

65. The MSA states that DJSPA "may perform . . . Services outside of the United States, . . . *only if* expressly agreed to by [GMACM] in the Statement of Work or otherwise." MSA at ¶ 8.1 (emphasis added). Stern admitted under oath that DJSPA outsourced work on files DJSPA handled to individuals working in the Philippines, starting as early as 2007. (*See* Smith T Decl. at ¶ 10 (*citing* Stern Depo. 177:10–12, 17–25; 178:1)). The employees in the Philippines inputted all of the information into the software that created the foreclosure documents. (*See*

Smith T Decl. at ¶ 7 (*citing* Depo. of Tammy Lou Kapusta, 69: 4–8)). Kapusta acknowledged that this created "huge problem[s]" for the firm's handling of matters because of educational differences. (*Id.* at 69:11–13). GMACM was not informed of and did not approve – expressly or otherwise -- this offshoring operation. (*See* Cunningham Decl. at ¶ 8).

- (3) In Related Litigation, DJSPA has been Barred from Recovery as a Result of its Material Breaches.
- 66. DJSPA represented numerous mortgage service providers, including CitiMortgage, Inc. ("CMI"). At about the same time it sued GMACM, on March 18, 2011, DJSPA also brought suit against CMI, claiming CMI owed \$4,439,794.53 for unpaid legal services. CMI moved for summary judgment, and on February 20, 2013, Judge Cooke entered an order granting summary judgment to CMI against DJSPA's claims. The filings were submitted under seal and the Judge's opinion is not publicly available.

(b) THE CLAIMS ARE OVERSTATED AND SUBJECT TO OFFSETS.

- (1) Stern Is Not Entitled To Recover Certain Elements Of The Claims.
 - a. Sums Related to FNMA & FHLMC Loans.
- 67. As of the Petition Date, DJSPA asserted that sums were due and owing to them by GMACM related to 10,203 outstanding invoices. Two thousand four hundred sixty-eight (2,468) of these invoices related to agency loans ¹⁶ and 7,735 invoices pertain to non-agency loans. More specifically, DJSPA asserts that \$411,687.15 is owed for work related to FNMA loans and \$271,820.75 is owed for work related to FHLMC loans.
- 68. As noted above, contemporaneous with the prosecution of the Florida Lawsuit between DJSPA and GMACM, DJSPA was also in litigation involving alleged unpaid fees for legal services against FHLMC and FNMA as well as other mortgage lenders. (*See* Smith T Decl.

¹⁶ Agency loans mean those loans owned by either FNMA or FHLMC.

at ¶ 12-13 (citing The Law Offices of David J. Stern, P.A. v. Federal Home Loan Mortgage Corp., Case No. 11-60623-CIV-Seitz/Simonton (U.S. Dist. Ct. S.D. Fla. Mar. 23, 2011) (the "FHLMC Suit"); Federal National Mortgage Assoc. a/k/a Fannie Mae v. The Law Offices of David J. Stern, P.A., No. 32-194Y-0016411 (American Arbitration Association) (the "FNMA Arbitration")). In connection with their legal disputes, FHLMC and FNMA requested that DJSPA invoices relating to FHLMC and FNMA loans (except those invoices relating to "curative work" as described below) be transferred, respectively, to the FHLMC Suit and FNMA Arbitration. (See Smith T Decl. at ¶13). Pursuant to filed stipulations of DJSPA and GMACM, the FHLMC and FNMA loans were transferred from the Florida Lawsuit to the FHLMC Suit and the FNMA Arbitration and were no longer part of the Florida Lawsuit at the time of the filing of these Chapter 11 cases. ¹⁷ (See Id.). Therefore, the total sum of \$683,507.90 is not recoverable through Claim Nos. 5275 and 7464 filed by DJSPA.

b. Further Reductions to Asserted Claim Amounts.

69. Therefore, only two elements of the claim remain – "curative" work and other alleged outstanding amounts. As noted above, DJSPA asserts GMACM failed to pay his firm \$2,498,475.82 for services provided before the Petition Date.

70. Upon information and belief, among the invoices for which DJSPA seeks payment are ones in the collective amount of \$1,158,885.04 that were submitted to (and denied by) GMACM before the Petition Date. (*See* Cunningham Decl. at ¶ 19). It was GMACM's practice to provide their outside counsel, such as DJSPA, with fee payment guidelines that set forth the items that counsel could and could not bill to GMACM. These guidelines were encompassed within an "Attorney Expectation Document." GMACM issued this document

¹⁷ To the extent any work performed on these loans related to curative work, such invoices remained a part of the Florida Lawsuit.

because, as a loan servicer, it managed an enormous volume of loan files and had its servicing costs (including fees of its outside foreclosure counsel) reimbursed by the investor for the underlying loan. Therefore, in order to ensure that GMACM could obtain reimbursements from the investors equivalent to the costs it incurred, GMACM issued a set of guidelines for its outside attorneys that described the services that the firms could bill for, how much could be billed for the particular services and the time within which bills had to be submitted to GMACM for repayment, as well as the consequences of failing to submit timely invoices. This document provides, in pertinent part, that charges by counsel over the amount allowed for investor reimbursement that do not have GMACM/investor approval will not be paid by GMACM. In addition, within the Attorney Expectation Document, GMACM advises counsel that GMACM reserves the right to decline payment of the invoice if it is not submitted within the required timelines. (See Cunningham Decl. at ¶ 19). DJSPA invoices totaling \$1,158,885.04 were denied for payment because either the invoice amounts were above the payment thresholds set by the applicable investor(s) and/or the invoices were not submitted on a timely basis to GMACM. (See Id.). Therefore, even if the Stern Claims are not disallowed in their entirety under the first breach doctrine, DJSPA may be entitled to a claim of no greater than \$1,339,590.78 on account of unpaid prepetition invoices.

71. As previously noted, DJSPA seeks \$2,979,500 from GMACM for the "curative work" it contends to have performed at GMACM's request. As described above, as part of its ongoing remediation efforts at the time, GMACM had both its own employees as well as outside counsel on site at DJSPA's offices reviewing files in the fall 2010. In fact, the curative work provided by DJSPA was untimely and of a very low quality. In order to complete the initial process of securing a corrective affidavit, GMACM's in-house personnel (and <u>not</u> DJSPA)

prepared the information and thereafter, supplied DJSPA with a letter documenting the corrections made to the original affidavit. Therefore, the only purported curative services DJSPA provided were limited to pulling files, providing original or copies of affidavits and making corrections to affidavits, which was significantly less than the scope of curative services ultimately invoiced by DJSPA and contemplated by the September 27 Letter. Furthermore, as a result of the files being transferred to other firms, not one of the affidavits that were drafted by DJSPA were used by other firms or DJSPA to remediate loans as required by GMACM. (*See* Cunningham Decl. at ¶ 12). As a result of DJSPA not providing the services for which it is seeking payment, DJSPA is not entitled to the amounts requested in the Stern Claims related to curative work purportedly performed in the fall of 2010.

(2) Potential Offsets Against Any Allowed Claim Amounts.

- 72. Delaware courts make clear that "in order to recover damages for . . . breach of contract, plaintiff must demonstrate substantial compliance with all the provisions of the contract." *Emmett S. Hickman Co. v. Emilio Capaldi Developer, Inc.*, 251 A.2d 571, 573 (Del. Super. Ct. 1969) (citing *Carroll v. Cohen*, 91 A. 1001, 1003 (Del. Super. Ct. 1914)). A contract has been substantially performed "where all the essentials necessary to the full accomplishment of the purposes for which the thing contracted for..." are performed. *Trader v. Grampp Builders, Inc.*, 263 A.2d 304, 305 (Del. Super. Ct. 1970).
- 73. Relatedly, Delaware courts determine damages in a breach of contract action "as if the parties had fully performed the contract." *Reserves Dev. LLC v. Crystal Props., LLC*, 986 A.2d 362, 367 (Del. 2009). If the performance of the party bringing the breach of contract action does not meet the contractual requirements, the trial judge shall deduct from the damages amount, an amount attributed to the non-conforming work. *Id.*; *see also Frunzi v. Paoli Servs., Inc.*, No. N11A-08-001-MMJ, 2012 WL 2691164, at *9 (Del. Super. Ct. July 6, 2012) (reducing

contract damages by the cost of the work that was not fully performed). Florida courts also apply the same offsetting principle. *Ocean Ridge Dev. Corp. v. Quality Plastering, Inc.*, 247 So. 2d 72, 75 (Fla. Dist. Ct. App. 1971) ("Substantial performance is that of a contract which, while not full performance, is so nearly equivalent to what was bargained for that it would be unreasonable to deny the promise the full contract price subject to the promisor's right to recover whatever damages may have been occasioned him by the promisee's failure to render full performance.")

- 74. Delaware contract law further provides that any damages awarded to a party claiming breach of contract be offset against amounts incurred by the other party to the contract. *Reserves Dev.*, 986 A.2d at 367; *Frunzi*, 2012 WL 2691164, at *9; *Rothensies v. Elec. Storage Battery Co.*, 329 U.S. 296, 299 (1946).
- 75. Accordingly, if the Court does not disallow the Claims in their entirety due to DJSPA's material breaches of the MSA and SOWs, then any amounts that the Court determines DJSPA is entitled to recover must be offset against GMACM's damages flowing from DJSPA's failure to provide substantial performance.
- 76. In particular, as a result of the Claimant's inability to provide the requisite services contemplated by the MSA, GMACM not only had to retain new counsel, at a significant cost, to handle all of the foreclosure files being handled by the Claimant, but also had to pay significant monetary penalties to both FNMA and FHLMC because of the delay in prosecuting foreclosures being handled by the Claimant, as well as other costs associated with litigations mishandled by the Claimant prior to the termination of its relationship with GMACM.

a. Timeline Penalties.

77. From February 2011 through February 2013, GMACM was delayed in pursuing foreclosure proceedings against delinquent borrowers because i) appropriate procedures were not followed by DJSPA during the time such files were in its possession and under its responsibility,

which required other firms to perform new foreclosure services and initiate new actions or amend prior actions, and ii) the courts became backlogged due to a significant amount of new or amended actions having to be filed with the court in order to remedy DJSPA's mistakes. As a result of having to reassign the files being managed by DJSPA and incurring delays pursuing foreclosures, GMACM incurred timeline penalties of \$1,220,865.96, which it had to pay to FNMA and FHLMC. More specifically, there are 21 FHLMC loans that took more than two years (and in some instance, five years) to complete the foreclosure sale from the date when the loan was first referred to foreclosure, which led to penalties of \$345,570.00. Similarly, there are 58 FNMA loans that took more than two years (and, in some instances, well over four years) to complete the foreclosure sale from the date when the loan was first referred to foreclosure, which led to penalties of \$875,295.56. Therefore, but for DJSPA's actions, GMACM would not have incurred such penalties. (See Cunningham Decl. at ¶ 19).

b. <u>File Transfer Costs.</u>

78. Upon the termination of its professional relationship with the Claimant, GMACM had to transfer 9,206 loan files that were being handled by Claimant to new law firms. This included 6,549 non-agency loans (i.e., loans where neither Fannie Mae nor Freddie Mac were the investor). At the time, GMACM and the new firms agreed that GMACM would pay each firm \$300 per loan file to cover the time the firm would need to familiarize itself with the facts of each file. GMACM was not entitled to have these file transfer costs reimbursed by the loan investors. As a result, GMACM was damaged in the amount of \$1,964,700 (the "Transfer Costs"). But for the Claimant's inability to provide the professional services it promised to GMACM, which required GMACM to transfer all of its files to new law firms, GMACM would never have incurred these costs. (See Cunningham Decl. at ¶ 22). Therefore, GMACM is

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entitled to offset the Transfer Costs against any allowed claim the Claimant may have against GMACM in these Chapter 11 cases.

Stern's Negligent Handling of Loan Files.

- As referenced above, GMACM's investigation has documented numerous instances in which loan files were poorly managed and mishandled by DJSPA, resulting in damage to GMACM. (*See* supra ¶¶ 30-32). These matters are summarized in Exhibit S to the Smith T Decl and incorporated herein. These matters involved the submission of invalid documentation by the Claimant to the Florida courts, loss of loan documents, failure to respond to discovery propounded by adversaries, failure to respond to dispositive motions, and failure to respond to counterclaims which, in several instances, resulted in default judgments being entered as to loans owned or serviced by GMACM. GMACM was prejudiced by DJSPA's acts of malpractice, including having to pay legal counsel to attempt to correct DJSPA's flagrant errors. The amount of damages presently known to GMACM resulting from DJSPA's negligence is at least \$865,104.33.
- 80. Beyond its inability to properly manage litigation on behalf of GMACM, the Claimant failed to recover costs from borrowers that the servicer was rightly entitled to receive when it enforced its remedies against the borrower. For example, in chapter 13 cases, the Claimant failed to recoup from the debtor-borrower all of the costs incurred by GMACM in enforcing the loan terms because the borrower completed a chapter 13 repayment plan that was predicated on a cure amount that was not inclusive of all of GMACM's costs. As a result, GMACM paid the Claimant for its work, yet the Claimant never took the appropriate steps to ensure that GMACM was made whole. Similarly, the Claimant would file a stay relief motion against the borrower, but fail to include all of GMACM's costs in the order granting relief from

the automatic stay that also awarded GMACM its costs. In other instances, the Claimant would file a motion for stay relief against a borrower that was not warranted yet still invoice GMACM for its time on a meritless motion. On other occasions, the Claimant took so long to foreclose on a property that the loan investor (e.g., the Veterans Administration or "VA") would not reimburse GMACM for its property preservation costs because the inordinate delay in foreclosing on the loan was beyond the acceptable foreclosure period permitted by under VA servicing guidelines. As a result, GMACM lost the opportunity to have its costs reimbursed in these circumstances. Similarly, other investors had their own limited timeframes within which they would reimburse a servicer for its costs, including professional fees. Accordingly, in certain instances, the Claimant submitted bills beyond an investor's deadline, GMACM paid the Claimant but lost the ability to have that cost reimbursed. In sum, GMACM was damaged by the Claimant because, but for the Claimant's actions, GMACM would have been able to rightfully recover the fees it paid to the Claimant. These matters are identified by Loan ID # in the Cunningham Decl. and incorporated herein. The amount of damages presently known to GMACM resulting from DJSPA's negligence is at least \$57,139.98. (See Cunningham Decl. at ¶ 21).

(c) DJSPA'S CLAIMS FOR OPEN ACCOUNT OR ACCOUNT STATED ARE REDUNDANT AND OTHERWISE INVALID.

81. In the Florida Lawsuit, DJSPA also asserted causes of action for Open Account and Account Stated, but these claims are redundant to its Breach of Contract claim. The Stern Claims do not suggest that these additional claims seek amounts any different from the amounts sought pursuant to the alleged breach of contract claim. Nor could they, since the parties' relationship was expressly made subject to the written agreements between them. (MSA, 21.11 (providing for Exclusion of Other Terms and Conditions).

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82. Regardless, a claim for Open Account is unavailable to DJSPA since there must be at least some expectation that the parties will work together again in the future. *See Robert W. Gottfried, Inc. v. Cole,* 454 So. 2d 695, 696 (Fla. Dist. Ct. App. 1984) (explaining that open account requires "the expectation of further transactions subject to future settlement and adjustment"). As Stern has been individually disbarred and DJSPA dissolved, there is of course no chance that the parties will resume working together in the future. ¹⁸

83. Second, for an account stated to exist as a matter of law, there must be an agreement between the parties that a certain balance is correct and due and an express or implicit promise to pay this balance. *Harold R. Clune, Inc. v. Healthco Med. Supply*, 78 A.D.2d 914 (1980). Something more than one party simply sending hundreds of invoices is required for the court to find an agreement between the parties that a certain balance is correct and due. *Breezy Bay, Inc. v. Indusria Maquiladora Mexicana, S.A.*, 361 So. 2d 440 (Fla. Dist. Ct. App. 1978). Here, DJSPA cannot prove that it did the work shown on the claimed invoices and GMACM never agreed, explicitly or implicitly, to pay a certain balance. Thus, to the extent that DJSPA is entitled to seek recovery, it must do so under breach of contract, not open account or account stated.

¹⁸ Stern wrote GMACM on March 1, 2011 confirming that the widespread firings of the firm by firm clients resulted in DJSPA being prevented "from performing any services to facilitate keeping [GMACM] cases active" and informing GMACM that "as of March 31, 2011 [sic], this firm will completely cease any and all services on [GMACM's] behalf." (*See* Cunningham Decl. at ¶ 17).

NOTICE

84. The Liquidating Trust has provided notice of this Objection in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012 [Docket No. 141] and the Procedures Order.

CONCLUSION

WHEREFORE, the Liquidating Trust respectfully request entry of the Proposed Order (i) disallowing the Stern Claims in their entirety with prejudice, and (ii) such other and further relief as the Court may deem proper.

Dated: April 27, 2015 /s/ Jordan A. Wishnew

Norman S. Rosenbaum Jordan A. Wishnew MORRISON & FOERSTER LLP 250 West 55th Street New York, New York 10019 Telephone: (212) 468-8000 Facsimile: (212) 468-7900

- And -

John W. Smith T (admitted *pro hac vice*) BRADLEY ARANT BOULT CUMMINGS LLP One Federal Place 1819 Fifth Avenue North Birmingham, Alabama 35203 Telephone: (205) 521-8521 Facsimile: (205) 488-6521

Counsel for the ResCap Liquidating Trust

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Hearing Date and Time: June 23, 2015 at 10:00 a.m. (Prevailing Eastern Time) Response Deadline: May 18, 2015 at 4:00 p.m. (Prevailing Eastern Time)

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Jordan A. Wishnew John W. Smith T (admitted *pro hac vice*)

Counsel for the ResCap Liquidating Trust
Co-Counsel for the ResCap Liquidating Trust

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

)	
In re:)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	,)	Chapter 11
Debtors.)	Jointly Administered
)	

NOTICE OF RESCAP LIQUIDATING TRUST'S OBJECTION TO PROOFS OF CLAIM NOS. 5275 AND 7464 FILED BY THE LAW OFFICES OF DAVID J. STERN, P.A.

PLEASE TAKE NOTICE that the undersigned have filed the attached *ResCap Liquidating Trust's Objection to Proofs of Claim Nos. 5275 and 7464 Filed by The Law Offices of David J. Stern, P.A.* (the "Objection").

PLEASE TAKE FURTHER NOTICE that a hearing on the Objection will take place on June 23, 2015 at 10:00 a.m. (Prevailing Eastern Time) before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than May 18, 2015 at 4:00 **p.m.** (Prevailing Eastern Time), upon: (a) Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408; (b) counsel to the ResCap Liquidating Trust, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attention: Norman S. Rosenbaum and Jordan A. Wishnew); (c) co-counsel to the ResCap Liquidating Trust, Bradley Arant Boult Cummings LLP, One Federal Place, 1819 Fifth Avenue North, Birmingham, AL 35203 (Attention: John W. Smith T); (d) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda A. Riffkin and Brian S. Masumoto); (e) The ResCap Liquidating Trust, Quest Turnaround Advisors, 800 Westchester Avenue, Suite S-520, Rye Brook, NY 10573 (Attention: Jeffrey Brodsky); and (f) The ResCap Borrower Claims Trust, Polsinelli PC, 900 Third Avenue, 21st Floor, New York, NY 10022 (Attention: Daniel J. Flanigan); and (g) counsel to The Law Office of David J. Stern PA, TEW Cardenas LLP, 1441 Brickell Avenue, 15th Floor, The Four Seasons Tower, Miami, FL 33131-3407 (Attention: James Malphurs).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written response to the relief requested in the Objection, the Bankruptcy Court may deem any opposition waived, treat the Objection as conceded, and enter an order granting the relief requested in the Objection without further notice or hearing.

Dated: April 27, 2015 /s/ Jordan A. Wishnew

Norman S. Rosenbaum Jordan A. Wishnew MORRISON & FOERSTER LLP 250 West 55th Street New York, New York 10019 Telephone: (212) 468-8000 Facsimile: (212) 468-7900

- and -

John W. Smith T (admitted *pro hac vice*) BRADLEY ARANT BOULT CUMMINGS LLP One Federal Place 1819 Fifth Avenue North Birmingham, Alabama 35203 Telephone: (205) 521-8521

Counsel for the ResCap Liquidating Trust

Facsimile: (205) 488-6521

Exhibit 1

Proposed Order

12-12020-mg Doc 8531-2 Filed 04/27/15 Entered 04/27/15 16:52:56 Exhibit 1 - Proposed Order Pg 2 of 4

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, et al	, <u>(</u>	Chapter 11
, , <u>, , , , , , , , , , , , , , , , , </u>	,	1
Debtors.)	Jointly Administered
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)	J

ORDER GRANTING RESCAP LIQUIDATING TRUST'S OBJECTION TO PROOFS OF CLAIM NOS. 5275 AND 7464 FILED BY THE LAW OFFICES OF DAVID J. STERN, P.A.

Upon the objection (the "Objection") of The ResCap Liquidating Trust (the "Liquidating Trust"), as successor to Residential Capital, LLC and its affiliated debtors (collectively, the "Debtors"), seeking entry of an order, pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, disallowing and expunging the Stern Claims (Claim Nos. 5275 and 7464) against GMACM, all as more fully described in the Objection; and the Court having jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, and it appearing that no other or further notice need be provided; and upon consideration of the Objection and the Declarations of David Cunningham and John W. Smith T, annexed to the Objection as Exhibit 2-A and Exhibit 2-B, respectively; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Liquidating Trust, the Liquidating Trust's beneficiaries, the Debtors, their estates, creditors, and other parties in interest, and that the legal and factual

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Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Objection.

bases set forth in the Objection establish just cause for the relief granted herein; and responses to the Objection, if any, having been resolved, withdrawn or otherwise overruled by this Order; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the relief requested in the Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Stern Claims are disallowed and expunged with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the notice and claims agent in these Chapter 11 Cases, is directed to disallow and expunge the Stern Claims so that such claims are no longer reflected on the claims register maintained in the Chapter 11 Cases; and it is further

ORDERED that entry of this Order is without prejudice to the Liquidating Trust's right to object to any other claims in these Chapter 11 Cases; and it is further

ORDERED that the Liquidating Trust and the Debtors are authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Objection, as provided therein, is deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a), the Case Management Procedures entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

12-12020-m	ng Doc 8531-2	Filed 04/27/15 Entered 04/27/15 16:52:56 Exhibit 1 - Proposed Order Pg 4 of 4
Dated: New	, 2015 v York, New York	
		THE HONORABLE MARTIN GLENN
		UNITED STATES BANKRUPTCY JUDGE

Exhibit 2-A

Cunningham Declaration

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UNITED STA	TES BAN	KRUPTCY	COURT
SOUTHERN	DISTRICT	COF NEW	YORK

	_)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, et al.,)	Chapter 11
)	
Debtors.)	Jointly Administered
)	

DECLARATION OF DAVID CUNNINGHAM IN SUPPORT OF RESCAP LIQUIDATING CLAIMS TRUST'S OBJECTION TO PROOFS OF CLAIM NOS. 5275 AND 7464 FILED BY THE LAW OFFICES OF DAVID J. STERN, P.A.

I, David Cunningham, hereby declare as follows:

Liquidating Trust (the "Liquidating Trust"), established pursuant to the terms of the Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Director for Residential Capital, LLC ("ResCap"), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the "Debtors"). I have been employed by affiliates of ResCap since August of 2001. I began my association with ResCap in 2001 working as a Foreclosure Specialist in the Loan Servicing Operation. In 2002, I became a Team Leader in the Foreclosure Department, a position I held until 2003 when I became a Manager. In 2007, I became the Director, Foreclosure Operations. In February of 2013, I became Director of Regulatory and Compliance. In my current position, I am responsible for ensuring that ResCap satisfies its obligations under settlements entered into

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with the Department of Justice and the Federal Reserve Board. I am authorized to submit this declaration (the "<u>Declaration</u>") in support of the *ResCap Liquidating Trust's Objection To Proofs* of Claim Nos. 5275 and 7464 Filed By David J. Stern (the "Objection").

- 2. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations, information learned from my review of relevant documents and information I have received through my discussions with other former members of the Debtors' management or other former employees of the Debtors, the Liquidating Trust, its professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Objection on that basis.
- In my capacity as Director, I am familiar with the claims reconciliation process in these Chapter 11 Cases and I assist the Liquidating Trust with the claims reconciliation process. Except as otherwise indicated, all statements in this Declaration are based upon my familiarity with the Debtors' books and records, the Debtors' schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the "Schedules"), and/or my review of relevant documents. I or my designee at my direction have reviewed and analyzed the proof of claim form and supporting documentation filed by the Claimant. Since the Plan went effective and the Liquidating Trust was established, I, along with other members of the Liquidating Trust have participated in the claims reconciliation process, analyzed claims, and determined the appropriate treatment of the same. In connection with such review and analysis, where applicable, I or other Liquidating Trust personnel, together with professional advisors, have reviewed (i) information supplied or verified by former personnel in departments within the Debtors' various business units, (ii) the Books and Records, and (iii) the Schedules.

Capitalized terms not defined herein shall have the meanings ascribed to them in the Objection.

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4. The Claimant filed proof of claim number 5275 against GMACM in the amount of \$6,161,483.70 on account of outstanding sums purportedly due and owing as of February 2011. The Claim is premised on the Complaint filed on June 2, 2011 in the Circuit Court of the 17th Judicial District, In and For Broward County, Florida against GMACM, which alleged Breach of Contract (Count I), Open Account (Count II), and Account Stated (Count III). The Complaint seeks \$6,161,483.70 (plus interest and costs), which Stern contends GMACM owes his firm for legal work allegedly performed but for which he was not compensated. There are multiple components to the Claims: alleged unpaid invoices for (a) "curative" work GMACM requested of the Claimant in 2010, (b) services rendered before GMACM terminated its relationship with the Claimant, and (c) sums related to Fannie Mae and Freddie Mac matters.

GMAC Mortgage's Relationship With The Law Offices of David J. Stern, P.A.

- 5. The Claimant, Law Offices of David J. Stern, P.A. ("<u>DJSPA</u>"), is a Florida law firm that held itself as specialists in handling residential mortgage foreclosures, bankruptcy, evictions, the sale of real estate owned properties by foreclosing lenders, and other foreclosure-related litigation in Florida. At all relevant times, David J. Stern ("<u>Stern</u>") was the principal of DJSPA.
- 6. GMACM retained DJSPA to provide legal services in connection with mortgage loans for Florida properties that GMACM was servicing on behalf of various financial institutions, including, but not limited to, Federal National Mortgage Association (a/k/a Fannie Mae, hereafter "FNMA") and Federal Home Loan Mortgage Corp. (a/k/a Freddie Mac, hereafter "FHLMC"). On January 17, 2007, GMACM formalized its pre-existing attorney-client relationship with DJSPA and entered into a Master Services Agreement ("MSA") and Statement of Work ("SOW"), which was amended and modified from time-to-time, and provided for

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DJSPA to handle residential mortgage foreclosures, bankruptcy, evictions, and the sale of real estate owned properties in the State of Florida. A copy of the MSA and the subsequent SOWs (entered into prior to the 2010 termination of the GMACM relationship) are collectively attached hereto as **Exhibit A**.

- 7. According to the invoices submitted by DJSPA that purport to substantiate the Stern Claims, during the period from 2007 until November 2010, DJSPA performed legal work on thousands of mortgage files serviced by GMACM. For example, in 2010, GMACM's inventory of Florida loans in foreclosure totaled 15,412. Of that loan population, there were 1,483 FHLMC loans and 2,995 FNMA loans. DJSPA handled the majority of GMACM's Florida loans in foreclosure. Certain support services for the legal work provided by DJSPA to GMACM were performed by one or more separately-incorporated entities in which Stern held a substantial interest and over which Stern maintained substantial control. One of these entities was DJS Processing, LLC, which was created by DJSPA to provide non-legal services needed to process foreclosure files and ancillary services for DJSPA.²
- 8. Under the MSA, DJSPA was prohibited from assigning out such functions absent written approval by GMACM. Upon information and belief, GMACM never consented to allowing DJSPA to assign its obligations under the MSA to a third party. The MSA further states that Stern "may perform . . . Services outside of the United States, . . . *only if* expressly agreed to by [GMACM] in the Statement of Work or otherwise." MSA at ¶ 8.1. Upon information and belief, GMACM was not informed of and did not approve expressly or otherwise -- this offshoring operation.

² According to the Florida Secretary of State's website, DJSPA is the managing member of DJS Processing, LLC, which is a Delaware entity that was organized in 2009. *See* Smith T Decl. at ¶ 6 (DJS Processing, LLC Application for Authorization to Transact Business in Florida, FLORIDA DEPARTMENT OF STATE – DIVISION OF CORPORATIONS, http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2009%5C1005%5C0 0209278.Tif&documentNumber=M09000003832).

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Curative Work

- 9. During the time period of the Florida Attorney General's investigation of DJSPA, GMACM became aware of problems with the potentially improper or questionable affidavits that had been filed on GMACM's mortgage loan files. On or about August 23, 2010, GMACM sent attorneys and staff to meet with Mr. Stern at DJSPA's offices to discuss the potential defects with affidavits of indebtedness (the "Affidavits") submitted in judicial foreclosures in Florida. GMACM thereafter immediately sought to address remediation of the Affidavits, including submitting corrected affidavits.
- 10. On September 27, 2010, David Stern sent a letter to GMACM (the "September 27 Letter") requesting flat fee billing for specific services that DJSPA proposed to provide to assist GMACM with completing remediation. (*See* Exhibit B hereto). The September 27 Letter contemplated a specific flat fee for services for each population of loans that required affidavit remediation. (*See Id.*). On October 14, 2010, GMACM responded to DJSPA's billing proposal agreeing generally to the proposed rates so long as DJSPA met specific timing expectations. (*See* Exhibit C hereto (the "GMACM Letter")). The GMACM Letter made clear, however, that DJSPA was only authorized to proceed with work on a portion of the files requiring remediation.
- understanding that four thousand two hundred and ten (4,210) Affidavits required remediation, which included two thousand nine hundred forty-one (2,941) foreclosures that were filed against a borrower but for which no judgment was entered as well as one thousand two hundred sixty-nine (1,269) foreclosures in which a judgment has been entered but for which a sale had not yet been held.

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12. As part of its ongoing remediation efforts at the time, GMACM had both its own employees as well as outside counsel on site at DJSPA's offices reviewing the files in the Fall of 2010. The curative work provided by DJSPA was untimely and of a very low quality. In order to complete the initial process of securing a corrective affidavit, GMACM's in-house personnel (and not DJSPA) prepared the information and thereafter, supplied DJSPA with a letter documenting the corrections made to the original affidavit. Therefore, the only purported curative services DJSPA provided were limited to pulling files, providing original or copies of affidavits and making corrections to affidavits, which was significantly less than the scope of curative services ultimately invoiced by DJSPA and contemplated by the September 27 Letter. Furthermore, as a result of the files being transferred to other firms, not one of the "corrected" affidavits that were drafted by DJSPA were used by other firms or DJSPA to remediate loans as required by GMACM. As a result, DJSPA is not entitled to any sums for its efforts in fall 2010 to provide curative work.

Termination of Relationship With Claimant

DJSPA and obtain possession of the loan files and move them to new law firms to be serviced, on November 5, 2010, GMAC and DJSPA entered into an Escrow Agreement (a copy of which is attached hereto as **Exhibit D**), wherein the law firm of Bradley Arant Boult Cummings LLP ("BABC") agreed to serve as Escrow Agent and hold the sum of \$3 million in escrow while GMACM and DJSPA resolved their dispute over attorneys' fees and expenses. These funds remain in escrow with BABC at this time. With the Escrow Agreement in place, GMACM instructed DJSPA to return all of GMACM's files.

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- 14. FHLMC terminated its relationship with DJSPA by letter dated November 1, 2010, which meant that DJSPA was no longer authorized to participate in the designated counsel program with FHLMC. On November 10, 2010, FNMA notified GMACM that FNMA had "terminated its relationship with the Law Offices of David J. Stern, P.A." and barred all loan servicers from referring "any future Fannie Mae matters to the Stern Firm." (*See* Servicing Notice, Nov. 10, 2010), attached hereto as **Exhibit E**).
- 15. In light of the serious ethical cloud hanging over DJSPA arising from the formal investigation by the Florida Attorney General, together with DJSPA's loss of approval to prosecute foreclosures of loans owned by FNMA and FHLMC, GMACM officially terminated its relationship with DJSPA on or about November 15, 2010.
- 16. Thereafter, on or about February 25, 2011, DJSPA sent GMACM a letter demanding the sum of \$6,161,483.70 for unpaid legal services it purportedly provided to GMACM. When the demand went unsatisfied, DJSPA commenced a lawsuit against GMACM.
- 17. Moreover, on March 1, 2011,³ Stern wrote GMACM (and all of the other firms DJSPA did work for in Florida) confirming that the widespread firings of the firm by firm clients resulted in DJSPA being prevented "from performing any services to facilitate keeping [GMACM] cases active" and informing GMACM that "as of March 31, 2011 [sic], this firm will completely cease any and all services on [GMACM's] behalf." (*see* Letter dated from DJSPA attached hereto as **Exhibit F**).

³ The letter was incorrectly dated March 1, 2010.

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Unpaid Invoices

- 18. As of the Petition Date, DJSPA asserted that sums were due and owing to them by GMACM related to 10,203 outstanding invoices. Two thousand four hundred sixty-eight (2,468) of these loans related to agency loans, and seven thousand seven hundred thirty-five loans (7,735) were non-agency loans.
- 19. Upon information and belief, among the invoices for which DJSPA seeks payment are ones in the collective amount of \$1,158,885.04 that were submitted to GMACM before the Petition Date (and denied by GMACM before the Petition Date). It is my understanding that such invoices were denied for payment because either the invoice amounts were above the payment thresholds set by the applicable investor(s) and/or the invoices were not submitted on a timely basis to GMACM. More specifically, based on the loan-level detail maintained in the Debtors' books and records, DJSPA re-invoiced GMACM for 1,515 loans totaling \$647,175.94 that had been submitted previously to GMACM for payment and denied, and submitted 1,384 invoices totaling \$511,709.10 well after the permissible period of time for reimbursement.4 It was GMACM's practice to provide its outside counsel, such as DJSPA, with fee payment guidelines that set forth the items that counsel could and could not bill to GMACM. These guidelines were encompassed within an "Attorney Expectation Document." GMACM regularly issued this document because, as a loan servicer, it managed an enormous volume of loan files and had its servicing costs (including fees of its outside foreclosure counsel) reimbursed by the investor for the underlying loan. Therefore, in order to ensure that GMACM could obtain reimbursements from the investors equivalent to the costs it incurred, GMACM issued a set of guidelines (that was updated and distributed to DJSPA periodically) for its outside

⁴ Due to the sheer volume of paper that would be required to substantiate this statement, the Trust has not attached is to the declaration, but it can be made available to DJSPA or the Court upon request.

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attorneys that described the services that the firms could bill for, how much could be billed for the particular services and the time within which bills had to be submitted to GMACM for repayment, as well as the consequences of failing to submit timely invoices. This document provides, in pertinent part, that charges by counsel over the amount allowed for investor reimbursement that do not have GMACM/investor approval will not be paid by GMACM. In addition, within the Attorney Expectation Document, GMACM advises counsel that GMACM reserves the right to decline payment of the invoice if it is not submitted within the predetermined timelines. A copy of the most recent Attorney Expectation Document that was provided to DJSPA in March 2010 is attached hereto as **Exhibit G**.

Timeline Penalties

20. From February 2011 through February 2013, GMACM was delayed in pursuing foreclosure proceedings against delinquent borrowers because i) appropriate procedures were not followed by DJSPA during the time such files were in its possession and under its responsibility, which required other firms to perform new foreclosure services and initiate new actions or amend prior actions, and ii) the courts became backlogged due to a significant amount of new or amended actions having to be filed with the court in order to remedy DJSPA's mistakes. Servicing guidelines set by FHLMC and FNMA impose deadlines by which a servicer, such as GMACM, must obtain a foreclosure judgment on delinquent loans for which either FNMA or FHLMC is the investor. If the deadline is not met, then FNMA and FHLMC are entitled to compensatory damages from the loan servicer in the form of a per diem fee.

⁵ See excerpt from FNMA Servicing Guide, dated August 31, 2010, which discusses foreclosure time frames and compensatory fees for breach of servicing obligations. Based on my servicing experience, FHLMC's servicing practices, as it relates to foreclosure time frames and compensatory fees, are generally consistent with those of FNMA. A copy of the excerpt is attached hereto as **Exhibit H**.

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FNMA and FHLMC regularly provided compensatory damage reports to GMACM, which were maintained in GMACM's books and records.

21. As a result of having to reassign the files being managed by DJSPA and incurring the aforementioned delays pursuing foreclosures, GMACM incurred timeline penalties of approximately \$1,220,865.96, which it had to pay to FNMA and FHLMC. More specifically, there are 21 FHLMC loans that took more than two years (and in some instance, five years) to complete the foreclosure sale from the date when the loan was first referred to foreclosure, which led to penalties of \$345,570.00. Similarly, there are 58 FNMA loans in which it took more than two years (and in some instances, well over four years) to complete the foreclosure sale from the date when the loan was first referred to foreclosure, which led to penalties of \$875,295.56. Therefore, it is my understanding that but for DJSPA's actions, GMACM would not have incurred such penalties. A worksheet, together with the relevant loan level data, setting forth the information above is attached hereto as **Exhibit I**.

Transfer Fees

22. Upon the termination of its professional relationship with the Claimant, GMACM had to transfer 9,206 loan files that were being handled by Claimant to new law firms. This included 6,549 non-agency loans (i.e., loans where neither FNMA nor FHLMC were the investor). At the time, GMACM and the new firms agreed that GMACM would pay each firm \$300 per loan file to cover the time the firm would need to familiarize itself with the facts of each file. GMACM was not entitled to have these file transfer costs reimbursed by the loan investors. As a result, GMACM was damaged in the amount of \$1,964,700 (the "Transfer Costs"). But for the Claimant's inability to provide the professional services if promised to GMACM, which required GMACM to transfer all of its files to new law firms, GMACM would

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never have incurred these costs. A worksheet, together with the relevant loan transfer data, is attached hereto as **Exhibit J**.

Other Sums Owed by Claimant

23 The Claimant failed to recover costs from borrowers that the servicer was rightly entitled to receive when it enforced its remedies against the borrower. For example, in chapter 13 cases, the Claimant failed to recoup from the debtor-borrower all of the costs incurred by GMACM in enforcing the loan terms because the borrower completed their chapter 13 repayment plan that was predicated on a cure amount that was not inclusive of all of GMACM's costs. As a result, GMACM paid the Claimant for his time, yet the Claimant never took the appropriate steps to ensure that GMACM was made whole. Similarly, the Claimant would file a stay relief motion against the borrower, but fail to include all of GMACM's costs in the order granting relief from the automatic stay that also awarded GMACM its costs. In other instances, the Claimant would file a motion for stay relief against a borrower that was not warranted yet still invoice GMACM for its time on a meritless motion. On other occasions, the Claimant took so long to foreclose on a property that the loan investor (i.e., the Veterans Administration ("VA")) would not reimburse GMACM for its property preservation costs because the inordinate delay in foreclosing on the loan was beyond the acceptable foreclosure period permitted under VA servicing guidelines. As a result, GMACM lost the opportunity to have its costs reimbursed in these circumstances. Similarly, other investors had their own limited timeframe within which they would reimburse a servicer for its costs, including professional fees. Accordingly, in certain instances, the Claimant submitted bills beyond an investor's deadline, GMACM paid the Claimant but lost the ability to have that cost reimbursed. In sum, GMACM was damaged by the Claimant because, but for the Claimant's actions, GMACM would have been able to rightfully

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recover the fees it paid to the Claimant. In the ordinary course of the Debtors' business, these matters were tracked in the Loss Control Database ("LCD"), which was utilized by GMACM's loan servicing group. The relevant losses, which are itemized in **Exhibit K** hereto, are identified by Loan ID number and include excerpts from the LCD that were inputted at the time of the loss by an associate in GMACM's loan servicing department. The amount of damages presently known to GMACM resulting from DJSPA's negligence is at least \$57,139.98.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 24, 2015

/s/ David Cunningham
David Cunningham
Director for ResCap Liquidating Trust

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Exhibit A

MASTER SERVICES AGREEMENT LAW-04018

This Master Services Agreement (the "Agreement") is made as of January 17, 2007, , (the "Effective Date") by and between GMAC Mortgage Group, LLC, a limited liability company, having a place of business at 100 Witmer Road, Horsham, PA 19044, and Law Firm of David J. Stern, a Florida corporation, having its principal place of business at 801 S. University Drive, Suite 500, Plantation, FL 33324 ("Company").

RECITALS

WHEREAS, GMAC Mortgage Group, LLC wishes to engage the services of Company, to provide certain services, as defined below, upon the terms and conditions specified herein, for the benefit of GMAC Mortgage Group, LLC ("Client") and the direct and indirect subsidiaries of Residential Capital, LLC (collectively "GMACR")

WHEREAS, it is the intention of the parties to establish this Agreement to govern the respective rights, duties and obligations of the parties.

THEREFORE, in consideration of the mutual covenants, agreements, warranties, and representations made and contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows.

Services shall be performed in accordance with the attached Terms and Conditions, Statement(s) of Work and all other documentation referred to herein and attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

- ANAMA MINITERE ALARY TEACH	Lary A Lill DE Carlet J. Cloth	
By: Weller J. Mayer	By: IMI	
Printed Name William J. Maguire Senior Vice President	Printed Name David J. Stern,	
Title	Title President	
This Agreement has been approved by the following Clier	nt business unit;	
Business Unit:	_	
Ву:		
		
Printed Name	_	
Printed Name Title	_	

Address for legal notice:

GMAC Mortgage Group, LLC 100 Witmer Road Horsham, PA 19044 ATTN: General Counsel

CMAC Markeness Cross II CQ

Law Firm of David L. Stern 801 S. University Drive Suite 500 Plantation, FL 33324 ATTN: David J. Stern

Law Firm of David I Stem

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TERMS AND CONDITIONS

FOR THE MASTER SERVICES AGREEMENT

1. Project: During the Term (as defined herein), Client or Company may identify services that Company can provide to the Client ("Project(s)"). Each Project may include provisions of services ("Services") and/or delivery of certain products or other items ("Deliverables"). Each Project will be described, along with any terms and conditions that are additional to the terms and conditions of this Agreement, in a Statement of Work, which may contain specifications, schedules, milestones, payments, or any other terms and conditions mutually agreed upon by the parties. The terms and conditions of this Agreement shall be applicable to each Project and are incorporated by reference into each Statement of Work. Incorporation of third-party products or services into a specific Project must be approved in advance and in writing by Client. If Client agrees that any third-party products or services are necessary for integration into a specific Project, Client will provide Company with reasonable access to the vendor of such third-party products or services, when Client, in its sole discretion, agrees that it is necessary and appropriate. During the Term of this Agreement and until the expiration of the applicable warranty period, Company will respond diligently and within a commercially reasonable period of time to all inquiries and requests for assistance by the Client. Client does not guarantee that Company will be asked to perform any minimum amount of Services hereunder.

2. Pricing and Involces:

- 2.1. Pricing: Client agrees to pay the fees set forth in the Statement of Work for Services satisfactorily performed, in U.S. dollars.
- 2.2. Taxes: Except for those taxes noted herein, no extra charges of any kind, including without limitation, transportation charges, shall be allowed unless agreed to in writing by Client prior to the performance of the Services. Client shall pay all sales, excise, or use taxes due on the transactions hereunder or provide Company customary proof that the transactions are exempt from sales taxes. Invoices shall separately identify any tax and shall include either Company's sales tax or use tax permit number. Company shall pay any other taxes and charges, including without limitation, assessments or fines arising from Company's performance of the Services under the Agreement, including taxes based upon Company's net income and penalties or fees imposed due to failure to file or pay collected sales or use taxes, failure to verify taxability of a purchase, or failure to calculate or remit taxes in a timely manner.
- 2.3. Invoices: Company shall invoice Client for Services within thirty (30) days from completion of the Services. Each invoice shall include identification information required by Client, a description of the services provided, and shall be subject to approval by the Client. Undisputed invoices shall be due thirty (30) days from receipt by Client.
- 2.4. Interest: Interest on undisputed past due amounts will be charged at the rate of one percent (1%) per month or the maximum rate allowable by law, whichever is less, provided that Company has given written notice of such default and an opportunity to cure in accordance with Section 3.3.1. Neither this provision, nor any other penalty and/or termination provision contained within this Agreement, shall apply if Client withholds payment because a good faith dispute exists regarding a material duty, obligation or term contained in this Agreement. Unless otherwise requested by Client, Company shall continue to perform fully under this Agreement while any dispute between the paxies is being resolved.
- 2.5. Acceptance: No payment made by Client shall be considered an acceptance of satisfactory performance of Company's obligations under this Agreement, nor shall any payment be construed as relieving Company from its full responsibility under this Agreement.

3. Term and Termination:

- 3.1. Term: The term of this Agreement (the "Term") shall commence on the Effective Date as stated above and will remain in force unless terminated in accordance with provisions of the Agreement.
- 3.2. Termination for Convenience: Unless otherwise provided herein, Client may terminate the Agreement or any Statement of Work issued hereunder without cause, by providing at least thirty (30)

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days written notice of such termination to Company. Upon such termination, Company shall recover, as its sole remedy, payment for work satisfactorily completed and not previously paid. Company hereby waives and forfeits all other claims for payment and damages including without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

3.3. Termination for Default:

- 3.3.1. Bither party may terminate this Agreement for cause upon a material default by the other party (including any default for which specific remedies are provided herein), which default remains uncured thirty (30) days after written notice thereof is given to the defaulting party.
- 3.3.2. If either party becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, then the other party may, by giving written notice thereof to such party, terminate this Agreement as of a date specified in such notice of termination.
- 3.3.3. If any of the insurance coverage or policies required to be maintained by Company under this Agreement is terminated, lapses or for any reason does not remain in full force and effect, or any such coverage or policy is replaced or materially modified without the prior written consent of Client, then Client may, by giving written notice thereof to Company, terminate this Agreement upon the date specified in the notice, which date may be the date of the notice.
- 3.3.4. If Company or its employees appear on or are members of any organization that appears on any government list, including, but not limited to, the Control List prepared by the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury, then Client may take all measures authorized under applicable law and may, by giving written notice thereof to Company, terminate this Agreement upon the date specified in the notice, which date may be the date of the notice.
- Termination Assistance: In connection with the termination of this Agreement for any reason, and notwithstanding any dispute between the parties, Company shall provide to Client such termination assistance as it may reasonably request in order to provide an orderly transition from Company to another provider (the "Termination Services"). If any such Termination Services requires resources in addition to those being used by Company in the performance of the Services, Client shall pay Company therefore on a mutually acceptable basis. Client shall continue to pay for all Termination Services requested by Client and performed by Company after the termination date, provided that if termination was by reason of a payment default by Client, Company shall be entitled to reasonable assurances acceptable to it prior to commencing such Termination Services that it will be fully compensated for such Termination Services.
- 4. Non-Exclusivity: The Agreement is a non-exclusive arrangement to purchase specified Services from Company.
- 5. Future Acquisitions: If during the term of the Agreement, Client acquires control of an entity ("Acquired Entity") under an existing contract with Company covering or relating to the subject matter of the Agreement, Client, at its option, may (a) keep the Acquired Entity's existing contract in effect until the date of termination of the existing contract, after which, such Acquired Entity may receive the benefits of the Agreement; (b) immediately cancel such existing contract after which, such Acquired Entity may receive the benefits of the Agreement or (c) assume the better of the contracts.

6. Representations and Warranties:

- Company represents and warrants that the Services will be performed in a diligent and workmanlike manner in accordance with good industry practices, by individuals of suitable training and skill.
- 6.2. Company represents and warrants that the Services and all Deliverables provided under this Agreement shall comply with and function in accordance with the requirements set forth in this Agreement and the Statement of Work.
- Company represents and warrants that its performance of Services and provision of Deliverables and Client's subsequent use of such Services and Deliverables does not and will not violate any copyright,

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patent, trade secret, trademark or other intellectual property or proprietary right of any third party.

- 6.4. Company represents and warrants that Company's actions and performance of the Services are and will be in full compliance with all applicable federal, state, and local requirements, including but not limited to, federal banking laws, federal consumer protection and privacy laws; all applicable state laws and regulations; any valid and effective order (including regulatory orders), verdict, judgment, consent decree or agreement.
- 6.5. Company warrants that the prices charged to Client shall be no less favorable than those currently extended to any other customer of Company for similar services.
- 6.6. Company represents and warrants that it has, and will maintain throughout the Term of this Agreement, all licenses, franchises, permits, authorizations and approvals materially necessary for the lawful conduct of its business.
- 6.7. Company and Client each represent and warrant to the other that the execution, delivery and performance of this Agreement by such party (a) has been duly authorized by all necessary corporate action (b) does not conflict with, or result in a material breach of, the articles of incorporation or by-laws of such party, and any material agreement by which such party is bound, or any law, regulation, rule, judgment or decree of any governmental instrumentality or court having jurisdiction over such party, and (c) and constitutes a valid and legally binding obligation of such party enforceable in accordance with its terms.
- 6.8. Company represents and warrants that there is no action, suit, claim, investigation or proceeding pending or, to the best of its knowledge, threatened against it that, if adversely decided, might adversely affect Company's ability to enter into this Agreement or performance of its obligations hereunder.
- 6.9. Company represents and warrants that no representation or warranty contained in this Agreement (including in any Attachment or addendum hereto) contains any untrue statement of material fact or omits to state a material fact necessary to make the statements and facts contained herein not materially misleading.
- 6.10. The warranties provided herein are cumulative of and in addition to any other warranties provided by law. The representations and warranties shall survive expiration or termination of this Agreement.
- 7. Security and Use of Client Systems: When Company is performing Services on Client's premises, Company shall comply with Client's security, safety, and fire protection procedures. If Company is given a key, code, combination or other access device to Client's premises, Company shall: (a) safeguard it with the same degree of care as Company safeguards keys to its own premises, but in no event with less than reasonable care; (b) account for all keys and access devices whenever requested to do so by Client; (c) maintain a log of the names of personnel and times when they have possession of such keys or access devices, and (d) return all such keys and access devices immediately upon request by Client. Client shall have the right to inspect the contents of all containers or packages being brought into or removed from Client's locations. Company's and its employees, agents and subcontractors use of Client's computers, equipment and systems ("Client Systems") shall be only to the extent necessary to perform the Services hereunder. Client may monitor such use of the Client Systems. In the event Client, in its sole discretion, determines that Company failed to comply with this provision, Client may immediately terminate this Agreement or take such action as it deems appropriate, and Client's sole liability shall be for payment of Services already rendered.

8. Performance and Personnel:

- 8.1. Place of Performance: Performance by Company of the Services shall take place in any of the fifty (50) states of the United States of America or the District of Columbia (the "United States"). Company may perform any of the Services outside of the United States, and on such additional terms and conditions as may be acceptable to Client, only if expressly agreed to by Client in the Statement of Work or otherwise.
- 8.2. Contact List: Company shall provide Client with a contact list for servicing needs containing the names, addresses, telephone and fax numbers, mobile and pager numbers, e-mail or Internet addresses and such other information as Client may reasonably request.

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8.3. At the request of Client, Company shall provide assurances satisfactory to Client, that Company's personnel meet the rules and requirements of Client pertaining to work history and qualifications.

- 8.4. Company shall provide Client with the name of each person assigned to work on Client's premises, and shall immediately update such information whenever changes occur.
- 8.5. While at any Client location or if Company or its agents or representatives are given access to any Client computing equipment, applications or the Client computer network, Company and Company's personnel shall follow all reasonable directions and instructions given by Client. Upon the request of Client, Company shall reassign or otherwise arrange so that a particular employee or agent of Company does not work at any Client location.
- 8.6. Client may require that Company submit any and all Company personnel to be assigned in connection with the performance of Services hereunder to a screening process, including but not limited to, employment eligibility verification and criminal background investigation. Company represents that all such investigations, inquiries, or tests required by Client will be conducted as a precondition of assignment to the performance of Services and provision of Deliverables hereunder, with the knowledge and consent of Company's personnel involved, and in compliance with all applicable state and federal laws and regulations. In addition to any criminal background checks that Client may require pursuant to the foregoing, it is mandatory for Company to conduct, and document in Company's files, a criminal background check for Company personnel performing Services for Client who has key or card key access to Client's offices. The background check must take place prior to such individual beginning to perform Services on Client's premises or networks. The background check should be conducted in accordance with Client's current policies.
- 8.7. Company's personnel must carry identification identifying themselves as employees of the Company.
- 8.8. Company shall take appropriate measures to select, supervise and monitor the personnel performing Services. Company shall maintain current employment eligibility verification records, including necessary certification and documentation and insurance for its employees performing Services hereunder. Company will not conduct disciplinary actions with respect to Company personnel while on Client's premises, including but not limited to terminating employment of Company personnel.

9. Independent Contractor Status:

- 9.1. The Services of Company are to be rendered as an independent contractor. Company and Company's employees, consultants, subcontractors, agents and representatives shall not be, or represent themselves to be, officers, employees, agents or representatives of Client and shall not bind, or attempt to bind, Client to any agreement, liability or obligation of any nature.
- 9.2. Company's personnel shall not be considered employees of Client within the meaning or application of any federal, state, or local laws or regulations. Company shall be responsible for the payment of wages, salaries, and other amounts due its employees in connection with the services performed hereunder, and shall be responsible for all payroll reports and obligations, including but not limited to withholding, social security, unemployment insurance, workers' compensation, immigration and naturalization, and similar items.
- 10. Change Orders: Both parties acknowledge that the scope of work for the Services to be provided by Company under a Statement of Work may change over the course of a project, and agree that no additional fees shall be due for any changes that do not materially alter the obligations of Company relating to such Statement of Work. Company will not charge additional fees until such changes are greater than a five percent (5%) increase of the time and materials specified in the Statement of Work. If the Client requests Company to provide additional services resulting in fees of greater than five percent (5%) for such increased time and materials, then Company may, as mutually agreed upon by the parties, respond to such requests from the Client as a change in order ("Change Order"), provided however, that all Change Orders must be agreed upon in writing and signed by an authorized representative of both parties prior to commencing such additional services. Such Change Orders shall be amendments to the current Project and Statement of Work and will be paid as mutually agreed upon by the parties but in no event less than thirty (30) days following receipt of an undisputed invoice.
- 11. Remedies Relating to Services: Client shall have the right to reject the Services and/or Deliverables based upon Company's non-compliance with any term of this Agreement, including without limitation a breach of any

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of the representations and warranties set forth herein. This remedy shall be cumulative of and is in addition to any other remedies provided herein or existing at law or in equity.

12. Ownership:

- 12.1. Work for Hire: Company agrees that all right, title, and interest in and to the Services and Deliverables, including, without limitation, source and object code and all works derivative thereof, and all documentation thereof, and all intellectual property rights therein (the "Work") shall be the sole and exclusive property of Client and shall be deemed "Works Made For Hire" under Title 17 of the United States Code as it may be revised and amended from time to time. To the extent such Work or any portion thereof does not qualify as Work Made For Hire, Company hereby assigns all right, title and interest, including but not limited to all intellectual property rights and proprietary rights Company may have, whether directly or appurtenant thereto, in the Work to Client without further compensation than that specified in the applicable Statement of Work. Company will, at its own expense, cause any and all of its employees, independent consultants, and all other parties it engages for the Projects to undertake all actions and execute all appropriate documents necessary to carry out the intent of the paragraphs of this Section, including but not limited to, waivers, releases of liens and assignments. Company agrees to indemnify, waive and release Client against any third-party liens on the Work.
- 12.2. Excluded Property: Notwithstanding Section 12.1, excluded from the Work shall be the following: ideas, concepts, know-how, techniques and processes of a general nature that are discovered, invented, created, conceived, made or reduced to practice by Company (a) prior to performing Services or providing Deliverables; or (b) that are not a part of the Deliverables or necessary to the Deliverables or the function of the Deliverables, but (i) were developed by Company in support of the build effort as a tool, test, platform or development method and not as a specific function or feature of the actual application of the Deliverables; and (ii) are not based on or derived from Client Confidential Information (collectively the "Company Property").
- 12.3. License to Company Property: As part of the consideration tendered by the Client to Company for any Project, Company grants to Client a fully-paid, royalty-free, irrevocable, perpetual, unlimited, worldwide, non-exclusive license to the Company Property to use, execute, perform, display, reproduce, transfer, modify, and create derivative work of such Company Property as part of or in connection with the Client Property. Unless otherwise provided in an applicable Statement of Work, all licenses granted under this Agreement also include the right for the GMACR entities to use such license provided hereunder in accordance with this Agreement. Client is responsible for compliance by the GMACR entities with the terms and conditions set forth in this Agreement unless otherwise specified in a Statement of Work. Except as set forth herein, all right, title and interest in Company Property remains with Company.
- 12.4. Third Party Escrow: As necessary during a Project, Company agrees to promptly disclose to Client all Company Property and establish a third-party escrow account for any such Company Property source code determined by Client to be required. The terms of any third-party escrow account shall be as mutually agreed between the parties.
- 12.5. Assistance in Enforcement: Company agrees to provide all assistance reasonably requested by Client in the establishment, preservation and enforcement of Client's copyright, trade secret, and other proprietary interests in the Work, including executing documents, testifying, and all similar activity, such assistance to be provided at Client's expense.

13. Indemnification:

13.1. Infringement Indemnification by Company: Company shall, at its own expense, defend, indemnify and hold harmless GMACR and its employees, officers, directors, licensees, representatives, attorneys, parents, subsidiaries, successors, assigns and agents from and against any and all liabilities, claims, actions, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising out of any third-party claim(s) that the Services and Deliverables provided pursuant to this Agreement by Company or any of its employees, agents, representatives, or contractors, subcontractors, and/or consultants infringe any United States patent, or any license, trademark, copyright, trade secret or any other intellectual property right. Company will defend

Company's ability to defend a claim under this Section 13.1.

GMACR against such claims at Company's sole expense and pay all court awarded damages relating to such claims. GMACR agrees to notify Company in a timely manner in writing of the claim, and grant Company the right to control the defense and disposition of such claims provided that no settlement requiring any financial payment from GMACR or admission of liability by GMACR shall be made without GMACR's prior written approval. If an infringement claim is made or appears possible, Company will, at GMACR's sole option: (i) secure for GMACR the right to continue to use the Services and/or Deliverables; (ii) modify or replace the Services and/or Deliverables so that they are non-infringing but functionally equivalent; or (iii) accept the return of the Services or Deliverables from GMACR and provide a refund of fees paid by GMACR. However, Company has no obligation to the extent any claim is based in whole on modification of the Services or Deliverables by GMACR.

not otherwise authorized or directed by Company. A failure by GMACR under this Section 13.1 shall only affect Company's obligations under this Section to the extent such failure materially prejudices

- 13.2. Indemnification: Each party (each an "Indemnitor") shall, at its own expense, defend, indemnify and hold harmless the other party and its employees, officers, directors, licensees, representatives, attorneys, parents, subsidiaries, successors, assigns and agents (each of the foregoing an "Indemnitee") from and against any and all liabilities, claims, actions, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising out of any third-party claim(s) for bodily injury to or death of any person or for damage, loss or destruction of tangible real property or tangible personal property caused by the negligent acts or omissions, recklessness or willful misconduct of Indemnitor and its employees, agents, and representatives. The Indemnitor will defend Indemnitee against such claims at Indemnitor's sole expense and pay all court awarded damages relating to such claims. The Indemnitee agrees to notify the Indemnitor in a timely manner in writing of the claim, and grant Indemnitor the right to control the defense and disposition of such claims provided that no settlement requiring any financial payment from Indemnitee or admission of liability by Indemnitee shall be made without Indemnitee's prior written approval.
- 13.3. Survival: The provisions of this Section 13 shall survive the termination or expiration of all or any part of this Agreement. To the extent that GMACR is named in a legal action covered under this indemnification, GMACR reserves the right to approve counsel selected by Company.
- 14. Insurance: For and during the Term of this Agreement, Company shall secure and maintain at its own expense insurance of the type and in the amounts set forth below.
 - 14.1. Workers' Compensation in accordance with all federal and state statutory requirements and Employer's Liability Insurance in an amount of not less than \$500,000 per accident for bodily injury by accident and \$500,000 per employee/aggregate for bodily injury by disease. Company and its underwriter shall waive subrogation against Client.
 - 14.2. Commercial General Liability Insurance in an amount of not less than \$1,000,000 per occurrence, subject to a \$2,000,000 aggregate covering bodily injury (including death), personal injury, property damage including, and without limitation, all contractual liability for such injury or damage assumed by Company under this Agreement. This policy shall cover liability arising from premises and operations, independent contractors, products/completed operations, personal and advertising injury, and blanket contractual liability.
 - 14.3. Commercial Automobile Liability Insurance in an amount of not less than \$5,000,000 combined single limit covering bodily injury (including death) and property damage for all owned, hired and non-owned vehicles used by Company, including all statutory coverage for all provinces of operation.
 - 14.4. Umbrella Liability Insurance with respect to Workers' Compensation, Commercial General Liability, and Commercial Automobile Liability in an amount of not less than \$5,000,000 combined single limit.
 - 14.5. Blanket Crime Coverage including employee dishonesty covering liability against direct and verifiable losses of money, securities, products, equipment, material and other property of Client caused by theft or forgery by identifiable employees of Company acting alone or in collusion with others, in an amount of not less than \$250,000.
 - 14.6. Professional Errors and Omissions Liability Insurance appropriate to Company's profession.

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- Coverage should be for a professional error, act or omission arising out of the scope of services shown in this Agreement, in an amount not less than \$1,000,000 per occurrence.
- 14.7. Client, its directors, officers, employees, agents, subsidiaries and affiliates shall be named as additional insured on the Commercial General Liability and Commercial Automobile Liability policies. All of the foregoing policies shall be issued by insurance companies having an "A" rating by A.M. Best Company. These insurance provisions set forth the minimum amounts and scopes of coverage to be maintained by Company and are not to be construed in any way as a limitation or release of Company's liability under this Agreement or as a representation that coverage and limits will necessarily be adequate to protect Company. Company shall not self-insure any of its obligations under this Agreement without full disclosure to Client of its intention to self-insure and without obtaining Client's prior written consent. Any and all deductibles specified in the above-referenced insurance policies shall be assumed by, for the account of, and at the sole risk of Company. policies of insurance procured by Company shall be written as primary policies, not contributing with, nor in excess of coverage carried by Client.
- 14.8. Upon request from Client, Company shall furnish Certificates of Insurance evidencing all of the forgoing insurance coverage. All of the above-described policies shall provide that no less than thirty (30) days prior written notice of cancellation, material modification, reduction in coverage or nonrenewal shall be given to Client. In the event that any Services under this Agreement are to be rendered by persons other than the Company's own employees, Company shall arrange for such persons to forward to Client prior to commencement of Services by them, Certificates of Insurance evidencing such amounts, in such form, and with such insurance companies as are satisfactory to

15. Confidential Information:

- 15.1. For the purpose of this Section, the "Discloser" is the party disclosing its Confidential Information and the "Recipient" is the party receiving and/or accessing Confidential Information. Client and Company each agree that any information and documents that are furnished for the purposes of performing under this Agreement or which are produced or come to the attention of either party are proprietary to the disclosing party and shall be used only for the purposes of this Agreement. This information includes, without limitation; the terms of this Agreement, technical specifications and operating manuals, services and information concerning current, future, or proposed products and services; product and services descriptions; financial information; information related to mergers or acquisitions; passwords and security procedures; computer programs, software, and software documentation; customer and/or prospective client lists, mortgage loan files, and all other information relating in any way to the customer and/or prospective client; printouts; records; policies, practices and procedures; and any or all other information, data or materials relating to the business, trade secrets and technology of either party, its customers, clients, employees, business affairs, affiliates, subsidiaries and the affiliates of its parent organization (all of the foregoing collectively referred to as "Confidential Information"). Client may require that any representative, agent or subcontractor of Company shall enter into a non-disclosure agreement with Client to protect the Confidential Information of Client and Company shall comply with such request. If and to the extent such Confidential Information consists of information related to Discloser's customers, including without limitation any "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1138), as amended from time to time (the "GLB Act") and regulations promulgated thereunder in any form, whether or not owned or developed by the Discloser (collectively "Nonpublic Personal Information"), the requirements set forth in Exhibit A to Master Services Agreement, Confidentiality, Non-Disclosure and Security Requirements, attached hereto and incorporated herewith, shall apply to such Nonpublic Personal Information in addition to the provisions of this Section 15. In the event of a conflict between the provisions set forth in Exhibit A and those set forth herein, the provisions set forth in Exhibit A shall control for such Nonpublic Personal Information.
- 15.2. Each party shall maintain the Confidential Information of the other in confidence using the same care and discretion to avoid disclosure of Confidential Information as it uses to protect its own confidential information that it does not want disclosed. Each party further agrees to restrict disclosure of

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Confidential Information of Discloser solely to (i) persons who need to know the Confidential Information to perform under this Agreement, all of whom shall be under a written obligation of confidentiality, which is no less stringent that those set forth herein, and (ii) regulators and auditors. Recipient agrees that it shall remain fully responsible for any disclosure of Confidential Information. Each party shall, as soon as reasonably practicable, notify the other party of any unauthorized possession, disclosure, use or knowledge, or attempt thereof, of the other party's Confidential Information of which it becomes aware, including any material breach of security on a system, LAN or telecommunications network which contains, processes or transmits Confidential Information. Each party shall, as soon as reasonably practicable, furnish to the other full details of the unauthorized possession, disclosure, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other in investigating or preventing the recurrence of any unauthorized possession, disclosure, use or knowledge, or attempt thereof, of the other party's Confidential Information.

- 15.3. The obligations imposed under this Agreement shall not apply to Confidential Information that is (a) made public by Discloser, (b) generally available to the public other than by a breach of this Agreement by Recipient, its employees, agents or contractors, and/or (c) rightfully received from a third person having the legal right to disclose the Confidential Information free of any obligation of confidence. In the event that Recipient, or any of such party's agents, contractor's or employees, becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand or similar process) to disclose any Confidential Information of Discloser, such Recipient shall provide prompt prior notice to Discloser so that it may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, or that Discloser waives compliance with the provisions of this Section 15, the Recipient will furnish only that portion of the Confidential Information which is legally required and will exercise reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.
- 15.4. Each party acknowledges and agrees that any breach or threatened breach of any of the provisions of this Section 15 by the other party will result in immediate and irreparable harm and that any remedies at law in such event will be inadequate. The parties agree that such breaches, whether threatened or actual, will give Discloser the right to terminate this Agreement immediately and obtain injunctive relief to restrain such disclosure or use. This right shall, however, be in addition to and not in lieu of any other remedies at law or in equity.
- 15.5. Upon termination of the Agreement, all copies of the Confidential Information will either be destroyed or returned to Discloser immediately upon Discloser's request. Notwithstanding anything to the contrary contained herein, Client shall in no event have any obligation hereunder to destroy mortgage loan files or any documents related thereto.
- 15.6. The provisions of this Section 15 shall survive the termination or expiration of this Agreement.
- 16. Audits: The audit personnel of Client, as well as examiners and representatives of Client's regulatory agencies, will have the right to make examinations and inspections, upon reasonable written notice, of Company's financial records, facilities, procedures, technology security policies and procedures and such other documentation pertaining to Company's Services under this Agreement. Company may require such persons to provide reasonable evidence of their authority before being admitted to Company's facilities. Company shall preserve for a period of three (3) years after the completion or termination of services under this Agreement all documents related to the Services hereunder which shall be made available to Client's request.
- 17. Force Majeure: Any failure or delay by a party in the performance of its obligations under the Agreement shall not be deemed to be a default under the Agreement provided that such failure or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans or other means to the extent such failure or delay is caused by fire, flood, earthquake, elements of nature or acts of God, court order, public utility electrical failure, acts or war, terrorism, riots, civil disorders, rebellions or revolutions in any country or any similar cause beyond the reasonable control of such party and without the fault or negligence of such party (each a "Force Majeure Event"). The occurrence of a Force Majeure Event does not limit or otherwise affect Company's obligation to provide normal recovery procedures or any disaster recovery services to the extent practicable in the circumstances. Nothing contained in this section shall be construed as entitling Company to any delay

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resulting from labor disputes involving its own employees or employees of its contractors and/or subcontractors, agents, or representatives. The party affected by a Force Majeure event will advise the other party in reasonable detail of the event as promptly as practicable (including the estimated duration of the event) and keep the other party reasonably apprised of progress in resolving the event. Any warranty period affected by a Force Majeure event shall be extended for a period equal to the duration of such Force Majeure event.

18. Subcontracts and Assignment:

- 18.1. Company shall not assign, in whole or part, any of its obligations under this Agreement without Client's written consent. Company shall not subcontract any portion of its performance obligations under this Agreement without Client's prior written approval. Client's approval with respect to any subcontracting shall not relieve Company of its responsibility for the performance of its obligations under the Agreement.
- 18.2. In the case of any subcontract for which Client has issued its written consent, each subcontract entered into by Company shall be in such form and substance as will not create any relationship, contractual or otherwise, between the subcontractor and Client, and will not permit subcontract to pass through to Client, as agent for subcontractor or otherwise, any claims of subcontractor. Company shall be solely responsible for the job performance, payment, actions, and omissions of the subcontractor's employees through completion of the subcontractor's performance of any such services.
- 18.3. Company shall include in each subcontract terms and conditions consistent with the intent of the Agreement, including all special performance requirements hereunder. Additionally, Company shall include in each such subcontract, a provision giving Client the right to audit and inspect the subcontractor's facilities and procedures in accordance with the "Audit" requirements of the Agreement.
- 19. Governing Law: This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflicts of law rules.
- 20. Disaster Recovery Plan: Company shall provide disaster recovery and back up capabilities and facilities through which Company will be able to render the Services to Client with minimal disruptions or delays. Company shall provide to Client copies of the written plan or plans for disaster recovery and back up arrangements prior to or upon execution of this Agreement.

21. Miscellaneous:

- 21.1. Remedies: No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.
- 21.2. No Walver: No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be signed by the party waiving the rights.
- 21.3. Amendments/Modifications: No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of each of the parties.
- 21.4. Headings: The headings in this Agreement are for convenience of reference only and in no way define or limit any of the provisions hereof or otherwise affect their construction or effect.
- 21.5. Survival: Termination or expiration of this Agreement shall not release either party from their respective obligations hereunder with regard to (a) confidentiality, (b) indemnification, and (c) Services already delivered or performed, including, without limitation, obligations of payment, warranty, and representations.
- 21.6. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement, if capable of substantial performance, shall remain in full force and effect.
- 21.7. Use of Name: Company shall not use Client's or its affiliates name, trademarks and/or logos for

advertising or any other similar purpose including, but not limited to, brochures, advertisements, press releases, testimonials, websites, customer reference lists or other implied or expressed endorsements, without the prior written approval of Client, which can be withheld and withdrawn in its sole discretion. Company shall not represent directly or indirectly that the Services or Deliverables provided by Company to Client have been approved by or endorsed by Client. Company acknowledges that this Section 21.7 is a material provision to Client and further acknowledges that remedies at law may be inadequate to protect Client against breach of this provision. Company hereby agrees in advance that Client will be entitled to the granting of injunctive relief in its favor without proof of actual damages in the event of breach of this provision by Company. Such remedy shall not be deemed to be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other remedies at law or in equity available to Client.

- 21.8. California Personal Information Statute: Company acknowledges that Client Confidential Information may include personal information pertaining to California residents. Company shall ensure that its system and/or the networks comply with the requirements of California Civil Code §1798.82 et. seq.; or any similar federal or state statute that may enacted (the "California Statute"), including the encryption of all personally-identifiable Client Confidential Information. If Company believes that personally-identifiable Client Confidential Information has been accessed without proper authorization, or there has been an unsuccessful attempt to access such Confidential Information, Company shall provide written notice to Client within twenty-four (24) hours. If Client determines that actions must be taken to comply with the California Statute, Company shall fully cooperate with Client to achieve such compliance. Nothing contained herein shall be deemed to release Company from its indemnification obligations as set forth in the Agreement.
- 21.9. Representation of Counsel; Mutual Negotiation: Each party acknowledges that it has had an opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to either party.
- 21.10. Notices: Any notices required or permitted hereunder will be in writing and sent to a party at the address on the signature page of this agreement (or to such other address of which either party may notify the other in a notice that complies with the provision of this section). Notices shall be effective upon receipt and shall be sent (i) by private carrier or reputable overnight carrier with package tracing capability; or (ii) by personal service; or (iii) by registered or certified mail, postage prepaid, return receipt requested.
- 21.11. Order of Precedence; Exclusion of Other Terms and Conditions: This Agreement constitutes the entire and exclusive statement of the agreement between the parties and supersedes all prior representations, understandings or agreements between the parties with respect to such subject matter. The documents referred to herein and attached hereto ("Attachments") shall be read together with this Agreement to determine the parties' intent. If there is a conflict between or among such documents, this Agreement shall be the final expression of the parties' intent and shall prevail over any inconsistent terms set forth in any Attachments. Any other terms or conditions included in any clickwrap license agreements, shrink wrap license agreements, quotes, invoices, acknowledgements, purchase orders, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated in this Agreement or be binding upon the parties unless the parties expressly agree in writing or unless otherwise provided in this Agreement.

END OF TERMS AND CONDITIONS

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Exhibit A To Master Services Agreement: LAW-04018

Confidentiality, Non-Disclosure and Security Requirements

The Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1138), as amended from time to time (the "GLB Act") and the regulations promulgated thereunder impose certain obligations on financial institutions with respect to the confidentiality and security of the customer data of such financial institutions. This Exhibit A to the Master Services Agreement sets forth the Confidentiality, Non-Disclosure and Security requirements for confidential information related to customers, including without limitation any "nonpublic personal information" as defined under the GLB Act and regulations promulgated thereunder.

1. Confidential Information.

- 1.1. For the purpose of this Agreement, the "Discloser" is the party disclosing its Confidential Information and the "Recipient" is the party receiving and/or accessing Confidential Information.
- 1.2. For the purposes of this Agreement, "Confidential Information" shall mean all information related to customers, including without limitation any "nonpublic personal information" as defined under the GLB Act and regulations promulgated thereunder in oral, demonstrative, written, graphic or machine-readable form, whether or not owned or developed by the Discloser.

2. Disclosure and Protection of Confidential Information.

- 2.1. Discloser warrants that their disclosure of Confidential Information to Recipient is in accordance with applicable state and federal laws and the Discloser's own privacy policy.
- 2.2. Recipient agrees not to use Confidential Information for any purpose other than the fulfillment of Recipient's obligations to the Discloser. Recipient shall not disclose, publish, release, transfer or otherwise make available Confidential Information in any form to, or for the use or benefit of, any third party without Discloser's prior written consent. Recipient shall, however, be permitted to disclose relevant aspects of the Confidential Information to its employees, agents and subcontractors to the extent that such disclosure is reasonably necessary for the performance of its functions and/or contractual duties and provided that such disclosure is not prohibited by the GLB Act, and the regulations promulgated thereunder or other applicable law. Recipient agrees that it will not use nonpublic personal information about Client's customers in any manner prohibited by the GLB Act. Recipient agrees that it shall remain fully responsible for any disclosure as set forth in the preceding sentence. Recipient further agrees to advise Discloser promptly in writing of any misappropriation, or unauthorized disclosure or use of Confidential Information which may come to the attention of Recipient, and to take all steps reasonably requested by Discloser to limit, stop or otherwise remedy such misappropriation, or unauthorized disclosure or use. If the GLB Act or other applicable law now or hereafter in effect imposes a higher standard of confidentiality and/or protection to the Confidential Information, then such standard shall take precedence over the provisions of this Section.
- 2.3. Recipient will make no more copies of the Confidential Information than is necessary for Recipient's use. All copies made, in any medium whatsoever, shall be covered by the terms and conditions of this Agreement.
- 2.4. Each party shall develop, implement and maintain a comprehensive information security program (the "Security Program") to protect Confidential Information that includes administrative, technical and/or physical safeguards appropriate to such party's size and complexity and the nature and scope of its activities in compliance with the GLB Act and regulations promulgated thereunder. The objective of each such Security Program shall be to (i) insure the security and confidentiality of Confidential Information, (ii) protect against any anticipated threats or hazards to the security or integrity of Confidential Information that could result in substantial harm or inconvenience to any customer, and (iii) have a program to respond to a security breach and to notify its customers affected by the breach where required by law or regulation.
- 2.5. Recipient will ensure that any third party to whom it transfers Confidential Information enters into an agreement to protect the confidentiality and security of Confidential Information in a manner no less stringent than required by this Agreement.

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2.6. Upon request, a party shall provide to the other party information such as audits or summaries of test results demonstrating the effectiveness of its Security Program.

3. Return of Materials.

- 3.1. All Confidential Information, including copies thereof, shall be promptly returned to Discloser upon request, except that copies may be retained, if required, for legal or financial compliance purposes.
- 3.2. Upon termination or expiration of the business relationship and/or Contract, all Confidential Information, including copies thereof, shall be promptly returned to such party or destroyed, except that copies may be retained, if required, for legal or financial compliance purposes and the terms and conditions of this Exhibit shall continue to apply for the period such information is retained, notwithstanding any termination or expiration of the Agreement.
- 3.3. Recipient shall implement and monitor procedures to comply with Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159, 111 Stat. 1952), as amended from time to time (the "FACTA") and implementing regulations concerning the safeguarding and disposal of Confidential Information. Such policies and procedures shall include, but are not limited to, destroying records and files containing Confidential Information. All such paper records will be shredded and all electronic or digital records and files will be erased or otherwise rendered unreadable in a way that prevents records and files from being practically read or reconstructed. Recipient will provide Discloser with all information that Discloser reasonably requests regarding the disposal of records and files containing Confidential Information including, but not limited to, relevant portions of Discloser's information security policies and procedures.

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Amendment Number 1 to the Master Service Agreement

As of the 21st day of March, 2007, this Amendment Number I (the "Amendment") is hereby incorporated into the Master Service Agreement between GMAC Mortgage Group, LLC ("Client") and Law Firm of David J. Stern ("Company") dated January 12, 2007 (the "Agreement").

WHEREAS, Client and Company entered into the Agreement so that Company would provide certain direct sourcing for foreclosure and bankruptcy services to Client;

WHEREAS, Client and Company desire to amend the Agreement upon the terms and conditions noted below;

NOW THEREFORE, in consideration of the mutual covenants, agreements, warranties, and representations made and contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

Amended Terms

- 1. All references to GMAC Mortgage Group, LLC are hereby deleted from the Agreement and replaced with GMAC Mortgage, LLC.
- 2. Except as set forth herein, all other terms and conditions of the Agreement shall remaining full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first written above.

GMAC Mortgage,, LLC	Law Office of David J. Stern
By: Ween J. May	By: Mw (++++++++++++++++++++++++++++++++++
Printed Nove	David J. Stern Printed Name
Willam J. Maguire Senior \(\)(ce President	
	President
Title	Title

Address for legal notice: GMAC Mortgage, LLC 100 Witmer Road Horsham, PA 19044 Attention: General Counsel Lnw Office of David J. Stern 801 S. University Drive Suite 500 Plantation, FL 33324 Attention: David Stern

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STATEMENT OF WORK FOR DIRECT SOURCING OF FORECLOSURE AND BANKRUPTCY FEBRUARY 2007

I. INTRODUCTION

This Statement of Work (SOW) is Issued pursuant to and in accordance with the terms and conditions set forth in the Master Service Agreement (Agreement) dated as of February 8th 2007 between (Company) and GMAC Mortgage, LLC (Client). This SOW reflects the final pricing and requirements for Services, except as may be subsequently modified by the parties upon mutual written agreement. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. Any services not specifically defined and/or detailed in this SOW will be provided as no additional cost to Client upon mutual agreement.

Any changes to or modifications of this SOW will be completed through execution of a change order in a similar form to Attachment A (Change order form) as attached hereto which will then be incorporated into the SOW.

II. DESCRIPTION OF SERVICES

Company will receive direct referrals for foreclosure and bankruptcy actions through New Trak. Company will be responsible for paying to Fidelity all fees associated with New Trak usage. Company will be responsible for all required actions in order to protect the interest of Client.

III. BUSINESS REQUIREMENTS

Foreclosure

- Prioritize all new foreclosure referrals by obtaining all relevant and required Information and documentation for completing the first legal action and the foreclosure process.
- Adhere to all investor timeframes by completing each step in the foreclosure process within established industry standards. Make Client whole when Client has been assessed a penalty for fallure to adhere to established standards.
- Update New Trak and Client's system of Record (MortgageServ "MS") with all applicable events in the foreclosure process and update comments with the ongoing status of specific matters. All delays in the foreclosure process must be updated in MS with reasonable explanations. All pending foreclosure matters must be updated at least monthly with a current status of the applicable matter.

- Pull all information from MS that is needed to effectuate the foreclosure process. This
 information includes, but is not limited to, obtaining judgment figures, payoff quotes,
 reinstatement quotes, payment histories, etc.
- Prepare forectosure bids in accordance with Client or investor specifications that may be updated from time to time.
- Report all completed foreclosure sales to Client on the day of the sale so that the sale results can be reported to the investor timely. Client may give Company the ability to report sale results directly to the investor. Company will be responsible for any penalties imposed by investor for failure to report timely. Failure to report timely means either (1) no reporting sale results on the day of the sale to Client or (2) not reporting sale results directly to investor timely.

Bankruptcy

- Immediately prioritize all new referrals by obtaining all relevant required information
 and documentation to the matter. That would include reviewing all notices, debtor
 schedules, court docket notices, pleadings, and loan history to identify matters for
 immediate action, including but not limited to dismissal, stay relief, and abusive filling.
- Immediately file a notice of appearance so that law firm receives all future notices and pleadings relevant to the matter.
- Prepare the file and proof of claim in accordance with local rules and practices.
- Send out all ARM and escrow change letters to the trustee and debtor's attorney.
- Analyze filed bankruptcy plans and recommend an appropriate action or automatically take appropriate action, based on Client authorization, to ensure that the interest of Client is protected.
- File dismissals, stay relief, bankruptcy plan objections, or any other relevant proceeding in a timely matter.
- For all chapter 11, 12 and 13 bankruptcy matters that are reflecting as 60 days or
 greater post petition delinquent in MS and have not been referred for dismissal or a
 motion for relief, Company must update MS comments on a monthly basis with an
 explanation as to why the loan has not been referred.
- Perform ongoing analysis of the legal action and review all relevant court notices, pleadings, correspondence, docket review, etc.
- Update MS will all applicable events associated with the bankruptcy and document comments with the ongoing status of the particular case.
- Review the bankruptcy cases for ongoing payment compliance and take appropriate
 actions when payments are not being received. This includes following up with the
 bankruptcy trustee to ensure the timely receipt of trustee funds and also includes

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timely initiations of dismissals, motions for relief and/or timely fillings of default in the event the borrower falls to comply with the terms of an agreed order.

- Perform a complete audit on every Chapter 13 (C-13) case approaching discharge (90 days prior to scheduled discharge) to ensure that all amounts owing are accounted for and determine if any amounts can be changed back to the mortgagor or need to be written off.
- Respond to and assist Client on all routine inquires in a timely manner
- Reimburse Client for any documented errors by the law firm such as Proof of Claim
 (POC) errors resulting in shortages, agreed order errors resulting in shortages, etc.

IV. PROCESS FLOW

- Client will notify Company when a new foreclosure referral or bankruptcy filing received from the Company's referral database or from its third party service provider, currently BANKO.
- Client will update all the MS information required for a new filing.
- Client will provide the Company with a monthly report detailing the ARM and escrow change letters needed.
- Client reserves the right to add additional states and Service levels through a change order request-Attachment A.
- Company will follow all of the detailed policies and procedures provided by the Client.

V. MANAGEMENT REPORTS

Company will provide Client with the reports identified below by the 3rd calendar day of each month for the prior month's activity.

- Report #1 % of notices of appearances sent to the court within 10 business days of the bankruptcy filing.
- Report #2 % of C-13 plans reviewed 10 calendar days prior to confirmation hearing
- Report #3 % of POC filed with 15 calendar days of the notice of bankruptcy.
- Report #4 % of Motion for Relief (MFR) filed within 60 calendar days of the post petition due date
- Report #5 % of Notice of Default (NOD) requested before the 60th calendar day of delinquency
- Report #6 % of completed bankruptcies where Client was notified within 10 calendar days of release date
- Report #7 % of First Legal actions completed. Company will establish state by state standards for timeliness of filing the first legal to be referenced as Attachment B.
- Report #8 % Completed foreclosure sales. These would be in accordance with the shortest available investor time standard. Attorney would be permitted to carve out bankruptcy and loss mitigation delays from the time standard

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Report #9 - Report listing all reinstated and paid off loans from prior month. Attorney would be responsible for validating that funds were posted to each account by Client.

VI. SERVICE LEVEL AGREEMENT

SLA		MEETS	NEEDS IMPROVEMENT	BREACH
% of notices o bankruptcy filli	appearance sent to the court within 10 calendar days o f	96%-100%	90%-95.5%	<90%
% of C-13 plan	s reviewed 10 calendar days prior to confirmation hearing	96%-100%	90%-95.5%	<90%
% of PQCs file	d within 15 calendar days of the notice of BK	96%-100%	90%-95.5%	<90%
% of MFRs file	d within 60 calendar days of the post petition due date	96%-100%	90%-95.5%	<90%
% of NODs re-	quested before 60th calendar day of delinquency	96%-100%	90%-95.5%	<90%
•	d bankruptcles where Client was notified within 10 calendar of release date	96%-100%	90%-95.5%	<90%
· ·	al actions completed. Company will establish state by state meliness of filing the first legal to be referenced as	96%-100%	90%-95.5%	<90%
shortest availa	oreclosure sales. These would be in accordance with the ble investor time standard. Attorney would be permitted to ruptcy and loss mitigation delays from the time standard	96%-100%	90%-95.5%	<90%
-	Il reinstated and paid off loans from prior month. Attorney onsible for validating that funds were posted to each account	96%-100%	90%-95.5%	<90%

SCORING LEGEND	
MEETS/EXCEEDS STANDARD	96%-100%
NEEDS IMPROVEMENT	90%-95.5%
BREACH	<90%

VII. PRICING

- Company will bill Client in accordance with investor allowable and normal industry claimable items that are mutually agreed upon by the parties,
- Any charges that are over the allowable amount of the investor reimbursement will be billed back to Company. Reimbursement of such bill back amounts shall be sent to Client within 10 days of demand.
- Involces will be delivered to Client's third party invoice clearinghouse within 3 days of the conclusion of an action.
- Company will be responsible for the cost of the communication T1 line installation as well as the monthly and other associated charges.

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Client reserves the right to transfer to Company foreclosure and bankruptcy matters already in process with another firm at the sole discretion of Client. Company agrees to handle these matters in accordance with investor requirements and to do so without charging a "transfer fee" and to complete the process by charging the remaining investor allowable fee that has not been paid to the prior firm.

VIII. INVOICING

For purposed of this SOW only and notwithstanding anything to the contrary in Section VII "Pricing", Company shall submit all involces to Client using the electronic invoicing system Client presently uses. Client shall not be responsible for paying any invoices submitted by Company which have not been submitted using electronic invoicing unless mutually agreed to in writing in advance by the parties.

Invoices are to be submitted 3 business days after the conclusion of an action identified steps in the foreclosure process, specifically, (1) filing of the complaint, (2) writ of execution and (3) final statement.

IX. FAILURE TO MEET SERVICE LEVELS

Company will perform the required Services in a manner that meets the SLAs herein or attached. If Company fails to meet any of the committed SLAs, Client will take the following actions:

- Provide Client with a single point of contact for the prompt resolution of all SLA failures
- Report a fallure to Client within 48 hours
- Promptly initiate an investigation to identify the root cause of the failure
- Notify Client of the plan to resolve the problem within five (5) business days
- Correct the problem or provide capability to work around the problem depending on the severity of the problem
- Advise Client of the status of corrective efforts being undertaken with respect to solving this type of problem. Begin meeting the committed service levels with ten (10) business days

The remainder of this page is intentionally left blank.

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IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work as of the date first written above.

For Client:

GMAC Mortgage, LLC

•

William J. Maguire
PRINTED NAME

Senior Vice President

Title

For Company:

Law Offices of David J. Stern, P.A. COMRANY NAME

PRINTED NAME

President

Title

⊠ 007/008

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Attachment A- Change Order Form

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Change Reques (Name):	t Approved by:					
(Phone#): (E-Mail):						
(Signature & D						Anna 2000 CO
Consultant Cha	nge Request #:					
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EXHIBIT B FIRST LEGAL TIMELINE SCHEDULE

STATE	# OF DAYS
AK	15 CALENDAR DAYS
AL	15 CALENDAR DAYS
CA	10 CALENDAR DAYS
DC	20 CALENDAR DAYS
DE	15 CALENDAR DAYS
FL	15 CALENDAR DAYS
GA	15 CALENDAR DAYS
HI	15 CALENDAR DAYS
KS	15 CALENDAR DAYS
KY	15 CALENDAR DAYS
MA	15 CALENDAR DAYS
MD	20 CALENDAR DAYS
МІ	10 CALENDAR DAYS
MO	15 CALENDAR DAYS
MS	15 CALENDAR DAYS
ŅĊ	15 CALENDAR DAYS
NH	15 CALENDAR DAYS
.NJ	10 CALENDAR DAYS
NY	10 CALENDAR DAYS
ОН	15 CALENDAR DAYS
PA	10 CALENDAR DAYS
RI	15 CALENDAR DAYS
SC	15 CALENDAR DAYS
TN	15 CALENDAR DAYS
ТХ	15 CALENDAR DAYS
UT	15 CALENDAR DAYS
VA	20 CALENDAR DAYS
w	20 CALENDAR DAYS

2001/002

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Change Order- Number 1 dated April 18, 2007

To

Statement of Work For Law Firm of David J. Stern dated February 8, 2007

4/18/07	
Linda Walton	Brookentselfe, on delbrookel Salini Salini Bill
Linda.walton@gr	nacm.com
	To establish incident escalation and notification guidelines for breaches
And the second s	in security of consumer data.
The same of the sa	

For this change order Client and Company agree as follows:

The following is added as a new section to the Statement of Work:

Incident Escalation and Notification Guidelines- Company has implemented the following information security incident escalation and notification process with regard to Client:

- Notification of any incident that impacts the confidentiality of Client information will be made no later than 24 hours after the identification of the incident.
- Whenever there is an incident that impacts the confidentiality of Client Information the following procedures will be followed:
 - A representative of Company will notify the Client security contact Becky Stoffel (952-979-4706 Becky.Stoffel@gmacrfc) and relationship manager Linda Walton (215-682-1827) Linda.walton@gmacm.com) by phone and emaîl within 24 hours of the incident being Identified. Client may upon written notice to Company change either the Client security contact or relationship manager as necessary.
- Client requires that prior to distribution to Client customers, all notifications must be reviewed and approved by Client.

In the event of a conflict between this Change Order and the Statement of Work with respect to the Services provided under this Change Order, this Change Order shall control.

Except as set forth herein, all other terms and conditions of the Statement of Work shall remain in full force and effect.

Change Request Approved by:

2 002/002

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(Name):			
(Phone#):			
(E-Mail);	•	_	
(Signature & Date):			
Company Change Request #:			\ <u>\</u>

IN WITNESS WHEREOF, the parties hereto have executed this Change Order as of the day and year first written above.

GMAC Mortgage, LLC	Law Firm of David J. Stern
By: Willand - Maguin	By: 1 (1) 1
William J. Maguire	NAVIJ Stern
Printed Name	Printed Name
Senior Vice President	Pres
Title	Title



Change Order Number 02 dated December 3, 2007

To

Statement of Work for Direct Sourcing of Foreclosure & Bankruptcy for Law Firm of David L. Stern

(Ghibrisia) olerita imissi siyindi sii ili siidi siyasi sa	
Date Submitted 222 45 2 12/3/07	Number 1972 02
Regulation Linda Walton	
(E[[a]]) (E[[a]) Linda.Walton@gmacm.com	
Erter Description (6) NEED (8) LANGE PART Addition to	Section III BUSINESS REQUIREMENT
For this change order 02 Client and Company agree as	s follows:
Add to Section III, Business Requirements under the B "Determine debtors intention of the property actions, based on client authorization, to ens	y and properly update the company servicing system. Take appropriate
Change Order, this change shall control. The capitalized terms used herein, unless otherwise de	and the Statement of Work with respect to the Services provided under this efined, shall have the meaning set forth in the Agreement. he Statement of Work shall remain in full force and effect.
Change Request Approved by:	
(Name):	
(Phone#); (E-Mail);	
(Signature & Date);	·····
Consultant Change Request #:	
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Note: The Control of	DENEROSE ON MARKET AND
Table 11 Bay 150 to a distribution of 11 (10 10 of 14 (10 of 14 of 15 of	Paris and the Control of the Control
IN WITNESS WHEREOF, the parties hereto ha written above.	ave executed this Change Order as of the day and year first
GMAC Mortgage, LLC	Law Firm of Pavid 1, Stern
By: Wach of Mann	ву: 1004
William J. Maguire	1/DUND J. Stern
Printed Name	Printed Name
Senior Vice President	tresident_
Title	Title



Change Order Number 03 dated March 20, 2008

To

Statement of Work for Direct Sourcing of Foreclosure & Bankruptcy for the Law firm of David L. Stern

Ghange Order Form
Date Submitted 3/20/08 Number 03
Requester Linda Walton
(医Māii) (主题) Linda.waiton@gmacm.com
Brief Description of Need(s): Change to Reports and Service Levels
Formal Statement of Requirements in 1970 to the second sec
For this change order 03 Client and Company agree as follows: See attached "Change Order Terms".
In the event of a conflict between this Change Order and the Statement of Work with respect to the Service provided under this Change Order, this change order shall control. The capitalized terms used herein, unless otherwise defined, shall have the meaning set forth in the Agreement. Except as set forth, all other terms and conditions of the Statement of Work shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Change Order as of the day and year first written above.

GMAC Mortgage, LLC	Company
By: Well J. May	ву; \\\
William J. Maguire	David J. Stern
Printed Name	Printed Name
Senior Vice President	President
Title	Title

STATEMENT OF WORK (LAW-15696)
TO
MASTER SERVICES AGREEMENT (LAW-04018)
FOR DIRECT SOURCING OF FORECLOSURE AND BANKRUPTCY
EFFECTIVE January 31, 2010

I. INTRODUCTION

This Statement of Work (SOW) is issued pursuant to and in accordance with the terms and conditions set forth in the Master Service Agreement LAW-04018 (Agreement) dated as of 1/17/2007 between Law Firm of David Stern, (Supplier) and GMAC Mortgage, LLC (GMAC). This SOW reflects the final pricing and requirements for Services, except as may be subsequently modified by the parties upon mutual written agreement. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. Any services not specifically defined and/or detailed in this SOW will be provided at no additional cost to GMAC upon mutual agreement. Any changes to or modifications of this SOW will be completed through execution of a change order form in a similar form to Exhibit A (Change Order Form) as attached hereto which will then be incorporated into the SOW.

This Statement of Work supersedes the prior Statement of Work for Direct Sourcing of Foreclosure and Bankruptcy dated 2/8/2007 and all subsequent change orders between the Parties related to the Services described herein. Further, the Agreement is only the effective Master Service Agreement in place between the parties related to the services described herein.

II. DESCRIPTION OF SERVICES

Supplier will receive direct referrals for foreclosure and bankruptcy actions through Process Management ("PM") or any other applicable system. Supplier will be responsible for paying to LPS all fees associated with PM usage. Supplier will be responsible for all required actions in order to protect the interest of GMAC.

III. INCIDENT ESCALATION AND NOTIFICATION

- Incident Escalation and Notification Guidelines- Supplier will implement the following information security incident escalation and notification process with regard to GMAC:
- Supplier must notify GMAC of any incident that affects the confidentiality of GMAC information no later than 24 hours after the Supplier identifies an incident may have occurred.
- Whenever there is an incident that may impact the confidentiality or security of GMAC information Supplier must notify the GMAC security contact Privacy.Office@gmacm.com and relationship manager Linda Walton (215-734-5074 Linda.walton@gmacm.com) by phone and email within 24 hours of the identification of the potential incident. GMAC may upon written notice to Supplier change either the GMAC security contact or relationship manager as necessary.
- In the event Supplier suffers a security breach notification event involving GMAC data, Supplier must coordinate its response to such incident with GMAC. Supplier will not distribute security breach notices to GMAC's customers without GMAC's prior written consent.

IV. PRIVACY STATEMENT

- Supplier affirms its commitment to treat any and all information pertaining to the borrowers, including but not limited to their name, address, phone number, loan number, principal balance, monthly payments, default status, Social Security number, employment information or any other information provided to it under this SOW as non-public, confidential and private information, and comply with all applicable laws pertaining thereto.
- Supplier will not use such information for any purpose other than the specific business purpose for which it is furnished to Supplier.
- Information will be released to third parties, independent agents, or independent sub-contractors, only to the extent necessary for the performance of the services requested hereunder
- Supplier will monitor the handling of documents, data and reports to assure they remain secure and safeguarded against anticipated threats or hazards to the security of such information.

V. PRIVACY TRAINING

During the term of this Statement of work and annually, Supplier will be responsible for Privacy training each year beginning 2010. Completion of the privacy training must be done annually and acknowledgement form, Exhibit C returned to Linda Walton. Relationship Manager, linda.walton@gmacm.com by October 31st of each year. Non compliance will be considered a breach in security and could result in termination.

VI. DELIVERABLES

Supplier is required to install hard drive and email encryption on machines/computing equipment which
will be used to fulfill GMAC RFG contractual obligations. All emails sent to GMAC with any
personal/confidential information on a borrower.

- Supplier is required to respond to all intercoms, emails, phone calls, and status requests within 2 business days of receipt.
- All items deemed non recoverable must be itemized as such within Invoice Management and the appropriate issue must be immediately raised in Process Management.

FORECLOSURE

- Prioritize all new referrals by obtaining all relevant and required information and documentation for completing the first legal action and the foreclosure process.
- Adhere to all investor timeframes by completing each step in the foreclosure process within established industry standards. Make GMAC whole when GMAC has been assessed a penalty for failure to adhere to established standards.
- Update PM including servicer steps listed in Exhibit F and GMAC's system of record (FiServe "FS") with all applicable events in the foreclosure process and update comments with the origing status of specific matters. All delays in the foreclosure process must be updated in PM or FS with reasonable explanations. All pending foreclosure matters must be updated at least monthly with a current status of the applicable matter.
- Monitor, complete and reply when necessary to CITs found in individual and general FiServe queues within the timeframe specified in Exhibit E.
- Pull all information from FS that is needed to effectuate the foreclosure process. This information includes but is not limited to, obtaining judgment figures, payoff quotes, reinstatement quotes, payment histories, etc.
- Prepare foreclosure bids in accordance with GMAC/Investor specifications that may be updated from time to time.
- Report all completed foreclosure sale to GMAC no later than 12:00PM Eastern Standard time (EST) on the business day following the sale so that the sale results can be reported to the investor timely. GMAC may give Supplier the ability to report sale results directly to the investor. Supplier will be responsible for penalties imposed by investor if the failure to meet the timeline was within their control. Failure to report timely means either (1) not reporting sale results to GMAC by 12:00pm EST on the business day following the sale, or (2) not reporting sale results directly to investor timely.

BANKRUPTCY

- Immediately prioritize all new referrals by obtaining all relevant required information and documentation to
 the matter. That would include reviewing all notices, debtor schedules, court docket notices, pleadings,
 and loan history to identify matters for immediate action, including but not limited to dismissal, stay relief,
 and abusive filing.
- If supplier learns of a new BK filing they must open CIT895.
- GMAC relies on the expertise of Supplier to appropriately manage and handle all bankruptcies. Supplier should always proceed in the most economical manner and with GMAC's best interest in mind.
- Adhere to all investor timeframes by referring and completing each step in the pankruptcy process within established industry standards. Ensure all POC, stay relief, bankruptcy plan objections, or other relevant pleadings are filed in a timely manner. Make GMAC whole when GMAC has been assessed a penalty for failure to adhere to established standards.
- Update PM including servicer steps listed in Exhibit F and GMAC's system of record (FiServ "FS") with all
 applicable events in the bankruptcy process and update comments with the ongoing status of specific
 matters. All delays in the bankruptcy process must be updated in FS with reasonable explanations.
- Monitor, complete and reply when necessary to CITs found in individual and general FiServ queues within the timeframe specified in Exhibit E.
- Pull all information from FS that is needed to effectuate the bankruptcy process. This information includes but is not limited to, POC/MFR figures, payoff quotes, reinstatement quotes, payment histories, etc.
- Review the bankruptcy cases for ongoing payment compliance and take appropriate actions when payments are not being received. This includes following up with the bankruptcy trustee to ensure the timely receipt of trustee funds and also includes timely initiations of dismissals, motions for relief and/or timely fillings of default in the event the borrower fails to comply with the terms of the agreed order. Refer out Motion for Relief in accordance with GMAC/Investor specifications including the timelines in Exhibit B.
- Timely review all bankruptcy plans and if appropriate refer out the Proof of Claim. Ensure the Proof of claim is accurately and timely filed within the SLA timeframe.
- Complete reconciliation within 45 business days when the Poc (including amended Pocs) is filed, the plan is
 confirmed, or an agreed order is filed with the Court. This reconciliation includes ensuring that all
 documents filed with the Court are accurate and FS is appropriately updated including all system figures.
- Complete all closings within the SLA timeframe ensuring that prior to closing out the loan the final bill has been paid and all fees and costs have been reconciled and all non-recoverable amounts removed from the loan prior to close out.
- When Supplier is notified of a Chapter 13 discharge they are to ensure that the account is contractually current, that there is \$350 or less in fees and costs, and escrow does not have a shortage. If there are fees of \$350.00 or less open a 'BK Non Recoverable Fee Closing" issue and wait for the fees to be properly removed. If these conditions are not met, Supplier is to complete a full audit of the loan. The loan must remain in active status with the delinquent counselor code updated to BKD and the audit must.

be completed within <u>45 business days</u> from the date of discharge. Supplier must document the Global Notes in FiServ as to their initial research and all continued research throughout the reconciliation process, including full notating any delays or extenuating circumstances that cause the loan to exceed the 45 business day timeframe. A report will be run daily to review loans that exceed the timeline and Supplier will need to provide an update to the extenuating circumstances.

 Perform ongoing analysis of the legal actions and review all relevant court notices, pleadings, correspondence, docket review, etc.

 Update PM servicer steps and FS with all appropriate events associated with the bankruptcy and document comments with the ongoing status of the particular case.

 Perform a complete audit on every Chapter 13 (C-13) case approaching discharge (90 days prior to scheduled discharge) to ensure that all amounts owing are accounted for and determine if any amounts can be charged back to the mortgagor or need to be written off.

Respond to and assist GMAC on all routine inquiries in a timely manner.

 Supplier must immediately notify the appropriate GMAC litigation representative of all litigation (excluding objections to POC) including but not limited to adversaries, motions for sanctions, Title issues, discovery requests, QWRs, lien strips, cram downs, evidentiary hearings, etc upon receipt

Reimburse GMAC for any documented errors by the laws firm such as Proof of Claim (POC) errors resulting
in shortages, agreed order errors resulting in shortages, etc.

VII. CLIENT RESPONSIBILITIES

 GMAC will notify Supplier when a new foreclosure referral or bankruptcy filing is received from the Supplier's referral database or from its third party service provider, currently EANKO.

GMAC will update all the FS information required for a new filing

- GMAC will notify the Supplier of all ARM and escrow change letters on active bankruptcles.
- GMAC reserves the right to add additional states and Service levels through a change order request, Exhibit
 A.
- Supplier is to follow the P&P manual and attorney expectation document as reference for operational procedures and responsibilities.

VIII. PROJECT ORGANIZATION

Brett Larson	VM Analyst - BK	Brett.larson@gmacmc.com	215-734-5156
Geoff Hynes	VM Analyst - FCL	Geoff.larson@gmacm.com	215-734-5317
Will Watson	Team Lead	Will,watson@gmacm.com	215-734-5316
Linda Walton	Manager	Linda.walton@gmacm.com	215-734-5074
Pat Ford	Director	patricia.ford@gmacm.com	215-734-5258

IX. MANAGEMENT REPORTS

GMAC will provide supplier with the reports identified below by the 1st business day of each month for the prior month's activity. Supplier will return the reports with any exceptions by 12pm (noon) of the 3rd business day of each month.

- Report #1 % of C-13 plans reviewed 10 business days of the notice of bankn ptcy.
- Report #2 % of POC filed within 45 calendar days of the notice of bankruptcy
- Report #3 % of Motion for Relief (MFR) referred within timelines given in Exhibit D
- Report #4 % of Motion for Relief (MFR) filed within 30 calendar days of refer al
- Report #5 % of Notice of Default (NOD) requested before the 60th calendar day of delinquency
- Report #6 % of closed bankruptcies within 10 calendar days of notification date
- Report #7 % of Discharge Not Current (DNC) bankruptcies released within 45 business days of discharge
- Report #8 % of first legal actions completed within state by state timelines given in Exhibit B
- Report #9 % of bids completed 10 calendar days prior to sale
- Report #10 % foreclosure sales completed within state by state timelines given in Exhibit B.
- Report #11 Delinquent Direct Source steps in PM as a % of BK and FCL inventory in Exhibit F
- Report #12 Delinquent Direct Source CITs as a % of open BK and FCL inventory in Exhibit E

Supplier will provide GMAC with the reports identified below by the 3^{rd} calendar day c^r each month for the prior month's activity.

 Report # 1 - Report listing all reinstated and paid off loans from the prior month. Attorney would be responsible for validating that GMAC posted the funds to each account.

X SERVICE LEVEL AGREEMENT

SLAs	EXCEEDS	MEETS	NEEDS IMPROVEMENT	BREACH
% of C-13 plans reviewed 10 business days of the notice of bankruptcy.	>99%	96% - 99%	90% - 95.9%	<90%
% of POC filed within 45 calendar days of the notice of	>99%	96% - 99%	90% - 95.9%	<90%

bankruptcy. POCs must be filed with a complete breakdown of all fees and costs and have the loan documents attached				
% of POC's and Amended POC's accurately reconciled on Fiserv within 45 business days of the POC's filing date with the court.	>99%	96% - 99%	90% - 95.9%	<90%
% of Motion for Relief (MFR) referred within timelines given in Exhibit D	>99%	96% - 99%	90% - 95.9%	<90%
% of Motion for Relief (MFR) filed within 30 days of referral	>99%	96% - 99%	90% - 95.9%	<90%
% of Notice of Default (NOD) requested before the 60 th calendar day of delinquency	>99%	96% - 99%	90% - 95.9%	<90%
% of completed bankruptcies where FiServ and Process Management were closed within 10 calendar days of release date	>99%	96% - 99%	90% - 95.9%	<90%
% of Discharge Not Current (DNC) bankruptcles audited and released within 45 business days of discharge	>99%	96% - 99%	90% - 95.9%	<90%
% of first legal actions completed within state by state timelines given in Exhibit B	>99%	96% - 99%	90% - 95.9%	<90%
% of bids completed prior to 10 calendar days of sale.	>99%	96% - 99%	90% - 95.9%	<90%
% foreclosure sales completed within state by state timelines given in Exhibit B. Attorney would be permitted to carve out bankruptcy and loss mitigation delays from the time standard.	>99%	96% - 99%	90% - 95,9%	<90%
Delinquent Direct Source steps (all vendor steps plus servicer steps listed in exhibit F) in PM as a % of BK and FCL inventory.	>99%	96% - 99%	90% - 95.9%	<90%
Delinquent CITs as a % of open BK and FCL inventory. Firm must complete or reply to CITs (found in individual and general Fisery queues) within timelines given in Exhibit E.	>99%	96% - 99%	90% - 95.9%	<90%
Report listing all reinstated and paid off loans from the prior month. Attorney would be responsible for validating that funds posted to each account by GMAC.	>99%	96% - 99%	90% - 95.9%	<90%

NG LEGEND
EXCEEDS
MEETS
NEEDS IMPROVEMENT
BREACH

Quality Control

Quality control reviews will be conducted monthly on FC and BK related operational tasks (as outlined in the FC and BK policy and procedures guidelines and the attorney expectations, such as updating the system accurately, using accurate figures, appropriate follow up etc) as well as auditing the applicable legal filings to ensure they are accurate and comply with jurisdictional and GMAC requirements. A sample testing will be reviewed and any monetary errors will result in an immediate action plan and non-monetary errors must be 96% or greater to achieve a Meets, 90%-95.9% to achieve a Needs Improvement, and below 90% will be a Breach and result in an action plan as set forth in XIII.

The official reporting on new SLAs and credits as referenced below will not be charged until 60 days after "Go Live" or a mutually agreed upon new date furthermore, if the Supplier fails to satisfy a Breach for two consecutive months a service level credit will be imposed as described below.

Processing Errors-The Supplier will be responsible for any and all hard nosts incurred by GMAC resulting from processing errors or omissions from the Supplier performing the services. If GMAC suffers a hard cost loss, GMAC will request reimbursement and said reimbursement will be delivered to GMAC within ten (10) business days of request.

XI. PRICING

Supplier will bill GMAC in accordance with investor allowable and normal industry claimable items that are
mutually agreed upon by all parties. All billing must be prorated to reasonable relate to the work actually
performed and the allowable should not be billed unless the action being billed has been completed. All

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actions requiring additional fees must be approved by GMAC Mortgage/Investor prior to the action commencing unless the action is required to urgently protect the client's interest. Those items determined non recoverable by state or federal statue will be taken as a cost of doing business to GMAC.

Any charges that are over the allowable amount of the investor reimbursement, and do not have GMAC/investor approval, will be bill back to the Supplier. Reimbursement of such bill back amounts shall be sent to GMAC within 10 days of demand.

 GMAC reminds Supplier that fees charged to borrowers must be permitted under the terms of the note, security instrument, and applicable laws and be prorated to reasonably relate to the amount of work actually performed. If Supplier determines that fees are non-recoverable please ensure the appropriate issue in process management is opened at the time of bill submission.

Supplier will be responsible for the cost of the communication T1 line installation as well as the monthly

and other associated charges.

GMAC reserves the right to transfer to Supplier foreclosures and bankruptcy matters already in process with another firm at the sole discretion of GMAC. Supplier agrees to handle these matters in accordance with investor requirements and to do so without charging a "transfer fee" and to complete the process by charging the remaining investor allowable fee that has not been paid to the prior firm.

XII. INVOICING

For purposes of this SOW only and notwithstanding anything to the contrary in Section VII "PRICING", Supplier shall submit all invoices to GMAC using the electronic invoicing system GMAC presently uses. GMAC shall not be responsible for paying any invoices submitted by Supplier which have not been submitted using electronic invoicing unless mutually agreed to in writing In advance by the parties.

Invoices will be delivered to GMAC's third party invoice clearinghouse no later than:

Bankruptcy Invoices - 5 days of Bankruptcy resolution (dismissal, discharge or relief) Foreclosure Invoices - 15 days of Foreclosure acquisition (FCL sale, end of redemption, ratification or confirmation)

This supersedes all other instructions received for invoice submission.

XIII. NON SOLICITATION OF EMPLOYEES

During the Term and for a period of one year following termination of this Statement of Work, neither Party shall, without the prior consent of the other Party, intentionally solicit for employment any personnel of the other Party. The phrase "intentionally solicit" shall not include consideration of responses to advertising or job postings directed at the general public or unsolicited resumes. The Parties agree to inform their personnel of the applicable terms of this policy.

XIV. FAILURE TO MEET SERVICE AND QUALITY CONTROL LEVELS

Supplier will perform the required Services in a manner that meets the SLAs and quality control standards herein or attached. In the event the overall service level is 90% or lower for any two (2) consecutive months Supplier and GMAC will take the following action:

- During our SLA/Quality Call Provide GMAC with a single point of contact for the prompt resolution of all SLA failures
- Following the SLA/Quality call Promptly initiate an investigation to identify the root cause of the failure
- Notify GMAC in writing of the action plan to resolve the problem within five (5) business days from the SLA
- Correct the problem or provide capability to work around the problem depending on the severity of the
- Advise GMAC of the status of corrective efforts being undertaken with respect to solving this type of problem.
- By the end of the 2nd month of a service or quality control failure if all action plans have not been successful, Supplier will be penalized \$7,500. Once demand is made the Supplier will tender penalty payment within ten (10) business days of demand.

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work as of the date first written above.

For GMAC:

GMAC Mortgage, LLC

PRINTED NAME

For Supplier:

PRINTED NAME

Sourcing	Manager		
Title		Title	

Exhibit A - Change Order Form

Change Order F	orm		
Date Submitted:		Number:	
Requester:			
(E-Mail)			
Brief Description o	f Need(s):		
Formal Statement	of Requirements:		

IN WITNESS WHEREOF, the parties hereto have executed this Change Order as of the day and year first written above.

GMAC Mortgage, LLC	Supplier	
Ву:	Ву:	
Printed Name	Printed Name	
Title	Title	

Exhibit B ~ FIRST LEGAL AND SALE TIMELINE SCHEDULE
(Note: Schedule is for GMAC internal use only and does not excuse your firm from meeting other applicable timelines)

	Referral to 1st Legal	Referral to Sale
Alabama	30	90
Alaska	15	150
Arizona	15	125
Arkansas	15	130
California	10	150
Colorado	15	165
Connecticut	15	220
District of Columbia	20	120
Delaware	15	250
Florida	30	170
Georgia	40	80
Guam	15	120
Hawaii	15	150
Idaho	15	190
Illinois	15	275
Indiana	15	265
lowa	15	315
Kansas	15	180
Kentucky	15	265
Louisiana	15	220
Maine	30	355
Maryland	75	150
Massachusetts	15	195
Michigan	35	100
Minnesota	30	110
Mississippi	15	130
Missouri	15	85
Montana	15	205
Nebraska	15	155
Nevada	15	155
New Hampshire	30	110
New Jersey	15	300
New Mexico	15	250
New York	15	280
North Carolina	15	120
North Dakota	15	190
Ohio	15	265
Oklahoma	15	250
	15	180
Oregon Pennsylvania	15	300
	15	360
Puerto Rico		90
Rhode Island South Carolina	60	215
South Dakota	30	150
		90
Tennessee	15 40	90
Texas		165
Utah	15	
Vermont	30	360
Virgin Islands	15	300
Virginia	30	60
Washington	15	160
West Virginia	30	150
Wisconsin	15	310
Wyoming	15	100

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EXHIBIT C PARTICIPANT ACKNOWLEDGEMENT FORM INDIVIDUAL

20__ Information Protection Training Acknowledgement Form

By signing this form I acknowledge that I have completed the 20__ Information Protection Training.

Name:	Signature:	
Organization:	Date:	

Please fax this form to Linda Walton at 866-340-2924 or email to Linda.wa ton@gmacm.com
Or
William Watson at William.watson@gmacm.com

EXHIBIT D

MFR Referral Timelines

All days are business days

- All FHLMC MFRs must be referred out by the following timeframes:
 - Chapter 7 (not delinquent at BK filing) referred no earlier than 30 days and no later than 44 days from contractual delinquency
 - ii. Chapter 7 (delinquent at BK filing) referred no later than 3 business days from BK notification
 - Chapter 13 referred no earlier than 45 days and no later than 59 days from post petition delinquency
- · All FNMA MFRs must be referred out by the following timeframes:
 - Chapter 7 (<=60 days delinquent at BK filing) referred no earlier than 60 days and no later than 74 days from contractual delinquency
 - ii. Chapter 7 (> 60 days delinquent or in FCL at BK filing) referred no later than 7 days from BK notification
 - Chapter 13 referred no earlier than 60 days and no later than 74 days from post petition delinquency
- · All other investors' MFRs must be referred out by the following timeframes:
 - Chapter 7 referred no earlier than 45 days and no later than 59 days from contractual delinquency
 - Chapter 13 referred no earlier than 45 days and no later than 59 days from post petition delinquency

EXHIBIT E

CIT Completion/Response Timelines

Firm will complete or reply to CITs found in individual processor queues and general queues ocated in FiServe. These CITs must be completed or replied to within the specified number of days from CIT origination.

CIT# 809 (Property preservation CIT, Individual Queues) - 2 days

CIT# 886 (Close Reo module CIT, Individual Queues) - 2 days

CITs 904,905,906,907,908,909 (Investor Reporting CIT, Individual Queues) - 5 days

CITs 648, 649 (Payment reversal CITs, Individual Queue) - 3 days

CIT# 733 (Permission to pay Taxes BK, General Queue – Sort by state) - 10 days CIT# 770 (Urgent permission to pay Taxes BK, General Queue – Sort by state) - 5 days

CIT# 950 (CIT from property preservation, General Queue) - 21 days

CIT# 957 (Cash movement CIT, General Queue) - 5 days

CIT# 967 (BK analysis not processed CIT, Individual Queue) - 1 day

EXHIBIT F Direct Source Servicer

Steps	
Accounting Adjustment Complete	
Amended Proof of Claim Referred to Attorney	
Adequate Protection Referred to Attorney	
Agreed Order Default Cured, Client System Updated	
Agreed Order Default Referred to Attorney	
Agreed Order SetUp on Client System	
All Payments Received, AO Cured	
Amended Proof of Claim Referred to Attorney	
Attorney Notified to Close File	
Bid Approved	
Bid Calculation Completed	
Bidding Instructions To Attorney	_
Chapter 13 Closing Reason	
Chapter 13 Closing Reason Effective Date	
Ch 13 Dishcarge Audit Requested	
Ch 13 Discharge Audit Completed	
Chapter 13 Discharge Review Complete	
Chapter 13 Processes Closed in NewTrak	
Chapter 13 Trustee Ledger Reconciled	_
Chapter 7 Asset Review Complete	
Chapter 7 Closing Reason	
Chapter 7 Closing Reason Effective Date	=
Chapter 7 Processes Closed in NewTrak	
Client Review for Workstation Closing	
Client System Closed	-
Client System Updated	-
Defense of Proof of Claim Referred to Attorney	
Escrow Analysis Completed	
Executed Document Received Sent to Attorney	-
Fees and Costs Reconciled	
File Closing Complete	-
Filed Agreed Order/APO Reconciled	_
Filed Amended POC Reconciled	_
Filed POC Reconciled	_
Hearing Results Reviewed	_
HUD Conveyance Extension Requested	_
HUD Conveyance Extension Response Received	
Hud Extension Referral Sent to Attorney	_
In rem Motion for Relief Referred to Attorney	
Judgment Figure Data Referred	-
Motion for Relief Referred to Attorney	_
Motion to Deem Current Referred to Attorney	_
Motion to Dismiss Referred to Attorney	-
Motion to Sell Referred to Attorney	-
Motion to Sell Order Entered	_
No Stay Order Referred to Attorney	_
Objection to Motion to Extend Stay Referred to Attorney	
Objection to Motion to Impose Stary Referred to Attorney Payoff Quote Request Submitted	
Plan Review Referred to Attorney Step	-
	-
Plan Objection Referred	-
Plan Objection Results	_
Plan Objection Review Complete	
POC Screen Modified in Client System	
Post Redemption Codes Changed in Clients System	
Proof of Claim Referred to Attorney	
Proof of Claim Screen Set Up in Client System	

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Exhibit B

Law Offices of David J. Stern, P.A.

900 South Pine Island Road, Suite 400 Plantation, Florida 33324-3920

David J. Stern Managing Partner

Primary Phone (954)233-8000 Auto Attendant (954)233-8400 Primary/Foreclosure Fax (954)233-8333

Internet E-Mail dstern@dstern.com

September 27, 2010

Joseph A. Pensabene
Executive Vice President
Chief Servicing Officer
1100 Virginia Drive
Fort Washington, PA 19034
joe.pensabene@gmacrescap.com

Re: GMAC/Ally Affidavits in Support of Summary Judgment - Corrective Work on Current GMAC Foreclosure Files in the State of Florida

Dear Joe,

Thank you for taking the time to meet with me on Friday and discussing our continued partnership and on moving forward to correct the foreclosure files our office currently has that may have a potentially defective affidavit. As you are aware, we have been in constant and close communication with our ethics counsel. After analyzing and reconciling the general Florida Bar opinion he received with the black letter law of the Rules of Professional Responsibility regulating members of the Florida Bar and taking into account other legal considerations, including protecting GMAC's interests, we are pleased to provide you with our plan of action.

It was further discussed during our meeting that GMAC has agreed to continue to send to my firm normal referral volumes across the board once all the corrective pleadings in the pending cases are filed. We further spoke about billing these files on a spreadsheet sent directly to your business group. To keep things simple, we are proposing flat fee billing for each bucket or stage the foreclosure case is at. I believe this will be the most efficient way to manage the number of files that need curative work. My firm will provide GMAC with spreadsheets containing files separated into different buckets. Should the case not be resolved as proposed and become contested, we will request additional fee approval for the litigation at \$180 per hour. The proposed flat fees do not include any costs that my firm may incur - such as retrieving files from

12-12020-mg Doc 8531-5 Filed 04/27/15 Entered 04/27/15 16:52:56 Cunningham Decl. Exhibit B Pg 3 of 4 storage, documents from the court file, post judgment filing fees and publication fees to name a few. These fees are not all inclusive.

The following are the proposed buckets, the work needed to be done in each bucket and the suggested flat fee for that group of cases.

1) Judgment motion filed but no hearing pending - Flat Fee \$500

- a notice will be prepared and filed with the court in each case;
- thereafter or simultaneously where feasible, a properly verified amended affidavit containing current judgment figures will be filed with the court before proceeding with hearing on the motion for summary judgment.
- a hearing will be set or requested at the time the amended affidavit is filed.

(2) Judgment motion filed with hearing pending - Flat Fee \$750

- a notice will be prepared and filed with the court in each case;
- thereafter or simultaneously where feasible, a properly verified amended affidavit containing current judgment figures will be filed with the court before proceeding with hearing on the motion;
- if the amended affidavits are not able to be produced and verified in sufficient time for filing with the court at least 25 days prior to hearings currently scheduled on the pending motions, we will cancel the hearings at issue.
- many counties are requiring that motions be filed to cancel summary judgment hearings setting forth the reason for the cancellation.
- the hearing will be re-scheduled upon receipt of the properly verified amended affidavit.

(3) Judgment entered based on affected affidavit and sale pending- Flat Fee \$1,000

We cannot allow the court to proceed with a pending judicial sale where we are on notice of a potential defect in the summary judgment evidence presented to the court upon which it relied in granting the judgment.

- we must file a motion with the court which reveals the defect in the affidavit, attach a properly verified supplemental affidavit that confirms the accuracy of the previously filed affidavit (mirrors the affidavit the court relied on in entering judgment) and seek as a suggested remedial measure, that the court ratify the summary final judgment nunc pro tunc to the original date of entry.
- where time constraints necessitate more expedient notice to the court because the supplemental affidavit review and execution are delayed, we will file a similar notice to the pre-judgment matters advising the court that a supplemental affidavit and motion will be forthcoming.
- a motion to cancel the sale will be drafted and may need to be set for hearing depending on the county where same is being filed.
- the motions seeking ratification of the judgment will require a hearing with notice to all parties. The purpose of the motion is to make certain the matter is properly before the court to propose a remedial measure to the court that is in the best interest of GMAC and its investors. The actual result or remedial measure will ultimately be at the discretion of the court.

(4) Judgment entered based on affected affidavit and sale held - Flat Fee \$1,200

The same action as bucket 3 as we cannot allow further action to be taken in a matter where we are on notice of the issues stated herein. Thus, no pending evictions, REO sales, HUD or VA conveyances affected by this issue can move forward until the action in bucket 3 is taken.

- we must file a motion with the court which reveals the defect in the affidavit, attach a properly verified supplemental affidavit that confirms the accuracy of the previously filed affidavit (mirrors the affidavit the court relied on in entering judgment) and seek as a suggested remedial measure, that the court ratify the summary final judgment, sale and certificate of title nunc pro tunc to the original date of entry.
- the motions seeking ratification of the judgment, sale and CT will require a hearing with notice to all parties. The purpose of the motion is to make certain the matter is properly before the court to propose a remedial measure to the court that is in the best interest of GMAC and its investors. The actual result or remedial measure will ultimately be at the discretion of the court.
- motions will be filed in instances where the property reverted back to the Plaintiff and where the property went to a third party bidder.
- in evictions cases we will need to cancel lockouts and bill the file.
- GSE REO files have been placed on hold until the curative action has been taken. We have approximately 300 GMAC non-GSE files that have been transferred out, there has not been a commitment to return the files to our firm. Unless otherwise advised, we will bill the files for work performed to date. Please note that these files will need the curative work set forth above which we will undertake and bill regardless of whether they are returned to our office or not..
- we need instructions as to how GMAC would like us to handle the VA FHA reconveyances.

Note that under Florida Rule of Civil Procedure 1.540 a motion for relief from judgment may be brought not more than one year after the entry of the final judgment. However, this rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment for fraud upon the court. Therefore, we recommend that the curative action should encompass the entire period during which affected affidavits were identified by GMAC to have existed and been used in support of summary judgment motions.

Please confirm the dates in question. Based on information received from GMAC it is our understanding that the potentially defective affidavits stem back to June 1, 2008 and that the verification process was rectified the week of July 6, 2010 with no date certain within that week stated, thus, the following Monday, July 12, 2010, was used as a benchmark to err on the side of caution.

Please do not hesitate to contact me should you have any questions or concerns about our proposed course of action. If this letter contains anything that does not reflect your understanding of our meeting kindly let me know immediately. After review, please confirm in writing that the suggested course of action and billing schedule set forth above are agreed to and approved by GMAC.

Cordially,

David J. Stern

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Exhibit C



David Stern
The Law Offices of David J. Stern, P.A.
900 South Pine Island Road
Suite 400
Plantation, FL 33324

Dear David:

The purpose of this letter is to confirm and document our agreed upon plan of action for GMACM's ongoing remediation work at your office.

As you know, GMACM is completing a comprehensive review of its foreclosure files to determine whether any remedial measures will be taken pursuant to procedures established by the company. Pursuant to this review, we currently have several employees working at your office and executing affidavits where called for. It is of paramount importance to GMACM that this work continue, and that it be completed no later than **October 29, 2010**. This deadline is a deadline for all affidavit review and revision – not for any subsequent motion practice necessitated by revised affidavits.

In response to our request for an accounting of the GMACM files in your office, you provided us with information indicating that there are 1,352 pre-judgment (bucket 1) and 1,262 post-judgment and presale (bucket 2) files. Of these 2,614 files, we believe approximately 1,900 have not yet been reviewed. We believe the best way to ensure that GMACM can complete its remediation work by the October 29 deadline is for your office to immediately begin uploading the affidavits in these files to LPS. Once they are uploaded, our teams in Fort Washington and Dallas can be enlisted to assist with the effort of verifying the information in the affidavits. We can then send any needed revisions to you. Christy Hancock has advised that you have agreed to this process, and that your office will immediately begin uploading affidavits in these 1,900 files. We appreciate your prompt action on our request.

Additionally, for reviews in your office, we ask that your employees promptly make requested affidavit revisions. Since we resumed our review we have periodically received purportedly revised affidavits from your employees that include language we previously requested to be deleted or corrected. Timely processing of our revisions will expedite our remedial efforts.

With respect to bucket 3 files, we will contact you shortly with our plan of action. Until then we ask that you focus on buckets 1 and 2.

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With respect to payment, as I advised in an email to you on October 13th, GMACM has agreed to pay you for your work in support of remediation at the rates set forth in your September 27th letter. We will pay these rates upon completion of the work and receipt of the invoice. Additionally, you are advised that in the event it is necessary for you to hire temporary employees, pay overtime to your current employees or incur other reasonable expenses to comply with the deadline, GMACM is willing to reimburse you so long as the work is completed by the October 29th deadline.

If you are aware of any issues that you believe will prevent us from completing our remediation efforts by 3:00 p.m. on Friday, October 29th, please advise me in a written response to this letter by the close of business on Friday, October 15th.

We appreciate the assistance you have provided us as we work through the various issues we face, and look forward to concluding remediation in your office by the end of the month.

Joseph Pensabene

Chief Servicing Officer, EVP

GMAC ResCap

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Exhibit D

ESCROW AGREEMENT

This Escrow Agreement is executed this ______ day of November, 2010, by Bradley Arant Boult Cummings LLP (the "Escrow Agent"), Law Offices of David J. Stern, P.A. (the "Stern Firm") and GMAC Mortgage, LLC ("GMACM").

Recitals

- A. GMACM has agreed to place into escrow with the Escrow Agent, and the Stern Firm has agreed to the appointment of such Escrow Agent, by deposit into the trust account of Escrow Agent the sum of Three Million and No/100s Dollars (\$3,000,000.00) (the "Attorney Fee & Expense Funds"), for the purpose of holding funds available until certain disputes over attorneys fees and expenses are resolved (the "Agreement").
- B. Under the terms of the Agreement, the Escrow Agent is to hold the Attorney Fee & Expense Funds (as defined herein), subject to the terms of this Escrow Agreement.

Agreement

NOW, THEREFORE, in consideration of the Recitals, the parties agree as follows:

- The Escrow Agent acknowledges receipt of a wire transfer of the Attorney Fee & Expense Funds.
- (2) The Attorney Fee & Expense Funds shall be deposited by GMACM in a deposit trust account at RegionsBank, 1900 5th Avenue North, Birmingham, Alabama 35203, ABA 062005690, Account 0049604686, Name: Bradley Arant Boult Cummings LLP Attorney Trust Account, and the proceeds held and disbursed in accordance with the terms of the Agreement. Upon receipt and approval of any written agreement executed and notarized by both parties between Stern Firm and GMACM and/or any Court Order from a Court of competent jurisdiction, after appeals have been exhausted, Escrow Agent shall remit the Attorney Fee & Expense Funds in accordance with any agreement or Court Order. Either GMACM or Stern Firm may exercise its right to file suit as to the Attorney Fee & Expense Funds at any time pursuant to applicable limitations periods.
- (3) In the event of any dispute or doubt as to the genuineness of any document or signature, or uncertainty as to Escrow Agent's duties, then Escrow Agent shall have the right either to continue to hold the Attorney Fee & Expense Funds in escrow or to pay the Attorney Fee & Expense Funds into court pursuant to relevant statute or rule of court.
- (4) The parties agree jointly to defend (by attorneys selected by Escrow Agent), indemnify and hold harmless Escrow Agent against and from any claim, judgment, loss, liability, cost or expense resulting from any dispute or litigation arising out of or concerning Escrow Agent's duties or services hereunder. This indemnity includes, without limitation, disbursements and reasonable attorneys' fees either paid to retain attorneys or representing the fair value of legal services rendered by Escrow Agent to itself.
- (5) Escrow Agent shall not be liable for any error in judgment or for any act done or step taken or omitted in good faith, or for any mistake of fact or law, except for Escrow Agent's own gross negligence or willful misconduct. Stern Firm and GMACM acknowledge and agree that (a) the amount of the Attorney Fee & Expense Funds may exceed the amount of FDIC insurance coverage applicable to the Attorney Fee & Expense Funds in the deposit account in which the

Attorney Fee & Expense Funds is deposited, (b) the Escrow Agent has deposited the Attorney Fee & Expense Funds in the deposit account at the direction of Stern Firm and GMACM and has not exercised (and does not have) investment discretion over the Attorney Fee & Expense Funds, and (c) the Escrow Agent shall have no liability to Stern Firm, GMACM, or any other person or entity in the event of any diminution in value of, or failure of the bank in which the Attorney Fee & Expense Funds is deposited to pay, any deposit account in which the Attorney Fee & Expense Funds or any part thereof is deposited at any time.

- (6) The parties acknowledge that Escrow Agent is merely a stakeholder. Upon payment of the Attorney Fee & Expense Funds pursuant to <u>Paragraph 2</u> hereof, Escrow Agent shall be fully released from all liability and obligations with respect to the Attorney Fee & Expense Funds.
- (7) It is acknowledged that Escrow Agent is not the attorney for Stern Firm.
- (8) Escrow Agent shall serve without compensation.
- (9) The signing of this Escrow Agreement by Escrow Agent is only to evidence Escrow Agent's acceptance of the terms and conditions of Paragraph 2 of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Escrow Agreement as of the date first set forth above.

BRADLEY ARANT BOULT CUMMINGS LLP

Its Partner

GMAC Mortgage, LLC

Its Vice President EVI

DAVID J. STERN, P.A.

By Its De

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Exhibit E

Termination of Relationship with the Stern Law Firm

November 10, 2010

This Notice affects existing and future mediation, foreclosure, bankruptcy, and litigation referrals of mortgage loans in the State of Florida. Fannie Mae has terminated its relationship with the Law Offices of David J. Stern, P.A. (the "Stern Firm"). Servicers may not refer any future Fannie Mae matters to the Stern Firm.

Servicers that have existing Fannie Mae matters at the Stern Firm must take immediate action to transfer those matters to other firms in the Fannie Mae Retained Attorney Network in Florida. Fannie Mae is in the process of adding firms to the Retained Attorney Network list for the State of Florida. The list, which is posted on eFannieMae.com, will be updated with additional firms from time to time.

By November 15, 2010, servicers must:

- determine transfer locations for the Fannie Mae matters currently at the Stern Firm,
- · notify the new firms that they will receive the matters, and
- notify Fannie Mae via <u>retained_attorney@fanniemae.com</u> of the destination for the matters.

The new law firm(s) should be instructed to work with Fannie Mae and the Stern Firm to execute an orderly transfer of the collateral files and any additional information needed to conduct the matters being transferred. Servicers must work with the new law firm(s) to ensure that all mediation, foreclosure, bankruptcy, and litigation matters that require immediate intervention and action on the part of the law firm(s) over the next thirty calendar days be the first priority for file set-up and review at the new firm(s).

Servicers are reminded of their responsibility to monitor and manage the attorney's performance with respect to the matters transferred from the Stern Firm.

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Exhibit F

Cunningham

LAW OFFICES OF DAVID STERN 900 South Pine Island Drive, Suite 400 Plantation FL, 33324 (954) 233-8000

VIA OVERNIGHT AND EMAIL

GMAC MORTGAGE, LLC 1100 VIRGINIA DRIVE FT. WASHINGTON, PA 19034

> Date: March 1st, 2010 Re: Cessation of Legal Services

Dear Client:

As you know, on or about November 15, 2010, you demanded that all mortgage foreclosure and bankruptcy cases which we were handling on your behalf be immediately transferred to new counsel. We responded to your demand by either allowing you to remove our files or quickly transferring all such files and records to you or your designee. You assured us that your new counsel would promptly substitute in as counsel thereby releasing this law firm from any counsel role with regard to your cases.

As a result of the termination of our firm's services, we have been forced to drastically reduce the attorney and paraprofessional staff within the law firm. The result of these significant cuts has created a situation that prevents us from performing any services to facilitate keeping your cases active within the applicable jurisdictions in Florida where they are pending. Accordingly, be advised that as of March 31, 2011, this law firm will completely cease any and all services on your behalf. We urge you once again for your protection to have your new counsel appear as counsel in your cases as soon as possible. Be advised that your failure to have new counsel appear and substitute in for our firm may result in dismissals of the pending cases. Also, your delay in having new counsel appear has resulted in our firm suffering significant needless costs and expenses.

We regret that your failure to timely arrange to have new counsel take responsibility for the handling of your files by making the appropriate appearance in the applicable court cases has caused us to take these steps.

Sincerely,

David J. Stern

- Print the label(s): Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- Fold the printed label at the solid line below. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. GETTING YOUR SHIPMENT TO UPS

Customers without a Daily Pickup

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.

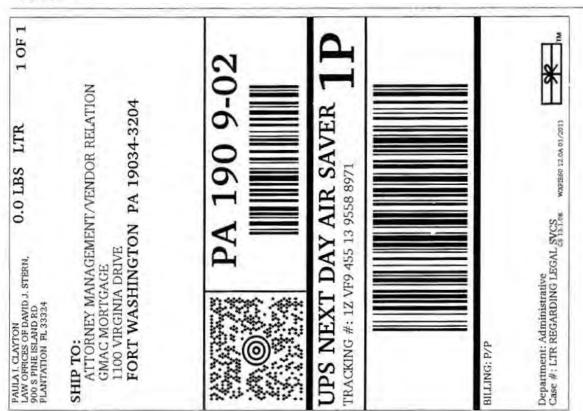
Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return ServicesSM (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup

Your driver will pickup your shipment(s) as usual.

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Exhibit G

GMAC ATTORNEY EXPECTATION DOCUMENT

Firms shall utilize Process Management to update all files via intercoms, issues, and holds. Firms will utilize Document Management to retrieve and return documents. Firms will utilize Invoice Management to invoice their fees and costs for foreclosure and bankruptcy actions. An overview of the general processes and procedures are outlined below. If you have additional questions, please direct them to your GMAC contact.

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Process Management, Document Management and Invoice Management

Process Management

Your firm is required to update all files via Process Management.

Document Management

All referral cover sheets will be delivered via Document Management. Referrals received from GMAC will have documents attached to the referral via Document Management. All return foreclosure or bankruptcy documents must be browsed into Document Management. If you do not receive the loan documents within 7 days, please obtain copies at a cost not to exceed \$50.00. If a lost note affidavit can be utilized please raise an issue and image one for execution. Please ensure you provide the cost for the affidavit, and indicate clearly if any delay will result in the utilization of the lost note affidavit. Additional costs require prior approval

Invoice Management

All invoicing will be processed in Invoice Management. DO NOT submit your invoices directly to GMAC. *All invoices must be submitted within the timelines below:*

Bankruptcy Invoices – 5 days of Bankruptcy resolution (dismissal, discharge or relief)

Foreclosure Invoices – 15 days of Foreclosure acquisition (FCL sale, end of redemption, ratification or confirmation) This supersedes all other instructions received for invoice submission.

In Pennsylvania, the attorney timeline will be extended to 45 days for the sheriff cost invoice, which would include the sheriff's cost and the deed recording cost for all FNMA loans and all investors who follow the FNMA guidelines. For FHLMC loans, all sheriff's cost invoices submitted greater than 30 days must have the 104DC submitted and have FHLMC approval for late submission attached to the invoice. The 15 day timeline will still be in effect for the final attorney invoice that will include all other attorney fees and costs associated with the sale of the property.

If a bankruptcy is filed on the subject property or if the loan is put on hold due to loss mitigation, the attorney must submit all outstanding foreclosure and/or eviction invoices up through the bankruptcy filing date or loss mitigation hold date within 5 business days after learning of the bankruptcy filing or the loss mitigation hold. All adjusted and rejected invoices must be reviewed and responded to within five (5) business days.

GMAC wants to remind counsel that we encourage counsel to interim bill at the end of each critical stage for all fees or costs that have reasonable been incurred to date. We allow interim billing to assist with the tight timeframes we have for final invoicing. For example, the POC filing may be billed once the POC is filed with the Court and MFR invoicing should be submitted once the hearing has been held. In order to ensure a bankruptcy loan is properly closed out we must have all invoices paid and reviewed for recoverability before closing the loan out of bankruptcy. Foreclosure must ensure final invoices are paid as the investors have very tight claims deadlines. When the foreclosure process is stopped, interim billing occurs or the file is placed on "Hold" at any time during the foreclosure process, the attorney is allowed to invoice a certain percentage of the allowable fee depending on the last process completed, based on the Graduated fee Schedule (below).

GRADUATED FEE SCHEDULE FOR NON-JUDICIAL FORECLOSURES

Event		Modified ResCap Allowable Fee	
A.	File received by Firm	25% of the fee	
B.	1st Action Complete	50% of the fee	
<mark>C.</mark>	Sale Scheduled	100% of the fee	

GRADUATED FEE SCHEDULE FOR JUDICIAL FORECLOSURES

Event		Modified ResCap Allowable Fee
A.	File received by Firm	25% of the fee

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B.	1st Action Complete	50% of the fee
C.	Service Complete	75% of the fee
D.	Sale Scheduled	100% of the fee

All items deemed non recoverable must be itemized as such within Invoice Management and the appropriate issue must be immediately raised in Process Management

If you do not invoice your file timely, GMAC reserves the right to decline the payment of the invoice. You may not charge for "soft costs" such as postage (including overnight mail), copies (non-certified), long distance (unless part of pre-approved litigation fees), bankruptcy service costs, faxes or PACER.

For litigated matters where GMAC's Legal Department is the point of contact and the attorney has signed an engagement letter from GMAC Legal, the attorney must submit invoices for litigation fees and costs to GMAC Legal Department in accordance with the terms in the engagement letter. Invoices for standard foreclosure or bankruptcy fees and costs must be billed separately via Invoice Management.

General Expectations

Fees

Counsel will bill GMAC in accordance with investor/insurer (FNMA, FHLMC, HUD, VA, RFC, etc.) allowable and normal industry claimable items that are mutually agreed upon by all parties. Private label serviced loans and Private Investor loans must comply with the Fannie Mae fee schedule. All billing must be prorated to reasonably relate to the work actually performed and the allowable fee should not be billed unless the action being billed has been completed. All actions requiring additional fees must be approved by GMAC Mortgage/Investor prior to the action commencing unless the action is required to urgently protect the client's interest. Those items determined non recoverable by state or federal statue will be taken as a cost of doing business to GMAC.

Any charges that are over the allowable amount of the investor reimbursement, and do not have GMAC/investor approval, will be a bill back to Counsel. Reimbursement of such bill back amounts shall be sent to GMAC within 10 days of demand. GMAC reminds Counsel that fees charged to borrowers must be permitted under the terms of the note, security instrument, and applicable laws and be prorated to reasonably relate to the amount of work actually performed. If Counsel determines that fees are non-recoverable please ensure the appropriate issue in Process Management is opened at the time of bill submission.

For chapter 13 bankruptcy matters attorneys are expected to adhere to the investor allowable fee schedules. All applications for fees should be filed with the Court when deemed necessary by jurisdiction and local rules. Counsel must ensure the filing is appropriate under the circumstances and obtain attorney fee approval if there is a fee related to the filing.

Processing Errors - Counsel will be responsible for any and all costs incurred by GMAC resulting from processing errors or omissions from Counsel performing the services. If GMAC suffers a hard cost loss, GMAC will request reimbursement and said reimbursement will be delivered to GMAC within 10 business days of request.

Additional Fees

All actions requiring additional fees must be approved by GMAC Mortgage/ Investor prior to the action commencing, unless the action is required to urgently protect the client's interest. Firms are to open the "Additional Fees-BK", "Additional Fees-FC" or "Additional Fees-Contested" Issue in Process Management providing specific detail regarding the required action and the fee breakdown (e.g. 1 hour to prepare motion, 1 hour to research case law, 2 hours for attendance of hearing, etc.). Firms are allowed to bill up to a rate of \$180.00 per hour. Additional fees are not to be requested should an action be necessary as a direct result of an error made by the firm or the firms associate.

Non-Recoverable Fees and Costs

If any fees and/or costs have been determined by counsel or by the Court to be uncollectible from the debtor, you must provide immediate notification to GMAC. The notification should provide specific details of (1) the amount of fees and costs that are not recoverable, (2) the reason the fees and costs cannot be recovered (i.e., inappropriate charges, court order, etc), and (3) whether any portion or all of the fees and costs would be recoverable from the debtor should the Bankruptcy matter be dismissed or if GMAC obtains relief from stay. GMAC will move all uncollectible amounts from the recoverable bucket so they do not show as a collectible item on the account during the Bankruptcy matter. Please ensure you utilize the issues in Process Management entitled "BK Non Recoverable Fees" and "FC Non Recoverable Fees". Please image all supporting documentation into Process Management.

Privacy Statement

Counsel affirms its commitment to treat any and all information pertaining to the borrowers, including but not limited to their name, address, phone number, loan number, principal balance, monthly payments, default status, employment information or any other information provided to it under this engagement as non-public, confidential and private information, and comply with all applicable laws pertaining thereto. Counsel will not use such information for any purpose other than the specific business purpose for which it is furnished to Counsel. Information will be released to third parties, independent agents, or independent sub-contractors, only to the extent necessary for the performance of the services requested hereunder. Counsel will monitor the handling of documents, data and reports to assure they remain secure and safeguarded against anticipated threats or hazards to the security of such information. Counsel is required to install hard drive and email encryption on machines/computing equipment which will be used to fulfill GMAC contractual obligations.

Privacy Training

During the term of this Statement of work and annually, Counsel will be responsible for Privacy training each year beginning 2010. Completion of the privacy training must be done annually and acknowledgement form (Exhibit 1) returned to Linda Walton, Relationship Manager, linda.walton@gmacm.com or Will Watson, Vendor Management Team Lead, William.watson@gmacm.com by October 31st of each year. Non compliance will be considered a breach in security and could result in termination.

BPO's

GMAC will order BPO's as per their internal procedures. If a BPO is missing or needs to be updated, firms should open the "Appraisal/BPO Needed" Issue or Hold in Process Management.

Communication and Contacts

Firms should utilize Process Management intercoms, Issues or Holds for all communication. The reprojection process in Process Management is not to be used for requesting additional information from GMAC. Any requests for additional information from GMAC must be submitted through the Issues or Holds process. It is GMAC's expectation that telephone calls will be returned, correspondence will be answered and requests for specific information will be responded to within 24 hours of receipt. You should expect the same from the GMAC Processor. If you do not receive a timely response, please send a second request, and escalate to the appropriate senior or team lead. Firms are responsible for updating their scheduled steps through Process Management daily.

Document Execution

The Signature Required Module is to be used for all documents which require execution. Please ensure all documents uploaded for signature are **accurate** and necessary. If you are experiencing delays in receiving executed documents please send an intercom to the appropriate team player and, if necessary, elevate per the team matrix. Do not open multiple issues for the same document.

Fee and Costs Requests

All fees and costs requests will come through Process Management via the fees and costs module, and are to be responded to within 4 hours. GMAC is requiring firms to identify the itemized fee or cost as either recoverable or non-recoverable from the mortgagor in the description field within the Fees and Costs Module. In addition, the attorney is responsible for obtaining and documenting outstanding fees and costs from their downstream counsel, if applicable.

Loss Mitigation

Calls from mortgagors for loan workouts while in Foreclosure must be referred to GMAC's loss mitigation department at (800) 850-4622.

GMAC has a dedicated loss mitigation team for loans that are active in bankruptcy. Below are the email addresses to utilize to contact GMAC's bankruptcy loss mitigation department:

BK_LM_Escalated@gmacm.com For all escalated bankruptcy loss mitigation requiring immediate attention.

BK_LM_New_Referrals@gmacm.com For all new loss mitigation referrals on active bankruptcy accounts.

Legal_LM_New_Referrals@gmacm.com For all new contested or litigated matters requiring loss mitigation to resolve the proceedings.

Missing Documents

If you determine that necessary documents are missing from the referral file, you must review the systems you have access to determine if the documents can first be obtained. For all other document requests you must open the applicable Issue in Process Management specific to the document(s) missing and complete the comment box. GMAC will review the Issue, obtain the documents, if available, and upload the required documents into Document Management. Assignments out of the name of MERS are not billable and are included in the investor allowable fee.

Original Documents

Where required, original documents will be mailed directly from GMAC to your office. It is GMAC's expectation that <u>original</u> legal documentation (including Note/LNA, recorded Mortgage, Assignment, Title Policy) used in proceedings should be returned immediately upon foreclosure reinstatement/completion. The original legal documents are required in order to meet securitization and investor requirements.

Return all GMAC original documents to the following address:

GMAC c/o ACS, Inc. 9401 James Avenue South, Suite 140 Minneapolis, MN 55431 ATTN: Trailing Mail

Demand Letter and Re-demand Letter

If a copy of an ACT/Demand Letter is needed, firms should first request the document by opening the applicable issue. If the breach letter is not found, then firms should open the Hold or Issue in Process Management for "Copy of ACT/Demand Letter". You are required to ensure all applicable acceleration letters, notices of default requirements, demand letters, etc. were performed and are within state regulations. If new notices are required and not received within 7 days, please prepare notices that fully comply with all state requirements and comply with the loan documents. A fee of up to \$50.00 is approved to prepare the notice. If more than \$50.00, an additional fee request must be made. The fee may not exceed \$100.00. Also, please ensure that when you review title, notices have been provided to all required parties.

When a file comes off a bankruptcy or forbearance hold, the firm must determine whether the account needs to be re-demanded. If a new Demand is required, the firm will raise the "ACT (PA) Letter/Demand Letter/NOI Expiration" Hold in Process Management. GMAC expects firms to send a new demand and set the hold to expire on the demand expiration date. The firm will receive notification that the "ACT (PA) Letter/Demand Letter/NOI Expiration" Hold in Process Management ended and will proceed with foreclosure.

Reinstatements and Payoffs

Reinstatement and payoff requests received from a borrower or borrower's representative should be requested by the firm opening the appropriate Issue in Process Management. All reinstatement/payoff quotes must be sent through GMAC counsel and supplied on Counsel's letterhead. Firms must include outstanding Foreclosure and Bankruptcy fees and costs describing each as recoverable or non-recoverable from the mortgagor, (including fees and costs from their downstream counsel, if applicable) and a good through date. For payoffs, the Issue must include a fax# to which the statement can be sent. GMAC will send the quote back to the attorney for distribution to the requesting party. There may be instances where a borrower contacts GMAC directly for a reinstatement or payoff quote. In these cases GMAC will send the quote back to the attorney's office with direction to add fees and costs to the quote. It will be the responsibility of the applicable law firm to send these quotes directly to the borrower on firm letterhead. Firms are required to review all quotes prior to communicating figures to the borrower or borrower's representative to ensure recoverability follows all applicable statutory guidelines. Review the reinstatement quote for accuracy and compliance with the laws of your state and pursuant to the note and mortgage. GMAC relies on Counsel to ensure that all figures comply with local and federal bankruptcy requirements, statutory requirements, state laws, local rules, note and mortgage terms, etc. Amounts that cannot be recovered must be communicated back to GMAC in Process Management and must not be included in the final quote that is sent to the borrower. Once the figures have been provided to the debtor, a copy of the final quote is to be uploaded into Document Management.

Receipt of Funds

When funds are sent to GMAC for posting, firms should raise an "Awaiting Funds to Post" Hold in Process Management for files in foreclosure, and the "BK Awaiting Funds to Post" hold in Process Management for files in bankruptcy, stating that the funds have been forwarded to GMAC. Firms must document in Process Management a breakdown of all funds received. Firms must remit all funds and are not permitted to retain their fees and costs on payoffs, reinstatements or 3rd party sales. Firms must wire all payoff, reinstatement, redemption and 3rd party funds in accordance with the below instructions. If a check is received that is payable to GMAC, forward to:

Attn: Payment Processing GMAC Mortgage, LLC 3451 Hammond Ave Waterloo, IA 50702

Funds for Reinstatements and Payoffs, 3rd Party Sales and Certified Checks:

Wiring Instructions

- Payoffs / 3rd party / redemption / reinstatements & attorney refunds:
 - ABA information: Wire 021000021, New York, NY
 - Bank Account: 699282885
 - Bank Name: JPMorgan Chase
 - Beneficiary: GMAC Mortgage
 - Additional credit information: Include GMAC Mortgage account number
 - Send an excel spreadsheet with a breakdown of funds to: paymentwires@acsgs.com

Notification Requirements

Your firm must notify us via Process Management of the following events as they occur:

- 1. Date First action sent (i.e. Notice to quit, demand letter, etc.)
- 2. Date First legal action completed (i.e. summons and complaint, complaint and ejectment, show cause order, etc.)
- 3. Date Service complete (in those states that apply)
- 4. Date Judgment entered (in those states that apply)
- 5. Scheduled Sale Date (as soon as notified)
- 6. Sale results are to be reported the same day as the sale date
- 7. Date redemption expires, sale confirmation or ratification (in those states that apply)
- 8. Hearing/trial dates with results within 5 business days
- 9. Date Writ issued
- 10. Lockout date and time (i.e. date, time, sheriff information and special instructions. This will be communicated via a DDF in Process Management)
- 11. First time vacancies need to be reported within 24 hours of receiving the vacancy information via the Process Management Issue 'Vacant Property'.
- 12. Stipulation to vacate
- 13. Bankruptcy filings and resolutions (i.e. dismissals, discharges and relief granted)
- 14. Objections filed to any Bankruptcy Pleadings and any adversary or motion for sanctions.
- 15. Bankruptcy Hearing dates (as soon as notified)
- 16. Entry into an agreed order including the terms of the agreed order.
- 17. Contested evictions
- 18. Rent Control updates
- 19. Deed recording information Process Management will be updated upon a deed being recorded. If your state has the ability to utilize a direct deed in some cases rather than recording a deed to GMAC, we require you notate Process Management at the time the eviction is started.
- 20. Any witness needed for hearings/trials as soon as notified of the hearing/trial date.

Securitized Housing Assets

GMAC expects that firms understand relevant securitization transactions, and related custodial practices, in sufficient detail for which they act to explain and prove those terms and the resulting ownership interests to courts and government agencies. It is expected that firms foreclosing on a property mortgaged to a securitization trust should name the securitization as "[Name], Attorney for [Servicer Name], Acting for [Name of Trustee] as Trustee of the [Name of Trust]". In no event should the firm mislead any 3rd party into believing that the Trustee directly controls the foreclosure process or any related litigation process. In addition, the Trustee should never be described as the party who "made" or is "in the business of making/securitizing loans as such descriptions inaccurately reflect the role of a securitization trustee.

Qualified Written Requests

If, during the course of a Foreclosure or Bankruptcy, a Firm receives a Qualified Written Request ("QWR") as defined in the Real Estate Settlement Practices Act ("RESPA"), the Firm *must immediately*: 1) place the file on hold, 2) enter the applicable hold reason code into the Process Management system, and 3) forward the QWR immediately upon receipt to the GMAC Voice of the Customer group (the "VOC") by faxing to 866-273-2413 or overnight to GMAC Mortgage, [Robinson, Sharon - IA] 3451 Hammond Ave, Waterloo IA 50702. All bankruptcy Qualified Written Requests should also be sent to the correct bankruptcy litigation team member at GMAC that can be found on the department matrix. GMAC may ask its Firms to assist in answering certain foreclosure or bankruptcy related QWR questions. Because response time is of the essence, GMAC expects that these requests receive expeditious attention. If a Firm needs additional information from GMAC, it should elevate the request by utilizing the "escalation matrix".

Other Services

It is the expectation of GMAC that law firms gain the best execution possible on all services contracted for by the law firm to effectuate the foreclosure and bankruptcy processes. GMAC expects the law firm to choose vendors (service of process, posting and publication, auctioneer fees, etc.) who will provide these services efficiently, expeditiously, economically and ethically. In the event that the law firm selects a vendor whose fee and cost schedules exceed the current market rate, or contain a vendor imposed surcharge, the law firm will be expected to provide GMAC and its investors with written justification as to the reasons for the imposed charges, as well as an indemnification for same. The law firm is prohibited from passing through to the borrower or to GMAC any amounts in excess of the reasonable and customary charges for these services.

Service Levels

The below tasks will be reviewed by GMAC and firm performance assessed on a monthly basis.

- 1. Delinquent vendor steps in Process Management. Scores will be based upon the total delinquent steps as a % of Process Management inventory.
- 2. First legal actions filed. State by state standards for timeliness of filing the first legal are attached as Exhibit 2. Scores will be based upon the % of first legals filed within the state standard.
- 3. Sales held. State by state standards for allowable days from referral to sale are attached as Exhibit 2. Scores will be based upon the % of sales held within the state standard.
- 4. POCs filed. Scores will be based upon the % of POCs filed within 30 days of the POC referral date.
- 5. MFRs filed. Scores will be based upon the % of MFRs filed within 30 days of the MFR referral date.

The scale for all performance measures will be:

MEETS STANDARDS 96% - 100% NEEDS IMPROVEMENT 90% - 95.9% BREACH <90%

If Supplier fails to meet any of the committed service levels, upon GMAC's request, supplier will take the following actions:

- Provide GMAC with a single point of contact for the prompt resolution of all service level failures
- Promptly initiate an investigation to identify the root cause of the failure
- Notify GMAC of the plan to resolve the problem within five (5) business days
- Correct the problem or provide capability to work around the problem depending on the severity of the problem
- Advise GMAC of the status of corrective efforts being undertaken to solve the problem.

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•	Begin meeting the s	service levels, going	forward, with ten (10)	business days	
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Foreclosure

Bankruptcy Filings during Foreclosure

Upon receipt of a new foreclosure referral, and at the time of sale, firms must run PACER to ascertain if a bankruptcy has been filed. If a bankruptcy is filed during a foreclosure action, raise the "Bankruptcy Filed" Hold in Process Management. Firms must provide complete bankruptcy information including: **Debtor(s) name; filing date; chapter; case number; state, district and division, trustee name, debtor's attorney name, address and phone number, and sale date, if set.** If a sale was held, indicate whether it is valid or not. A Fees and Costs Request will be opened to document these items. All firms are required to search for bankruptcy filings, filed by the primary borrower, co-borrower, or real owner, via pacer in all districts in the property state within 48 hours prior to the sale date. Firms do not have automatic proceed approval for the bankruptcy matter.

Bids

In accordance with GMAC guidelines, GMAC will calculate foreclosure sale bids and deliver bids to firms via Document Management. If the firm has not received the bid within 3 days of the sale, raise the "Missing Bid" Issue. GMAC will provide FHLMC Designated firms with total debt figures. FHLMC Designated firms will continue to prepare bids as per existing procedures. If a bid has not been provided within 72 hours of either the sale or the state bid deadline requirement, please raise the "Missing Bid" issue.

Foreclose in the Name Of

Review the referral cover letter for the Action in the Name of instructions. If upon review of the referral you cannot clearly identify who to file in the name of, open the "Action in the Name of" Issue if the attorney can proceed with the foreclosure or the "Vesting Issue" Hold if the attorney cannot proceed. It is possible that at some point during the foreclosure process that the name of the initial beneficiary may change. Any changes in beneficiary will be communicated to the attorney at the time the bidding instructions are sent to the attorney. Firms are required to ensure that all final vesting occur in the name of the final beneficiary. Please ensure that the chain of title corresponds with the name that you are foreclosing in, if there are any discrepancies contact GMAC and do not file the first legal action.

MERS

- For all loans referred to foreclosure in judicial states that have been assigned to MERS, GMAC will require the attorney to prepare an assignment out of MERS and into the name of GMAC Mortgage, LLC or the designated beneficiary named in the foreclosure referral. GMAC considers the cost associated with preparing the assignment to be part of the foreclosure fee and we will not pay a document preparation fee associated with preparing the assignment. We will reimburse the attorney any cost associated with recording the applicable assignment. The cost for recording the assignment should be submitted through Invoice Management as a non-recoverable advance.
- Attorneys are authorized to proceed with the foreclosure action in the name of MERS in non-judicial states. If there are any concerns with proceeding in this manner please alert GMAC.

SSCRA

When notification of active military duty is received, please raise the Soldiers and Sailors Relief Act Hold in Process Management. After raising the hold request, please upload all supporting documentation for review. Once GMAC reviews, we will notify your office on how to proceed.

Judgment Figures

A Judgment Figures form will be provided for the Judgment Figures via Document Management. The Fees & Costs Module in Process Management should be reviewed prior to completing the final figures for outstanding fees and costs due to parties other than the firm. Do not complete the figures until the most recent request through the module has been closed. All attorneys addressing outstanding Fees & Costs within the module must take into consideration outstanding dollar amounts due to their 2nd party firms. Firms are expected to adjust the figures provided as per state law. Firms are to prepare the Affidavit and return via the Signature Required process for execution.

Sale Postponement

Your office is not authorized to postpone a sale without authorization from GMAC. A postponement requested must include: the next possible sale date and any additional fees and costs that would apply if the sale postponement would be approved.

Junior Liens

GMAC requires that firms handling a junior lien foreclosure or a senior lien monitor file provide a monthly senior lien status update in Process Management. Firms are expected to obtain a senior lien payoff amount on behalf of GMAC at least 5 days prior to the sale and upload the payoff into Document Management. The firm is expected to return all funds advanced for a senior sale or excess funds after the senior sale back to GMAC within 3 days of the sale being held. If you do not return senior lien advance funds or excess funds back to GMAC timely, the firm will be charged per diem interest for the advance amount as a result of any delays.

VA Appraisals

- Prior to ordering the appraisal, the attorney must place a message in Process Management requesting the occupancy status and any phone numbers.
- Register on the VA's website using GMAC Mortgage's information so we can retrieve the appraisal and invoice:
- GMAC Mortgage's VA SERVICER NUMBER: 7250160000 PIN NUMBER: 0000
 - 1. Email address this would be the GMAC Mortgage rep's email address (request in Process Management)
 - 2. Your name and phone number
 - 3. This would be the GMAC rep's name and number. (request in Process Management)
 - 4. Enter Condo # if property is a Condo
 - 5. Enter the property address
 - 6. Enter the legal description
 - 7. N/A
 - 8. This would be GMAC Mortgage as it is used by the appraiser for mailing purposes. GMAC Mortgage, 1100 Virginia Drive Fort Washington, Pa 19034
 - 9. Borrower's name address optional phone number if we provide it.
 - 10. Based on GMAC Mortgage's response to occupancy request on Process Management
 - 11 N/A
 - 12. Contact person is the borrower if property is occupied. GMAC reps are the contact ONLY if the property is vacant.
 - 13. Based on GMAC's response to occupancy request in Process Management
 - 14. & 15. N/A
 - 16. Only if Vacant, then it would be GMAC rep as noted in Process Management.
 - 17. thru 21. N/A
 - 22. Only if we know it's a mobile home.
 - 23. GMAC's Loan Number

HUD Occupancy Letters

Firms will prepare and send the HUD Occupancy letters in all states.

Sales Results

GMAC requires that firms place all sales results in Process Management on the same day that the sale was held. There are two fields within the DDF in Process Management for completing the sale results to indicate whether the property went to a third party or was acquired. The comment box within the DDF needs to include: sold to, sale amount, and if applicable, the redemption/confirmation/ratification with the anticipated date to expire. Copies of any and all checks should be uploaded to Document Management.

VA Post Sale Requirements

You must put the following information in Document Management upon completion of the foreclosure sale:

- Deeds which need to be executed, need to be provided right after sale
- Copies of all recorded foreclosure deeds
- Copies of title policy sent to Countrywide

Mobile/Manufactured Homes

Mobile, manufactured and/or modular homes (collectively referred to as "MH") must be converted or prepared to be converted to real property at the time of foreclosure sale. GMAC requires the attorney to obtain the certificate(s) of title and any other state applicable documentation to the MH in order for the investor to market and sell the property. State guidelines should be used for verification.

- The MH should have been specifically and accurately described in the legal description of the security deed and/or manufactured housing rider.
- The lending institution should have been referenced as "secured party" on the motor vehicle certificate of the title to the mobile home.

Tax Issues

After reviewing title, if it is determined that there are delinquent taxes on the account, firms must open the Delinquent Tax Issue via Process Management and complete the comment box. Firms are to provide tax information up to and including the year(s) for which the taxes are due, amounts due for each year, a good through date, information as to whom the taxes are payable, whether the taxes must be paid prior to attending the sale, and whether the client is in jeopardy of losing the property. If any of the necessary information is not available, please indicate within the Issue comment box.

Title Orders

GMAC does not direct attorneys to use a specific title company for the foreclosure process except in the states of FL, GA, IL, MI, OH, NJ and PA. GMAC expects the law firm to choose a vendor who will provide the necessary title work efficiently, expeditiously, economically and ethically. In the event that the law firm selects a vendor whose fee and cost schedules exceed the current market rate, or contain a vendor imposed surcharge, the law firm will be expected to provide GMAC and its investors with written justification as to the reasons for the imposed charges, as well as an indemnification for same. The law firm is prohibited from passing through to the borrower or to GMAC any amounts in excess of the reasonable and customary charges for these services.

Title and Litigated/Contested Matters

After reviewing Title, if it is determined that a Title Issue exists, or during the course of the Foreclosure an issue becomes litigated, firms must open the Title or Litigation related Issue (if the action is proceeding) or Hold (if the action must be stopped) in Process Management and complete the comment box outlining specifics of the Issue. GMAC expects all firms to review title within 3 days of receiving the title and to raise all title related issues within this timeframe. Firms must also browse into Document Management any additional fee requests, title reports, copies of court documents or pleadings.

When Title or Litigation issues exist in combination with issues relating to missing documents and/or delinquent taxes, firms must open Process Management Issues for each matter. For example, if there is a Title Issue and a missing Note, but neither requires that the file be placed on Hold, the firm will open an Issue for the Title and another for the Missing Document. However, if there is a Title Issue that prevents the firm from proceeding, and there is a missing Note, the firm will place file on Hold for the Title Issue and open the Missing Document Issue.

If the title issue can be resolved through the title claim process, Law Firms have pre-authorization to file a title claim on GMAC's behalf at a flat rate of \$180 per title claim.

Post Sale Instructions

- On HUD loans, Attorney shall review the Foreclosure time frame utilized beginning with the first action through the completion of the foreclosure. If conveyance of title goes directly to HUD (3rd party deed), an additional 30 days is allowed. If the allowable time frame is exceeded, Lender requires Attorney to submit a full chronology detailing all delays with the Foreclosure package. Upon foreclosure sale, Attorney shall follow up on a bi-weekly basis with county recorders office to obtain recording information and notify GMAC when information is received via Process Management or email in order to meet conveyance deadlines. Attorney shall upload a copy of the recorded deed within 24 hours of receipt. Please send notification to GMAC Post Sale dept on Government accounts; please include chronology if deed receipt exceeds 30 days. If the time frame is exceeded due to delay or error on Attorney, Lender will require Attorney to reimburse them for all curtailed interest.
- When Lender instructs Attorney to record the Warranty Deed or Deeds conveying title to HUD, Attorney shall fax a copy of the transmittal letter addressed to the recording authority to Lender the same day of issuance by 3pm eastern time.
- Lender will monitor the process of obtaining and submitting title evidence to FHA and VA. Attorney shall bring any delays in obtaining or submitting title to Lender's attention. Attorney should file any required extension of time and monitor the receipt of same. Attorney shall upload to Document Management all approved or denied extension to Lender.
- Within forty-five (45) days of the date of conveyance, title evidence must be submitted to the local FHA or 60 days for VA office UNLESS VA GUIDELINES permit otherwise along with a statement indicating title approval should be sent to Lender. The original title evidence invoices should be forwarded directly to Lender via Invoice Management within 48 hours of submission, with a copy of the cover letter submitting the title package to the appropriate HUD or VA office.
- For VA loans, Attorney shall forward Warranty Deeds conveying title on the warranty deeds to the Secretary of Veterans Affairs to Lender for execution at least thirty (30) days prior to the foreclosure sale thru Process Management under Signature required module. Lender will execute the deed and return it to Attorney. Attorney is authorized to record the deed immediately after completion of the Foreclosure sale, and upload thru Document Management once recorded. If No-bid instructions are given by the VA, title must remain in beneficiary's name.
- Lender is expected to be able to convey clear and marketable title after each foreclosure sale. Attorney should make every effort to obtain clear and marketable title so delays in recording the foreclosure deeds are not experienced.

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Bankruptcy

Bankruptcy referral packages (i.e. Proof of Claim, Plan Objection, and Motion for Relief) will be transmitted to your office via Document Management. Referrals shall be reviewed upon receipt by your office for missing documents. Bankruptcy case status shall be confirmed by your office via PACER prior to commencing legal action.

If the file came from Foreclosure, please file the POC/MFR in the name of "GMAC Mortgage, LLC as servicer for ______" and use the name that is being used in the foreclosure. If the file has not been in foreclosure, file the POC/MFR in the name of "GMAC Mortgage, LLC as servicer for ______" and use the investor provided. Also, if it is not the best practice in your jurisdiction to file the matter in the name of the servicer, please notify us.

Before you file the POC/MFR, if required in your jurisdiction, please ensure that the note is endorsed over to the investor or there is an appropriate assignment chain. On any assignments to GMAC, please use 'GMAC Mortgage, LLC' and not 'GMAC Mortgage Corporation'. GMAC Mortgage Corporation is no longer a valid name for GMAC. Assignments involving MERS should read – 'Mortgage Electronic Registration Systems, Inc. ("MERS")'. If you do not have the proper documentation or assignment chain to support the POC/MFR, please contact GMAC. If your jurisdiction or judge requires a copy of the Power of Attorney utilized to give the signor of the document authority to sign, please raise the "Copy of Power of Attorney" issue.

Proof of Claim and Plan Review

Proofs of claim and plan reviews will be referred as per the GMAC approved attorney matrix. All Proofs of Claim (including supplemental and amended claims) and Plan Review documents should be placed in Document Management (including any filed attachments/exhibits). Your office shall open the "Copy of Proof of Claim" or "BK Plan Copy Needed" Issue if the Proof of Claim or Plan is needed for the current legal action and not available to counsel.

When a Chapter 13 is filed plan review will be the initial process opened in Process Management. Counsel is to review the bankruptcy plan within 10 days to determine if a Proof of Claim is needed or necessary under the circumstances of the case. Once the DDF for plan review is completed, if appropriate, the Proof of Claim process will be opened and a Proof of Claim referral will be sent to counsel. During the plan review process if counsel find any unusual requirements or attempts to modify the loan, notification must immediately be made to the appropriate GMAC representative.

All Proofs of Claim must have the necessary documentation attached, including the note, mortgage and any assignments. If your office does not have the documents needed, please raise an issue in Process Management requesting the documents. Proofs of claim without the proper documentation should not be filed until the proper documentation is obtained. If the file was previously in foreclosure, ensure all fees and costs relating to the foreclosure that are allowable are included in the Proof of Claim. If your office did not handle the foreclosure action, please alert the GMAC POC processor and do not file the POC until you receive the appropriate foreclosure fees and costs. All Proofs of Claim containing a claim for fees and costs must include a complete itemization of all amounts claimed. If, for any reason, any fees and costs cannot be claimed in the Proof of Claim, open the "BK Non Recoverable Issue" in PM. Also, if counsel determines that fees or costs may be inappropriate or challenged please notify the appropriate GMAC representative prior to including those fees or costs in the POC.

All proof of claims must have a complete itemization of the secured total debt and any arrearage. If you office needs the breakdown of any figures please open up the appropriate issue in Process Management.

All Proofs of Claim must provide the following mailing addresses

All payments should be sent to:

GMAC Mortgage, LLC ATTN: Payment Processing 3451 Hammond Avenue Waterloo, IA 50702

All correspondence should be sent to:

GMAC Mortgage, LLC

ATTN: Bankruptcy Department 1100 Virginia Avenue Ft. Washington, PA 19034

It is important that all Proofs of Claim filed on GMAC files meet these requirements and are as accurate as possible. If you do not have the necessary information, we would prefer that you delay filing the Proof of Claim, rather than file an incomplete document with the Court. If you do not have access to the necessary information, please request a "HOLD" while the information is being obtained. If a bar date is approaching and you have still have not received the proper information or documentation, you must immediately intercom bankruptcy management. All Proofs of Claim (including supplemental and amended claims) and Plan Review documents should be placed in Document Management.

Any loan where the plan states the loan will be paid in full during the bankruptcy should be forwarded to GMAC's bankruptcy litigation team for handling. Counsel will be expected to file a total debt payoff POC.

GMAC has provided the following parameters regarding the type of Proof of Claim to be filed for chapter 13 cases:

- 1. Claims should be filed on all chapter 13 bankruptcy cases except zero balance Home Equity Line of Credit loans, energy loans and charge off loans in which there has not been a request directly from GMAC. Also, claims should not be filed if counsel believe based on the review of the plan and jurisdictional requirements that the filing is not necessary (i.e. Surrender, current accounts, lien strips, etc.).
- 2. A Principal Balance Proof of Claim should be filed in all cases where the monthly payments are current and the total arrearage, including escrow shortage, is less than \$400.00. If it is not best practice to file a Proof of claim in your jurisdiction on these loans please advise us via intercom and completion of the Plan Review DDF in process management.
- 3. An Arrearage Proof of Claim should be filed in all cases where the monthly payments are delinquent and or the total amount in arrears, including escrow shortage, is \$400.00 or greater. If it is not best practice to file a Proof of claim in your jurisdiction on a loan that has intent to surrender in the plan, please advise us via intercom and completion of the Plan Review DDF in process management.
- 4. In the event a Principal Balance Proof of Claim will be filed but the bar date has passed, no POC should be filed UNLESS it is not necessary to file a motion to allow a late claim.

If the borrower is surrendering their property, Counsel is to review the plan to determine if GMAC is to obtain automatic relief upon confirmation. If so, Counsel is to notify GMAC that the loan can be closed out when the plan is confirmed.

Plan and POC Objections

Counsel is required to ensure the plan adequately protects GMAC. Please ensure you are considering the best interest of GMAC and if the objection relates to an amount that is less then or equal to the fee for objection this should be brought to the attention of the appropriate GMAC Bankruptcy representative. If the loan has matured, will mature within the next 5 years, is an expired balloon or is a balloon that will expire within the next 5 years, Counsel should object to the plan. If the loan is a line of credit with a balance, ensure that there is appropriate language for the resets which may be monthly. Any language limiting GMAC's ability to pay future taxes or insurance should be addressed. If there are special requirements stated in the Plan, counsel must notify GMAC so a discussion can be had to see if GMAC can comply with the special requirements.

Approval is required on all Plan objections. GMAC has provided parameters (see Plan Objection guidelines) to follow when determining when an objection is needed. Your firm must update the Process Management Plan Review Terms DDF field "Objection Needed?" with "yes" when appropriate. The request will be reviewed for approval. If approved, the Plan Objection process will be opened on Process Management. Do not proceed with filing an objection until the Plan Objection process has been opened and the "Plan Objection Referral Received" step comes due for your firm on Process Management.

Plan Objection Guidelines

Following are the provisions provided by GMAC to determine when an objection to the debtor's plan is appropriate.

- 1. Request an objection if the trustee pays per the Plan and the difference between the Plan and POC is \$1000.00 or more.
- 2. Request an objection if the Plan is not feasible.
- 3. Request an objection if GMAC or GMAC Mortgage Beneficiary/Investor is not listed in the plan.
- 4. If the loan will be paid off within the Plan (Total Debt), please notify the Bankruptcy Litigation team for direction as to whether an objection is appropriate.

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- 5. Request an objection to a "Cram down" if the property has enough equity to be paid in full. Notify GMAC Bankruptcy's litigation team to determine if an objection is appropriate.
- 6. Request an objection if delinquent taxes are not included in the Plan
- 7. Request an objection if GMAC's claim is in jeopardy of not being paid in full.
- 8. For Lien Strips, if the property has equity, notify GMAC Bankruptcy's litigation team to determine if an objection is appropriate.

If an objection is not filed and GMAC will receive less then the Proof of Claim amount, you must notify GMAC so we can update our Pre Petition arrearage amount on our internal system.

Counsel must notify GMAC of any objections to POC. A response should not be filed if an error was made and an amendment can resolve the matter. Please ensure you are considering the best and most economical interest of GMAC and if the objection relates to an amount that is less than or equal to the fee for objection this should be brought to the attention of the appropriate GMAC Bankruptcy Representative.

Motions for Relief

The motion for relief should only be filed if appropriate under the circumstances of the Bankruptcy matter you are handling. Accordingly, it is absolutely essential that you carefully review the payment history associated with the account to ensure that the motion for relief is appropriate. We rely on counsel to advise us of any additional requirements necessary within your jurisdiction. Counsels is responsible for ensuring that all affidavits or information provided at the hearing is accurate

Motions for Relief must be mailed for filing or electronically filed within 30 days from receipt of a complete referral package and all necessary documentation. If your office receives a Motion for Relief referral and has any concerns about filing the motion, you must alert GMAC immediately via intercom to the assigned representative. Firms should include attorney fees and costs in all Motions for Relief and Orders for Adequate Protection, if allowed by the Court. Motion mailing and filing dates should be communicated and updated in Process Management within 24 hours of receipt of information. *Please DO NOT forward copies of the Motion.*

Counsel must ensure all hearing dates are updated in Process Management. If a witness is required GMAC must be notified immediately upon notification. Hearing results must be updated in Process Management within 72 hours and if appropriate the loan closed in Process Management and final invoice submitted.

Relief Orders

GMAC requires that firms obtain Orders Granting Relief from Stay which includes language allowing GMAC to contact the debtor to explore loss mitigation opportunities and to perform property preservation. **Relief orders must be uploaded to Document Management upon receipt.**

Agreed Order Default

The Agreed Order Default process on Process Management has been modified to follow the Motion for Relief process. Firms will complete step "Agreed Order Default Results" with the appropriate result, which will launch a corresponding sub-process – "Cured", "Not Cured, Hearing Needed", "Not Cured, Relief Granted, No Abandonment Needed", "Not Cured, Relief Granted, Abandonment Needed", or "Amended APO or Agreed Order Needed". Utilize the sub-process to provide the hearing results and the relief order.

Agreed Order Default

Following are the provisions that are required by GMAC when entering into an Agreed Order between the debtor(s) and GMAC to cure post-petition arrearages.

1. Please confirm the debtor is not delinquent in plan payments prior to entering into an Agreed Order to ensure the proposed order is not a delay tactic.

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- 2. GMAC will not approve Agreed Orders if:
 - ⇒ Debtor has filed more than two bankruptcies (or relief was granted on a Agreed Order in a prior bankruptcy);
 - ⇒ File was referred as an "abusive" filing;
 - ⇒ File was referred to obtain a dismissal, In Rem relief or 180 day bar.
- 3. The following terms apply to all Agreed Orders:
 - ⇒ No longer than 6 months to cure post petition default;
 - ⇒ "Good faith" payment up front, preferably one third of post petition arrearage;
 - ⇒ Allowed attorney fees paid;
 - ⇒ Late charges and other servicer incurred charges included;
 - ⇒ "Drop dead" provision with no more than 3 defaults;
 - ⇒ "Strict compliance" on remaining post petition payments.
- 4. Actual Order format should be clear, easy to decipher, and must include:
 - ⇒ *Arrearage amounts* clearly identified and broken down (i.e. "the post petition arrearage consists of: attorney fees equaling \$860; 3/1/97, 4/1/97 and 5/1/97 monthly payments of \$500 each equaling \$1,500; 3 late charges for same months of \$20 each equaling \$60; resulting in a total post petition arrearage of \$2,420");
 - ⇒ **Terms of payments** clearly laid out (i.e. "payment of \$860 due no later than 6/1/97; regular monthly payment of \$500 made by the 1st of each month commencing 6/1/97; an additional payment of \$260 made by the 15th of each month commencing 6/15/97 and ending 11/15/97; all other post petition payments made by the 1st of the month commencing 12/1/97").
- 5. Payments must be sent directly to GMAC Mortgage (physical address, NOT lock box or P.O. Box):

GMAC Mortgage, LLC 3451 Hammond Ave Waterloo, IA 50702 Attn: Payment Processing

Agreed Order terms must be communicated via Process Management within 24 hours, even if the signed order has not yet been entered.

Attorneys are to make recommendations to GMAC when it is in GMAC's best interest that an amended Adequate Protection Order be proposed.

Consent Orders/Agreed Orders/Stipulations

Approval is required on Conditional Orders that fall outside of the approved parameters (see Agreed Order Guidelines). On second bankruptcy filings, include In Rem/180 day bar language upon default of the Order. Final terms of the Agreed Order should be communicated via Process Management utilizing the agreed order DDF available, even if the signed order is pending. Terms of the agreed order should not be communicated via intercom. Once the final terms are agreed upon and signed by all parties, a copy must be uploaded to Document Management. If the agreed order or stipulation requires that the plan be amended or an amended Proof of Claim be filed, counsel is required to ensure that these documents are appropriately filed and upload the document through document management to GMAC.

Bankruptcy Closings

Counsel is to advise GMAC immediately when they become aware of discharge, dismissal or relief. If a Chapter 7 discharge requires a closing order the loan will be coded by GMAC and monitored for the closing order, if counsel learns of the closing please notify GMAC. Counsel must update Process management within 24 hours of notification of MFR results. If Bankruptcy can be closed or stay terminated as to our interest in any other way such as abandonment, intent to surrender, etc. please notify GMAC. Counsel should ensure all loans are invoiced within 5 days of the bankruptcy resolution and if any fees or costs are not recoverable from the debtor the appropriate issue is opened in Process Management.

Motions to Sell or Motion to Employ Auctioneer

Counsel is required to review the Motion to sell/Motion to Employ Auctioneer to ensure GMAC's interest is protected. If GMAC's interest is not protected counsel should raise an issue for additional fees, a BK Motion to Sell issue and include a recommendation for the course of action that is most economically beneficial to GMAC.

Motions to Deem Current

Immediately upon notification of a motion to deem current, Counsel must open the BK Motion to Deem Current issue in PM. All pertinent information relating to the issue and the motion must be imaged in PM. If a response is to be filed, then an additional fee request issue should be opened in PM. GMAC will launch the corresponding process in Process Management. GMAC may also request that a response to an up-coming discharge be filed by referring a Motion to Deem Current to your firm.

Motions to Extend or Impose Stay

Firms should open either the "BK Motion to Extend" or "BK Motion to Impose" Issue if either Motion has been filed by the debtor. Note that the "Additional Fee Request-BK" Issue must also be raised. Attorneys are to receive approval for the additional fees prior to commencing the action. GMAC will launch the corresponding process on Process Management.

Motions to Vacate Relief

If Relief has been granted, and the borrower files a Motion to Vacate Relief, the firm is to raise the appropriate issue and GMAC will initiate this process. Note that the "Additional Fee Request-BK" Issue must also be raised. The Motion to Vacate Relief Hearing Results selections in the process are:

Relief from Stay Upheld

Relief Vacated - New Agreed Order Entered Into

Relief Vacated - Agreed Order reinstated

Relief Vacated - Loan Current

Relief Vacated - Trustee to sell

Relief Vacated - Debtor to sell

Motions to Validate

The Motion to Validate process will be initiated when your office opens the "Post Sale BK Filed" Hold advising that the foreclosure sale needs to be validated. Firms must request fee approval for the action. Hearing Results selections will be:

FC Sale Invalid, BK Stay in Effect

FC Sale Valid, Relief Granted, Abandonment Needed

FC Sale Valid, Relief Granted, No Abandonment

Selection of either "FC Sale Valid" result will launch the related relief granted process. Your office must complete all steps in the relief granted process. When the "FC Sale Invalid" selection is made, your office is not required to raise an Issue or take any other action. GMAC will monitor for this result via the "Post Sale BK Filed" hold, and have the file opened on Process Management. GMAC will then review to refer further actions.

Multiple Filings

Counsel must review all new BK filings to determine if they are multiple filers or filed in bad faith and appropriately address the matter (i.e. Motion to Dismiss, In Rem Relief, Comfort Order, No Stay Order, etc.). If the loan is a FHLMC loan follow the FHLMC guidelines for multiple filings (Section 67.8 of the Servicing Guide). Your office shall review for abusive filings upon receipt of Bankruptcy referrals for a chapter 13 or a chapter 7. On all third bankruptcy filings, seek In Rem relief (desired) or a dismissal with bar. When a No Stay Order is found to be the appropriate action, the attorney firm should open the "BK No Stay Request" Issue.

Payment Notification Requests

If you receive notification that a payment has been made during a Motion for Relief, you should respond within 24 hours as to whether the payment should be applied, returned to the debtor or mailed to your office. Cure payments should be in the form of Money Order or Cashier's Check to GMAC Mortgage. All debtor payments and trustee funds should be sent directly to:

GMAC Mortgage, LLC 3451 Hammond Ave Waterloo, IA 50702 Attn: Payment Processing

Reaffirmations

Your office shall raise a "Reaffirmation Requested" Issue upon receipt of a Reaffirmation request from the debtor or debtor's attorney. GMAC will prepare the Reaffirmation, send to the debtor's attorney for signatures, and debtor's counsel will be responsible to file the Reaffirmation. Reaffirmation Requests should be uploaded to Document Management.

GMAC will only enter into reaffirmations for Active Chapter 7 bankruptcy filings in which the loan is contractually current and it is within the 60 day required timeframe of the original meeting of creditors.

Payment Change Letters

GMAC will provide Counsel with notification of all payment changes (ARM or Escrow) and Counsel is to determine if it is necessary to file the notification with the Court. GMAC will send copies to debtor, debtor's counsel and the trustee. If the notification must be filed with the Court Counsel will be expected to follow the appropriate court procedures and file supporting documentation according to court requirements. Any fee for this service must receive additional fee approval.

Bankruptcy Litigation

Any motions for sanctions, adversaries, discovery requests, lien strips, cram downs, total debt plans, title issues or QWR, brought against GMAC or relating to any loan that is serviced by GMAC must be brought to GMAC's attention immediately. Please contact the appropriate bankruptcy litigation team member.

Bankruptcy Loss Mitigation

GMAC has a dedicated loss mitigation team for loans that are active in bankruptcy. Below are the email addresses to utilize to contact GMAC's loss mitigation department:

BK_LM_Escalated@gmacm.com BK_LM_New_Referrals@gmacm.com Legal_LM_New_Referrals@gmacm.com For all escalated bankruptcy loss mitigation requiring immediate attention. For all new loss mitigation referrals on active bankruptcy accounts. For all new contested or litigated matters requiring loss mitigation to resolve the proceedings.

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Counsel Acknowledgement by a duly authorized representative of acceptance to the terms.

FIRM NAME
BY:
PRINTED NAME
TITLE
DATE

Exhibit 1

PARTICIPANT ACKNOWLEDGEMENT FORM INDIVIDUAL

20_ _ Information Protection Training Acknowledgement Form

By signing this form I acknowledge that I have completed the 20_ _ Information Protection Training.

Name:	Signature:	
Organization:	Date:	

Please fax this form to Linda Walton at 866-340-2924 or William Watson at 866-728-6113 or email to Linda.walton@gmacm.com or William.Watson@gmacm.com.

Exhibit 2

EXHIBIT 2	Referral to 1st Legal	Referral to Sale
Alabama	30	90
Alaska	15	150
Arizona	15	125
Arkansas	15	130
California	10	150
Colorado	15	165
Connecticut	15	220
District of Columbia	20	120
Delaware	15	250
Florida	30	170
Georgia	40	80
Guam	15	120
Hawaii	15	150
Idaho	30	190
Illinois	15	275
Indiana	15	265
Iowa	15	315
Kansas	15	180
Kentucky	15	265
Louisiana	15	220
Maine	30	355
Maryland	30	150
Massachusetts	15	195
Michigan	35	100
Minnesota	30	110
Mississippi	15	130
Missouri	15	85
Montana	15	205
Nebraska	15	155
Nevada	15	155
New Hampshire	30	110
New Jersey	15	300
New Mexico	15	250
New York	15	280
North Carolina	15	120
North Dakota	15	190
Ohio	15	265
Oklahoma	15	250
Oregon	15	180
Pennsylvania	15	300
Puerto Rico	15	360
Rhode Island	15	90
South Carolina	15	215
South Dakota	30	150
Tennessee	15	90
Texas	40	90
Utah	15	165
Vermont	30	360
Virgin Islands	15	300
Virginia	30	60
Washington	15	
West Virginia	30	160
	15	150
Wyoming		310
Wyoming	15	100

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Exhibit H



Announcement SVC-2010-12

August 31, 2010

Foreclosure Time Frames and Compensatory Fees for Breach of Servicing Obligations

Introduction

In the Servicing Guide, Fannie Mae has established time frames within which routine foreclosure proceedings are to be completed. This Announcement revises the time frames for four states, based on a review of foreclosure timeline standards.

To remediate a specific problem affecting a loan or correct the servicer's overall performance, Fannie Mae reserves the right to impose a compensatory fee as provided in the *Servicing Guide*, Part I, Section 207: Imposition of Compensatory Fees.

With this Announcement, Fannie Mae:

- has updated the allowable foreclosure time frames for four states;
- is monitoring all delinquent loans in Fannie Mae's portfolio or MBS pools, and will begin notifying servicers of delays in processing delinquent loans;
- may begin conducting reviews of servicer loan files, processes, or procedures;
- · requires accurate and timely reporting on the delinquency status of mortgage loans; and,
- will exercise its remedy to assess compensatory fees as deemed necessary.

Allowable Time Frames for Completing Foreclosure

Servicing Guide (2010 version), Part VIII, 104.05: Allowable Time Frames for Completing Foreclosure

Effective with the date of this Announcement, any mortgage loan referred to an attorney (or trustee) to initiate foreclosure proceedings with properties located in the States of Florida, Maryland, Nevada, and New York must meet the new foreclosure time frames noted below:

- Florida 185 days
 - This timeline has an additional 35 days added to allow for a mediation referral prior to a foreclosure suit being commenced.
- Maryland 90 days
 - This timeline begins when the case is referred to an attorney to file suit together with a Loss Mitigation Affidavit. The servicer must execute a Final Loss Mitigation Affidavit at the commencement of the case, if appropriate. If a Preliminary Loss Mitigation Affidavit is required, then the time frame allowed will be extended to 120 days.
- Nevada 150 days
- New York (Upstate) 300 days

- New York (Downstate) 420 days
 - In the State of New York, a timeline of 300 days applies to all localities except for New York City and Long Island.
 - A timeline of 420 days applies for foreclosures conducted in the five boroughs of New York City -- Bronx, Brooklyn (Kings County), Manhattan (New York County), Queens, and Staten Island (Richmond County) -- and on Long Island (Nassau and Suffolk Counties).

Refer to <u>Foreclosure Time Frames</u> on eFannieMae.com for the allowable time lapses between the time the case is referred to the attorney (or trustee) for action and the completion of the foreclosure sale in all other jurisdictions. These allowable time frames represent the time typically required for routine, uncontested foreclosure proceedings, given the legal requirements of the applicable jurisdiction. The timelines presume that there are no delays outside the control of the servicer or attorney such as diligent participation in an opt-in mediation or unavoidable judicial process or administrative delays.

Fannie Mae monitors the servicer's management of the foreclosure process by reviewing at the first of each month each mortgage loan for which Fannie Mae expected action to be completed in the previous month (based on these time frames). If there appears to have been a delay in completing the foreclosure process, and the servicer is unable to provide a reasonable explanation for the delay, Fannie Mae may require the servicer to pay a compensatory fee. Fannie Mae will not impose compensatory fees for delays beyond the control of the servicer, such as unavoidable mediation or court delays, or sales delays by sheriffs or other selling officers.

Fannie Mae will continue to monitor foreclosure time frame standards for its book of business, and will adjust its timeline expectations accordingly (as it pertains to the determination of compensatory fees).

Monitoring of Delinquent Loans

All whole mortgages, participation pool mortgages, and MBS pool mortgages with a special servicing option referred to an attorney or trustee to initiate foreclosure proceedings on or after July 1, 2010, will be monitored to ensure that all expected actions were taken in a timely manner and that the proceedings were completed within an acceptable time frame. (See the *Servicing Guide*, Part VII, Chapter 5, Exhibit 5: Bankruptcy Referral and Completion Timelines, and Part VIII, Section 104.05: Allowable Time Frames for Completing Foreclosure.)

Servicer Reviews

Fannie Mae will utilize delinquent loan status code data and other information collected from the servicer during other interactions to identify delays in the default management process. Fannie Mae may elect to perform a servicing review to further evaluate the actions the servicer took in servicing those mortgage loans. Fannie Mae will notify the servicer of the intention to perform a desk review or an on site review. The servicers must send the requested documentation or make it available for an on site review within the time frame specified in the notification. If the servicer fails to do so, Fannie Mae may assess compensatory fees without first reviewing the loan or exercise other available remedies.

Fannie Mae will communicate any performance deficiencies noted to the servicer. The servicer will be given an opportunity to explain any mitigating circumstances or factors that justify the servicing actions it took or did not take within a time frame specified by Fannie Mae in its communication of the performance deficiencies.

Note: A desk or on site review of files is not a necessary precondition to assessing a compensatory fee.

Delinquency Reporting

Servicers are reminded of the requirement to advise Fannie Mae of the action taken to resolve a delinquency, the effective date of the action taken, and the reason for the default, as indicated in the *Servicing Guide*, Part VII, Chapter 701: Delinquency Status and "Reason for Delinquency" Codes. Fannie Mae may rely on this data, in whole or in part, in its assessment of performance deficiencies and imposition of compensatory fees.

Imposition of Compensatory Fees

In order to remediate a specific problem affecting a loan or correct the servicer's overall performance, Fannie Mae may decide to impose a compensatory fee as provided in the Servicing Guide, Part I, Section 207: Imposition of Compensatory Fees. Attachment 1 provides an overview of some specific situations for which a compensatory fee may be assessed.

A compensatory fee not only compensates Fannie Mae for damages but also emphasizes the importance placed on a particular aspect of the servicer's performance. In some cases, a compensatory fee will relate to the action the servicer took, or failed to take, in handling a specific mortgage loan. At other times, the compensatory fee reflects the impact of the servicer's performance deficiencies on Fannie Mae's cash flow. A compensatory fee may be imposed to provide the servicer with a financial incentive to comply with Fannie Mae policies and improve the overall quality of their performance.

Fannie Mae reserves the right to review all seriously delinquent loans currently in the default management process and to pursue remedies on such loans, when it deems appropriate.

If assessed, compensatory fees will be applied based on the outstanding principal balance of the mortgage loan, the applicable pass-through rate, the length of the delay, and any additional costs that are directly attributable to the delay.

Servicers should contact their Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicer Support Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans Vice President Chief Risk Officer for Credit Portfolio Management

Attachment 1

Compensatory Fees for Specific Circumstances

(This table is not a comprehensive list of all circumstances that may result in a compensatory fee being assessed.)

Туре	Servicing Guide (2006/2010) Section	Summary	Remedy
Delayed Remittance of Claim Proceeds	2006 I, 207.01	When insurance claim settlements are sent directly to the mortgage servicer in error, the servicer must remit to Fannie Mae within 15 days after receipt.	Daily interest charge imposed for a delay.
Late Submission of REOgram [®]	2006 I, 207.03	REOgram must be submitted by the servicer within 24 hours after the foreclosure sale or date a deed-in-lieu is executed.	\$100 daily charge imposed for a delay.
Delays in Liquidation Process	2006 I, 207.07	Servicer's handling of seriously delinquent mortgage loans serviced under the special servicing option to determine specific actions are being taken in a timely manner.	Based on the outstanding principal balance of the mortgage, the applicable pass-through rate, the length of the delay(s), and any additional costs that are directly attributable to the delay(s).
Late Filing of Final Request for Reimbursement	2006 I, 207.13	Final Form 571 must be submitted within 30 days after completion of a loss mitigation alternative, filing a mortgage insurance claim, acquisition of property by a third party at a foreclosure sale, or disposition of property.	Request can either be denied or assessed a late submission fee.
Access to Records	2006 I, 406	On our written request, the servicer must deliver all mortgage records and documents to Fannie Mae or to whomever Fannie Mae designates. Each mortgage must be clearly identified. If the servicer is retaining any of the records in a format other than paper, it must reproduce them at its own expense.	If the servicer fails to provide a reasonable explanation or any evidence showing that the requirement was satisfied, Fannie Mae can take any action that is authorized under the Mortgage Selling and Servicing Contract or the Guides for the servicer's breach of requirements.

Attachment 1 Page 1

Туре	Servicing Guide (2006/2010) Section	Summary	Remedy
	2010 VII, 502.12	Delay in completing the bankruptcy process and the servicer is unable to provide a reasonable explanation. Losses incurred as a result of the servicer's failure to properly apply and monitor payments during bankruptcy. The servicer will be responsible for any delays attributable to the servicer in all cases and for delays attributable to the bankruptcy attorney in all cases handled by servicer-retained attorneys. When the automatic stay is terminated or case is dismissed, the servicer must	Fee calculated based on the outstanding principal balance of the mortgage loan, the applicable pass-
Timelines	2010 VII, 503.02	immediately send any required breach letter to the borrower and refer the mortgage loan for foreclosure proceedings.	through rate, the length of the delay, and any additional costs that are directly attributable to the delay.
	2010 VIII, 104.05	To ensure that the foreclosure is handled in a timely and professional manner, the servicer is responsible for monitoring the attorney (or trustee). Fannie Mae has established time frames within which it expects routine foreclosure proceedings to be completed.	

Attachment 1 Page 2

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Exhibit I

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FNMA Penalty	FHLMC Penalty	Total
\$875,295.96	\$345,570.00	\$1,220,865.96

Servicer Loan Number			Date FCL Referral	I Date FCI Sale I		UPB	Est. Comp. Fee
3267		4729	8/16/2006	7/11/2011	FL	\$189,013.02	\$450.00
2479		7115	1/7/2011	2/13/2013	FL	\$193,989.28	\$5,220.00
7242		7025	11/10/2010	2/13/2013	FL	\$293,741.84	\$5,310.00
6233		7117	1/20/2010	10/6/2011	FL	\$264,564.41	\$6,510.00
7861		6575	9/18/2010	12/12/2012	FL	\$78,511.04	\$10,290.00
8444		3267	6/18/2010	9/27/2012	FL	\$51,137.55	\$11,130.00
6334		7808	8/29/2009	12/22/2011	FL	\$201,863.36	\$11,190.00
3959		9437	4/30/2010	2/1/2013	FL	\$29,094.75	\$12,240.00
9502		4720	7/7/2010	2/15/2013	FL	\$82,973.25	\$12,660.00
2047		9771	11/19/2009	1/9/2012	FL	\$53,813.78	\$14,220.00
4253		8997	1/20/2010	9/24/2012	FL	\$212,578.20	\$15,630.00
8383		8023	12/19/2009	2/6/2013	FL	\$95,882.35	\$15,780.00
5136		9470	1/16/2009	7/27/2011	FL	\$139,416.73	\$18,030.00
6273		4583	12/19/2009	2/27/2013	FL	\$217,115.70	\$18,450.00
5456		3444	6/4/2008	3/30/2011	FL	\$155,822.42	\$20,040.00
2008		4346	7/13/2007	10/18/2011	FL	\$359,650.00	\$21,450.00
7251		9523	7/8/2009	2/8/2013	FL	\$154,400.00	\$21,450.00
2641		3120	10/8/2008	2/14/2013	FL	\$124,933.68	\$22,080.00
2840		4020	11/3/2008	3/26/2012	FL	\$251,666.20	\$22,290.00
9270		5647	6/5/2008	2/4/2013	FL	\$46,988.30	\$35,100.00
1041		3963	6/7/2007	2/4/2013	FL	\$150,000.00	\$46,050.00

\$345,570.00

Compiner Loop	TNIMA Laan			Dranarty		Total Current
Servicer Loan	FNMA Loan	LPI Date	Date FCL Sale	Property	UPB	Total Current
Number 3143	Number 2456	8/1/2010	7/11/2012	State FL	\$1.4E 0E0 71	Due \$349.65
5944	5134		8/15/2012	FL	\$145,852.71 \$117,154.62	\$365.91
	7312	11/1/2010	2/27/2012	FL		
4737	3165	8/1/2009	9/24/2012	FL	\$192,307.20 \$157,245.79	\$434.67 \$907.09
6687		6/1/2008		FL		\$1,601.39
0333	9193		9/18/2012		\$131,178.91	
8325	1177	1/1/2010	7/9/2012	FL	\$80,474.10	\$2,535.49
9533	4445	5/1/2010	8/17/2012	FL	\$114,475.48	\$3,017.53
8339	0482	5/1/2008	9/27/2012	FL	\$238,391.45	\$3,464.91
2242	2220	2/1/2008	6/28/2012	FL	\$172,939.94	\$5,199.27
6404	2017	1/1/2008	6/4/2012	FL FL	\$145,138.57	\$5,256.09
8461	4772	5/1/2009	8/3/2012	FL	\$133,937.81	\$5,348.34
0072	5346	1/1/2009	7/12/2012	FL	\$120,271.24	\$5,529.59
2538	3667	8/1/2009	7/9/2012		\$84,569.90	\$5,725.27
8317	6752	5/1/2010	8/7/2012	FL	\$202,624.68	\$5,863.63
3724	0676	11/1/2009	5/23/2012	FL	\$129,866.07	\$6,093.03
7147	2510	3/1/2008	8/7/2012	FL	\$270,988.72	\$6,574.12
3970	2950	10/1/2008	8/13/2012	FL	\$110,339.49	\$6,819.89
0176	2127	11/1/2008	9/5/2012	FL	\$48,828.68	\$6,967.12
5261	2836	1/1/2009	5/8/2012	FL	\$82,356.55	\$7,220.02
1916	3131	6/1/2007	8/22/2012	FL	\$134,033.26	\$8,458.97
5055	8165	3/1/2010	9/18/2012	FL	\$235,410.63	\$8,505.42
3936	7987	12/1/2008	9/25/2012	FL	\$74,754.95	\$8,711.57
1449	9443	2/1/2009	2/21/2012	FL	\$173,075.65	\$9,491.90
5199	7838	4/1/2009	6/14/2012	FL	\$116,088.46	\$10,948.89
9130	1589	12/1/2007	8/21/2012	FL	\$56,994.13	\$11,225.11
9280	6145	6/1/2009	7/12/2012	FL	\$124,695.04	\$11,407.03
1730	1658	8/1/2009	9/20/2012	FL	\$138,803.17	\$12,244.15
9272	0218	3/1/2009	9/19/2012	FL	\$129,627.53	\$12,529.48
9834	4953	5/1/2009	6/14/2012	FL	\$162,649.86	\$13,101.11
7945	7865	2/1/2009	5/14/2012	FL	\$142,361.44	\$13,114.80
9111	3575	12/1/2009	5/15/2012	FL	\$341,228.93	\$13,237.81
7097	0000	8/1/2009	5/22/2012	FL	\$216,532.83	\$13,262.64
4693	4992	4/1/2009	9/27/2012	FL	\$157,441.46	\$15,127.00 \$15,265.09
9873	3191	3/1/2009	7/16/2012	FL	\$172,868.18	
6252	0862	4/1/2008	8/6/2012	FL	\$94,812.49	\$15,367.42
6784 7964	5745 0681	2/1/2007 12/1/2008	5/29/2012 7/11/2012	FL FL	\$143,724.58 \$162,408.90	\$15,799.86
7538	1022		9/11/2012	FL	\$162,406.90	\$16,102.95 \$16,208.22
5262	7961		9/11/2012	FL	\$115,210.61	\$17,599.21
5861 7038	1697	9/1/2007 4/1/2008	7/11/2012	FL FL	\$222,660.00 \$116,460.14	\$17,681.64 \$17,750.50
9070			7/17/2012 8/29/2012	FL	\$116,460.14	\$17,759.50 \$17,976.33
0230	4244			FL	\$206,341.51	
4977	0249			FL	\$200,341.31	\$18,651.29 \$20,825,21
0543	1841	12/1/2009	7/11/2012	FL	\$128,423.26	\$20,825.21 \$22,518.05
4756	5162	1/1/2007	6/1/2012	FL	\$120,423.20	\$23,545.45
1068	7799	1/1/2008	9/12/2012	FL	\$191,791.00	\$23,545.45
6959	2146	7/1/2008	8/16/2012	FL	\$171,192.98	\$24,170.20
3460	7811	9/1/2008	8/7/2012	FL	\$171,192.96	\$24,332.27
1864	0450	1/1/2009	9/11/2012	FL	\$174,590.93	\$26,962.55
9185	2419			FL	\$215,600.00	\$27,346.55
5598	1403			FL	\$200,073.93	\$29,778.54
5692	4095	11/1/2007	7/30/2012	FL	\$174,105.13	\$31,988.84
3061	0250	8/1/2008	8/28/2012	FL	\$220,000.00	\$33,063.29
4165	5802	4/1/2009	9/24/2012	FL	\$357,059.37	\$36,699.44
2938	3945	1/1/2009	7/18/2012	FL	\$285,156.94	\$41,992.29
2882	9067	2/1/2008	7/26/2012	FL	\$283,431.87	\$45,519.93
9350	8822	10/1/2008		FL	\$408,443.48	\$52,707.39
9330	0022	10/1/2000	0/30/2012		Ψ - -00, -1 3.40	ψυΖ,101.03

\$875,295.96

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Exhibit J

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Stern Transfer Files to Firms

Count of Send File to:				
Send File to:	Total	Non-Agency	FNMA	FHLMC
Ben-Ezra & Katz	535	535		
Daniel C. Consuegra	17			17
Elizabeth Welborn	452	452		
Greenspoon and Marder, PA	887	887		
James E. Albertelli, P.A.	2,127	500	1,627	
Johnson & Freedman	1,013			1,013
Pendergast & Jones, P.C	2,770	2,770		
Phelan Hallinan, PLC	1,405	1,405		
Grand Total	9,206	6,549	1,627	1,030

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Exhibit K

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ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
96799	4704	ROCHESTER COMMUNITY SAVINGS	Hafeeza	Discharged Chpt 13 - Plan Did Not Bring Loan Current	\$2,142.70	This is a dnc account with fc fee/cost on the account Request a billback be done as the fc atty and bky atty are the same and all of the fc fee/cost were not included/amended into the claim to recoup back in the bky.
97037	969	IMPAC	Novak	Discharged Chpt 13 - Plan Did Not Bring Loan Current	\$700.00	It has been found that the MFR filed listed no set fees and costs, but did request reimbursment. No answer was filed by borrower and Order submitted by the Stern Law Office failed to provide for the fees and costs billed by the office for this Motion.
102950	5639	GMACM HOME EQUITY TRUST	ANGELINA P TYTAR	Discharged Chpt 13 - Plan Did Not Bring Loan Current	\$500.00	DNC Loan with outstanding fees on the loan. The fees were pre petition but were omitted on the poc in error by the atty, David Stern. Please make business decision to clear fees on loan and clear cus user.
96783	7029	Fannie Mae	Scott & Theresa Strickland	Improper Motion for Relief	\$250.00	Attorney billed \$250.00 for MFR review on 5/10/10. Attorney referred themselves MFR when loan was current. Bill back submitted to VM as MFR review is part of DS servicing agreement.
97043	4352	CitiGroup	Encinas	Improper Motion for Relief	\$700.00	It has been found that the justified MFR filed in this matter conatined provisions for atty fees and costs. It further stated under note these fees are recoverable. MFR was undefended and Order submitted by counsel failed to provide for fees/costs billed. A review of PACER indicated MFR asked for undefined fees/costs but Order submitted provided for none. Non recoverable fee issue raised by counsel stated they were "disallowed per court order", this is not true as Court did not strike or disallow in any manner, counsel did not provide for them in the Order they submitted.
97055	4038	Fannie Mae	Hysell	Improper Motion for Relief	\$700.00	It has been found that the justified MFR was filed requesting atty fees/costs iao \$700.00. Even though Motion went undefended Order submitted to Court by Counsel did not include these fees/costs. Fees/costs iao \$700.00 were left off Order submitted by Counsel in MFR. Fees/Costs were not disallowed by Court as nonted in non recoverable issue raised. Court did not strike from submitted Order, Order did not conatin fees/costs.
97066	5943	Residential Funding	Smith	Improper Motion for Relief	\$700.00	It has been found that MFR fees asked for in the MFR filed were not included in the Order submitted for signing- a non recoverable fee issue was opened to claim these fees as uncollectable per Court Order- but judge did not strike fees they were left off Order submitted in error. A review of PACER indicates the fees requested in MFR (\$700.00 total) were left off submitted Order in error causing Order not to include these fees

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ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
						It has been found that the MFR had requested atty fees and cost in Motion. In fact a
						review of PACER indicates request for atty fees. The Proposed Order attached to the
97072	3033	RFC Home Equity	Thomas	Improper Motion for Relief	\$700.00	Motion submitted by counsel neglected to incude these fees/costs. As debtor did not respond the Court granted the propsed Order submitted.
37072	3000	Equity	Thomas	Improper Motion for Relief	ψ1 00.00	respond the court granted the proposed order submitted.
						It has been found that MFR fees asked for in the MFR filed were not included in the Order submitted for signing- a non recoverable fee issue was opened to claim these
						fees as uncollectable per Court Order- but judge did not strike fees they were left off
						Order submitted in error. A review of PACER indicates the fees requested in MFR
97085	6853	Impac	Wallace	Improper Motion for Relief	\$700.00	(\$700.00 total) were left off submitted Order in error causing Order not to include these fees .
		·				
		Residential				MFR FILE REVIEW FEE - LOAN WAS CURRENT AT TIME OF
97101	6351	Funding	Rondon	Improper Motion for Relief	\$250.00	FILING AND SHOULD NOT HAVE BEEN REFERRED FOR MFR.
						250.00 for bill back represents a fee for a motion for unclaimed funds filed by our
						direct source attorney. When asked why they did not ask for approval of this fee they
						stated they were following direct source discharge not current guidelines. After review by team lead it was determined the amount we would be filing for was not
						enough to justify the costs and this should be billed back because the attorney never
97172	8806	Fannie Mae	Spry	Improper Motion for Relief	\$250.00	was given authorization to file from us.
						It has been found that the MFR had requested atty fees and cost in Motion. In fact a review of PACER indicates request for atty fees. Even though debtor did not answer
		Residential				an error (on their part) neglected to include these fees and costs in Order submitted
97189	4232	Asset Mortgage	Stafford	Improper Motion for Relief	\$700.00	for Judge to sign.
						It has been found that the MFR had requested atty fees and cost in Motion. In fact a
		Residential				review of PACER indicates request for atty fees. Even though debtor did not answer an error (on their part) neglected to include these fees and costs in Order submitted
97190	4465	Funding	Arocha	Improper Motion for Relief	\$700.00	for Judge to sign.
						It has been found that the MFR had requested atty fees and cost in Motion. In fact a
						review of PACER indicates request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in Order
						submitted for Judge to sign. MFR fees left off Order submitted to J. to sign. Court did
		rocidontial				not strike or disallow fees/costs in any way and as they were left off Order submitted
97193	1185	residential funding	Gordon	Improper Motion for Relief	\$700.00	for signing could not grant either. It is not the Court"s responsibility to add in fees/costs on uncontested MFR.

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ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
97201	4884	WELLS FARGO	Struve	Improper Motion for Relief	\$700.00	It has been found that the MFR had requested atty fees and cost in Motion. In fact a review of PACER indicates request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in Order submitted for Judge to sign.
97202	3075	FREDDIE MAC	Murphey	Improper Motion for Relief	\$655.00	It has been found that the MFR had not requested atty fees and cost in Motion. In fact a review of PACER indicates no request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in MFR and Order submitted for Judge to sign.
97207	7791	Residential Funding	Toussaint	Improper Motion for Relief	\$700.00	It has been found that the MFR had requested atty fees and cost in Motion. In fact a review of PACER indicates request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in Order submitted for Judge to sign. MFR fees left off Order submitted to J. to sign.Court did not strike or disallow fees/costs in any way and as they were left off Order submitted for signing could not grant either. It is not the Court"s responsibility to add in fees/costs on uncontested MFR.
97412	3933	FANNIE MAE	Lasaponara	Improper Motion for Relief	\$250.00	MFR Fee of \$250.00. Debtor filed chapter 7 on 8/19/09 and was contractually due for 9/1/09 at this time. David Stern"s office referred this account for an MFR on 8/26/09 and the account was current. This fee needs to be billed back to David Stern"s office. Fee amt moved to fee type 96 and cus user field 31
97528	0921	RFC	Craig Vollmer	Improper Motion for Relief	\$250.00	\$250.00 billed for MFR review on 4/19/10 needs to be billed back to investor as DS atty referred MFR to themselves before reviewing loan to see if MFR was warranted. Loan was current & MFR process had to be closed.
98215	7327	RFC	Wolf	Improper Motion for Relief	\$1,250.00	This is a dnc account with atty fee/cost on the loan. this loan was closed in error by David Stern"s office they thought relief was granted.No MFR was done, the prior atty, David Stern, thought since JPMorgan?s lien was stripped (2nd lien) that we had automatic relief. This was not correct F/C ATTY FEE (STERN\$650.00ATTY CLOSED BK IN ERROR RELIEF NOT GRANTED F/C TITLE SEARCH\$275.00FEE ASSESSED POST PETITION NON-RECOVERABLE F/C ATTY REFERAL FEE\$325.00ASSESED IN ERROR BK SHOULD NOT WENT TO F/C

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						1
ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
						It has been found that MFR fees were requested in the MFR filed and not included in the Order submitted for signing- a non recoverable fee issue was opened to claim these fees as uncollectable - but judge did not strike fees they were left off Order submitted in error. A review of PACER indicates that fees were requested in MFR
100775	5767	FANNIE MAE	Ortiz	Improper Motion for Relief	\$700.00	(\$700.00 total) and were left off submitted Order but were requested in filed MFR. The error caused Order not to include these fees.
	5330	Residential			\$700.00	It has been found that the MFR had requested atty fees and cost in Motion. In fact a review of PACER indicates request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in Order
100786	5330	Funding	Murray	Improper Motion for Relief	\$700.00	submitted for Judge to sign.
100787	0274	GMAC	Pugliese	Improper Motion for Relief	\$655.00	It has been found that the MFR had not requested atty fees and cost in Motion. In fact a review of PACER indicates no request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in MFR and Order submitted for Judge to sign.
100798	2430	Residential Funding	Lashbrook	Improper Motion for Relief	\$700.00	It has been found that the MFR had requested atty fees and cost in Motion. In fact a review of PACER indicates request for atty fees. Even though debtor did not answer an error (on counsel"s part) neglected to include these fees and costs in Order submitted for Judge to sign. MFR fees left off Order submitted to J. to sign.Court did not strike or disallow fees/costs in any way and as they were left off Order submitted for signing could not grant either. It is not the Court"s responsibility to add in fees/costs on uncontested MFR.
97073	9950	RFC	Strebeigh	Delayed Invoice	\$180.00	Short sale 12/30/08 Attorney invoice iao \$180.00 posted with an r instead of c causing fee not to show on loan until 3/12/09 Investor will not reimburse for any expenses after 60 days of liquidation
119032	8160	FANNIE MAE	TERENCE D CLARKE	Delayed Invoice	\$5,567.50	This loan went to REO sale 7/15/10. The invoice from David Stern's office was posted to this account on 9/15/10. Attorneys are required to have their bills submitted for final payment no less than 30 days after liquidation. GMAC cannot collect balances billed after this date on investor claims.
149589	8494		Fakava	Delayed Invoice	\$2,401.60	LOAN WENT TO REO SALE ON 1/20/10, ATTORNEY FEES WERE BILLED TO THE ACOUNT ON 5/8/12. PER THE INVESTOR GUIDELINES, ALL FEES MUST BE PAID WITHIN 6 MONTHS OF THE LIQUIDATION DATE. THE TIMEFRAME FOR SUBMITTING A CLAIM HAS EXPIRED.

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ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
100552	9754	ENIMA	Majorit	Foregoniza Timeline Delevi	SE 040.45	UGIC paid the MI claim on 11/14/10. The MI claim proceeds were curtailed \$5910.15 for Foreclosure Delays and Lack of Diligence in Pursuit of Title. FNMA sent a Demand Letter on 11/30/10 requesting the amount they would have received if the MI were not curtailed. An email was sent to fcl on 12/14/10 requesting addl information and the information was received from fcl on 12/17/10. The information provided by fcl was sent as an appeal to UGIC on 12/30/10. UGIC reviewed the information sent and denied our appeal on 06/01/11 stating the addl information recieved was not sufficient to overturn the curtailment. An email was sent to FCL on
106553	8754	FNMA	Malmut	Foreclosure Timeline Delay	\$5,910.15	06/06/11 informing fcl the appeal was denied. due to court & process delays that occured during the time David Stern was working this file unable to reach out to David Stern for justification to appeal the interest cut date of 01/23/09property preservation03/23/2010Insurance Advance - Forced place (annual)\$2,090.00
						03/31/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00
						04/14/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00
						04/29/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00
						05/17/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00
						06/03/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00
						06/18/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00
139693	4995		RICHARD P BONNER	Foreclosure Timeline Delay	\$19,037.56	07/01/2010Yard Maintenance Advance - Recut cut 10,000 s.f. or larger\$105.00

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		_				
ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
						David Stern File the following items were rejected due to delays during the time David Stern was working the fileunable to reach out for supporting documentation and or jusify the delay to fcl the VA interest cut off date is 09/25/1001/04/2012Securing Advance - Securing of the property\$40.00
						01/04/2012Securing Advance - Securing of the property\$60.00
						11/03/2010Tax Advance - County/ Parish\$1,608.26
						06/16/2011Insurance Advance - Homeowner's/Fire/Hazard\$1,364.00
		GMAC				11/02/2011Tax Advance - County/ Parish\$1,228.76 01/05/2012Attorney Expense - Foreclosure attorney fees
139710		MORTGAGE	DANIEL E. FORESTER	Foreclosure Timeline Delay	\$4,541.02	balance 240.00
		WELLS				As a result of foreclosure delays mi claim was curtailed on the interest, preservation, and hazard insurance expenses, total amount reimbursed shouldve been \$2,528.35 only 884.80 was reimbursed, so we still owe the investor \$1,643.35. The breakdown is as follows: Curtailment amount 7,223.89 MI Coverage (%) x .35 Reimburse Trust 2,528.35 GMAC Reimbursed - 884.80
		FARGO BANK,				Reimbursement 1,643.55
176011	7148	N.A.	SIDNEY AMERSON	Foreclosure Timeline Delay	\$1,643.20	
97047	5867	FHLM	Marisol M Castillo	Over Allowable Expense	\$103.00	FCL Sale 5/7/09; FCL Acquire 5/7/09 The following BPO was ordered Valuation Costs Exterior BPO - 48 Hour Rush iao \$103.00. FHLM denied this expense stating that appraisals are not reimbursable without prior approval. No prior approval from FHLM was found on ISS or looking glass. Total Request of write off - \$103.00
97224	3046	FHLMC	Cook	Over Allowable Expense	\$560.00	Short Sale date: 08/25/09 The attny did not include \$2053.50 in legal fees on the 104DC. Loan mod funds iao \$1493.50 were applied to fees on 10/20/08. This results in a w/o iao \$560.00.

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136204 MARK MCDOWELL Over Allowable Expense \$250.00 closed 05/19/11 (no comments). No approval has been uploaded to date. The 3rd party funds were short when received from David Sterns office. Request were sent and firm would not answer or provide a breakdown. The file transferred	ID	AccountNumber	InvestorName	CustomerName	WriteOffReason	TotAlWriteOffAmount	WriteOffComment
were sent and firm would not answer or provide a breakdown. The file transferred	136204	4784		MARK MCDOWELL	Over Allowable Expense	\$250.00	responsible for obtaining OTA. FNMA denied OTA Atty Fees pd on 6/17/10 for Reset Sale iao \$250 stating that additional fees require excess fee approval. CIT 17 was opened on 05/10/11 and
the atty. 139176 FANNIE MAE JAY H. GRANITZ Short 3rd Party FC Sale Funds \$693.25	139176	7668	FANNIE MAE	JAY H. GRANITZ	Short 3rd Party FC Sale Funds		The 3rd party funds were short when received from David Sterns office. Requests were sent and firm would not answer or provide a breakdown. The file transferred to Abertelli¿s office post sale and they did not have any information. Please billback to the atty.
\$57,139.98	I	1				\$57,139.98	

Exhibit 2-B

Smith T Declaration

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE:)
RESIDENTIAL CAPITAL, LLC, et. al.,)
Debtors.) CASE NUMBER:) 12–12020
)

DECLARATION OF JOHN W. SMITH T

I, John W. Smith T, make this declaration under 28 U.S.C. § 1746 and hereby declare as follows:

- 1. I am an attorney with the law firm of Bradley Arant Boult Cummings LLP and co-counsel for the The ResCap Liquidating Trust.
- 2. I am licensed to practice law in the state of Alabama. I have been practicing law in the State of Alabama for more than twenty (20) years, and I have no record of discipline with the State Bar of Alabama or any state or federal bar.
 - 3. I am over 19 years of age.
- 4. I am authorized to submit this declaration (the "<u>Declaration</u>") in support of the RESCAP LIQUIDATING TRUST'S OBJECTION TO PROOFS OF CLAIM NOS. 5275 AND 7464 FILED BY DAVID J. STERN (the "<u>Objection</u>").
- 5. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the litigation between the Law Offices of David J. Stern, P.A. ("DJSPA") and GMAC Mortgage, LLC ("GMACM"), information learned from my review of relevant documents, including those identified herein, and discussions with persons in my office who handled or are personally familiar with matters identified below that were previously

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handled by DJSPA. If I were called upon to testify, I could and would testify competently as follows:

- 6. Publicly available information about the organizations of DJSPA and DJS Processing, LLC is available through the internet. True and correct copies of this information are attached as follows:
- a. David J. Stern, P.A. Articles of Incorporation, Florida Department of State Division of Corporations, http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2 009%5C1007%5C61457623.Tif&documentNumber=P93000080387 (downloaded March 18, 2015), attached hereto as Exhibit A; and
- b. DJS Processing, LLC Application for Authorization to Transact Business in Florida, Florida Department of State Division of Corporations, http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2 009%5C1005%5C00209278.Tif&documentNumber=M09000003832 (downloaded March 18, 2015), attached hereto as Exhibit B.
- 7. Based on publicly available news reports, the Florida Office of the Attorney opened investigation General into DJSPA in August 2010. E.g., an http://jacksonville.com/opinion/blog/401574/abel-harding/2010-08-10/attorney-general-billmccollum-opens-investigations. A true and correct copy of this article is attached hereto as Exhibit C. True and correct copies of the following documents related to this investigation conducted by the Office of the Attorney General are attached hereto:
- a. Order on Petitioner's Amended Petition to Quash the Investigative Subpoena Duces Tecum Issued by Florida's Attorney General, dated October 13, 2010, *Law Offices of*

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David J. Stern, P.A. v. State of Florida Department of Legal Affairs, et al., Case No. 10-32965 (17th Judicial Circuit of Broward County, Florida), attached as Exhibit D; ¹

- b. Corrected Sworn Statement of Kelly Scott, *In re Investigation of Law Offices of David J. Stern, P.A.*, (AG# L10-3-1145), dated October 4, 2010, relating to her employment at DJSPA, attached as Exhibit E; and
- c. Deposition of Tammie Lou Kapusta, *In re Investigation of Law Offices of David J. Stern, P.A.*, (AG# L10-3-1145), dated September 22, 2010, relating to her employment at DJSPA, attached as Exhibit F.
- 8. On April 17, 2013, The Florida Bar filed a Complaint against David J. Stern and that case reached the Florida Supreme Court. True and correct copies of the following documents related to that matter are attached hereto:
- a. Complaint, *The Florida Bar v. David James Stern*, Florida Bar File Nos. 2010-51,725(17I), et al. (Fla. 2013), *available at* http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=Dis ActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed %26MFL%3DDavid%2520James%2520Stern%26ICN%3D201051725%26DAD%3DDisbarme nt, attached hereto as Exhibit G;
- b. Report of the Referee, *The Florida Bar v. David James Stern*, Supreme Court Case No. SC13-643 (Fla. 2013), *available at* http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=Dis ActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed

¹ The Florida Court of Appeals subsequently ruled, on January 6, 2012, that the subpoena had been improvidently issued.

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%26MFL%3DDavid%2520James%2520Stern%26ICN%3D201051725%26DAD%3DDisbarme nt, attached hereto as Exhibit H;

- c. *The Florida Bar v. Jorge Luis Suarez*, Florida Bar File No. 2012-51,389(17I) (Fla. Jan. 14, 2014), Conditional Guilty Plea For Consent Judgment, at 2–5, *available at* http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=Dis ActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed %26MFL%3DJorge%2520Luis%2520Suarez%26ICN%3D201251389%26DAD%3DSuspended %2520-%2520with%2520Conditions, attached hereto as Exhibit I;
- d. Supreme Court of Florida, Order of Disbarment, Jan. 1, 2014, *The Florida Bar v. David James Stern*, SC13-643, *available at* http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=Dis ActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed %26MFL%3DDavid%2520James%2520Stern%26ICN%3D201051725%26DAD%3DDisbarme nt, attached hereto as Exhibit J;
- e. Supreme Court of Florida, Order of Suspension, Feb. 10, 2014, *The Florida Bar*v. Miriam L. Mendieta, SC13-2424, available at

 http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=Dis

 ActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed

 %26MFL%3DMiriam%2520L%2520Mendieta%26ICN%3D201150538%26DAD%3DSuspensi

 on, attached hereto as Exhibit K.
- 9. In 2010, several news outlets reported irregularities on the part of DJSPA. True and correct copies of the following articles that are accessible on the internet are attached hereto:
 - a. Gretchen Morgenson & Geraldine Fabrikant, Florida's High-Speed Answer to a

Foreclosure Mess, N.Y. TIMES (Sept. 4, 2010), http://www.nytimes.com/2010/09/05/business/05house.html?pagewanted=all, attached hereto as Exhibit L; and

- b. Ray Sanchez, *Florida's Foreclosure King Investigated for Questionable Practices*, ABC NEWS (Oct. 12, 2010), http://abcnews.go.com/Business/florida-foreclosure-lawyer-david-stern-investigated/story?id=11854272, attached hereto as Exhibit M.
- 10. David J. Stern has been deposed in connection with at least two lawsuits, including *Mowat, Mack, Rahming & Humphrey v. DJSP Enterprises, Inc.,* 10-623020-CIV-UNGARO (United States Dist. Court for the S.D. Fla.) and *The Law Offices of David J. Stern, P.A. v. Bank of America, Corp.*, No. aa-21349-CIV-MORENO (United States Dist. Court for the S.D. Fla.). A true and correct copy of the transcripts of these depositions are attached hereto as Exhibits N-1 and N-2, respectively.
- 11. On June 6, 2011, DJSPA brought suit against GMACM in Broward County, Florida seeking \$6,161,483.70, the value of allegedly unpaid legal services that DJSPA claims to have provided to GMACM ("the Florida Lawsuit"). In its Complaint, DJSPA summarized the amounts it contends are owed in the following categories:

1).	FNMA matters	\$ 411,687.15
2).	FHLMC matters	\$ 271,820.73
3).	Remediation Work	\$ 2,979,500.00
4).	Other FC Work	<u>\$ 2,498,475.82</u>
Total		\$ 6,161,483.70

A true and correct copy of the Complaint is attached as Exhibit O. GMACM removed the Florida Lawsuit to the United States District Court for the Southern District of Florida ("the Southern District Court of Florida") and filed an Answer and Counterclaims against DJSPA. A true and correct copy of the Answer and Counterclaim is attached as Exhibit P. The parties had

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previously mediated the dispute unsuccessfully on May 25, 2011. While the Florida Lawsuit was pending, the parties engaged in some written discovery and document productions. As part of DJSPA's initial document production, DJSPA produced 17,694 allegedly unpaid invoices which it contends reflects unpaid work performed on 12,615 loan files on behalf of GMACM.² Following GMACM's filing of bankruptcy, the Florida Lawsuit was stayed on May 23, 2012.

- litigation involving alleged unpaid fees for legal services against other mortgage lenders as well as the Federal Home Loan Mortgage Corp. ("FHLMC") and the Federal National Mortgage Association ("FNMA"), entitled respectively: *The Law Offices of David J. Stern, P.A. v. Federal Home Loan Mortgage Corp.*, 0:11-60623-CIV-Seitz/Simonton (U.S. Dist. Ct. S.D. Fla.) (the "FHLMC Suit"); and *Federal National Mortgage Assoc. a/k/a Fannie Mae v. The Law Offices of David J. Stern, P.A.*, No. 32-194Y-0016411 (American Arbitration Association) ("the FNMA Arbitration"). As a result of the investigation of and potential misconduct by DJSPA, FHLMC and FNMA notified DJSPA that it was no longer authorized to participate in the designated counsel program. (*E.g.*, FHLMC Suit, Answer, Affirmative Defenses and Counterclaims of FHLMC, Doc. 63, at ¶ 39 and Exhibit B attached thereto, filed March 30, 2012, attached hereto as Exhibit Q.).
- 13. A significant number of the invoices that are the subject of DJSPA's claims involved loans owned by FHLMC and FNMA. Both FHLMC and FNMA requested that DJSPA's invoices relating to their loans be transferred to the FHLMC Suit and FNMA Arbitration, respectively. As reflected by the stipulations attached hereto as Exhibits R, the parties—DJSPA, GMACM, FHLMC and FNMA—jointly agreed to transfer these loans from the

² These figures do not account for duplications which are believed to exist in the documentation produced by DJSPA.

Florida Litigation to the FHLMC suit and the FNMA arbitration. There are believed to be 790 FHLMC loans and 1198 FNMA loans that were transferred by the Southern District Court of Florida to the FHLMC Suit and FNMA Arbitration, and such loans are no longer part of the Florida Litigation.³ However, to the extent any work performed on FHLMC and FNMA loans related to remediation work, such invoices remained a part of the Florida Lawsuit. (*See* Plaintiff's and Defendant's Joint Stipulation (Doc. 44), filed February 3, 2012, attached as Exhibit R).

- 14. As reflected in its Counterclaims, GMACM alleges that DJSPA committed numerous acts of malpractice during its representation of GMACM in various matters and that the acts of malpractice occurred as early as 2009. GMACM's investigation into DJSPA's malpractice continues, but the following matters, which are described by attorneys at my Firm who handled these matters in the Summary attached as Exhibit S, are known to have involved error and misconduct by DJSPA which resulted in damage to GMACM and its successor entities:
- a. Deutsche Bank Trust Co. Americas as Trustee for RALI 2007QS3 v. Barry F. Mack, et al., Case No. 09-7336-CA, 20th Judicial Circuit Court for Collier County, Florida ("Mack"). True and correct copies of the following documents, attached hereto, are pleadings, orders, and transcripts in Mack:
 - i. Complaint of Deutsche Bank Trust Co. Americas as Trustee for RALI
 2007QS3, dated August 20, 2009, is attached hereto as Exhibit T;

The transfer pleadings, which were based on loan information provided by DJSPA, reflect 980 FHLMC loans and 1488 FNMA loans, but the above numbers account for duplicate loan numbers that were provided by DJSPA.

- ii. Answer to Complaint to Foreclose Mortgage, Affirmative Defenses and Counterclaims of Barry and Cheryl Mack, dated September 11, 2009, is attached hereto as Exhibit U;
- iii. Final Judgment, dated May 11, 2011, is attached hereto as Exhibit V;
- iv. Final Order on Plaintiff's Motion to Set Aside Final Judgment and Set New Trial, dated Feb. 26, 2013, is attached hereto as Exhibit W;
- v. A true and correct copy of the Deposition of Forrest McSurdy, dated April 17, 2012, is attached hereto as Exhibit X; and
- vi. A true and correct copy of the Testimony of Forrest McSurdy, dated May 16, 2012, is attached hereto as Exhibit Y.
- b. *GMAC Mortgage, LLC v. Michael Montroy, et al.*, Case No. 52-2008-CA-005375, Circuit Court for Pinellas County, Florida;
- c. Bank of New York Mellon Trust Company v. Dana Joy Allen, et al., Case No. 2010-985-CA, Circuit Court for Bay County, Florida;
- d. Deutsche Bank and Trust Co. v. Danny Armstrong, Case No. 16-2008-CA-015892, Circuit Court for Duval County, Florida;
- e. *U.S. Bank, N.A. v. Margaret Lipinski*, Case No. 10-15855-CI, Circuit Court for Pinellas County, Florida;
- f. Bank of New York Mellon Trust Co., N.A. v. Eric Tamayo, Case No. 09-2229-CA, Circuit Court for Collier County, Florida;
- g. *GMAC Mortgage, LLC v. Carrie Gasque*, Case No. 16-2008-CA-012971, Circuit Court for Duval County, Florida;

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- h. *GMAC Mortgage v. Patrick Hopper*, Case No. 2009-011026-CA, Circuit Court for Collier County, Florida; and
- i. *GMAC Mortgage, LLC v. Christopher Contreras*, Case No. 2010-2868-CA, Circuit Court for Sarasota County, Florida.

As reflected in the attached Summary (Exhibit S), the damages include fees and costs incurred by counsel to attempt to address the errors committed by DJSPA.

[Signatures on next page]

12-12020-mg Doc 8531-15 Filed 04/27/15 Entered 04/27/15 16:52:56 Exhibit 2-B - Smith T Declaration Pg 11 of 11

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed this 27th day of April, 2015. John W. Smith T STATE OF ALABAMA JEFFERSON COUNTY I, the undersigned, a notary public in and for said county in said state, hereby certify that , whose name is signed to the foregoing JOHN SMITHT instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, and acting with the advice of counsel of his choosing, he executed the same voluntarily on the day the same bears date. Given under my hand and official seal this 27th day of April

My commission expires: 16/2/2017

[NOTARIAL SEAL]

EXHIBIT A TO THE DECLARATION OF JOHN W. SMITH T

P93000080387

The microfilm containing the articles of incorporation filed on November 22, 1993 is missing from our records. This replacement set of articles was supplied by the corporation.

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6 pages

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11:24 AM

PUBLIC ACCESS SYSTEM

ELECTRONIC FILING COVER SHEET

FROM: EMPIRE CORPORATE KIT. COMPANY 1492 W FLAGLER ST TO: DIVISION OF CORPORATIONS

DEPARTMENT OF STATE STATE OF FLORIDA BUITE 200

HIAMI FL 33135-409 EAST GAINES STREET CONTACT: RAY STORMONT TALLAHASSEE, FL 32399 FAX: (904) 922-4000

PHONE: (305) 541-3694 FAX: (305) 641-3770

DOCUMENT TYPE: FLORIDA PROFIT CORPORATION OR P.A. NAME: DAVID J. STERN, P.A.

CURRENT STATUS: REQUESTED TIME REQUESTED: 11:24:30 CERTIFICATE OF STATUS: 0 FAX AUDIT NUMBER: H93000009434

DATE REQUESTED: 11/22/1993 CERTIFIED COPIES:

NUMBER OF PAGES: 5

METHOD OF DELIVERY: FAX ACCOUNT NUMBER: 072450003255 ESTIMATED CHARGE: \$122.50

NOTE: PLEASE PRINT THIS PAGE AND USE IT AS A COVER SHEET WHEN SUBMITTING DOCUMENTS TO THE DIVISION OF CORPORATIONS. YOUR DOCUMENT CANNOT BE PROCESSED WITHOUT THE INFORMATION CONTAINED ON THIS PAGE. REMEMBER TO TYPE THE FAX AUDITOUMBER ON THE TOP AND BOTTOM OF ALL PAGES OF THE DOCUMENT.

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ARTICLES OF INCORPORATION

DAVID J. STERM, P.A.

THE UNDERSIGNED subscriber to those Articles of Incorporation, hereby forms a corporation under the Laws of the State of Florida.

ARTICLE I. NAME:

The name of this corporation shall be:
DAVID J. STERN, P.A.

ARTICLE II: NATURE OF BUSINESS AND INITIAL PURPOSE

The corporation may engage in any activity or business permitted under the Laws of the State of Plorida and of the United States of America. This corporation is initially organized for the purpose of The practice of law and all related fields and any other activity or business permitted under the laws

and any and all lawful business for which corporations may engage.

ARTICLE III: CAPITAL STOCK

The aggregate number of shares that this corporation is authorized to have outstanding at any one time is $\frac{100}{100}$ of no par (\$ -0-) dollars par value common stock.

ARTICLE IV: PREEMPTIVE RIGHTS

Every shareholder, upon the sale for cash of any new stock of this corporation of the same kind, class or series as that which he already holds, shall have the right to purchase his pro rata share thereof (as nearly as may be done without issuance of fractional shares) at prices which it is offered to others.

ARTICLE V: TERM OF EXISTENCE

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This corporation shall exist perpetually.

Propaced by: Michael P. Chase, Attorney at Law 2627 NR 203rd St. Ste. 205 H. Miami Beach, Fl. 33180 (3US)931-3418 BAR#099132

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ARTICLE VI: INTITIAL REGISTERED OFFICE AND AGENT AND PRINCIPAL PLACE OF BUSINESS

The street address of the initial registered office of this corporation is: 2627 MB 203rd St. Ste. 204 N. Mismi Beach, Fl. 33180

and the name of the initial registered agent of this corporation is DAVID 3. STERN, Attorney at Law

ARTICLE VII: INITIAL BOARD OF DIRECTORS

The corporation shall have 1 director initially. The number of directors may be either increased or decreased from time to time by the bylaws, but shall never be less than one. The name and address of the initial director of this corporation is:

DAVID J. STERN

2627 NR 203rd St. Ste. 204 N. Mismi Beach, F1, 33180

ARTICLE VIII: INCORPORATOR

The name and address of the person signing these Articles of Incorporation is:

David J. Stern 2527 WE 203rd St. Ste. 204 M. Miami Beach, Fl. 33160

and this is the corporation's principal place of business.

ARTICLE IX: AMENDMENTS

This corporation reserves the right to amond or repeal any provision contained in these Articles of Incorporation, or any amendment hereto, and any right conferred upon the shareholders is subject to this reservation.

ARTICLE X: TRANSFER OF STOCKS.

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The Shareholders of this corporation may not sell or

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transfer any shares of this corporation except to another individual who is duly licensed to practice law in the State of Florida or render professional services which the corporation has the power to conduct, and such sale or transfer may be made only after the same shall have been approved, at a stockholders' meeting especially called for such purpose, by the holders of a majority of the outstanding stock.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation this 22th day of November 1993.

DAVID J. STERN, Attorney at Lat Subscriber and Registered Agent Florida Bar#0911054

STATE OF PLORIDA)

COUNTY OF DADE)

BRFORE BR, the undersigned authority, parsonally appeared DAVID J. STERN known to me as the person described as Subscriber and Registered Agent in and who executed the foregoing Articles of Incorporation, and he acknowledged before me that he subscribed to same.

WITHESS my hand and real this 22 day of Derenter 1993.

Notary Public, State of Florid

REVERLY COOPERANTS Rotary Paties, Date of Floride at Large My Committed of Excites Feb. 18, 1996
committee than advance movement and advance movement.

73043ZS4900 b: S4

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MON-55-1993 15:09 FROM ENPIRE

CERTIFY CATE JELICATING FOR CHANGING) PLACE OF BUSINESS OR DONICILE FOR THE SERVICE OF PROCESS WITHIN THIS STATE, MAKING AGENT UPON WHOM PROCESS MAY BE SERVED.

is sub	In pursuance mitted, in co	of Chapter 607.34 impliance with sai	Tlorida d Acts	Statuzes,	静 卷	lowing
		DAVID J. STERN.				-11
				te of	lorida (Plorida	(ii)
with i	ts principal	office, as indica	ted in the Hismi Ba	articles	0 5	ro County
	Dade (County)		● oţ ● (GT#À)	Plorida	65,54	ت
has na	med (County)	DAVID J: STERN	i	(2500	e }	· ·
	d at 2627 NR	(Name of R 203rd St., Sto. 2 rest address and s st Office Box add	osident Aq 05 number of	building,		*
	f <u>lo. Minmi</u> of Florida, a	Beach. City) s its agent to acc	Coun	ty of Da	de (County	ain
ACKNOMI	LEDGENERT (YE DENDIE RE TRUM	DESIGNATE	O AGENT)		
hereby	surporation, accept to act	mod to accept ser at place designat in this capecity d Act relative to	ed in this, and agrice of the control of the contro	obeb eviq sa to comb e certitic	ate. I ly with office. Agent	

EXHIBIT B TO THE DECLARATION OF JOHN W. SMITH T

Division of Corporations Public Access System

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FLORIDA/FOREIGN LIMITED LIABILITY CO.

DJS Processing LLC

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EXAMINER

9/28/2009

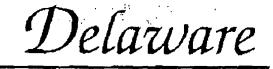
APPLICATION BY FOREIGN LIMITED LIABILITY COMPANY FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA

4N Li	! COMPLIANCE WITH SECTION 608503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A ! MITTED LIABILITY COMPANY TO TRANSACT BUSINESS IN THE STATE OF FLORIDA:	ŀKJKĒX	3 ₩
;	DJS PROCESSING, LLC		
•	(Name of Foreign Limited Liability Company; must include "Limited Liability Company," "L.L.C.," or "LLC.")		
CO	i name unavailable, enter alternate name adopted for the purpose of transacting business in Florida and attach a copy of the street of the managers or managing members adopting the alternate name. The alternate name must include "Limited Lindompany," "L.L.C," "LLC,")	 ne write bility	en
2.	DELAWARE 3.		
	(Jurisdiction under the law of which foreign limited liability (FEI number, if applicable) company is organized)		
4,	SEPTEMBER 15, 2009 5. PERPETUAL		
	(Date of Organization) (Duration: Year limited liability company will cease to exist or "perpetual")	1	
6.	UPON REGISTRATION IN FLORIDA		
	(Date first transpoted business in Florida, if prior to registration.) (See sections 608.501 & 608.502 F.S. to determine penalty liability)	69	SIVIC 38
7.	900 SOUTH PINE ISLAND ROAD, SUFTE 400	33	<u>ō</u> Ω
	PLANTATION, FLORIDA 33324	09 SEP 28	SET A
	(Street Address of Principal Office)		C) RY
8,	If limited liability company is a manager-managed company, check here	AM 10: 00	CORPORATI
9.	The name and usual business addresses of the managing members or managers are as follows:	00	ATE
	LAW OFFICES OF DAYID J. STERN, P.A.		*
	900 SOUTH PINE ISLAND ROAD, SUITE 400 //	_	
	PLANTATION, FLORIDA 33324	**	
the:	. Attached is an original cartificate of existence, no more than 90 days old, duly authenticated by the official having custody of a juristriction under the law of which it is organized. (A photocopy is not acceptable. If the certificate is in a foreign language, a uslation of the certificate under cath of the translator must be submitted.)		n .
11	. Nature of business or purposes to be conducted or promoted in Florida: The foreign limited liability		
	company may engage in any activity or business pentited under the Florida Business Comporation Act, including but		
	not limited to title searches performed, title examination try in any foreelessive administration,	_	
	Signature of a member or an authorized representative of a member.		
	(In accordance with section 608.408(3), F.S., the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true.)		
	DAVID I. STERN		
	Typed or printed name of signee		

CERTIFICATE OF DESIGNATION OF REGISTERED AGENT/REGISTERED OFFICE

PURSUANT TO THE PROVISIONS OF SECTION 608.415 or 608.507, FLORIDA STATUTES, THE UNDERSIGNED LIMITED LIABILITY COMPANY SUBMITS THE FOLLOWING STATEMENT TO DESIGNATE A REGISTERED OFFICE AND REGISTERED AGENT IN THE STATE OF FLORIDA.

1 The name of the Lim	ited Liability Company is:	
	DJS PROCESSING, LLC	
Tunavailable, the alternate to be used in the state of Florida is:		
2. The name and the Flo	rida street address of the registered agent and office are:	
	DAVID J. STERN	
	(Name)	
	900 SOUTH PINE ISLAND ROAD, SUITE 400	
	Florida Street Address (P.O. Box NOT ACCEPTABLE)	
	PLANTATION FL 33324	
	City/State/Zip	
hability company at the pagent and agree to act in relating to the proper and abligations of my position DAVID J. TER	fature)	
-	\$ 100.00 Filing Fee for Application \$ 25.00 Designation of Registered Agent	
	\$ 30.00 Certified Copy (optional)	
	\$ 5.00 Certificate of Status (optional)	



PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY "DJS PROCESSING, LLC" IS DULY FORMED
UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING
AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE
SHOW, AS OF THE TWENTY-EIGHTH DAY OF SEPTEMBER, A.D. 2009.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

4731030 8300

090890170

You may varify this certificate online

AUTHENTY CATION: 7551985

DATE: 09-28-09

EXHIBIT C TO THE DECLARATION OF JOHN W. SMITH T

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Attorney General Bill McCollum opens investigations into foreclosure law firms

By Abel Harding (Abel Harding) | August 10, 2010 - 6:07pm



AP Photo/Mel Evans, file

Florida Attorney General Bill McCollum opened investigations Tuesday into allegations of unfair and deceptive practices by three of the state's largest foreclosure law firms.

The investigations are targeted at Fort Lauderdale-based The Law Offices of Marshall C. Watson, P.A.; Tampa-based Shapiro & Fishman, LLP; and Plantation-based The Law Offices of David J. Stern, P.A. The Attorney General previously opened investigations into

Florida Default Law Group, a foreclosure firm based in Tampa, and Jacksonville-based Fidelity National Financial.

Read: Florida investigating 'bogus' foreclosure records

Stern's practice was sued last month in U.S. District Court, Southern District of Florida, by Fort Lauderdale attorney Kenneth Eric Trent, who represents South Florida resident Ignacio Damian Figueroa and is seeking class-action status.

In the suit, Trent says that Stern's law firm generated fraudulent mortgage assignments when pursuing foreclosures, something the suit says violated the Racketeer Influenced and Corrupt Organizations Act.

"There's an intentional haze that no one can get through," said Trent. "It's designed to hide the fact that no one can prove who owns these mortgages."

Because many mortgages have been bought and sold by different institutions multiple times, paperwork involved in the process to obtain foreclosure judgements is often missing. Trent said Stern's firm overcame that obstacle by creating an assignment, which was signed by a Stern employee instead of a representative of the lender attempting to foreclose.

Trent said news of the Attorney General's investigation added legitimacy to his case.

"It's a rotation of the snowball that will hopefully lead to the avalanche that will force widespread change in Florida's foreclosure practices," he said.

The Attorney General's office said it served subpoenas on the three firms and was also investigating whether or not the firms had created affiliated companies outside the United States where the documents were prepared.

"Our primary concern is that Florida homeowners have access to due process," said Sandi Copes, a spokesperson for the Attorney General's office.

MORE FROM THIS BLOG

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- Abel Harding: Industry's chance for action is now

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- Tour De Food in St. Augustine
- What Isn't a Negotiable Instrument?
- Plan for some weekend rain

EXHIBIT D TO THE DECLARATION OF JOHN W. SMITH T

10 0CT | L PM 3: 3

M

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

LAW OFFICES OF DAVID J. STERN, PA.,

Plaintiff,

CASE NO.: 10-32965 (04)

VS.

HON. EILEEN M. O'CONNOR

THE STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS,

Defendants.

ORDER ON PETITONER'S AMENDED PETITION TO QUASH THE INVESTIGATIVE SUBPOENA DUCES TECUM ISSUED BY FLORIDA'S ATTORNESS GENERAL

THIS CAUSE having come before the Court on Petitioner's Amended Petition To Quash the Investigative Subpoena Duces Tecum Issued by Florida's Attorney General. The Court having considered the motion, the Attorney General's response, testimony and the supplemental authority filed by both parties, it is hereby

ordered and adjudged that the amended motion to quash [the amended] subpoenal based upon petitioner's argument that the Attorney General has no jurisdiction to issue a subpoena to a law firm on the basis of Florida Statutes, Chapter 501.203 (8) FDUTPA, is DENIED.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida

day of October, 2010.

BO HEREBY CERTIFY The within and foregoing is a true

and correct dopy of the original as it appears on record and Jeff Dadfile of the Circuit Court Clerk of Broward

WithEss by hand and purcipal Seal at Fort Laudergate

Hon. Eileen M. O'Connor

Circuit Court Judge

The petitioner apparents abangoned to priginal petition upon receipt of the amended investigative suppoena which addressed many of the original objections. The amended subpoena is attached hereto.

VAI KINGA SPENCE

12-12020-mg Doc 8531-19 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit D Pg 3 of 12

Copies furnished to:

Jeffrey Tew, Esq. and Andrew B. Thomson, Esq. TEW CARDENAS, LLP, 1441 Brickell Avenue, 15th Floor, Miami, FL 3313

June M. Clarkson, Esq. and Theresa B. Edwards, Esq. Office of the Attorney General, 110 SE 6th Street, 10th Floor, Fort Lauderdale, FL



STATE OF FLORIDA OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF LEGAL AFFAIRS

ECONOMIC CRIMES AMENDED INVESTIGATIVE SUBPOENA DUCES TECUM

IN THE INVESTIGATION OF:

Law Offices of David J. Stern, P.A.

900 S. Pine Island Road

Suite 400

Plantation, Florida 33324

Attention: REGISTERED AGENT and RECORDS CUSTODIAN David J. Stern

900 S. Pine Island Road Suite 400 Plantation, Florida 33324

(or any other lawful address of service)

This investigative Subpoena Duces Tecum is issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, in the course and authority of an official investigation. The general purpose and scope of this investigation extends to possible unfair and deceptive trade practices, unconscionable acts and/or unfair competition of the above named recipient and/or associated entities. Your attention is directed to Sections 501.204 and 501.206. Florida Statutes, printed at the back of this document.

YOU ARE HEREBY COMMANDED to produce all documentary material and other tangible evidence as described herein, that is in your possession, custody or control, or in the possession custody or control of your agents or employees, and to make it available for inspection and copying or reproduction before Assistant Attorney Generals, June M. Clarkson and Theresa B. Edwards and/or their designated representative on November 1, 2010 at 1:00 pm at the following location:

DEPARTMENT OF LEGAL AFFAIRS OFFICE OF THE ATTORNEY GENERAL

Attention: David J. Stern 110 S.E. 6th Street, 10th Floor Fort Lauderdale, Florida 33301 are responsive.

- F. In the event that you seek to withhold any document on the basis that is properly entitled to some privilege or limitation, please provide the following information:
 - 1. A list identifying each document for which you believe a limitation exists;
 - 2. The name of each author, writer, sender or initiator of such document or thing, if any;
 - 3. The name of each recipient, addressee or party for whom such document or thing was intended, if any;
 - 4. The date of such document, if any, or an estimate thereof so indicated if no date appears on the document;
 - 5. The general subject matter as described in such document, or, if no such description appears, then such other description sufficient to identify said document; and
 - 6. The claimed grounds for withholding the document, including, but not limited to the nature of any claimed privilege and grounds in support thereof.
- G. For each request, or part thereof, which is not fully responded to pursuant to a privilege, the nature of the privilege and grounds in support thereof should be fully stated.
- H. If you possess, control or have custody of no documents responsive to any of the numbered requests set forth below, state this fact in your response to said request.
- I. For purposes of responding to this subpoena, the term "document" shall mean all writings or stored data or information of any kind, in any form, including the originals and all non-identical copies, whether different from the originals by reason of any notation(s) made on such copies or otherwise, including, without limitation: correspondence, notes, letters,

telegrams, minutes, certificates, diplomas, contracts, franchise agreements and other agreements, brochures, pamphlets, forms, scripts, reports, studies, statistics, inter-office and intra-office communications, training materials, analyses, memoranda, statements, summaries, graphs, charts, tests, plans, arrangements, tabulations, bulletins, newsletters, advertisements, computer printouts, teletype, telefax, microfilm, e-mail, electronically stored data, price books and lists, invoices, receipts, inventories, regularly kept summaries or compilations of business records, notations of any type of conversations, meetings, telephone or other communications, audio and videotapes; electronic, mechanical or electrical records or representations of any kind (including without limitation tapes, cassettes, discs, magnetic tapes, hard drives and recordings – to include each document translated, if necessary, through detection devices into reasonably usable form).

- J. For purposes of responding to this subpoena, the term "affiliate" shall mean: a corporation, partnership, business trust, joint venture or other artificial entity which effectively controls, or is effectively controlled by you, or which is related to you as a parent or subsidiary or sibling entity. "Affiliate" shall also mean any entity in which there is a mutual identity of any officer or director. "Effectively controls" shall mean having the status of owner, investor (if 5% or more of voting stock), partner, member, officer, director, shareholder, manager, settlor, trustee, beneficiary or ultimate equitable owner as defined in Section 607.0505(11)(e), Florida Statutes.
- K. The term "Florida affiliates" shall mean those of your affiliates which do business in Florida or which are licensed to do business in Florida.

- L. If production of documents or other items required by this subpoena would be, in whole or in part, unduly burdensome, or if the response to an individual request for production may be aided by clarification of the request, contact the Assistant Attorney General who issued this subpoena to discuss possible amendments or modifications of the subpoena, within five (5) days of receipt of same.
- M. Unless otherwise specified, the pertinent time period is January 1, 2008 to the present date (hereinafter "pertinent time period") and all questions pertain solely to that narrow time period.
- N. Documents maintained in electronic form must be produced in their native electronic form with all metadata intact. Data must be produced in the data format in which it is typically used and maintained. Moreover, to the extent that a responsive Document has been electronically scanned (for any purpose), that Document must be produced in an Optical Character Recognition (OCR) format and an opportunity provided to review the original Document. In addition, documents that have been electronically scanned must be in black and white and should be produced in a Group IV TIFF Format (TIF image format), with a Summation format load file (dii extension). DII Coded data should be received in a (Comma-Separated Values) CSV format with a pipe (f) used for multivalue fields. Images should be single page TIFFs, meaning one TIFF file for each page of the Document, not one .tiff for each Document. If there is no text for a text file, the following should be inserted in that text file: "Page Intentionally Left Blank."

 Moreover, this Subpoena requires all objective coding for the production, to the extent it exists.

- O. DJS shall mean the business entity "David J. Stern, P.A."
- P. The relevant time period for the present request shall be from October 6, 2007 to present unless otherwise specifically stated.

YOU ARE HEREBY COMMANDED to produce at said time and place all documents, as defined above, relating to the following subjects:

- 1. A list of all current and former employees, independent contractors and/or subcontractors of DJS, including their job title(s), their duties and responsibilities and the length of their employment with DJS. This request would include any contracts between DJS and such employees, independent contractors or subcontractors.
- 2. The names and addresses of any and all lawyers and/or law firms that DJS hires/uses (or has hired/used) throughout the State to represent DJS clients in foreclosure cases.

 Describe the capacity in which said lawyers/law firms serve(d) DJS, including any contracts between DJS and said lawyer(s) and/or law firm(s).
- 3. The names and addresses of any and all lending institutions that DJS has represented in foreclosure cases, including any contracts between DJS and said institutions.
- 4. The names and addresses of any and all companies employed by DJS to draft and/or execute Assignments of Mortgage or Affidavits, including any contracts between the

lending institutions and DJS allowing for the use of the companies to draft and/or execute said Assignments of Mortgage.

- 5. The names and addresses of any and all persons and/or companies hired and/or used by DJS to perfect service of process on foreclosure defendants for the past 4 years, including their relationship to DJS and/or David J. Stern, individually including any and all contracts between the person or persons and/or company and DJS.
- 6. The names and addresses of any and all servicing companies DJS represents or represented.
- 7. The names and addresses of any corporations, companies, partnerships or associations that DJS has any interest in, including any foreign corporations, and detail what the business does and what type of interest is held by DJS. This request is only to businesses that in any way pertain to the respondents' foreclosure practices, including but not limited to Process Serving Companies, Title Companies and Document Preparation Companies.
- 8. Copies of all documents that are NOT attorney client privileged, in DJS's files for the following foreclosures:
 - Ernesto Diaz and Hayne Murcia
 - Ernest E. Harpster
 - William and Trisha Martin
 - Jorge Porter
 - Janice Epps
 - John Hewett

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- Marianela Hernandez
- Marie G. Charles
- Claire Nesbeth
- Ticiane Andrade and Fabio Rodrigues
- Weston Walrond
- Barry and Shirley Staley
- 9. List all notaries that worked or works for DJS who notarized Affidavits as to fees and Assignments of Mortgage, include their names and addresses.
- 10. Copies of all non-disclosure agreements between DJS and any and all of its employees, subcontractor or independent contractors.
- 11. Copies of all checks and/or evidence of any other form of payment(s) from the plaintiffs that DJS represents in court in foreclosure cases to DJS and/or any of DJS's affiliates and/or subsidiaries for services rendered in foreclosure cases.
- 12. Documents, including emails, that evidence what the pay scales, pay grades and/or bonuses paid by DJS to employees, subcontractors or independent contractors for completion of foreclosure cases.
- 13. Documents, including emails, that evidence what the pay scales, pay grades and/or bonuses paid by lenders to DJS or its employees, subcontractors or independent contractors for completion of foreclosure cases

WITNESS the FLORIDA OFFICE OF THE ATTORNEY GENERAL in	Fort
Lauderdale, Florida, this / day of October, 2010.	

June M. Clarkson

Assistant Attorney General Florida Bar Number: 785709

Theresa B. Edwards

Assistant Attorney General
Florida Bar Number: 252794

OFFICE OF THE ATTORNEY GENERAL

110 S.E. 6th Street, 10th Floor Fort Lauderdale, Florida 33301

Telephone:

954-712-4600

Facsimile:

954-712-4658

NOTE: In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact George Rudd, Assistant Attorney General at (954) 712-4600 no later than seven days prior to the proceedings. If hearing impaired, contact the Florida Relay Service 1-800-955-8771 (TDD); or 1-800-955-8770 (Voice), for assistance.

AUTHORITY

Florida Statute 501.206

501.206 Investigative powers of enforcing authority.—

- (1) If, by his own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he resides or in which he transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his rights under this subsection.
- (2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to

inspect the matter on his behalf, and he may respond to similar requests from officials of other states.

- (3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.
- (4) The enforcing authority may request that the individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law shall not have the testimony or matter so provided, or evidence derived there from, received against him in any criminal investigation proceeding.
- (5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes, destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than \$5,000, reasonable attorney's fees, and costs.

Affidavit of Service Attached

EXHIBIT E TO THE DECLARATION OF JOHN W. SMITH T

Page 1

STATE OF FLORIDA OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF LEGAL AFFAIRS



ECONOMIC CRIMES

SUBPOENA FOR APPEARANCE FOR KELLY SCOTT

AG CASE NO.: L10-3-1145

IN THE INVESTIGATION OF: Law Offices of David J. Stern, P.A.

900 S. Pine Island Road

Suite 400

Plantation, Florida 33324

CORRECTED

SWORN STATEMENT

OF

KELLY SCOTT

Office of the Attorney General
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
October 4th, 2010
2:14 p.m. - 3:45 p.m.

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г		Deci. Exhibit E 1 g 0 01 70	
			Page 2
1	APPEARANCES:		
2			
3	For the Plain	tiff(s):	
4		JUNE M. CLARKSON, ESQUIRE	
		THERESA B. EDWARDS, ESQUIRE	
5		Office of the Attorney General	
		110 S.E. 6th Street, 9th Floor	
6		Fort Lauderdale, Florida 33301	
7			
	For the Defen	dant(s):	
8			
		(Appearing telephonically)	
9		DOUGLAS S. LYONS, ESQUIRE	
		MARSHA L. LYONS, ESQUIRE	
10		Lyons & Farrar	
Ī		325 N. Calhoun Street	
11		Tallahassee, Florida 32301	
12	Also Present:		
13		CORY FRIEDMAN (Intern)	
		HAROLD REAGAN (Court Reporter)	
14			
15			
1.0			
16			
17			
18 19			
20			
21			
22			
23			
24			
25			

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,	Dec	cl. Exhibit E Pg 4 of 76	
			Page 3
1		I N D E X	
2			
3	Witness	Direct Cross Redirect	Recross
4	KELLY SCOTT		
	By Ms. Clark	son 3	
5	By Ms. Edwar		
6			
7			
		EXHIBIT INDEX	
8			
	Plaintiff's	Description Pag	e No.
9			
	1	Subpoena	4
10			
3	2	Exemplar of Cheryl Salmons's 2	3
11		Signature	
12	3	Assignment of Mortgage 2	3
13	4	Assignment of Mortgage and 2	6
l		three signatures	
14			
	5	Cheryl Salmons signature 2	7
15			
	(Exhibits we	ere retained by attorney.)	
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

	Page 4
1	THEREUPON:
2	KELLY SCOTT
3	a witness named in the notice heretofore filed, having been
4	first duly sworn, deposes and says as follows:
5	DIRECT EXAMINATION
6	BY MS. CLARKSON:
7	Q. Please state your name for the record, please?
8	A. My name is Kelly Scott.
9	Q. Do you sometimes go by another name?
10	A. My middle name. But I hardly ever use it, which is
11	Noelia.
12	Q. Okay. Is that N-o-e-l-l?
13	A. N-o-e-l-i-a.
14	Q. I'm going to ask you to take a look at this and see
15	if you recognize it?
16	A. Yes, I do.
17	Q. Okay. Is that the Subpoena that brought you here
18	today?
19	A. Yes.
20	MS. CLARKSON: I'd like to have this marked as
21	Exhibit 1.
22	(Thereupon, the document was marked as Plaintiff's Exhibit
23	1 for identification.)
24	MS. CLARKSON: Doug, did you get a copy of the
25	Subpoena?

```
Page 5
 1
                  MR. LYONS: No, I did not.
 2
                  MS. CLARKSON: If you want one I can have it sent to
 3
            you.
 4
                  MR. LYONS: Thank you.
 5
                  MS. CLARKSON: You're welcome.
      BY MS. CLARKSON:
 6
 7
           Q.
                  Have you ever had your sworn statement taken before?
 8
           Α.
                 Yes.
 9
                  When was that?
           Q.
10
           A.
                 More than fifteen years ago.
11
                 For a case?
           0.
12
                 Yes.
           A.
13
                  What kind of case?
           Q.
14
                 Child molestation.
           Α.
15
                 Against?
           Q.
16
           Α.
                 Against a minor.
17
           Q.
                 Okay. Who was the defendant in that case?
18
           Α.
                 It was Rebecca Diaz.
19
                 And who was the plaintiff in that case?
           Q.
20
                 I can't remember.
           Α.
21
                 MS. CLARKSON: Since it's been a while, remember to
22
           answer verbally because when you nod your head like that
23
           she can't take it down. And if you say uh-huh, we don't
24
           know if that's a yes or a no. Okay?
25
                 THE WITNESS: Okay.
```

```
Page 6
                  MS. CLARKSON: Perfect. And if you need a break just
 1
 2
           let me know.
 3
                  If you don't understand a question that I ask, ask me
 4
           to repeat it because I want you to understand before you
 5
           answer.
 6
                  THE WITNESS: All right.
 7
                 MS. CLARKSON: Okay.
      BY MS. CLARKSON:
 8
 9
                 This Subpoena was served on you and that's why you're
           Q.
10
      here today. Correct?
11
           Α.
                 Correct.
12
           Q.
                 Okay. This says it's in the investigation of the Law
      Offices of David J. Stern, P.A. Are you familiar with the Law
13
      Offices of David J. Stern, P.A.?
14
15
           Α.
                 Yes.
16
           Q.
                 How are you familiar with them?
17
           Α.
                 That was my previous employer.
18
                 When did you work there?
           Q.
19
                 In 2008.
           Α.
20
                 For how long about?
           Q.
21
           Α.
                 A year.
22
                 When in 2008?
           Q.
23
           A.
                 2008? January 24th and I left the firm some time in
24
      February of 2009.
25
                 So a year, a year and a week and a month?
           Q.
```

Page 7 Uh-huh. 1 A. 2 And what was your position at that office? Q. 3 I was the legal assistant to Cheryl Salmons Α. 4 (phonetic). 5 Of you were her legal assistant? Q. 6 Α. Yes. 7 Q. Okay. Did she have any other legal assistants? 8 At the time, yes. Α. 9 Who else was her legal assistant? Q. 10 Α. Marsha. Not Marsha. I can't remember. I'm trying to 11 remember her name. I just can't remember right now. 12 Okay. If you do remember it let me know. Q. 13 Α. Okay. MS. CLARKSON: Okay. Thank you. 14 15 (Thereupon, a discussion was held off the record.) 16 BY MS. CLARKSON: Okay. Go ahead. Do you recall? 17 Q. 18 Yes, I recall. The other assistant, when I came in Α. 2008, her name was Marvis Brown. 19 20 0. M-a-r-v-i-s? 21 Α. Yes. 22 And were you the two assistants together? Q. 23 Α. Yes. 24 Was there ever a time when you were just the Q. 25 assistant by yourself?

	<u></u>	
		Page 8
1	A.	Yes.
2	Q.	When was that, approximately?
3	A.	2008, Mother's Day.
4	Q.	In May?
5	A.	Yeah, it was in 2008. Marvis quit the firm.
6	Q.	Do you know why she quit?
7	A.	No.
8	Q.	Okay. Do you know if she went to work someplace
9	else?	
10	A.	I have no idea.
11	Q.	So as the assistant to Cheryl Salmons, what were your
12	duties?	
13	A.	Assisting Cheryl with her work, daily.
14	Q.	What was her work, daily?
15	A.	Her work, daily, was reviewing files, checking voice
16	mail, e-ma	ils, assisting clients daily, requesting documents.
17	Q.	Requesting documents from who?
18	A.	From the client.
19	Q.	And the client would be, for instance?
20	Α.	The banks. Any type of banks.
21	Q.	Like a Wells Fargo?
22	A.	Wells Fargo, Countrywide, Citi.
23	Q.	Okay. And she would request documents from them?
24	A.	Yes.
25	Q.	Do you know what kind of documents?

		Page 9
1	A.	Demand letters and original Notes.
2	Q.	Original Notes and Mortgages?
3	A.	Yes.
4	Q.	And this was for the purpose of what?
5	A.	For the purpose of obtaining hearings. We need to,
6	you know,	request documents before we can, you know, submit our
7	motions in	the court.
8	Q.	And this is foreclosures? Is that what you're
9	talking ab	out?
10	Α.	Yes.
11	Q.	What else did she do?
12	Α.	Chronology.
13	Q.	Which is what?
14	Α.	The foreclosure time line.
15	Q.	It had to be done within a certain amount of time?
16	A.	Correct.
17	Q.	Anything else? Did she sign documents?
18	A.	Yes.
19	Q.	Did she notarize documents?
20	A.	I don't recall.
21	Q.	Did she witness documents?
22	A.	No.
23	Q.	She basically executed them?
24	A.	Yes.
25	Q.	And what was her job title?

Page 10 1 A. Office Manager for the Foreclosure Department. 2 Q. Did that include all departments in foreclosure? 3 Yes. Α. Every single department, whether it was assignments 4 Q. or the lawyers or the paralegals? Was she like the Queen Bee? 5 6 She was the Queen Bee for the Foreclosure Department 7 but not for the attorneys. 8 Q. She didn't tell the attorneys what to do? 9 No. Α. 10 Who told the attorneys what to do? Q. 11 Miriam Mindietta and Beverly Macoma. Α. 12 And are they lawyers? Q. 13 Α. Yes. 14 Do you remember what they're positions were? Q. 15 They are the head managers for all of the attorneys Α. 16 in the firm. 17 Okay. There were two of them? Q. 18 Α. Yes. 19 Q. And do you know, when you left there were they still 20 working there? 21 Α. Yes. 22 Q. So describe Cheryl Salmons role in the firm, if you 23 would? 24 Α. Can you be a little bit more specific. 25 Q. Well, was she -- Was it what she said went?

Page 11 1 A. Yes. 2 As far as staff was concerned? 3 Yes, she controlled exactly what occurred and what Α. needed to occur to get a hearing granted. 4 5 Q. In your opinion, did she do what David Stern told her 6 to do? 7 Α. Yes. 8 Q. Okay. And why is that your opinion? Because I was there and saw it and I heard it. 9 A. 10 Okay. Could you tell me what you saw and heard? Q. 11 We had rapid docket. Α. 12 You had what? Q. 13 Α. Rapid docket. 14 Rapid? Q. 15 Yes, rapid docket. Which means that we can have a 16 certain of files per day; 200 to up to 500 and it would be a five minutes hearing. So we --17 18 0. Five minutes for each? 19 Α. Five minutes for each. 20 Q. Okay. 21 And we would push out as many files as we can and get Α. all the pleadings entered and granted. 22 23 And that is -- Who told her that? Who told her that Q. 24 was what she was supposed to be doing? 25 David Stern. Α.

Page 12 1 Q. Would you see him there often? 2 Α. Yes. So he was hands on? 3 0. 4 Α. Yes. 5 Do you know how many employees the Law Office of 6 David Stern had? 7 A. At the time when I started it was 327 and when I resigned it was 857. 8 9 That's a lot of growth. 10 Α. Yes. As you're assistant to Cheryl Salmons, did you ever 11 Q. 12 sign any documents --13 Α. No. 14 0. -- as witnesses? As a witness? 15 Α. No. 16 As a notary? Q. 17 Α. No. 18 Q. As a person executing the document? 19 Α. No. 20 Have you seen the system that is used to -- in the Q. 21 office, to witness, execute and have notarized documents? 22 Yes. A. 23 Q. Can you tell me how that system operated? 24 How the system operated is that every paralegal in A. 25 the firm, they were all notaries.

Page 13

Q. They were notaries?

A. Yeah, they were notaries. They had their stamp. They would prepare all of the motions. The junior would prepare it. They'd get all the pleadings, documents.

And once they were printed out and they received the original docs from the file room, the senior paralegal, which would be the team lead, would notarize the file, sign it.

Once they notarized and signed it, then they would take it to each floor.

We had at that time, like, four floors. So it would be laid on a table.

- Q. A long table?
- A. A long table.
- Q. Like this conference table?
- 15 **A.** Yes.

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MS. CLARKSON: Okay. Let it note that this conference table look to be fifteen feet long and about five feet wide.

19 BY MS. CLARKSON:

- O. Go on.
- A. They would stacked amongst each other, side by side, and Cheryl would come twice a day, in the morning and mid-afternoon, around two or three o'clock and she would sign all of them; every single one of them.
 - Q. But they've already been notarized?

Page 14 1 Α. They've already been notarized. 2 And what about witnessed? Q. 3 A. There was no witness there. 4 Q. There was no witness there at the time? 5 Α. None whatsoever. 6 Q. So you don't -- Have you ever seen witnesses execute 7 the documents as witnesses? 8 Yeah. Α. 9 When it's already done? Q. 10 Α. Yes. 11 Okay. How would that happen? How would the Q. 12 witnessing take place? Would they still stay on the table and 13 then witnesses come by? 14 Α. No. 15 Q. Okay? 16 Once the para of the team signs, notarizes it and Α. 17 it's laid out for Cheryl to come and just sign, she doesn't 18 review them. She just looks. The paper is going to be in the 19 top folder. So it's visible for her. And she knows exactly 20 where she would have to put her signature. 21 Once she has signed all of the documents she would send a 22 massive e-mail, please come collect your files. 23 Q. Okay? 24 And then the paralegals would go and collect their Α. 25 files.

Page 15 And then the paralegals would take care of getting 1 0. 2 them witnessed? 3 Α. Yes. 4 How would they do that? Do you know? Q. 5 Α. They would get another notary to go ahead and sign off. 6 7 Q. So they'd swap? 8 Α. Yes. 9 So one notary/paralegal would pass hers to another Q. 10 notary/paralegal and vice-a-versa? 11 Α. Yes. 12 Q. And they were signing as witnesses, documents that had already been notarized and executed? Is that correct? 13 14 Α. Correct. 15 Do you know what happened to the documents at that Q. 16 point? 17 Α. At that point, once everything was signed it was good to go, to go to court. So they would, you know, send out the 18 19 second half. You know, the package would be sent, submitted to 20 the court and we would wait for the hearing. 21 Are you aware of any of the documents before they go Q. 22 into court going into the County Recorder's Office to be 23 recorded? 24 Α. No. 25 You're not aware of Assignments of Mortgage being Q.

Decl. Exhibit E Pg 17 of 76 Page 16 1 executed and filed with the County Recorder's Office and then sent to court? 2 3 No. Α. Okay. That's fine. Can you tell me anything else 4 Q. 5 that Cheryl Salmons was responsible for at the firm? She was responsible for lost Notes, which is the LNA. 6 Α. 7 Q. The LNA? 8 Α. Yes, LNA. It call a Lost Note Affidavit. 9 Okay? 0. If we weren't able to locate it in the house or if it 10 Α. was lost in transition to the firm, I would normally take the 11 12 file to Cheryl Salmons and she will make this affidavit appear. 13 She would sign it and notarize it and stamp it and it was good 14 to go. And the I was able to take it to the Title Department. 15 And that was an Affidavit of Lost Note? Q. Yes. 16 Α. 17 When you say make it appear, is she asking someone Q. 18 else for it? 19 No, I would bring the file to her and let her know, listen, we can't have an original Note. It's not here. The 20 21 client -- It's missing. So we need an LNA. I would leave it in her office and within an hour she 22 23 would send me an e-mail come pick up the file or most of the

time she would just have her file clerk take the file, already,

to the Title Department and it would be good to go.

24

25

- Q. When you say good to go that means she had her affidavit executed?
 - A. Executed, stamped by her. Yes.
 - Q. What else did she do? Her role?
- A. Her role was to train. To have her other departments training new employees how to prepare motions, defaults, requesting docs. And it was a work in progress, about ten hours per day. So everyone was pumping out as many files as they can.

Freddie Mac was one of the majority one. Freddie Mac, as well.

- Q. You mean Fannie Mae and Freddie Mac?
- 12 **A.** Yes.

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- 13 Q. Both of them?
- 14 A. Yes.
 - Q. As her personal assistant, were you ever aware that

 Ms. Salmons would bring in her personal home bills, private

 bills to be paid for by the firm?
- 18 **A.** Yes.
 - Q. Could you tell me about that? Did she give them to you or who did she give them to?
 - A. She would never give them to me. They were always given directly to Shamisa (phonetic).
 - Q. Can you spell that?
- A. I recall can't spell it.
- 25 Q. And what's the last name, if you know?

		Page 18
1	A.	I don't know her last name.
2	Q.	Okay. What was her job there?
3	A.	She was the head accounting.
4	Q.	You say was, is she no longer there?
5	A.	No.
6	Q.	She's left?
7	A.	Yes.
8	Q.	Was she fired or quit? Do you know?
9	A.	Terminated.
10	Q.	Do you know why?
11	A.	No.
12	Q.	Okay. Shamisa?
13	A.	Shamisa.
14	Q.	So she would Now how are you aware that these were
15	her persor	al bills?
16	A.	Because I was good friends with one of her
17	assistants	3 .
18	Q.	The other assistant?
19	A.	Yes.
20	Q.	Okay. And what was her name?
21	A.	Erica.
22	Q.	Cheryl Salmons' assistant?
23	A.	No, Shamisa's assistant.
24	Q.	You were good friend with?
25	A.	Shamisa's assistant.

		Page 19	
1	Q.	Who was the head accounting person?	
2	A.	Correct.	
3	Q.	And what did this friend say?	
4	A.	Just regular bills, car payments, cell phone, house,	
5	electrica	1.	
6	Q.	When you say house, do you mean mortgage?	
7	A.	I'm assuming. I'm not sure. I never saw the bills.	
8	Q.	Right. What's the friend's name of Shamisa?	
9	A.	Erica.	
10	Q.	Erica who?	
11	A.	I'm trying to remember her last name. I can't	
12	remember :	right now. And There's someone else. I just can't	
13	remember :	right now.	
14	Q.	Do you know how to spell Erica, E-r-i-c-a?	
15	A.	It was E-r-i-c-k-a.	
16	Q.	C-k-a?	
17	A.	Yes.	
18	Q.	Okay. And she told you that Ericka would see Cheryl	
19	Salmons bills being paid for by Shamisa?		
20	A.	Yes.	
21	Q.	Was this paid for out of the Law Offices of David	
22	Stern acco	ount?	
23	A.	Yes.	
24	Q.	And Ericka saw this?	
25	A.	Yes.	
İ			

Page 20 1 Q. Were they being paid on a monthly basis? 2 Α. Yes. 3 Were they being paid like that since -- How long did Q. you know about it? 4 5 I knew about it from the beginning. Α. 6 Right when you got in there? Q. 7 Α. Yes. And what was said about Cheryl's bills being paid for 8 Ο. the Law Offices of David Stern? 9 10 Α. That he's always done it. David Stern has always 11 paid for Cheryl's expenses. 12 Q. Personal expenses? 13 Α. Yes. 14 Do you know if he -- Well was there rumor -- Was Ο. 15 there talk, rather, that he paid -- that he bought her car? 16 No, that's confirmed. He did buy her a car. I Α. 17 acknowledge that. 18 Q. He did buy her a car? 19 Α. Yes. 20 What kind of car did he buy her? Q. 21 It was a BMW SUV. Α. 22 And how do you know that? Q. Because he left her a voice message and since I was 23 Α. 24 Cheryl's assistant I had privileges of going and reviewing her 25 voice mail. And that day in particular, he wanted to make sure

Page 21 1 that was satisfied with the car. If not they can return the car 2 and she could get a different car. 3 But he said, I bought you a car? Q. Yes. 4 Α. Did he say why he bought her the car? 5 Q. 6 Α. No. 7 Q. Did you ever hear of him buying her a home? 8 Α. No. 9 Did you ever hear that he had bought cars or 10 automobiles for her before? 11 Α. Yes. 12 What did you hear about that? 13 Α. I've heard it before from Maggie Pena and she was 14 another assistant for Shamisa. And --15 That's in accounting? 16 Α. Yeah, in accounting. And he's -- I think it's every 17 year that she always gets a new car. They swap out the car and 18 she gets a new one, the new version for the SUV BMW. 19 Do you know of any other, for lack of a better word, perks that Cheryl Salmons got? 20 21 Α. Not that I recall. 22 Are you aware of anyone other than Cheryl Salmons 23 signing Cheryl Salmons' name to documents? 24 Α. Yes. 25 Q. Could you tell me about that, please?

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Q.

Page 22 Cheryl would give certain paralegals rights to sign her name, because most of the time she was very tired, exhausted from signing her name numerous times per day. You had to understand it was more than five hundred files that she's signing morning and afternoon. Five hundred in the morning and then another five hundred in the afternoon? Α. Yes. So approximately a thousand a day? Q. A. A thousand day. Q. Okay? So yes, she would -- you know, if they were very Α. close with Cheryl Salmons --They who? Could you give me their names? 0. Shannon Smith, Elizabeth Davilla, Beth Cerni. Α. These people were allowed to sign her name? Q. Α. Yes. Are you familiar in any way, shape or form at all Q. that they would learn how to sign like she did? Yes, she showed me herself how to sign her name. Α. She should you as well? Q. A. Yes. Q. Did you learn? Α. Yes.

Could you do it now?

Page 23 1 Α. Yes. 2 0. Okay. Let me give you a piece of paper and ask you 3 to go ahead and do that for me? You have to give me some time. It's been a while. 4 A. 5 MS. CLARKSON: I'm going to have this marked. 6 (Thereupon, the document was marked as Plaintiff's Exhibit 7 2 for identification.) BY MS. CLARKSON: 8 9 Did you ever sign for Cheryl Salmons? 10 Yes. Α. 11 What did you sign? Q. 12 PTO requests for employees. Α. 13 Q. What is that, please? 14 Personal time off. Α. 15 What else did you sign, if anything? Q. 16 That's it. Α. 17 What is personal time off? Q. 18 Α. Vacation requests. 19 Q. You just granted their --20 Α. Yes. 21 MS. CLARKSON: Okay. I'm going to ask you to look at this document. It's called an Assignment of Mortgage. 22 23 is executed by Cheryl Salmons from the Law Office of David 24 Stern. I'm going to have it marked.

(Thereupon, the document was marked as Plaintiff's Exhibit

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Page 24
 1
      3 for identification.)
 2
      BY MS. CLARKSON:
 3
                  Do you recognize that signature?
            Q.
 4
           A.
                  Yes.
 5
                  Now can you tell if that's Cheryl's or Beth's or
           Q.
 6
      whose?
 7
           A.
                  No, that's Cheryl's.
 8
           Q.
                  That's Cheryl's?
 9
           Α.
                  Yes.
                  That's Cheryl Salmons'?
10
           Q.
11
           Α.
                  Yes.
                  Can you tell the different between Cheryl's and
12
           Q.
13
      Beth's and anyone else that was able to sign?
14
           A.
                  No.
                  You couldn't?
15
           Q.
16
           Α.
                 No.
17
                  Now I'm going to show you three and two, and ask you
           Q.
18
      again, if that is the way you would sign?
19
           Α.
                  It would be exactly like this but with more of a
20
      curve.
21
                  You would put more loops into it?
           Q.
22
           Α.
                  Yes.
23
                  This is the first time you've signed this in how
           Q.
24
      long?
25
           Α.
                 Like two years and a half.
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1	Q. Do you know approximately how many documents you	
2	signed in her name?	
3	A. Maybe fifty.	
4	Q. When you said that you could tell that this was	
5	Cheryl's signature, how can you tell?	
6	A. Because of the shape of the C. She makes a big curve	
7	and then she loops down and then she makes another swerve. So	
8	it's not a signature. It's like an initial of her	
9	Q. All right. I'm going to ask you to look at all three	
10	signatures on this after it gets marked as Exhibit 4. This is	
11	also an Assignment of Mortgage. It's from the Law Office of	
12	David Stern, supposedly signed by Cheryl Salmons, witnessed by	
13	Elizabeth Lee and notarized by Elizabeth Lee.	
14	Do you know Elizabeth Lee?	
15	A. Yes.	
16	Q. Did anyone else have Elizabeth Lee's signature?	
17	A. No.	
18	Q. Did Elizabeth Lee sign for anyone else?	
19	A. For Cheryl.	
20	Q. She signed for Cheryl as well?	
21	A. Yes.	
22	Q. Now take a look at this document. There are three	
23	signatures there that all are squiggles. Do you know who signed	
24	those?	
25	A No.	

Page 26 1 (Thereupon, the document was marked as Plaintiff's Exhibit 2 4 for identification.) BY MS. CLARKSON: 3 Is that Cheryl's signature? 4 Q. 5 Α. No. Is that Cheryl's signature or someone else's? 6 0. 7 A. Cheryl's. 8 Q. Okay. And what about -- Are you familiar with Elizabeth Lee's signature? 9 10 A. No. 11 Not at all? Q. 12 Un-uh. Α. 13 Q. Okay. So tell me about Elizabeth Lee and the signing? She's a team lead for her group. I don't remember 14 Α. 15 the group that she was in. But she was a head team lead. 16 Q. And she also was taught to sign for Cheryl? Yes. 17 Α. 18 And if you saw Elizabeth's signature on a document Q. 19 for Cheryl, could you tell the difference? Or could you tell the difference with Beth's? 20 21 Α. Uhm --Or you could you only tell the difference that it's 22 Q. 23 not her? 24 Α. I can only identify Cheryl's signature. 25 Q. I'd like you take a look at this before I mark it and

Page 27 ask you if that's Cheryl's signature? 1 2 A. The top one, yes. 3 0. Right there? Yes. 4 Α. 5 MS. CLARKSON: I'll mark it Exhibit 5. 6 (Thereupon, the document was marked as Plaintiff's Exhibit 7 5 for identification.) 8 BY MS. CLARKSON: 9 Take a look at this and I'm going to ask you if Ο. that's a signature of Cheryl Salmons? 10 11 Α. No. 12 How do you know that it's not her signature? 0. 13 Α. Because the C is not shaped correctly. Where is the C? 14 Q. 15 At the beginning of her signature. If you look at Α. 16 Exhibit 4, Cheryl, she forms like a C and it dips down into a 17 loop which then goes like into an L and then converts into an S. 18 Okay. And that's not her signature? Q. 19 Α. No. 20 Do you recognize whose signature that is? Q. 21 No. Α. 22 0. Okay. Had you seen any individuals personally with your own eyes sign Cheryl Salmons' name? 23 24 Α. No. 25 Q. As part of your job did you ever speak with the

public? The people being foreclosed on?

- A. When they called in the office, if I picked up the phone and it was a borrower, yes.
 - Q. Okay. So you had spoken with the borrowers?
 - A. No.

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- Q. Did you ever hear any complaints from the borrowers?
- A. Yes.
- Q. Could you give me an idea of what kind of complaints you heard?
- A. That they had an eviction in 24 hours and that they were notified that they were going to be evicted. And this borrower, in particular, she just got out of the hospital. And she had just had a baby. So I put her on hold and I went to see Cheryl to advise her of the situation because this lady had nowhere to go. And Cheryl instructed me that was not her problem or her issue and to transfer her to Claudia Bunje (phonetic) the re-instatement supervisor.
 - Q. And what would the re-instatement supervisor do?
 - A. I have no idea.
 - Q. What was the Re-Instatement Department doing?
- A. They will sometimes request pay off figures and re-instate the loan.
 - Q. Okay. Do you remember the woman's name?
- 24 **A.** No.
- 25 Q. How long did it take you to learn to sign like Cheryl

Page 29 1 Salmons? 2 A. One day. 3 But you never signed legal documents? Never. 4 Α. 5 Are you familiar with the manner in which Summonses Q. were filled out or Service of Process? 6 7 Α. Can you rephrase that a little bit for me? 8 Q. The Summonses that were attached to different 9 Complaints to be served on the defendants, are you aware of what company was used for servicing those? 10 11 Α. Yes. 12 Could you tell me, please? Q. 13 Α. Provest. 14 And you do you know who owns Provest? Q. 15 A. No. 16 Q. Do you know who has any interest in Provest? 17 Α. Yes. 18 Q. Could you tell me? 19 A. David Stern. 20 Q. How do you know this? 21 Because they work with us in the building. Α. 22 Q. They work -- Provest works with David Stern in the 23 building? 24 Α. Yes. 25 MS. CLARKSON: Do you know if Provest -- Go ahead.

If you have a question?

MS. EDWARDS: Since they worked in the building with you, how is it that you know that David Stern has an interest in Provest?

MS. CLARKSON: Go ahead.

THE WITNESS: Because Provest, at the time, when I was working there, they were on the fourth floor. So they had one side of the building which it was a whole wing that was only set for Provest.

So any file that needed proof of service, if we didn't have the proof of service you would go directly to Provest and request for a copy of proof of service that was given to the borrower.

BY MS. CLARKSON:

- Q. Okay. But that doesn't explain how you know that Mr. Stern had an interest in Provest?
 - A. Well --
 - Q. An ownership interest?
- A. Ownership interest? I'm not aware of that. But that they worked closely with David Stern and that they had perks with David Stern, yes.
 - Q. Explain the perks, please?
- A. Perks were that they were allowed to work in the firm with us as long as they were able to produce as many files for service completed for David.

Page 31 1 Q. Have you ever heard that Affidavits of Proof of 2 Service were created when service actually was not perfected? Correct. 3 A. How did you hear that? 4 Q. In the office. Everyone knew about it. 5 Α. Tell me what everyone knew about? 6 Q. 7 Α. Sometimes the borrower wouldn't be served correctly. It was back dated. 8 9 Anything else? 0. 10 Α. Nope. 11 Have you ever heard of the term sewer service? Q. 12 I've heard of it before. Α. 13 Q. And where did you hear it? 14 In the media. Α. 15 In the media? Q. 16 Α. Yes. 17 You didn't hear about it around David Stern's office Q. 18 or Provest? 19 Α. No. Was it general knowledge or common knowledge around 20 Q. the law firm that David Stern had an ownership interest in 21 Provest? 22 23 I really wouldn't know. I would just know the part of Α. 24 getting the service completed and getting it back dated to have 25 proof to the court that the borrower was served at a certain

time period.

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We have to file our motions and our Complaint and it has to be just by routine, that time period.

- Q. And is that at the direction of Fannie Mae or Freddie Mac or the banks?
 - A. The clients, yes.
- Q. Have you heard about any irregularities in the billing of Provest?
 - A. No.
- Q. Have you heard that Provest would serve or pretend to serve or try to serve four individuals at one property and bill four times, but only have one person actually living in the house?
 - A. Yes.
- Q. Can you tell me about that? And what is it you know about it?
- A. I've known about that part because I've overheard Cheryl numerous times talking to different paralegals where they've serviced three, four times and they've served at the wrong address and Cheryl's instructions was to go ahead and move on with the file. That the Judge wouldn't notice it.
- Q. And the whole point of that was to keep the billing with that file even though it was the wrong address?
- A. Correct.
- 25 Q. And who paid the bill?

- A. I wouldn't know. I'm sorry.
- Q. Okay. Have you ever seen Affidavits of Indebtedness?
 - A. Yes.
 - Q. Do you know what they are?
- A. Yes.

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- Q. Could you explain to me what you believe they are?
- A. We call it more the -- It's the AOI. We get the Judgment figure from the client and it's like an escrow breakdown. Once we get all of the information from the client we prepare the AOI. It's prepared.

Then it's uploaded into a client system so the client can review it to make sure that everything is correct.

If everything is correct then they will sign the document and we will receive it and then from there on we will have to, you know, stamp it, date it, notarize it acknowledging this is the correct AOI so it can be submitted with the Motion for Summary Judgment.

- Q. Do you know what AOI stands for?
- A. Yes.
- 20 Q. Affidavit of Indebtedness?
- 21 **A.** Yes.
 - Q. Okay. Also on this affidavit, would there be a space for expenses to the office, like service of process, complaint filing fee?
 - A. There would be -- Not on the AOI, but it would

1 definitely the Affidavit of --

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- Q. Of attorney's fees?
- A. Of attorney's fees. It would be included; filing fees, attorney's fees and processing fees.
 - Q. What about title company fees?
- A. Sometimes they will be included. Sometimes it will automatically be included with the client. It just depends which client. Certain clients you can charge them \$200.00. Certain client it will be \$325.00. It just depended on which bank.
- Q. And how did you -- How do you know which bank to charge \$300.00 and which bank to charge \$200.00?
- A. There was a spreadsheet that basically tells you, you know, exactly what's the title fee for that bank.
- Q. Are you aware of any of these affidavits, attorney's fees affidavits, being signed prior to the numbers being filled in?
 - A. No.
- MS. EDWARDS: Can I?
- MS. CLARKSON: Yeah. Go ahead.
- 20 BY MS. EDWARDS:
 - Q. When you talked about the Affidavit of Indebtedness that is filled out, I understood you to say that the figures are put in by the law firm and then reviewed by the client. Is that correct?
- 25 A. Correct.

- Q. Okay. Who signs the Affidavit of Indebtedness?
- A. That I wouldn't know. I really know who signs it.
- Q. Is it somebody on the client's end or in Stern's office?
 - A. I really wouldn't know. I know it's uploaded into the client's system and then it's uploaded again for approval to proceed.

So I really wouldn't know who would sign it, exactly.

- Q. Do you ever see the originals?
- A. No.

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- Q. Is that one of the documents that's put on the table for signature?
 - A. I don't recall.
- Q. You describe back dated service of process?
- 15 **A.** Yes.
- 16 \ Q. Who would direct that they should be back dated?
- 17 A. Cheryl Salmons.
 - Q. And did she do that whenever it was done? How did the request get to her?
 - A. The junior paralegal or the team lead would go into Cheryl's office or send her an e-mail to let her know the situation that the defendant wasn't served correctly. And they will have the discussion behind closed doors.
 - Q. And then how do you know the discussion was to back date it?

- A. Because one time I walked into the conversation, accidentally, and I overheard one of the juniors saying that this defendant wasn't served correctly and they were serving it at the wrong address and Cheryl said don't worry, just move on with the file. The Judge is not going to notice.
- Q. Okay. But that's not back dating. When did you hear about somebody saying there was going to be back dating on the service of process?
- A. Back dating -- They were doing the -- which is called the demand letter, which is the service. If I couldn't receive a demand letter and it wasn't in the client's system,

 Vendorscape or New Track, I would have to go with that file to Cheryl and then from there on the document will appear that the client's were served. Even though on my end I was requesting it. The client system couldn't provide it for me. So she will make the document appear that the client's were served.
- Q. So when you would be looking at the same document system that Cheryl Salmons had, you would look in the file.

 There would not be a demand letter that needed to be provided and served on the --
 - A. Defendant.
- Q. -- on the homeowner. And then you would bring it to Cheryl's attention?
 - A. Yes.

Q. And then the document which was necessary to proceed

would magically appear?

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- A. Yes.
- Q. How do you know it was done by Cheryl?
- A. Because I gave her the file and in an hour or two hours she would give it back to me, it was done. Service was already on the file. It was printed out.
 - Q. Oh, it was printed out or was it on the --
 - A. It was printed out and attached to the file.
 - Q. And how could that have happened?
- A. I would not know. I gave her the file. So I really wouldn't know how this document would appear, but it did appear.
- Q. And does it have an original signature or is it only off of the computer?
- A. It's more like a computerized image. There's not a signature. It's just basically Provest serving, you know, the borrower and then it's like an X marked served on such and such a date. So it's like more data entry, than a signature from someone saying yes, I've acknowledged that I received the service.
- Q. Okay. And could Cheryl Salmons make entries into the computer that would result on those types of documents being created?
- A. I wouldn't know.
- Q. Does she have the ability to create documents that would show service of process on the computer?

Page 38 1 Α. I wouldn't know. 2 Q. Could you? 3 No, not me. I didn't have that -- the knowledge or Α. the authorization to make any alterations to any documents. 4 5 So you could see what was on there but you could not Q. change it? 6 7 Α. Exactly. 8 Q. But you don't know if Cheryl could see it and make 9 changes? 10 Α. Correct. 11 So you would give her something and you would receive Q. it back and it would have changes on it? 12 13 Α. Yes. But it doesn't indicate there whether she made the 14 0. 15 changes or someone else? There's no initials or anything like that? 16 No. None. None whatsoever. 17 Α. 18 Are you aware of any other improprieties in the Q. 19 service of process by Provest? 20 Α. No, none. 21 Did you ever hear any other conversations with her or Q. 22 David Stern on how the Provest service of process was being 23 handled? 24 Α. No.

Did she have meetings with David Stern, regularly?

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Q.

A. Yes.

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- Q. And were you ever privy to the meetings?
- A. No.
 - Q. How often did she meet with him?
 - A. Every time the clients were going to come to visit us which were the banks they would have a meeting prior to that and then after the clients leave.
 - Q. And did anything happen in preparation for those meetings?
 - A. They were discussing the files that were going to be viewed and what needs to be done to these files before the clients arrived into the office.
- Q. Was there anything that they did to make it look good to the client that wasn't actually happening?
 - A. Yes.
- Q. What was that?
- A. Changing client code. Changing the client code in the file and hiding them from the client.
- Q. I'm not familiar with that. So could you tell me what you mean when you say changing the client code and hiding them?
- A. If certain files weren't up dated correctly and there was lack of process, they would change the client code in the file by -- if it was Countrywide they would change it into a different client name with a sticker and print it out and then these files were transferred into a room where they would hide

Decl. Exhibit E Pg 41 of 76 Page 40 them and then keep them behind closed doors until the client 1 2 would leave. And which clients would come? 3 Ο. Fannie Mae and Freddie Mac. Α. 4 5 Were those the only ones that came? Q. Α. They were the ones that came the most to the office. 6 7 How often would you say they came? Q. 8 Α. They came within that year, 2008, they came there 9 more than seven or eight times. Seven or eight times while you were there? 10 Q. 11 Α. Yes. 12 And what was the purpose of their trip? 0. 13 Α. Reviewing the files, auditing, questions and concerns about how they're moving their files, what they want from David 14 15 Stern, how to move their files. 16 Did you ever see any documentation or did you ever Q. hear any conversations about what the problems were and what the 17 18 concerns were and how they were resolved? 19 Just on how to push the files into getting MSJ 2.0 hearings granted and to push them to sale date. 21 Okay. So was their main focus on getting the Q. 22 foreclosures to final hearing? 23 Yes. A.

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Do you know why?

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Q.

Α.

No.

- Q. Did you hear conversations about it?
- A. Only through voice mail that David would leave to Cheryl Salmons.
 - Q. Saying what?

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- A. That the files from Freddie Mac and Fannie Mae, they need to pump out as much as they can for the month so they can meet the quota. What was the quota? I really wouldn't know. He didn't specify it. But that the clients weren't happy and that we needed to pick up our files.
 - Q. You mean to pick up the file or pick up the speed?
- 11 A. Pick up the speed.
 - Q. Okay. Was there anybody in particular that had contact with David Stern there when Fannie Mae or Freddie Mac visited?
- 15 A. David Stern had a contact from Freddie Mac that would 16 advise him that they were coming to the office.
 - Q. So they would have notice ahead of time?
 - A. Yes.
- 19 Q. And who was that?
- 20 A. I wouldn't know.
- 21 Q. Are you sure?
- 22 **A.** Yes.
- 23 \ Q. Is there any way you can find out?
- 24 **A.** No.
- 25 Q. So he had somebody in Freddie Mac that called to tell

him they were coming?

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- A. Yes.
- Q. And did they call -- Were they supposed to let him know ahead of time?
- A. To my understanding, this was normal in the office.

 But I don't know if it was nor not. But yes, they would call.
- Q. Would they call and set up an appointment or did they come unexpectedly?
- A. No, they would call and let David Stern know that the following week they would be in the office for three or four days or a week. And David Stern would take care of their expenses of bringing them into the office; hotel, food, rental cars, whatever the client needed.
 - Q. How do you know that?
- A. Because I heard the conversations through his voice mail when he left it for Cheryl. Plus I had to go out and cater for the clients when they came. So I had to purchase the drinks and the food and the catering.
- Q. And then after they left what happened to the files that had been hidden?
- A. They would leave the room and then we would have to change them back again to the right client code.
- Q. And on how many occasions did you do that during the year you were there?
- A. Like five, six, seven times.

		Page 43	
1	Q.	And how many files would you say you changed?	
2	A.	More than five hundred.	
3	Q.	And who else did that other than you?	
4	A.	It was me, Glenn Lewis, Vanessa Rios. And that's it.	
5	Q.	And were they Did they assist you changing those	
6	files?		
7	Α.	Yes.	
8	Q.	Putting on the stickers and moving them?	
9	A.	Yes.	
10	Q.	Did all of you do five hundred together or five	
11	hundred each?		
12	A.	I know I did five hundred. I don't know what they	
13	other two	did. But I know I did five hundred.	
14	Q.	Were they Were you in a room together or were you	
15	all separated?		
16	A.	No separated.	
17	Q.	Okay. So more than five hundred were changed by you	
18	on each occasion?		
19	A.	Yes.	
20	Q.	Who selected the people to do those changes?	
21	A.	Cheryl.	
22	Q.	So she selected the three of you to do that?	
23	A.	Yes.	
24	Q.	And she told you that was the purpose of doing it?	
25	A.	Yes.	

Page 44 1 Q. Was Stern aware of this? 2 Α. I don't know. 3 Because your only contact was with Cheryl? Q. 4 A. Yes. 5 Do you know whether there was a particular person at Q. Provest that was handling it when the service of process was 6 7 back dated? 8 Α. No. 9 Was there any particular person that dealt with David Ο. Stern from Provest or with Cheryl? 10 I wouldn't have that information. 11 Α. What was Mr. Stern's relationship with the people 12 Q. 13 that worked in the office? Can you specify that a little bit? 14 Α. Did he have -- Was he personal friends with anybody 15 Q. 16 that worked in the office, as well as being in the office with them? 17 18 A. Yes. 19 Q. Who was that? 20 David Vargas. Α. 21 Anybody else? Q. 22 A. Claudia Bunje, Miriam Mindietta, Beverly Macoma, 23 Mr. Forester, Elizabeth Lee, Elizabeth Davilla, Vanessa Rios, 24 Glenn Lewis, Jason Bennett. That's all I can remember right 25 now.

- Q. What about Cheryl Salmons?
- A. Yes, with Cheryl Salmons, as well.
- Q. When you say that they were personal friends as well as worked together, could you tell me the extent of that friendship, if you know?
- A. I understand that with Cheryl they basically brought the company from scratch. So they have a very close, tight relationship as friends, more than colleagues.

With David Vargas, he was like -- They called him his protege. He started with the firm as a file clerk and then upgraded into, I think it was, a supervisor position but I'm not -- I can't remember the title.

Q. Uh-huh?

- A. Miriam and Beverly, they were friends because Miriam and Beverly they have part ownership for the firm, as well. They invested.
 - Q. Uh-huh?
- A. And Jason Bennett and Glenn Lewis are very close with Stern in regards like chit-chatting. Jason Bennett will basically update our bible in our company. So David Stern would constantly be talking to Jason if there were any new laws or regulations being changed to have these perks updated in our bible.

And Glenn Lewis, well, they know each other for more than,

I think it's six or seven years. Don't really know the

Page 46 1 relationship with them. But I know that he's very fond of Glenn 2 Lewis. 3 And did these people go out to dinner together? Go on vacations? Anything like that? 4 5 Only Cheryl and David Vargas will go on vacation with David Stern, at certain times. 6 7 Q. And would you say that David Stern was in the office 8 every day? 9 Α. Yes. And he had his own office, I'm assuming? 10 Q. 11 Α. Yes. 12 Did he share it with anyone? Did he have it to Q. 13 himself? No, it was all to himself. 14 Α. And whose offices or whose desk was right around his 15 Q. office? 16 Paula Beacham, which was his assistant. 17 Α. 18 ٥. Is she still? 19 Α. I don't know. 20 Okay? Q. 21 And Cheryl Salmons and my cubicle was right in front Α. of his office. 22 23 Was there ever any conflicts that came up over how 24 the foreclosures were being handled and what was supposed to be 25 done to make things move more quickly?

Page 47

A. The only thing that was an issue in the firm is that if we had service releases for certain files -- When they're service released from one client, which is one bank, into another bank, those files automatically have to be updated within twenty-four hours.

We have to make sure that we're merging all of the information from the previous servicer into the new one so everything can show up in our client system, up to date.

And those files, we need to basically make sure that we did the Complaints correctly. We have to make sure that our MSJ was filed or if it wasn't filed we would have to prepare those and what documents were missing.

So those were one of the majority, when they became a service release, we had to make sure that those were basically taken care of and Fannie Mae and Freddie Mac. Those were top prior for David Stern.

The Freddie Mac and Fannie Mae were number one for his firm.

- Q. And do you know why that was?
- A. Because David Stern had a very close relationship with Freddie Mac and Fannie Mae.
 - Q. How is that?
- A. They will call David Stern and, you know -- I don't know exactly who will call David Stern from Freddie Mac. I would not be in that conversation. But I know that those were

considered his babies. And the reason why I say his babies is because he expressed it numerous times in the firm, that those files cannot be played around with or not taken care of correctly. That those files need to be pushed as any other file but with an extra push to it.

- Q. But these were the same files that were being hidden from them when they came in?
 - A. Yes.

- Q. Well how it would be if they were worked properly that they would be hidden?
- A. Sometimes if we got too many files and they're overlapping each other we pushed those files to the bottom of the pit. And the paralegal just wouldn't have enough time to update all these files. Some paralegals had up to five hundred, up to eight hundred files. A case load just for that one paralegal. So it was kind of hard to keep track of all of your files.

So if you had too many files for one individual, some of them are just going to pass by and you're not going to be able to catch on unless the client comes and questions what's going on with my files. And then that's when we would have to pick up that file from wherever it was hidden and push it and make sure that those files were being worked on right away.

Q. You mentioned before that Cheryl Salmons had a case that was transferred over to the re-instatement section?

A. Yes.

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- Q. Who decided if a foreclosure got moved over to re-instatement?
- A. The client will send a fax saying that the case is going to be re-instated for a loan modification or pay off figures.

Sometimes if the file was being transferred to another firm, we needed to have the pay off figures so we could bill the client before it can get transferred to the other firm.

- Q. Did cases often get transferred away from Stern to other foreclosure firms?
- A. Yes.
 - Q. And what was the reason for that?
- 14 A. I don't know.
- 15 \ Q. And did you hear any conversations about that?
- 16 **A.** No.
 - Q. When they left his firm what firms would they be transferred to?
 - A. Numerous, different -- Ben Azrick (phonetic). I know there was a lot of them from Ben Azrick.
 - Q. To or from?
 - A. No, going to Ben Azrick. Because I would see the fax from Ben Azrick. I used to pick up the fax machine paper from Cheryl's office and I would have to give all of those faxes from Ben Azrick to Claudia Bunje, which she was the supervisor for

the reinstatements. So I can acknowledge Ben Azrick, yes. But I can't remember the other firms that they were being transferred to. But I know for Ben Azrick, yes, because I saw the documents.

- Q. If a property was sold by short sale during the foreclosure, how would the information get to David Stern's office so the foreclosure would be halted?
- A. Sometimes the client will send like an intercom or an e-mail to let them know that this loan is going to be a short sale. But I wouldn't see them all the time. This is just sometimes, occasionally, I would see something like that.
- Q. Was there ever an occasion when a case had been closed by the court, when there a decision made to try to get a summary judgment granted on it even though it had been closed by the court?
 - A. I don't have any record of that.
- Q. Other than Cheryl going around twice a day to sign the documents that she was reading, was there anyone else that did that, as well?
- A. Only Cheryl. And only when Cheryl was of town, that she would go on vacation, there was someone else that would sign on her behalf. Who was it? I really don't know.
 - Q. But they signed Cheryl's name?
 - A. Yes.

Q. And when you said those were the papers that were up on the long table on the four floors, what types of documents

Page 51 1 were those? 2 Α. Motions for Summary Judgment and Assignments of 3 Mortgage. Would there ever be the AOIs? 4 Q. 5 I never saw them. They could have been with the file Α. but I never saw those laying in the front. 6 7 Q. But whatever was on those long tables, nobody was 8 reading? They were just putting their names on them? Yes, they were just putting their names. 9 Α. Yes, there was no one reading them? 10 Q. 11 Yes, there was no reading them. Α. 12 Was there ever a Lost Note Affidavit put up there, do Q. 13 you know? I don't know. 14 Α. And you said that the Lost Note Affidavits would just 15 Q. 16 appear? 17 From Cheryl's office, yes. Α. 18 Q. And was this an original that was signed and 19 notarized? 20 Α. Yes. 21 Q. And what signed by her? 22 Α. Yes. 23 How would she have known whether there was a lost Q. 24 Note? 25 Α. Because I would go into client system, notify the

client that I was unable to get the original doc and that we were still waiting for them and it passed a month -- The time line was a month to review the original docs.

If we didn't receive it in our Original Docs Department, which I would send them an e-mail, then I would let Cheryl know that we need an LNA. I would bring the file. She would stay with the file. And then I would get them back with an LNA and stamp the notary.

- Q. Signed by her?
- A. Yes. And then I was instructed to go the Title

 Department with the file so they could move on with the file.
- Q. So you would request the original Promissory Note?
- 13 **A.** Uh-huh.

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- Q. And if a month went by and it had not been received they then created a Lost Note Affidavit?
- A. Yes.
- Q. Did it mean that the Note was lost or did it mean you just hadn't gotten it?
- A. That the original Note was lost.
- Q. Who would have looked for it?
- 21 A. Cheryl or me.
 - Q. So why would you be sending an e-mail to the client or customer asking for it if the original would be with you or Cheryl?
 - A. I will only request for the original Note, if the

Page 53

file is fresh, that the service demand was completed. Then the next step for me was to request the original Note for the mortgage, for the loan. If I didn't get a reply back from the client saying that they have the Note, that the Note was sent to us. Then I would have to go ahead and give it to Cheryl and then she would have to create the LNA, get the papers signed and notarized for me so that I can bring it to the Title Department.

- Q. Okay. When you got these files to work on had the Complaint already been filed in them?
 - A. Yes.
- Q. So when you received the files they already had a Complaint filed and yet the original Promissory Note and Mortgage was not in the possession of the law firm?
 - A. No.
 - Q. And it was not in the possession of the client?
- A. No.

- 17 Q. Was the client the bank or the servicer?
 - A. The servicer. The servicer will contact the bank.

 It just depended which client's system. If it's New Track, it's the servicer and then the servicer will contact the bank. So it was more like a client system. It was like a third party and they would communicate with the bank and the bank would communicate with the servicer. And then it will be relayed back to us.
 - Q. How did the cases come through for Freddie Mac and

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Fannie Mae?

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- A. They would come through New Track or Vendorscape or Land Star. It just depended on what service they were using at that time, what client system.
- Q. So the first way Stern's office would get the information that they were being retained to handle the foreclosure was over this system?
 - A. Yes.
- Q. Was there any contract in place with Stern's office and the firms that hired them?
 - A. I wouldn't know that information.
 - Q. Did you ever see the contracts?
- A. I never saw that.
 - Q. Now you said that part of Cheryl's job in the office was to train other people?
 - A. Yes.
 - Q. And what did she train them to do?
- 18 A. Preparing motions and defaults.
 - Q. How would she train people to prepare motions and defaults when she wasn't a lawyer?
 - A. She had team leads that trained the new coming employees at junior paralegals. So she had her selected team leads that would go ahead and train these people in a special room and they would be training there for a month and a half to two months and a half preparing motions and defaults.

Page 55 1 Q. Did they do Motions for Summary Judgment? 2 Α. Yes. 3 Did any lawyers prepare any motions? Q. Not to my knowledge. 4 Α. So everything they did was done by the paralegals? 5 Q. 6 Α. Yes. 7 Q. Was it reviewed by lawyers? 8 Α. Yes. 9 Was it signed by lawyers? Ο. 10 Yes. A. 11 Were there ever changes made on any of the motions Q. 12 prepared by the paralegals? 13 Α. If there were some errors in the mailing address or errors in the verbiage, yes. 14 At what point after you received the file was the 15 0. 16 original Note and Mortgage requested by you? I would always request the original Note once I had 17 Α. 18 my demand letter service completed. If I received from the file 19 room then it was good to go and I would take it to the fifth floor where title was and I would give it to Stephanie Carrabayo 20 21 or I would give it to -- I mean, not Stephanie Carrabayo, Stephanie Izquierda or Carol Whitlow and Carol Whitlow was the 22 23 manager for title. 24 Okay. Now you said if you received the original Note 25 and Mortgage from the file room?

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Q.

Α.

Yes?

Decl. Exhibit E Pg 57 of 76 Page 56 Yes. The file clerk would bring it to me. I would send an e-mail to the Doc Department requesting that I needed the original docs for this file. Did they hold original docs there? Q. Yes, if they had them. Yes. Α. How would they get original docs if they hadn't been 0. aware that there was going to be a foreclosure? Α. I don't know. Did they create documents there? Ο. I don't know. Α. When the documents went to the Title Department what Q. happened then? Α. I wouldn't be able to tell you. Once --It was out of your hands? Q. Yes, it's out of my hands. Once it leaves my hands, that I requested the demand, the original Note, then it's off my hands. You described a little bit about the rapid docket Q. where two to five hundred cases were handled and that Salmons arranged to have that many cases moving there? Α. Yes. 0. Do you know who created the rapid docket? Honestly? Α.

Page 57

Which court? It just depended which court was approved for rapid docket and which Judge was allowing five minutes hearings.

Once we had the okay from that Judge in that County, then all of these files would start being prepared with the Motions for Default so we could get the hearing.

- Q. Did you hear any conversations or were you privy to anything about who's idea it was to start the rapid docket?
 - A. No.
- Q. Do you know if there were meetings with David Stern and anyone in the judicial system to get approval for the rapid docket?
- A. No.
 - Q. What about Cheryl Salmons?
- 14 **A.** No.

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- 15 Q. How did you first find out about the rapid docket?
 - A. Jason Bennett sent an e-mail out to the -- to all employees to let them know that certain counties were, at that time, allowing rapid docket five minute hearings and just to make sure to get those files moving the quickest.
 - Q. So who was responsible for getting that many files moving?
 - A. The paralegals and the juniors getting all of the motions prepared before hearing.
- 24 BY MS. CLARKSON:
- Q. When you call it the rapid docket, do you mean rocket

Page 58 1 docket? 2 Α. It's the same thing. But they call it the rapid docket. 3 Okay. When you left the Law Office of David Stern, 4 Q. 5 did you leave on your own or were you fired? Α. No, I left. 6 7 Q. You left on your own? 8 Α. Yes, I left. I gave three weeks notice. Why is that you wanted to leave there? 9 0. 10 It was just -- I was getting very sick, very ill. Α. So 11 I just didn't want to stay with the firm any more. 12 Physically ill? Q. 13 Α. Yes. 14 Did you take anything when you left? Q. 15 Like what exactly? Α. 16 Q. Any documents, e-mails? 17 No, none. Α. 18 Q. Nothing? 19 Α. No, just my resignation letter and the letter from H.R. 20 Were you aware of any other improprieties going on or 21 Q. what you considered to be improprieties that caused you concerns 22 23 at the Law Office of David Stern? 24 Α. Like? 25 Q. Anything?

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1 Α. Can you just name me like a subject, so at least I 2 know exactly what direction? 3 Q. Anything that --4 Α. Is it like personal or business or --5 Personal? Business? Anything at all? Q. 6 Personal? The only thing that I was aware of that Α. 7 took place there were the perks that certain employees received 8 from David Stern. If they were either dating him or they were good friends with him, that they would basically do certain 9 things for him for certain files, in the sense of like David 10 11 Vargas. He would have certain perks from David Stern, like a 12 house, a car, cell phone paid all by David Stern. 13 And that's all I know. Okay. So do you know of any other perks besides what 14 15 you said that Cheryl Salmons got? A car you said, for sure. 16 And her personal bills paid. Yes. And cell phone. 17 Α. 18 And probably her mortgage? Q. 19 Α. Yes. And vacations and gifts, jewelry. 20 Who else would received gifts and jewelry or cars or Q. 21 homes? 22 Α. His girlfriend and David Vargas. 23 Who's his girlfriend? Q. 24 Α. At the time it was Christina Dell'Aguila 25 Q. Could you spell that, the best you can?

Page 60

- A. D-e-l-l, apostrophe, A-q-u-i-l-a.
- Q. And what was her position in the firm?
- A. She was just a paralegal, a junior paralegal.
 - Q. A junior paralegal?
- A. Yes.

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BY MS. EDWARDS:

- Q. When you said that things were being done for files, for specific files, what did you mean by that?
- A. I know and I was aware of David Vargas. He had control over certain client systems that I had no control over; Lend Star. And there he would -- How can I explain to you? He would like fabricate certain documents and upload it into the client's system like back dating them.
 - Q. How do you know that?
- A. Because I was privileged to that information because one of the girls that worked with him gave me that information that he was changing documents for David Stern. What type of documents? She never specified. But that he was changing these documents in Lend Star.
- Q. Okay. I'm a little confused. He was doing it for David Stern?
- A. Yes, on certain files. But she didn't know exactly what documents were being changed.
- Q. What is her name?
- 25 **A.** It was Gianna Rodriguez.

	<u> </u>	Door. Exhibit E in giozofino
		Page 61
1	Q.	Is that G-i-a-n-n-a?
2	A.	Yes.
3	Q.	And does she still work there, as far as you know?
4	A.	No, she was fired.
5	Q.	Why was she fired?
6	A.	I have no idea.
7	Q.	Was there anything she was doing wrong that you know
8	of?	
9	A.	Not to my knowledge.
10	Q.	Do you know where she lives?
11	Α.	No.
12	Q.	How long did she work for David Vargas?
13	A.	I can't remember.
14	Q.	As long as you were there?
15	A.	Yes.
16	Q.	Did he fire her?
17	A.	Cheryl Salmons fired Gianna.
18	Q.	But you don't know why?
19	A.	No.
20	Q.	And Cheryl never said anything to you?
21	Α.	No. No.
22	Q.	Do you know anybody else that Cheryl fired while you
23	were there	?
24	Α.	She fired a lot of people. It just depended.
25	Q.	Did she have authority to hire and fire?

Page 62 1 Α. Yes. 2 Q. Any lawyers? 3 The lawyers, they would be fired by Beverly and Α. 4 Miriam. 5 Q. Why would they fire lawyers? They don't give that information out. 6 Α. 7 Q. But they did fire them? 8 Α. Yes, they would. 9 Did they hire them? Ο. 10 Α. Yes. 11 And did they do that with David Stern's approval or Q. 12 did he give them authority or how did that work? 13 Α. With David's approval. Did he know before or after it happened? 14 Q. He knew it before, before they got fired. 15 Α. 16 How do you know that? Q. Because Beverly or Miriam, both of them would go into 17 Α. 18 David's office before an attorney would be fired behind closed 19 doors and then you know that they were being terminated. 20 Did you ever hear Mr. Stern or did you hear about Q. 21 Mr. Stern expressing any concern about the investigation of these foreclosure mills? 22 23 Not to my knowledge when I worked there, no. Never. Α. 24 Q. And did you ever hear any conversations of Cheryl's 25 about the problems going on with the foreclosures?

Page 63 1 No, not when I worked there. No. A. 2 Q. Since then did you hear anything from them? From the office? 3 Α. Or from anyone that you know that was there at the 4 Q. 5 office? 6 From friends that I still have there, yes. Α. 7 they're very worried, yes. 8 Q. You have friends that still work at the office? 9 Α. Yes. Doing what? 10 Q. Foreclosure paralegals, docket return clerks. 11 A. 12 0. And what are they telling you? 13 Α. That they're very scared. That's it. 14 Q. That your friends are scared? 15 Yeah, that my friends are scared. Α. 16 Did they say anything about what's going on with Q. 17 Stern or Cheryl Salmons or anybody else? 18 The only concern was that they were moving files out Α. 19 of the office into a different office and that Eighteen Inch 20 Freight, I think, was picking them up. Something like that. 21 Trailer freight, something like that. 22 Ο. Do you know where --23 MS. CLARKSON: Eighteen wheeler? 24 THE WITNESS: Yeah, eighteen wheeler. 25 BY MS. EDWARDS:

Page 64 1 Q. Do you know where they were moving them? 2 Α. Supposedly they were being moved to Orlando's office. 3 And do you know why they would do that? Q. No. 4 Α. Do you know how long ago this was going on? 5 Q. I think a month and a half ago. 6 A. What kind of office is Orlando? 7 Q. 8 Α. David Stern has another law office in Orlando, Florida. 9 What office is that? 10 Q. Α. I don't know. 11 And was it connected with the office here in Broward 12 Q. 13 County? 14 Α. Yes. And do you know which -- what the office is there or 15 Q. what the location is? 16 No, I just know it's another law office for David 17 Α. 18 Stern that he's opened for foreclosures in Orlando. 19 And did he just open it a month and a half ago? 20 No. He opened it, I think it was either sometime at Α. 21 the beginning of this year or the end of last year. I can't 22 remember. 23 2010? Q. 24 Α. Yeah. 25 Q. Or December 2009?

Decl. Exhibit E Pg 66 of 76 Page 65 1 Α. It could be around that time. I just can't remember. 2 Q. Well do you know if these files were being moved out 3 over concern of the investigation? Oh, I don't know. 4 Α. 5 Or just because they were moving files? Q. 6 They were just moving a particular bunch of files to 7 that office to be reviewed. That's what -- You know, my friend 8 expressed that they were going to be reviewing them over there. 9 And do you know what files, what group of files it 10 was? I don't know. 11 Α. No. Do you know who was going to be reviewing it? 12 0. 13 A. No. And did the eighteen wheeler come and pick them up 14 Q. 15 during the day time, do you know? 16 Α. Yes. 17 But you don't know when it was? Q. 18 Α. Exactly. No. 19 Other than that did you hear -- Did your 20 acquaintances say anything else about what's been going on there in the last six months? 21 22 Α. No. 23 MS. EDWARDS: Okay. I don't have anything else.

I'd just like to know if you recall the name of any

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BY MS. CLARKSON:

Q.

Page 66 lawyers that were fired? 1 2 Α. I can't remember. There were so many of them. I just can't remember of all of them. And I'm not good with their last 3 names. 4 5 But if you do recall will you let me know, if you get Q. 6 a chance? 7 Α. Sure. 8 MS. CLARKSON: Okay. You have my card? 9 THE WITNESS: Yes. MS. CLARKSON: Okay. 10 MS. EDWARDS: I don't think we have any other 11 12 questions. Do they have anything? 13 MS. CLARKSON: Doug are you there? MR. LYONS: Yes. I just had you on mute. So that was 14 15 the clicking that you heard. 16 MS. CLARKSON: Yeah, we knew that. We're done. Does she want to waive or read? 17 18 MR. LYONS: No, let her read. That way we can make 19 sure that everything is accurate. 2.0 (Thereupon, the deposition was concluded.) 21 22 23 24 25

Page 67 1 CERTIFICATE 2 3 THE STATE OF FLORIDA) COUNTY OF BROWARD) 4 5 I, MARITZA MONROE, a Court Reporter, do hereby 6 7 certify that I was authorized to and did report the deposition 8 of KELLY SCOTT, a witness called in the above-styled cause, that 9 the witness was first duly sworn by me; that a review of the 10 transcript was requested; and that the transcript is a true and 11 complete record of my notes. 12 I further certify that I am not an attorney or 13 counsel for any of the parties, nor related to any of the parties, nor financially interested in the action. 14 15 Dated this 13th day of October, 2010 16 17 (contro Charces 18 MARITZA MONROE 19 COURT REPORTER 20 21 22 2.3 24 25 NBR/IMG

12-12020-mg Doc 8531-20 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit E Pg 69 of 76

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Under pen	alties of perjury,	I declare that	I have read my
depositio	n and that it is t	rue and correct	subject to any
changes i	n form or substanc	ce entered here.	
D	ate	KELLY	SCOTT

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EXHIBIT F TO THE DECLARATION OF JOHN W. SMITH T

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STATE OF FLORIDA OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF LEGAL AFFAIRS AG # L10-3-1145 IN RE: INVESTIGATION OF LAW OFFICES OF DAVID J. STERN, P.A. DEPOSITION OF TAMMIE LOU KAPUSTA 12:11 p.m. - 1:58 p.m. September 22, 2010 Office of the Attorney General 110 Southeast 6th Street, 10th Floor Fort Lauderdale, Florida 33301 Reported By: Kalandra Smith Notary Public, State of Florida Apex Reporting Group Phone - 954.467.8204

APEX REPORTING GROUP

Page 2 APPEARANCES: ON BEHALF OF THE STATE: JUNE M. CLARKSON, ASSISTANT ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL 110 Southeast 6th Street, 9th Floor Fort Lauderdale, Florida 33301 THERESA B. EDWARDS, ASSISTANT ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL 110 Southeast 6th Street, 9th Floor Fort Lauderdale, Florida 33301 MARK R. BRIESMEISTER, FINANCIAL INVESTIGATOR OFFICE OF THE ATTORNEY GENERAL 110 Southeast 6th Street, 9th Floor Fort Lauderdale, Florida 33301 10 ON BEHALF OF MS. KAPUSTA: DOUG LYONS, ESQUIRE (TELEPHONIC) 12 LYONS & FARRAR 325 North Calhoun Street 13 Tallahassee, Florida 32301 MARSHA LYONS, ESQUIRE (TELEPHONIC) 14 LYONS & FARRAR 325 North Calhoun Street 15 Tallahassee, Florida 32301 16 HAROLD REGAN, ESQUIRE (TELEPHONIC) 17 241 John Knox Road, Suite 100 Tallahassee, Florida 32303 18 INDEX 19 Direct Redirect 20 Name Cross Recross 21 Ms. Kapusta 22 EXHIBITS 24 Page Copy of subpoena

	Page 3
1	PROCEEDINGS
2	
3	Deposition taken before Kalandra Smith, Court
4	Reporter and Notary Public in and for the State of
5	Florida at Large, in the above cause.
6	
7	THEREUPON:
8	TAMMIE LOU KAPUSTA
9	having been first duly sworn or affirmed, was examined
10	and testified as follows:
11	DIRECT EXAMINATION
12	BY MS. CLARKSON:
13	Q State your name for the record, please.
14	A Tammie Kapusta.
15	Q I'd like you to take a look at this.
16	MS. CLARKSON: I'm handing the witness a copy
17	of the subpoena.
18	BY MS. CLARKSON:
19	${f Q}$ Is that a copy of the subpoena that you
20	received and are you here today due to that?
21	A Yes.
22	MS. CLARKSON: I'd like to mark this as A.
23	BY MS. CLARKSON:
24	Q Have you ever had your statement taken before,
25	deposition or a sworn statement?

```
Page 4
         А
2
              You just need to answer the questions verbally
    so that the court reporter can take them down. If you
3
    need to use the restroom or want some water just let me
    know. If you don't understand a question ask me to
    repeat it and I'll do the best I can so that you can
    understand the question. I'm not going to ask you to
    guess. Just answer it if you know.
              Okay.
10
              What is your employment background for the
11
12
             I'm a paralegal.
13
              Where did you get your education at?
14
              You worked for David Stern; is that correct?
15
16
              That's correct.
              You no longer work for him?
17
18
         A
              When did you start working for him?
19
         Q
               '08.
20
         А
21
              1082
22
              May, March of '08.
23
         0
              Through when?
               July of '09.
25
               What were your job titles at David Stern?
```

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I was the senior paralegal. What were your duties there at the firm? T was responsible for my team from initiation to sale. 5 ٥ What team? A I had Aurora Loan Services, Fannie Mae, Freddie Mac, broken down into alphabetical --O Aurora, Freddie, and --TCFM, which is Citibank and any client A 10 through L. 11 O That was a lot of clients. 12 A I had twelve thousand files. o How many were on your team? 13 14 Twelve girls. All paralegals? 15 Q A Juniors is what they were. 16 17 Q What were your duties? A I was responsible for everything for the file 18 from beginning of initiation to --19 20 e Explain to me what you did with the file. 21 Just walk me through a file from start to finish. 22 A When we would get the files they would be 23 checked in by Cheryl Samons and her crew. Then they would come to us and we would have to file the motion 24 for summary judgement, all the affidavits required to

APEX REPORTING GROUP

file that, any contested issues I handed on the files, all assignments of mortgages, anything pertaining to the file itself to make sure that it was done in the correct Were lis pendens filed in the cases? A Yes. Those were filed in a different department. Who prepared those lis pendens, do you know? A At the time when I was there it was what they called a casesum department. There was a manager for 11 that department also. o What department? 12 A They call it casesum. O Casesum? 14 15 A Yeah. Caseum is where it starts basically. MS. LYONS: I'm sorry. What was that word? 16 THE WITNESS: It's casesum. C-A-S-E-S-U-M. 17 It's their computer system. Basically someone 18 plugs in all the information given to them by the 19 20 banks or the referral source. MR. REGAN: Can I get that spelling again, 21 22 please. 23 THE WITNESS: C-A-S-E-S-U-M. MR. REGAN: C as in cat? 24 25 THE WITNESS: Yes.

```
Page 7
              MR. REGAN: C-A-S-E-U-M?
1
2
              THE WITNESS: S-U-M. Casesum.
              MR. REGAN: Okay. C-A-S-U-M. Okay. Go
         ahead.
    BY MS. CLARKSON:
         Q So, somebody in the casesum department would
    take care of the lis pendens?
         A Correct. They would take the referral and it
    would start with all the information, the borrower.
    Everything is plugged into a system which is in the
10
    casesum department, which created all of our documents
11
    thereafter.
12
13
         {f Q} Okay. So the documents were created in the
    Law Officers of David Stern?
14
         A Correct.
15
             Were any documents created outside that came
16
    in for your signatures or came in completed?
1.7
18
         A Like?
1.9
         O Affidavits from the lenders?
         A Not usually. We prepared most of the
20
    affidavits.
21
         Q And then you sent them out for signature?
22
         A Some of them. Most of them were signed
23
24
    in-house.
         Q In-house by whom?
25
```

```
Page 8
         A Cheryl Samons.
              How would she have authority to sign for a
2
    lender?
3
         A According to what we were aware of she had
    power of attorney to do that.
         Q Did you ever see the power of attorney?
             How many companies or lenders did she have
    power of attorney for that you could guess or know?
1.0
         A good guess would be approximately fifteen or
    mavbe more.
11
12
            So, she signed as attorney in fact or power of
    attorney?
13
14
            Correct.
         {f Q} Was she ever assistant secretary to any of the
15
16
         A Some of them stated that also. It would
17
18
    depend on I guess the bank that we were dealing with.
19
         O So she would be assistant secretary to some
20
    and attorney in fact for the others?
21
         A Correct.
         o Did you have a supervisor?
22
             Who was that?
24
25
            Cheryl Samons was my director. I took over
```

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		Page 9
1	her posit	tion at the company when she became COO. We all
2	reported	to her.
3	٥	Was she a lawyer?
4	A	No.
5	ō	Was she a paralegal?
6	A	I guess that's what you would call her. We
7	were unde	er the impression.
8	Q	When you say "we" who is that?
9	A	The staff.
10	Q	Speaking of the staff how many staff were
11	there?	
12	A	When I started with the company there was
13	approxima	tely two hundred and twenty-five. When I left
14	the compa	ny there was over eleven hundred.
15	Q	Is that including attorneys?
16	A	It would be a good guess to put them in there,
17	yes. Tha	t was just in our building though.
18	Q	You had another building?
19	A	Well, there was working being done offshore.
20	Q	I want to talk about that too. Is that where
21	documents	were prepared?
22	A	They were preparing the casesums offshore,
23	yes.	
24	Q	Where offshore, do you know?
25	A	I believe it was Guam and I don't remember the

APEX REPORTING GROUP

Page 10 other one. Q Somewhere in the Philippines? A The Philippines is where it was, yes. Q How do you know that documents were being prepared offshore in Guam and the Philippines? A Because we had several conversations about it in the firm. Q Generally? A Yes. With Mr. Stern? 10 A With Cheryl Samons. 11 12 Q Okay. What were you told about these 13 companies that were offshore? A That they were preparing our casesums while we 14 15 were sleeping. Q Did they prepare anything else? 16 17 A Not that I'm aware of. Q Did they provide documents? A Not that I'm aware of. 19 20 Q So if they were preparing the casesums what 21 exactly were they doing? A They were inputting the information to create 22 23 the documents. Casesum takes the referral from the 24 lender and creates a document in David Stern's office with all of the information that the lender provided.

	Page 11
1	In other words, like the UPBs.
2	Q UPB?
3	A Unpaid principal balance. The lender's
4	information, last known address, and stuff like that
5	that the bank would have on file for that.
6	Q Instead of having to do it here in his office
7	they would do it in Guam or the Philippines?
8	A Correct. Because our office was not putting
9	out enough work.
10	Q Okay. Do you know what the name of these
11	companies were?
12	A No, I do not.
13	Q Do you know if they were owned by David Stern
14	or just hired by David stern?
15	A I don't know.
16	$oldsymbol{Q}$ Do you know when approximately the offshore
17	casesums were begun?
18	A It would be so hard for me to say correctly
19	without looking back on my life at that time there. It
20	was probably when we moved in the new building, which is
21	the building now located off of Pine Island, the 900.
22	Q 900?
23	A Yeah. Maybe six months after we moved in
24	there.
25	Q When did you move in there?

		Page 12
1	A	I want to say July or August.
2	Q	Of what?
3	A	Of '08.
4	Q	So towards the end of '08, beginning of '09 is
5	when you	started hearing about the Guan and the
6	Philippin	nes companies?
7	A	Yes.
8	Q	Did you use process servers?
9	A	Yes.
10	Q	Did you have process servers in-house or were
11	they hire	d out?
12	A	They were hired out.
13	Q	Do you know what company you used?
14	A	G&Z and ProVest.
15	Q	GNZ?
16	A	G and like the little
17	Q	Ampersand?
18	A	Yeah.
19	Q	G&Z?
20	A	Correct.
21	Q	And what else?
22	A	ProVest.
23	Q	Did you have any ProVest or G&Z employees at
24	the Offic	es of David Stern?
25	A	I believe they were there but since we

1 occupied so many floors and there were so many people there there's a lot of things that a lot of us didn't 3 know It was more or less what was being said. I believe now they occupy an entire floor of David Stern's Q ProVest? Yes. 10 It's ProVest? 0 11 12 Q Are they hired by David Stern? Are they paid 13 by David Stern or are they paid by ProVest? I'm trying to find out whose employees they are if you know. 14 15 Q Are they not using G&Z anymore to the best of 16 17 your knowledge? A No, I believe they still are. 18 19 g So both? 20 Did you ever hear of any problems with service 21 22 of process, any complaints? A Those were daily phone calls. O Could you tell me about them. 24 25 People were not served.

APEX REPORTING GROUP

Page 15 you're saying? 1 2 A Correct. Q Did you have times when service was attempted numerous times or on people that did not live at the property? One property might have two owners; a husband and a wife. A Correct. O But then the law firm would send out a 10 subpoena for tenants A, B, C, D, E, F, G and get ten service 11 fees for only two people? 12 13 A Oh yeah. That was done regularly. Q Was that done intentionally to build up the 14 15 service fees? A I would assume so. If you're serving the 16 defendant at the property you can't serve Jane and John 17 Doe if you've already served the defendant there, 18 20 o If you say so. So they would send out 21 multiple services? 22 A Correct. There was always a Jane and John Doe. Sometimes there would be a spouse, unknown spouse, 23 spouse, unknown spouse. In other words, if it was Mary Jane it would be the unknown spouse of Mary Jane. Then 25

Page 14 1 O How did they know they weren't served? Well, some of them would go to do modifications on loans or go to take out other things and it would come up that they were in foreclosure and they would end up finding out that way that they was no actual service on them. I had tenants that were served saying that they were the property owners and they weren't the property owners. Service was a complete 10 Q At whose direction was service perfected? Cheryl Samons. 11 Q Did Cheryl Samons to the best of your 12 knowledge tell the process servers just to serve 14 anvbodv? 15 A I don't know that she told them that but when 16 we would get the phone calls it would be what she would call a business decision on whether the service was 17 completed or not. We were directed to do whatever she 19 Q Didn't the process server deliver a return of 20 21 service? 22 23 Q And would they say that it was served? 24 25 And oftentimes they weren't? Is that what

	Page 16
1	if it was James it would be the unknown spouse of James.
2	They changed it periodically on how they did it.
3	Q They'd also add tenants?
4	A Correct. There was a fee for everyone.
5	Q Do you know what the fees were?
6	A I believe it was forty-five dollars for
7	service at one attempt. Obviously two attempts was the
8	ninety dollars. Anything out of state was a hundred and
9	eighty dollars. It was out-of-state notices of action.
10	They did skip tracing. They charged an additional I
11	believe that was eighty.
12	Q Did they do the skip tracing?
13	${f A}$ I can't guarantee that. They said they did
14	it.
15	Q Who was billed the forty-five dollars? Let's
16	just say it was the one service. Who was billed?
17	A It goes back to the borrowers.
18	Q Eventually?
19	A Well, it goes into your Affidavit A's and it's
20	part of your service.
21	$oldsymbol{Q}$ Right. Okay. Before that. Because the
22	homeowner or the borrower or the defaulted one might not
23	pay so the process server has to get paid. Who pays
24	them?
25	A I would imagine it comes from the banks where

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Page 17 1 it's being billed to. 2 Q It's being billed to the banks? 3 Correct. It's not being billed to David Stern? A Well, David Stern pays the bills but in return 6 I would imagine he's getting paid by the banks from what we know. I don't know that for sure. 8 Q Do you ever have any reason to believe that if 9 the process server served one forty-five dollar bill 10 that it went into the affidavit as two or three? A I'm not sure I understand. 11 12 If the affidavits that were filled out by Law 13 Offices of David Stern reflected the actual bill that 14 was billed or did they bill the homeowner more? 15 A There was always a fee for the Jane and John Does in the bill. The bills always consisted of the 16 17 defendant, an unknown spouse of the defendant if there 18 wasn't a spouse, and always a Jane and John Doe. 19 Q So they were always billed for four of five? 20 21 Q So the bill came in to David Stern for four of 22 five? 23 24 Q Now, that bill was probably paid by David from 25 the bank's money or whatever?

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2 Now, this four of five is going to go on an affidavit of indebtedness? O Was it always just four of five? What I'm trying to ask you is was the bill ever inflated for the homeowner? 8 A I would say it was inflated if they are charging for a Jane and John Doe. Did we change what the actual bill said? 10 Q Yes. 11 12 No, we didn't. Not that I'm aware of on my 13 team. 14 Q Okay. About what percentage would you say of 15 the people that were served actually got service? A It became such a nuisance for me that I 16 actually would tell the people that claimed -- they were 17 serving people with the same names and they would call 18 19 and say I'm not this person. So to protect, you know, I basically said you need to send a letter to the firm because it became such a nuisance. Those were most of 21 my calls during a day. Any given day I'd probably have 23 a hundred different calls and most of it was service. 24 Q So fifty percent of the people? 25 A Yeah, that's a good guess.

Page 18

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		Page 19
1	Q	Let's go to the assignments of mortgage. They
2	were pre	pared in-house?
3	A	Yeah.
4	Q	You're smiling. You want to tell me about
5	them?	
6	А	Assignments were done sometimes after the
7	final jud	dgement was entered.
8	Q	Do you know why that is?
9	A	Because that's what we were directed to do by
10	Cheryl.	
11	Q	So the lis pendens is filed and you don't have
12	an assigr	nment in some cases?
13	A	Correct.
14	Q	When there was an assignment was it usually to
15	the plair	ntiff or could it have been to someone else
16	other tha	n the plaintiff?
17	A	Someone else other.
18	Q	Other than the plaintiff?
19	A	Yeah.
20	ō	Other than the plaintiff institution that was
21	actually	in the lawsuit and got the final judgement then
22	there wou	ald be an assignment to lender somebody else?
23	A	Well the lenders switched a lot in David's
24	firm.	
25	Q	Meaning?

Page 20 A Meaning that a lot of the times they were 2 changing. Say Aurora had the file. They transferred it over to TCFM. Why would they do that, do you know? A I'm not aware of that, no. O You're not aware --A I do not know why they did that. 8 You're aware of it happening? Oh yes. 10 Q You're not aware of why? 11 Q Would the change the plaintiff in the lawsuit 12 13 or would they just leave it alone? 14 A No. A lot of times we never did the 15 substitution of plaintiff. Until almost to the time 16 that I was leaving there is when things started to get ugly for them for the assignments. We were starting to have to do substitutions of plaintiff. If Nation Star 18 had the file and they turned it over to Citibank we were 19 20 foreclosing in Nation Star and not Citibank and we would 21 need to do a substitution of plaintiff for that. 22 Q Right. Would those be ex parte for the most 23 part? 24 Yeah. 25 They wouldn't dismiss the lawsuit and start

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		Page 2
1	over?	Lugo L.
2	A	No.
3	Q	They just substituted?
4	A	Yeah.
5	Q	They made it a practice to give the defendant
6	notice?	
7	A	I mean we would mail them to the defendant.
8	Q	The notice of substitution of party?
9	A	Yes.
10	Q	Would you file an assignment at that time?
11	A	Sometimes. Sometimes they were already filed.
12	Sometimes	we would have to change it. It depended on
13	the file.	It depended on how long it had been with the
14	firm. The	ose were business decisions that Cheryl made on
15	a regular	basis.
16	Q	Do you know what her business decisions were
17	based on?	
18	A	Nope. Nobody questioned that.
19	Q	Can you tell me the execution of the
20	assignment	ts, how it worked?
21	A	Assignments were prepared again from the
22	casesum.	All of our stuff comes from the casesum. They
23	would be s	stamped and signed by a notary or not. Per
24	floor we h	and a designated spot to place them and Cheryl
25	would come	e once a day and sign them.

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Page 22 1 0 Sign them as what? As --For the bank? Correct. Or for MERS or whoever it was for? Correct. Would these notaries be there watching her as she signed? A 10 She would just sit there and sign stacks of 11 12 Correct. As far as notaries go in the firm I don't think any notary actually used their own notary 14 stamp. The team used them. 15 There were just stamps around? 16 17 Q And you actually saw that? A I was part of that. Q You did it? Are you a notary? 19 20 A No, I'm not Did you sign as a witness? 22 I did not. I signed as a witness on one 23 document and after that I decided that I didn't want to 24 put my name as a witness anymore. 25 Q Tell me about the stamps. You stamped them?

	Page 23
1	A Yeah, I had stamps. Each team had a notary on
2	them or notaries that I was aware of. Whether they were
3	or weren't wasn't
4	Q You had stamps?
5	A Correct. We would stamp them and they would
6	get signed.
7	Q Stamp them in blanks?
8	A Yes.
9	Q Who would sign them?
10	A Other people on the team that could sign the
11	signature of the person or just a check on there or
12	whatever.
13	Q Was that common practice?
14	A Yes.
15	Q Was that standard practice?
16	A Pretty much.
17	Q What about the witnesses?
18	A Those would be signed by juniors who were
19	Q Standing there?
20	A Here, sign this. It has to go to Cheryl, sign
21	it. Then it would go and sit at the desk where Cheryl
22	would sign everything.
23	Q Out of view of the notary and out of view of
24	the witnesses?
25	A Correct.

```
Page 24
          Q Do you know who implemented this procedure?
 2
              Cheryl.
              Cheryl did?
 3
              Um-hum.
 5
              Did anybody else sign with the firm for the
 6
     banks?
 8
             Who was that?
         0
 9
             There were people that were responsible for
10
    signing Cheryl's name. Cheryl, Tammie Sweat, and Beth
11
    Cerni. Those were the only three people that could sign
12
    Cheryl's name. If you ever look at assignments you'll
13
     see that they are not all the same.
              MS. EDWARDS: What are the names again?
14
         Cheryl, Tammie?
              THE WITNESS: Tammie Sweat and Beth Cerni.
16
17
              MS. EDWARDS: Could you spell that.
              MS. CLARKSON: C-E-R-N-I.
18
    BY MS. CLARKSON:
19
20
         Q Did they practice Cheryl's signature?
21
         A I would assume so.
22
             Did you ever see them?
23
              Not practicing but I've seen them sign it.
24
              Did vou see somebody sign Chervl's name?
25
```

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		Page 25
1	Q	That wasn't Cheryl?
2	A	Yes. All the time.
3	Q	Did Cheryl know about this?
4	A	Yes.
5	Q	Was it at her direction?
6	A	Yes.
7	Q	What was her position with the firm?
8	A	When I started she was David's paralegal and
9	had the t	eam that I had. When we transferred into the
10	new build	ing she became this COO of the company.
11	Q	Was that going on when you transferred
12	buildings	and when she was the COO?
13	A	She was always the COO. She just never had
14	the title	•
15	٥	But now she has the title?
16	A	Correct.
17	Q	Did the practice still continue?
18	A	Oh yes.
19	Q	With the signatures?
20	A	Correct.
21	Q	So even though she became the COO her job
22	descripti	on didn't change?
23	A	No.
24	Q	She continued to pretty much run the office?
25	A	Oh yes.

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Page 26 Was David Stern aware of this as far as you 3 Yes. How do you know that he was? What makes you think that he was aware of this? A Because Cheryl and David had daily meetings. David knew the practice that was going on. David's office happened to be right outside -- I sat right in front of David's office. I'm well aware of what 10 transpired. Cheryl's office was here. Around the 1.1 corner was David's office. Everything was in the loop. He was well aware of what was going on. I mean, you could hear the screaming conversations. Nothing was 13 really a secret on the fourth floor because that's where 14 15 Chervl is. 16 Who was screaming at who? 17 A They were screaming at each other. Q They were screaming at each other? 18 A Yes. 19 Do you know over what? 20 Files not moving fast enough. Just stuff like 21 22 that. 23 O Business stuff? 24 Correct. 25 Do you know when these assignments were

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Page 27
    executed if Chervl one, two, or three ever read them?
1
2
         A No, they were never read.
         Q They were just signed?
             Correct.
             How many a day do you think?
             Oh goodness. Each floor would probably
    produce two, two-fifty a day.
         So somewhere between four and five hundred a
    day easy?
10
             There's eight floors I believe.
             And each floor did two to two-fifty?
11
12
         A Yes. We all had our own spot. There was a
13
    table approximately this big.
         o So you sat at a conference table?
14
         A No, we didn't sit at it. We just piled our
15
16
    files there.
              MS. EDWARDS: For the record, the table is
17
         approximately ten feet long by three feet wide.
18
              THE WITNESS: Correct.
19
20
              MS. EDWARDS: Would be piled.
              THE WITNESS: Correct.
21
22
    BY MS. CLARKSON:
23
         {f Q} With files ready for assignment signatures and
    notaries and witnesses?
24
         A Correct, yes.
25
```

Page 28 Where would these files go them at that point? Then we would get an email saying come get 2 your files, they've been signed by Cheryl. So this was an assignment signing table? A Correct. Assignments or Affidavit A's that she was signing. What's an Affidavit A? The indebtedness affidavit. A I think that's all Cheryl signed for. I think 10 Beth signed for the rest. There's your Exhibit E's. We 11 had different exhibits. That's how they signed them. 12 When Cheryl was out of the office Tammie would sign them 13 or Beth would go sign them. Q Beth would sign but it would say Cheryl 15 16 Samons? 17 Q And Beth would be the signer? 18 19 A Correct. 20 A Right. They were located on different floors. 21 22 The GMAC team was on the fifth floor. Beth Cerni would sign for the entire GMAC. If Cheryl had already gone to 23 the table and signed everything and you needed to sign 24 something to get it out you would go to one of them to

Page 29 sign it immediately. 2 Then these assignments would go where? In the file. Would they ever be sent to the recorder's office? 5 And they were recorded? ٥ Q And when you got them back from the recorder's office would they be filed in court? 10 11 A They were supposed to be. I wasn't in court 12 to know them. We sent them out occasionally to be 13 recorded. It became a more stiffer practice after I guess there was a problem where the notary date didn't match the date of the assignment being initiated. There 15 were basically three dates on there. The dates were all 16 17 different. 18 o Right. 19 A So at that point there was a huge meeting in the building by Beverly McComas and Miriam Mendieta who 20 were the controlling attorneys there. Basically we were 21 told if anyone sent out an assignment with the dates not being the same on them that they would be fired 23 24 25 Q Why would the dates on the other ones have

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been three different dates? What would cause that? A Poor practice, not paying attention, not 2 knowing that it was supposed to be that way from the 3 initiation. Basically they didn't train us to do it. You have people just typing in. Their being honest and tying in this date as the date as being assigned but it was executed six months ago. The dates would be different for that. The issue became then the notary would sign it tomorrow and date it tomorrow. Q So those attorneys knew this was going on? 10 A Yes. 11 12 Can you give me the names of the attorneys 13 that knew? 14 A Every attorney in the firm. What do you mean every attorney in the firm? A Well, Beverly McComas. 16 17 Can you spell that, please. 18 M-C-C-O-M-A-S, I believe and Miriam Mendieta 19 were the controlling attorneys. 20 Q They were the controlling attorneys? 21 A Correct. They controlled the attorneys and Cheryl controlled the paralegals and anybody else. 22 23 So they would inform the attorneys what they 24 25 wanted. They happened to be at the meeting for the APEX REPORTING GROUP

Page 30

	Page 31
1	assignments. They pulled us in by team since there were
2	so many of us and told us this is what it needs to be.
3	They got in trouble for it and this is what needs to be
4	happening now. Make sure that the date that it was
5	supposed to be executed is the same date that you're
6	signing it even though it could have been six months ago
7	and Cheryl is signing it today.
8	Q But make the dates match?
9	A Correct.
10	Q Regardless of the date it is today?
11	A Correct.
12	Q Okay. And that's the same for the notary?
13	A Correct.
14	Q And the date printed on it?
15	A Correct.
16	Q And the date that's actually typed in?
17	A Correct.
18	Q Make sure they're all the same no matter what
19	day it is?
20	A Correct.
21	Q The two lead lawyers, what was their title?
22	Were they senior attorneys?
23	A No. They didn't really have a title. Most
24	people were just afraid of them.
25	Q Why is that?
	·

	Page 3
1	A Because they were mean and nasty. They were
2	very mean.
3	Q In what way?
4	A They would demean you. They would yell and
5	scream at you.
6	Q Condescending?
7	A Oh yeah. They would make you look like an ass
8	in front of the entire firm.
9	$oldsymbol{arrho}$ What about the other lawyers that they
10	controlled?
11	A They were just there to get by on what they
12	were doing.
13	Q The other lawyers?
14	${f A}$ Yes. Most of the lawyers had issue with them
15	but it was their job.
16	$oldsymbol{arrho}$ Did anyone quit as far as you know due to the
17	practices?
18	A I'm sure but they wouldn't come right out and
19	say I quit because of the practices. I know that people
20	had left because they were uncomfortable with the things
21	that they were being asked to do, as most of us were.
22	When it got really sticky there were a lot of us that
23	weren't here.
24	Q What does really sticky mean?
25	A They wanted us to start changing the documents

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and stuff and doing stuff that we weren't supposed to be doing as far as service.

- Q What documents did they want you to change?
- A Manpower documents. A lot of judges started requiring, because of the Jane and John Doe issues, required that you have a military search for all the defendants. If you named a Jane and John Doe as an NKA you had to pull a military search on them. Unless you have somebody's social security number technically you can't pull a military search supposedly.

The program that we used for the program that we used, you could put in the main defendant's social security and John or Jane Doe's name and it would give us a military search saying that they were in the

11

12

13

14

15

16

17

18

19

20

22

23

24

25

- Q You would get their social security number because the bank documents contained it?
- $\boldsymbol{\mathsf{A}}$. Correct. The lenders, the referrals had the socials.
- $\ensuremath{\mathbf{Q}}$ Did you put the social in on everybody to find out their address for service?
- A Not everybody. I personally did not do it because I refused to do it. I wasn't going to falsify a military document. I was told that that's fine, somebody else on your team will do it.

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Page 35

Page 34 Q What do you mean falsify a military document? Well, I'm using the main defendant's social security number on somebody else's name, not his name. John Doe and the main defendant was James, I was taking James' social security number and putting John Doe's name in there. I wasn't but that's what the practice was. The judges started saying we're not going to consider service completed until --Q There's a miliary search? 10 A Correct. O So why wouldn't they use the right social 11 12 security number for the right person? 13 A Because you don't have a social for an NKA or 14 unknown tenant. They wouldn't enter a final judgement unless the military doc was there. O So you just used anybody's? 16 17 A Correct. 18 Did Stern know about that practice? 19 A Do I know if he knew personally, no. I can 20 tell you that Beverly and Miriam sent emails to the 21 attorneys telling them that that is what to be done and 22 if the paralegals would not do it then they are 23 responsible for doing it. That wasn't an option.

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A Correct. Of course I'm not privy to those but

So there were emails directing --

24

25

I was told by my own attorney because I told my attorney 2 I'm not doing this. I'm not doing it. I refused. 3 Q When you say you told your own attorney are you talking about the attorney at the firm? 5 A No. I'm talking about my attorney from my Q That's what I mean. At the firm. 8 Yes. Not your personal attorney? 10 No, no, no. 11 Q The attorney you worked for? What attorney 13 A Stephanie Burke. 14 B-U-R-K-E? 1.5 Yeah. She got married and I don't know what 16 her married name is. Stephanie Burke was my attorney at 17 that time. That's who I had that conversation with. She is the one who told me that there was an email sent 18 19 and she couldn't believe that they had actually sent an 20 email saying that. 21 O When the affidavits were created for 22 indebtedness who were they created by? A Us. 23 24 Q Paralegals?

Page 36 O Where did you get your figures from? We had sites we would get the information from the lenders on. A They were just typed in by us based on the information that they gave us. If we couldn't figure something out Cheryl would help us do it. O What about your costs and attorneys fees? Those were standing, except for if they had what they considered a litigated file. 10 11 Q A contested file? Yes. They would do a memorandum of law and 13 charge the litigation fees that were permitted. 14 O Do you know what those litigation fees were? 15 I believe it was \$175 for two hours is what they allowed. 16 Q What about just a standard non-contested 17 18 foreclosure? 19 A Originally the fees were twelve hundred and 20 then they went to thirteen. 21 O What about costs? A Costs were title searches. All that stuff was 22 broke down. Probably somewhere about \$475. At one 23 24 point we were putting postage in. Until probably June or July of last year postage was going in and we weren't

Paralegals, juniors, yes.

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supposed to be doing that either. That was \$1,650 I 1 think that we had to back out of most of -- you had your title searches, your GAP. That was on Exhibit B. On A 3 the costs were there but everything was broke down on B. That's what they'd put in there. o Were these figures that they put in the affidavits supported by documentation? A I didn't have an invoice for it. It was 8 standard. It was automatically plugged into our 10 o You didn't plug it in? 11 12 No. 13 Who plugged it in? A It was just automatically there in our 14 15 Q So what you would do is get on and find out 16 much the bank was owed? Is that what you said you did? 17 18 You interfaced with the bank's computer or site? A Yes. For the most part your UPB was put in at 19 20 casesum time. 21 Q Okay. A As a paralegal it would be within our job to 22 23 make sure that the figures matched on the Affidavit A and B before you actually typed out your MSJ, your 24 25 motion summary judgement. They were already there.

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Page 38 Everything just plugged in. But over time it changes. 2 So how did it get changed? 4 We would have got go in and change it but the UPB never changes from the initiation of the -- in other words when we get the referral from the lender, that stays the same. What changes are the other costs. What if a homeowner made payment? 1 0 A That was never there. Q If that happened it was never reflected? A No. There was instances where the UPB should 12 13 have been different than what it was, but again, that 14 was a business decision made by Cheryl based on where we were at on the file. If we were ready to get judgement 15 on it she would just --17 Q So there's instances that you're aware of where the affidavit of indebtedness used to get the 18 foreclosure was incorrect? Correct. 20 Q And lawyers and/or COO of the firm knew this? 21 A Well, I knew Cheryl knew because as a paralegal T would have to go to her and say we filed 23 this and it was this and this amount off and she would just say just go with it.

	Page 3
1	Q So who is it that's signing these affidavits?
2	A Cheryl.
3	Q Did she sign them all?
4	A Again, the same amount of companies, yeah.
5	Beth and Tammie signed. Anybody who signed Cheryl's
6	name would be those three.
7	${f Q}$ All of these affidavits, were they like the
8	assignment table?
9	${f A}$ Yeah. They all went together. It was either
10	assignments or affidavits on the table.
11	Q But these affidavits would be signed by Beth,
12	Tammie, or Cheryl?
13	A Correct.
14	Q All signing Cheryl's name?
15	A Correct.
16	Q Were they ever read or just signed?
17	A They were just signed.
18	Q Did you ever see them just being signed?
19	A Yes. Sometimes we would just go home with a
20	signature page because of the way we were told to do
21	things. If you look at the Affidavit A's they are two
22	pages for a reason. The signature page is on one and
23	the costs are on the other.
24	Q And you just slap them together?
25	A Correct.

	Page 40
1	Q You said sometimes we would go home with
2	stacks of them? Is that because you signed?
3	A No.
4	Q So what did you mean?
5	A What do you mean?
6	Q Who would go home with stacks of them?
7	A Files?
8	Q Yeah.
9	A Well, I worked from home.
10	Q Okay.
11	A So any paralegal who had the right to work
12	from home would obviously take
13	Q Take the files with you?
14	A Well, not the whole file but the paperwork
15	that I needed to type my motion or whatever it was that
16	I was doing that I needed to have. That practice
17	changed again before I left being another practice.
18	Q What was that practice?
19	A Well, I guess there was an instance where
20	Cheryl wasn't allowed to sign anymore for the
21	affidavits.
22	Q Why is that?
23	A I don't know that we were actually privy to
24	it. We were just told I believe there was a court
25	hearing of some sort. We were just told by Beverly and

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Miriam this is the way it's going to be done. I think I 2 want to say March 19th just because that sticks in my head. Q Of this year? A Of last year. From that forward anything signed by Cheryl was not usable because she got in trouble or something. o okav. A So what we had to do from that point, again 10 the affidavits were still split in two pages, at that point we were supposed to be sending them back to the 11 12 banks to be signed now. The problem being that a lot of 13 times we wouldn't get them back or executed in time for 14 the hearings. So we had what they called signature 15 pages that Tammie Sweat or someone else would have in 16 their possession. If we couldn't get it back from the 17 bank executed in time we would just take a signature 18 page and put it on the affidavit. 19 O What was on the signature page? 20 A The signature and notary from the bank. Q Were these documents photocopied or were they 22 original documents? 23 A Some were photocopied. 24 How would you get that many from a bank 25 original? The bank supplied them to you.

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Page 43 Personal vendetta, work, their practices weren't nice. 2 Q I'm more concerned with their legal practice 3 than with their attitudes. A We had lost notes. That was another common practice. That's our Exhibit E's. 5 Q Explain to me about the lost notes, how that worked? 8 A Well, I believe Beth Cerni was the only one to sign for those but I'm not a hundred percent sure on 10 that one either because they all signed for them. The 11 lost note would be if we lost the note in-house it's an affidavit that you type up saying that the note was 13 lost. 14 Q Okay. Tell me how those were generated? 15 The same way everything was generated in that office. 16 17 Q Were there a lot of lost note affidavits? A We had quite a few. More than we probably 18 19 should have. 20 Did you lose them in-house? Q 21 22 Q Did you ever find them again? A Not that I'm aware of. The practice of the 23 24 documents like mortgages and notes was really very disarray.

A Well, what would happen would be like if I had file A and that one didn't go to hearing because there was something wrong with it and file B was going to hearing but it was the same bank, I would take the signature page from A and give it to B. Q Oh give it to another file? And just re-execute this file. Q Okay. That was common practice? A Yes, after Chervl couldn't sign. O Did Chervl know? A Yes. 11 12 Q Cheryl knew about all the practices because 13 she is the one who ran the office? 14 A She was the one who implemented them. Q Were there any other activities or practices 16 over at David Stern's firm that made you feel 17 uncomfortable or that you were unwilling to do? A I don't know how to answer that question. It's a loaded one. 19 20 Q Take your time. A Yeah. Some of the things that were done there 22 just were not on the up and up. 23 Q Explain to me in as much detail as you can 24 what those things were. 25 A I don't even know where to start with it.

	Page 44
1	Q How so?
2	A Well, there were a lot of young kids working
3	up there who really didn't pay attention to what they
4	were doing. We had a lot of people that were hired in
5	the firm that were just hired as warm bodies to do work.
6	The training process was very stupid and ridiculous.
7	The girls would come out on the floor not knowing what
8	they were doing. Mortgages would get placed in
9	different files. They would get thrown out. There was
10	just no real organization when it came to the original
11	documents.
12	Q So if the original note was lost who would the
13	affidavit be executed by?
14	A Beth Cerni.
15	Q Beth Cerni did them all?
16	$oldsymbol{\mathtt{A}}$ She signed them. We executed them. We typed
17	them up.
18	Q You drafted them?
19	A Correct.
20	Q She executed them?
21	A Correct.
22	${f Q}$ She signed them?
23	A Correct.
24	Q Did she sign them all?
25	A As far as I know.

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Page 45 1 Q Did anybody have her signature as well? I never took it to anybody but her. Did she sign them? ٥ Yes, she did. Were they to be notarized? T believe so. And if they were to be notarized how would they get notarized? A The same way. 10 Q The same way as the practice you spoke about earlier, just stamped? 11 12 Not in front of the witness? Not in front of 13 14 the signer? 16 O These documents were then used as exhibits to 17 motions for summary judgement? A Correct. The memorandum of law that we were 18 19 doing was also -- that says we're litigating the file and the files never left the paralegal's desk. It was 21 never actually litigated in any way, shape, or form on 22 23 Q Were most of the judgements default 24 judgements? 25 A Default meaning?

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Page 47 court and not having the proper documentation, not having the note, the mortgage. The judge would kick it back for militaries. That's when those practices would come in where it would just be do this regardless of what was said. Just do it. Get it done. Get the file o Like sign the affidavit. Switch the page. correct. Have it notarized with somebody's stamp, we 10 don't care who. 11 A Correct. Cheryl's big thing was moving the 1.2 file. She didn't care how it got moved. 13 o Do you know if attorneys got any bonuses for the number of foreclosure final judgements it got? 14 A Not that I'm aware of. 15 Q Do you know if lawyers got paid more if they 16 worked on the weekends? 17 A As far as I know. 18 19 As far as you know yes? 20 Yes. 21 Anything else at the firm, their practices 22 that made you feel uncomfortable legally speaking? A I was gonna say that's a loaded question 23 24 again. 25 Q I'm not speaking of personality-wise.

Page 46 Q That the homeowner just never fought it. They defaulted so you get your judgement? Not a lot of defaults were entered, no. They responded. The problem is that the practice was so large that there was never actually -- I had actually been yelled at for trying to talk to homeowners on the phone. You're giving them too much time. Start working. I worked for hospice for twelve years before I went to David Stern so I just thought that there might be some kind of compassion. I would try to deal with what wasn't being done proper. We were directed that that was not what our 12 13 job was to do. Our job was to run the team and type the MSJs, get them out the door. Get the judgements 14 15 entered. Everything was about getting the judgement entered because we have to report back to the banks. We had to do chronological things that were sent to them 17 18 that were also obviously changed and fudged because the 19 banks, some of them, are very unaware of what the process is believe it or not. 20 21 Q What did you have changed? A It takes a hundred and twenty days for a 22 foreclosure from beginning to end is what their standard 23 practice is. Some of their files were three and four hundred days old because of the mishaps of going to

	Page 48
1	A Not that I'm aware of. Their practice in
2	doing things the way they did was just wrong in itself.
3	Q This was on a daily basis?
4	$oldsymbol{\lambda}$ Oh yes. This was how we kept our jobs and
5	they were threatened if not. It was just a warm body.
6	They would produce and produce and produce. All they
7	cared about was getting the file out.
8	$oldsymbol{arrho}$ Did you ever hear of any of the lawyers talk
9	about the practices and being in fear of being
10	disbarred?
11	A Yes.
12	Q What was said?
13	A Just that they were in fear of what they were
14	doing and that they knew that they could get in trouble
15	for it.
16	Q They acknowledged it?
17	A Oh yeah.
18	Q They acknowledged it to you or did you hear
19	them acknowledging it to each other? Do you know who
20	these people are? Could you give me a name or two of
21	someone that you actually know said that?
22	A Do I have to?
23	Q I would appreciate it, yes.
24	THE WITNESS: Doug, do I have to?
25	MS. CLARKSON: Yes.
1	

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1	THE WITNESS: He's not even listening to me.
2	A I was friendly with a few of the attorneys.
3	There was an attorney that I was very close with. Her
4	name is Cassandra.
5	BY MS. CLARKSON:
6	Q Cassandra what?
7	A Rigaud.
8	Q Spell it.
9	A R-I-G-A-U-D.
10	Q She knew and she was scared?
11	A Oh yeah. Their jobs were threatened. Their
12	jobs were threatened. Like everybody else they have a
13	family. There's a few. Daphne is one.
14	Q Daphne who?
15	A Tako.
16	Q T-A-C-0?
17	A T-A-K-O.
18	MR. REGAN: What's the first name? Was it
19	Daphne?
20	THE WITNESS: Yes.
21	MR. REGAN: Thank you.
22	BY MS. CLARKSON:
23	Q Go ahead.
24	A I guess the attorneys that left the firm left
25	for the nasty practices that were going on.

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1 2 Yeah. They would basically say this is what 3 4 you're going to do or you can find another place to work, which a lot of them did because the practices just became overwhelming for everyone. The responsibility that they expected people to have was above and beyond what a human could actually do as far as case loads. O Were they paid well? A Not from what I hear, no. I believe that they were very underpaid. I don't think there was an 11 attorney there that didn't complain about the salary. 12 Most of them would be what we would call newbies. They 13 were just learning to stand in front of a judge, you 14 15 know, litigate. That's why they stayed there. They would stay a year and they would just go because they 16 knew it wasn't safe practice. They were newbies and 17 they were well aware of it. 19 Q And they were scared? 20 A Oh yeah. Q And they were worried about the possibility of 22 maybe getting disbarred? 23 A Yes. 24 Did they as far as you know bring that to Mr. Stern's attention? 25 APEX REPORTING GROUP

Their jobs were threatened if they didn't do

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1	A I believe that everybody was well aware of it.
2	Miriam and Beverly were very stern and not nice. The
3	people that were in power were very mean and nasty.
4	Q Did they ever think that they were going to
5	get disbarred?
6	A No. They acted like they are above whatever.
7	Basically they could do whatever they wanted which was
8	the rule of thumb over there.
9	${f Q}$ Regardless of what is required by the law?
10	A Correct.
11	Q Was there any reason for David Stern to shred
12	any documents? Was there a shredder there?
13	A Yeah.
14	Q Did he use the shredder?
15	A Rumor has it that he used the shredder on
16	several occasions, yes.
17	Q Did rumor say what he shredded?
18	A Documents that weren't supposed to be in the
19	files or incorrect things that he was going. There
20	would be other people privy to that. I was just a
21	paralegal.
22	Q But when you say that you heard it who would
23	you hear it from or how would you hear of it?
24	A The grapevine is very long there. When you
25	have eleven hundred people working at a building like

Page 52 that the grapevine is very long. There's a lot of things that are said or that are occurring in different departments that get through the office. Q Right. Since I work directly under Cheryl there was a lot of people for some reason who thought that I was the person to tell a lot of these things to. I just listened. I don't really offer any information and never did. Yeah, there was practices where audits were coming in and we had to quickly run and get this 10 straight or get that straight. It was mostly on the 11 12 Fannie Mae files. Q What would you do on the Fannie Mae files? 13 A I wouldn't do anything. 14 15 What was done to the Fannie Mae files? 16 They were correcting the things that they were 17 doing wrong. 18 A Well, any practice that I just told you about. 19 Obviously the chronological orders of things. You can't lie to Fannie Mae. They'll find out, especially when 21 they are doing an audit. There was a few instances 22 where they were in the office and there were audits done. People were working overnight in the building to 24 25 get them straight.

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1	Q Did Fannie Mae ever find out problems with
2	files?
3	A I am unaware of any of that.
4	Q Where did you work before you worked at David
5	Stern?
6	A I worked for a neurologist. I did research
7	for the FDA.
8	Q Did you work at any other place in between the
9	neurologist and David Stern?
10	A Just mediocre jobs. I helped my friend with
11	his business or something like that. You mean have I
12	ever worked at another law firm?
13	Q No. I wasn't asking you that.
14	A Okay.
15	Q Did you work simultaneously at David Stern and
16	another job?
17	A No.
18	Q Okay.
19	A That was impossible. I worked a lot of hours.
20	MS. CLARKSON: Can we take a break for a
21	minute. Do you mind?
22	THE WITNESS: No, not at all.
23	(Thereupon, a brief recess was held.)
24	BY MS. CLARKSON: (DIRECT CONTINUED)
25	Q Do you know Shannon Smith?

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Page 54 How do you know her? She works at the firm or worked. I'm not sure if she's still there. She did work at the firm. Do you know what her duties were? She was a paralegal like me. Do you know what her duties were? The same as mine. Q Was she a notary? 10 As far as I know. 11 Did you ever see her use her notary at the 12 13 No. We were on two different floors. Was Shannon Smith in your group? 14 No. She was with Homecomings I believe. She would have been on the fifth floor. 16 17 She admits in a deposition that she took that she signed assignments. Were you aware of that? 18 A Yes. I think the whole firm was aware of 19 21 Q How was it the whole firm be aware of that? 22 A Everybody knew about the deposition where she had changed the dates on the assignments I think three or four times or so or the dates were different on it. 24 There was, again, the rumor mill.

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1	Q Did you ever hear of any rumors that Shannon
2	Smith was also signing as Cheryl Samons?
3	A No.
4	Q You did not know that she may have altered her
5	signature?
6	A May have, yes, but I was not aware that she
7	was doing it.
8	Q Did you hear it?
9	A I heard it. Anybody in the firm heard about
10	that whole instance.
11	Q Why don't you explain it to me what you heard.
12	A Because it's not my team, it's on a separate
13	floor, I really stayed to myself. It was just gossip.
14	Q What did you hear?
15	A Just that there was a document that she turned
16	in that was changed a few different times in front of a
17	judge in Hillsborough County if I'm not mistaken, if my
18	memory recalls me correctly and that she signed
19	something. I suppose they were saying she signed
20	Cheryl's name or Cheryl was saying she signed her name.
21	That was it really. We were told not to discuss it.
22	Again, if we were caught discussing things like that you
23	would be terminated.
24	Q Beth Cerni was a paralegal, correct?
25	A I believe so.

Page 56 Q Did you see her practicing law? She was the team lead. She was a manager in the building on the fifth floor. What else was on the fifth floor? A GMAC and Homecomings I believe were the only ones that occupied the fifth floor if I'm not mistaking. Beth Cerni was -- GMAC was her team when she started with Stern many years ago. MR. REGAN: Are you saying GMAC like G-M-A-C? THE WITNESS: Yes. 10 11 MR. REGAN: Like General Motors Acceptance 12 Corporation? 13 THE WITNESS: Correct. 14 MR. REGAN: Thank you. 15 BY MS. EDWARDS: 16 Q Did you ever hear any conversations in the firm about any particular judges or jurisdictions where there were problems with getting the foreclosures? 18 A Oh yeah. We knew what judges were what. We 19 had what they called a bible. The bible contained every 20 bit of information about every judge and what they were 21 looking for. It made our job twice as difficult because you had to go by the bible. 23 24 Q Was there any arrangements made with any particular judges or jurisdictions on how the

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Page 57 foreclosures would be handled by Stern's office? 1 2 A T believe the only one that I'm well aware of that is just a large cluster of something is Lee County judges. They used to do what they call a rocket docket. It was five hundred files from our firm every other BY MS. CLARKSON: Would be filed or heard? A Would be heard. 10 BY MS. EDWARDS: 11 A As far as I know Cheryl Samons and the county. 12 Q Cheryl and who? 13 14 A The county. I wasn't privy to that. 15 o So how would you find out that --16 Because they would call them rocket dockets. 17 We had to have five hundred files from our firm prepared for it. Originally we had an in-house counsel there or 18 local counsel there. Then it went to our attorneys. Two attorneys from our firm or two attorneys per floor 20 21 would go over to Lee County and do the rocket docket. 22 We would load their files into the car. o So that was coordinated with Chervl with the 23 24 A As far as I know. They were put on the rocket 25

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Page 59 and basic information. From what my understanding is 1 when you go over there, as long as there was no response from anybody and it isn't contested the judges would just sign off on them as far as I know. The final judgements? A Correct. Q So there would be a faxed over document with the basic information about the foreclosure on it and if nobody appeared in opposition the judges would sign the 10 final judgements? 11 A Correct. o This was in Lee County? 12 Yes. It wasn't faxed. The attorneys brought 13 them. So if the judge wanted to look at something the 14 files were there. That's my assumption. The files were 15 16 just loaded into these attorneys cars and they were elected to drive over there. It wasn't a choice. They 17 picked which attorneys were going to go each week or 18 ever other week whenever they decided to do the rocket 19 20 docket. 21 Q And they decided that it would be five hundred that would be handled? 22 A It was five hundred from our firm, yes. 23 Was it also other firms? 24 A As far as I know. I'm not privy to that 25

Page 58 docket basically. Q What I'm trying to find out was is Cheryl 2 involved in the implementation of the rocket docket? A Oh yes. She was responsible for all scheduling anywhere. Her Beverly McComas and Miriam Mendieta. How was it that the rocket docket was created? I am not sure. That's what they called it. They were going to do a rocket docket. Lee County I guess was our largest county for foreclosures at the 10 11 Were you aware of her having any meetings with 12 anyone there to implement or to come up with the idea to 13 14 come up with the rocket docket? A No, I'm not aware of any meetings? O Do you know who did that? 16 17 A My guess would be Miriam Mendieta and Beverly McComas because they were the controlling attorneys. 18 They would have been involved in the original 19 implementation of the rocket docket? A Correct. They are the one who assigned 21 attorneys. They're pretty much the ones that oversaw 22 the scheduling for that. There's a few counties that we would just send over a sheet of paper that would have 24 your unpaid, who was defaulted, when it was defaulted,

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information. I didn't work with other firms. Q Were you aware of comparable practices to those you have just described with any other law firms A No. It wasn't something I discussed about other firms. Q Are you aware of any payments that were made by David Stern's firm to any companies as a result of receiving the referrals of the foreclosure cases? A Not that I'm aware of. I know that one 10 particular bank that we dealt with, which was Aurora 11 Leman Brothers, he had his own employees there in Aurora. 13 14 o For that purpose? 15 That was not something we knew. There's four employees that are there. I would have to look through 16 some documents for their names. They worked for Aurora and were paid by David Stern if that makes sense. They 18 worked in Aurora's building, ALS, but they were paid by Q But you don't know what they did? 21 A It was to oversee the practice that was going 22 on. I could tell you that Aurora did not want them 23 there. The were not very nice to them. They constantly 24 had issues with them. It was more or less for us like

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if we needed assignments to get them like that; whatever we needed to get them back immediately. Aurora was his 2 baby and always has been. Q Why is that? A I believe that's what started his company. So he had his own employees in Aurora? He went over there and hired them. They lived there. I think it's in Minneapolis. I'm not sure. Q So David Stern personally went there and hired people to work in Aurora? 10 11 12 And you don't know what they did there but 13 they were paid by David? A Yes. They were paid by David. They had an 14 15 email address by David. So obviously knew exactly what they were 16 17 doing? 18 A Oh ves. 19 Q Mr. Stern? 20 Yes. Q If you needed to get assignments quickly 21 22 that's who you contacted? 23 A Correct. 24 O What did they do? 25 A I don't know what they did on their end. All

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Page 63 trying to think of the manager's name. Its at the tip 1 of my tongue but I can't think of his name either. 2 Q But there were people that actually lived 3 where Aurora is? A Yes, they lived there and they were hired by David. They were actually brought to our office. Since I was the team lead for Aurora I was introduced. They shadowed me so they could see what the process was that we had to go through. 10 Q Then they then went back to Aurora and they 11 did whatever they were doing for David Stern? A Correct. 12 Why would there be someone there if this whole 13 14 practice is down here? A I don't know. I couldn't answer that 15 16 question. Q Are you aware of any contacts that Mr. Stern 17 18 or anyone else had with Fannie Mae or Freddie Mac that 19 assisted him in getting his referrals? A No, I'm not aware of any of that. 20 Q Are you aware of any payments that were made 21 by Stern or his office to Fannie Mae or Freddie Mac or 22 23 anyone that worked there? 24 A No, I'm not aware of that either. 25 Q You mentioned that there was some vindictive

I know is I would have it by the end of the day. Q An original? 2 3 A No. because it would come from there. It would be something that they would scan over to us or send to us or get to us overnight. O How would that have been done differently than the assignment process that you just described to us? A I don't know how they did it. I just know if we needed anything that had to do with Aurora we would call there and speak to those people. Aurora was 10 11 probably our messiest client. 12 1.3 Because it was never done right from the 14 beginning so the files were a mess. O Why is that? A I have no idea. I don't know. I know that it 16 17 had changed hands a lot with paralegals and Cheryl and David. It was very messy. As far as I know that's the 18 19 only company that I worked with. Do you know if those employees ever signed off on assignments or any other documents that were needed 21 22 for foreclosures? A I don't recall. O Do you know the names of those employees? 24 25 A I can't recall their names at the moment. I'm

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1	behavior that you observed while you were working there.
2	Was any of this having anything to do with any of the
3	litigation in the home foreclosures?
4	A Meaning? Most of the meanness came from if we
5	didn't do their jobs what they would consider up to par.
6	Q You're talking about the people that worked in
7	David Stern's office?
8	A Yes.
9	Q That there was vindictiveness by personnel to
10	other personnel?
11	A Oh yes. And by Cheryl. Cheryl would scream
12	at the top of her lungs and embarrass you.
13	Q Was she very close with David Stern?
14	A Oh yes. Their families traveled together on
15	vacations. Their kids went to the same school.
16	Q Would you say that any information that Sheryl
17	had would probably also be information that David Stern
18	had?
19	A Oh yes.
20	Q Do you think there's any way that David Stern
21	did not know the procedures you just described that
22	Cheryl Samons was involved in?
23	A No, there's no way.
24	Q Did anyone express any concern when you left
25	the office that you had observed things that were not

1 proper going on there? 2 A Yes. When I left the office they came to my desk to -o Why who? HR. Alicia Rhonda who I believe was the one partaking in changing files. She's the HR manager there. She would come to your desk and go through every single document that you were removing from your desk. They wouldn't allow you to take anything. Not even a 10 sticky if it had something to do with the firm on it. Q Did you have any documents that belonged to 11 12 the firm when you left? 13 14 Q What sort of documents did you have? A I had numerous amounts of documents. 15 What type of documents were they? 17 I didn't take them when I left. I obviously 18 had already had them. What we've spoke about and the practice, emails, and stuff like that. o So they were documents that essentially 20 21 documented what you've just described? 22 23 o Do you have copies of those emails now? 24 A No. I don't. Q Do you have them in your possession? 25

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1 A It just happened to be something I had because I worked from home. There wee documents I would take to go over my -- we had reports that we would run. Since ${\tt I}$ had such a large amount of files it was easier for me to do it that way. That's how I initially got them. It was part of my job. Q What about the documents that you have? What is the nature of those documents, other than the emails? A They were just what we discussed here today. A Yes. Examples are actually from files. 11 12 O And so the documents you have are examples of what you described to us? 13 A Correct. There's also one thing I remembered 14 that I'm going to tell you because I want to make sure that I -- the Exhibit D's were our attorneys fees. 16 17 Those were pre-signed by the attorneys prior to us 18 getting them. 19 o Prior to you getting what? 20 A In other words, prior to them going out on the 21 file. The only thing we did was fill in the fee and 22 stamp it. So the attorneys were signing attorneys fee 23 affidavits without figures there? 24 25 A Correct.

Page 66 A No, I don't. 1 2 Where are thev? A They are with my attorney. O Who are the emails from? The majority of them are from Chervl. Some of them are from a gentleman named David Vargas which is an issue that I had. He was one of the mean people. Were those emails sent to you or other people? A No, they were sent to me. They all came from 10 mv email address. Q What was the nature of those emails that you 11 felt were important enough that you felt that you should 12 13 keep them? A Just the practices that weren't fair. The things that they were doing that weren't -- the things 15 16 that were wrong. Q Are those the things you've described so far? 17 18 Q And those emails document that? 19 A The emails pertain to different things: Changing UPB balances more or less, the badgering and 21 stuff, hearing outcomes. Every day there were emails 22 sent from each county on what the hearings were and stuff like that. 24 Q Why would you have saved those?

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	Page 68
1	Q And after the attorneys signed the affidavits
2	were notarized without the attorneys being there?
3	A Correct.
4	Q And the fee amount was filled in?
5	A Correct.
6	Q Were there particular attorneys that were used
7	for those?
8	A Richard Toledo I believe was one. Suarez was
9	the other one. I'm not sure of his first name.
10	Q So there were two?
11	A Yes. One did hearings in one county and one
12	did hearings in the other county. We couldn't use them
13	in the county they did hearings in.
14	Q How much were they paid for those?
15	A I have no idea.
16	Q Were they paid for filling out attorney fee
17	affidavits?
18	A I would imagine so.
19	Q But you don't have any knowledge of that?
20	A No.
21	Q If I understood your testimony about Cheryl
22	Samons signing affidavits of indebtedness and other
23	affidavits, these were all left on a table for her and
24	she signed without even reading them?
25	A Correct.

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Q Was that basically the case in every single situation? Q You described that there was offshore preparation of the information that was put into the software that created all of the documents in the foreclosure action; is that right? A Correct. Q Did anyone review to make sure that the information being inputted was accurate? 10 11 A That I'm not aware of. I know that initially 12 there was a huge problem with it just because of the 13 education between the two places. Sometimes you would be in Cheryl's office and hear a conversation about 15 them, which is how I happen to know about those. I 16 didn't work in the casesum department. 17 Q Do you know who was hired to put the 18 information into the casesum software? 19 A From overseas? 20 21 A No. I don't know particularly who, no. 22 Did David Stern know about this? 23 Oh ves. He actually went there. Everybody 24 was aware that he went there. O He went where?

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there's another place. I'm just not sure of the name. Q How do you know he went there? A Because we all knew that it was going to be implemented; that our case loads were going to be getting larger. In casesums Cheryl had a rule that you had to have fifteen casesums out the door a day and if you didn't she would fire you if it was two consecutive 10 Q And the casesum was where you were putting in 11 the information that would come from the lender? 12 Correct. We knew that our case loads were 13 going to get larger because they were going to be doing O Do you know if Mr. Stern was responsible for 15 16 hiring those people? 17 A As far as I know. 18 Q Do you know anything about who was paying 19 20 A He was paying them as far as I know. 21 Q Cheryl Samons worked there on a daily basis? 22 She was there all day? 23 Yes. 2.4 Q How often was Mr. Stern there? He was there every day unless he was APEX REPORTING GROUP

A To the Philippines and to Guam. I believe

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		Page 71
1	traveling	•
2	Q	Did he travel for purposes having to do with
3	the law f	irm?
4	A	Oh yeah.
5	Q	For what?
6	A	To visit different banks or go offshore. Most
7	of his tr	avels had to do with the office.
8	Q	Why would he be going to the banks?
9	A	I have no idea.
10	Q	He traveled to visit the banks regularly?
11	A	As far as I know, yes. That's what we were
12	told, tha	t he was out of the office for this or that
13	meeting.	A lot of times they would come to our office
14	too. The	re were quite a few meetings there.
15	Q	Of bank representatives?
16	A	Yes.
17	Q	Do you know anything about what the meetings
18	were abou	t?
19	A	No. Those were behind closed doors.
20	Q	Whose closed doors?
21	A	David Stern's, Miriam, and Beverly.
22	Q	Were those the people that attended the
23	meetings?	
24	A	Yes.
25	Q	Was there anyone else at the meetings that you

Page 72 know of? 2 A Not that I'm aware of, no. Cheryl was in and out of them I know. O Did anyone keep notes from the meetings? A I don't know. Q If someone of those people were at meetings who would you expect to be taking notes or keeping track of what was going on? A That would be Cheryl. 10 Q You mentioned that there were business decisions on whether or not they were going to be 12 changing the principal balances due. She said they were 13 business decisions? 14 A Well, the email subject line used to be business decision. I have to come to your office for 15 the file because we didn't do something we were supposed to do according to her rules. So we would go there, she 17 18 would look through the file, and she would make a 19 business decision based on where we were at with the 20 file. We didn't question her on that. That was 21 something you just didn't do. 22 Q So she would just tell you how it was going to 23 be? 24 25 O Now, you said that in every foreclosure there

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were summons sent out to a Jane and John Doe? 1 2 Correct. O Now, are you saying that there was one sent out whether there was even an issue of whether or not there was a Jane and John Doe involved or whether or not the people, the original mortgagors were actually living in the home? A Correct. A return of service would be turned in to court saying -- if they served me at home and my 10 husband, they would turn in also for Jane and John Doe. 11 Q So they would issue the Jane and John Doe 12 summons whether the homeowner was actually living in the 13 home and was going to be served? 15 O So What you're saying, if I understand it, is 16 that this was basically padded on to the summons to give 17 them an extra person to serve? 18 A Correct. 19 Q Extra two people to serve? 20 A Correct. Every single file that ever left the 21 office had a Jame and John Doe on it 22 Q And so basically they were sending a bill for 23 another ninety dollars? A Correct. 24 25 Q So the process servers got paid an extra

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whether there was any legitimate reason to think there should be one listed? A Correct. Q So, even when you knew the mortgagors were living in the home there was a Jane and John Doe summons? A Correct. O Who paid them? 10 A I would assume David. I'm not sure who paid 12 O Was there always a Jane and John Doe no matter 13 which one of the servicers were used? 15 O Was that amount included in the affidavit of 16 service? 17 Correct. Except for if the bible stated it. 18 There were some judges who got wise to it and decided that you can't charge for Jane and John Doe. There were other judges who would say I'm only going to allow you 20 21 twenty dollars for service. So, as I said, the bible was our bible. We would go by that. If Judge Smith said I'm only allowing you twenty dollars for service, 23 no Jane and John Does at all, then that's what we would 24 put in there. If a judge didn't complain and nobody

ninety dollars for service of a Jane and John Doe

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	Page 7
1	questioned it then it was put in here.
2	Q If there's properties were sold at a
3	foreclosure sale and they were purchased by the bank
4	would those amounts be billed to the bank?
5	A Sale was something I never ever I had my
6	own sale girl, own sale department.
7	Q Do you know if David Stern ever purchased any
8	properties at foreclosure sales?
9	A I have heard of a few.
10	Q How did you hear about it?
11	A Because the paralegal screwed up on something
12	or another was what the word said.
13	Q Why is he buying properties at foreclosure
14	sales?
L5	A I don't know. I couldn't answer that. I
16	don't know.
١7	${f Q}$ Were there any arrangements that he had with
8	the banks that he could bit on some and not others?
١9	A I'm unaware of anything to do with sales.
20	Q Why would assignments of mortgage been
21	recorded at Cheryl's direction after final judgements
22	were entered?
23	A Again, I don't know. After the initiation of
4	the file we would record them. We would be sending them
5	in with the final judgements. In other words, if there

Page 76 was a file that the assignment wasn't done properly some of them we would send the motion for summary judgement and the attorney would go to court with the assignment in their hands. Q Okay. Was there any discussion about the fact that that was not the correct or legal way to do that? A Not to me. I was just told to do it. If an assignment needed to be with the file it needed to be with the file. 10 Q Did anybody say that it's not going to be 11 recorded? A Not that I'm aware of I didn't learn until 12 actually the end of that that the Fannie Mae and Freddie 13 Mac guidelines state that an assignment of mortgage has 14 15 to be filed with the mortgage and the note. I was unaware of that because I didn't work on their teams until the latter part of my employment there. So at 17 that time when we were conveying to our client through 18 19 VendorScape or Landstar or whatever it was for the 20 files, when they would question why the lis pendens hadn't been filed we would say because under Fannie Mae 22 guidelines you can't file unless you have the 23 assignments of mortgage and the note and the mortgage. I was unaware of that until then. 24 25 O And that was at the end of the time that you

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worked there?

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- A Yeah. It was only the Fannie Mae files that we did it on.
- O So. Fannie Mae and Freddie Mac had guidelines that you could not record a lis pendens or an assignment of mortgage?
- A You weren't supposed to be filing the lis pendens prior to having those documents. I'm not saving that that's what happened because we know that they were back-dated. Technically that's when I learned you weren't supposed to be doing that, even though we were doing it and it was our practice. I was unaware until that point when I started working on that particular
- O Are you aware of whether anybody else knew that that was not the way that the foreclosure should be handled?
- A Oh yeah. The team leads. Tammie Sweat was responsible for Fannie Mae. Beth Cerni was responsible for GMAC. There was another manager Jason something or another. I don't know. He was responsible for Country Wide and stuff like that. I was told by them. That's what they told me to put in Landstar or VendorScape. My assumption would be yes they knew.
 - O They told you to nut what in?

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- Oh there was screaming and meetings. What I actually knew was going on or not -- Fannie Mae came to the building often. They were there because we would all have to be under strict dress code and emails would go out that Fannie Mae was in the office.
- O When you talked about the fact that there were ex-parte motions to substitute plaintiff filed in the foreclosure actions do you know whose decision it was on the cases to send in ex-parte motions to substitute
- A It was Cheryl's decision on any of them. Some of them we got the whole theory of when I questioned why we were foreclosing -- I've actually had tenants or borrowers call me and say well my bank was this and it turned over to this, why did you foreclose on this. I would ask Cheryl and she would say just tell them it doesn't matter. I would say well what is the case with that and she would say well it doesn't matter because the bank is buying it back and it's going back to Fannie Mae anyways so who cares. That was their theory on when you didn't file a substitution of plaintiff on the file.
- A lot of them happened to be GMAC and Nation Star. Why they are the ones, I'm not particularly sure. If it got flipped from one company to the other, which happened quite often, the substitution of plaintiffs

That the lis pendens had been filed because pursuant to Fannie Mae guidelines we have to have the

note and mortgage and stuff.

- And were the Fannie Mae quidelines that they could not file their complaints until they have the assignments of mortgage?
 - A Correct.
- O So Fannie Mae and Freddie Mac mortgages did not have complaints filed until the assignment of mortgage had been filed to reflect the proper owner?
- 11 Well, that was what the guidelines were but 12 that's not what we did. They would back-date them if 13 need be. In other words the assignments would be 14 back-dated to say yes that's what it was. They'd come 15 in and audit or we'd have to give them chronological on 16 VendorScape or Landstar so we're just typing in what they want to see. It's not necessarily what actually 17 18 occurred. That's what we were told to do.
 - Q At any point are you aware of Fannie Mae or Freddie Mac becoming aware that what was being reported to them was different than what was actually happening in David Stern's firm?
 - A I'm not privy to any of that information, no.
 - O So there was never any screaming or meetings about those issues?

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were not done on all of them I should say. If we had time and we had just gotten the file and we knew it was going to be changed and I was on top of my game with my

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files I would get it done. But if it wasn't done, it wasn't done

- Q Who would tell you to send in the ex-parte motions and orders?
 - Either Tammie or Cheryl.
- O What about if there was an attorney on the
- A Opposing counsel they didn't really care much 11 12 about. I wouldn't get involved in that. That would go 13 to my attorney.
- 14 Q Were you aware of attorneys sending in ex-parte motions and orders even if there was counsel on 16 the other side?
- 17 A Again, I wouldn't know. I couldn't definitely 18
- 19 Q Just to clarify, you said between two hundred 20 and two hundred and fifty affidavits and assignments 21 were signed by Cheryl a day times eight?
 - Well. I think there's about six floors. One were reinstatements so it probably was not on there and then one was something else. Yeah, at least that.
 - Q So you're talking about fifteen thousand a

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Page 81 1 day? 2 A Probably, yeah. MR. REGAN: No, no, no. Wait, wait, wait. Eight times two-fifty, that's not fifteen thousand. I'm sorry. Two thousand. THE WITNESS: Two thousand. BY MS. EDWARDS: Q So you're saying around two thousand a day were being signed by Cheryl? 10 A Yes. 11 Or other people on Cheryl's behalf? 12 Correct. 13 So Chervl worked as David's paralegal before he got into this foreclosure business? 15 A I'm not sure how that goes. One store here 16 and one store there. I actually had a conversation with 17 Cheryl about it one day just out of curiosity. She had said that she started out as his file clerk and then the 18 19 two of them built the company together. 20 Q Do you know whether or not Cheryl got any bonuses based on the number of files closed? 21 22 A I'm not personally aware of it but the 23 grapevine again says she did. There were a few people 24 that got bonuses based on what they got done. O Do you know who they were?

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1 A They were team leads, yeah. For sales it would have been Vanessa Rijos. For the firm Cheryl. As far as I know Cheryl never paid a bill for anything. Her bills were brought to the firm and paid for by the You mean her personal bills? 7 A Yes. I'm trying to think of the team leads. It's hard to remember without like a list of their names in front of me. I know Vanessa was sales. There was Kadian Doir was training. They're all in a clique so 10 it's just how they were. David Vargas. I mean they all 11 12 ended up with new cars all of a sudden and things like 13 Q Are any of these people personal friends with David Stern? 15 16 18 A Not that I'm aware of with the girls but David Vargas and Cheryl Samons are very close personal friends with David Stern. 20 BY MS. CLARKSON: 21 Q Are you aware of any other inflating billing 22 23 other than the process by David Stern? 24 A In memorandum of laws there would be inflated billing since the attorneys weren't reviewing it.

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	Page 83
1	Technically that's inflating it.
2	Q They didn't review them?
3	A No. I did it.
4	Q What about titles, abstract searches?
5	A Those were just a nightmare. I didn't work in
6	the title department. GAPs were supposed to be done and
7	sometimes they weren't done until after the properties
8	were sold. The title department is a complete mess
9	there. There's things that are overlooked or not seen.
10	If you had a problem with title you went to a gentleman
11	there. Brad is his first name I believe. I'm not sure
12	of his last name. He was the title person. There was
13	one other lady who worked there also who wasn't very
14	nice either.
15	Nobody really would go to any of the managers
16	like that because you would get screamed at. It wasn't
17	even it would be what are you stupid? Why are you
18	asking me this question? You were told to do this and
19	that's what you do. Okay. That's pretty much how it
20	ended up. With the title I know for sure was a screwy
21	thing sometimes.
22	Q Sometimes it was not done but was it always
23	billed for?
24	A Oh yes. It was always billed. That's
25	inputted automatically into their system unless again a

Page 84 judge says you're only allowed for a title to charge 2 this much, this much or this much, they would back it O And they would put that in the bible? Q Do you know of any instances or many instances where title was charged but not completed? O Many or any? 10 A Any. Probably many but in my own team, any. Q Okay. Do you know who they got the casesums back from Guam and the Philippines? 12 13 A I believe everything was done electronically 14 but I'm not sure, no. 15 O Are you aware of who the bank servicers were? 16 The servicers? Who told the attorneys what to 17 18 do? 19 20 0 No? 21 22 Did you take any other documents from the 23 officer that you haven't told us about? 24 25 MR. BRIESMEISTER: Mark Briesmeister here.

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2 Q Tammie, you indicated you worked there from approximately March of '08 to July of '09, correct? A I believe that's what it was, yes. Q What's your employment history since July of 1093 7 A I've worked for a condo HOA attorney. I'm 8 currently unemployed. I've actually had such a difficult time getting a job because I worked at David Stern's office. 10 11 Q So you've been unemployed since --12 I was employed for approximately seven months and I've been unemployed since, yes. My employment 13 14 terminated there July 7th of '09. Q You also indicated that your work space was 15 directly outside the office of David Stern, correct? 16 17 A Correct. 18 Q Did you in the course of working there ever 19 hear any conversations, meetings, dialog between David directly and either Cheryl or other employees that would 21 indicate to you improper conduct? 22 A On a personal level or business? 23 Business dealings. 24 Δ No. 25 Q With regard to emails and documents that you

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you got either originated by you or you are the recipient? A Correct. All of them. Q You have no emails that would have been 5 directed or the recipient other than you? A No. They all came from my email account. Q Any emails with David Stern in the chain? A Stern was in most of them when it came to like hearings and stuff like that. If I'm not mistaking the 10 11 copies were David Stern, Beverly, and Miriam Mendieta. As far as I know every email he got on his Blackberry 12 because he would respond sometimes outside the office 13 14 from his Blackberry. Q Email or documents related to business 15 practices in the firm? 16 17 18 And you indicated that all of the documents 19 and emails have been turned over to your attorney? 21 0 You have no others? 22 23 How large was the book that you called the Q 24 hible? 25 Oh good God. There's sixty-seven counties in APEX REPORTING GROUP

say you took from the business, are all of the emails

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1	the state? It was every county and every judge
2	pertaining to foreclosures.
3	Q Did you make any copies of any or part of
4	that?
5	A No. That was encrypted actually. Jason is
6	the person who controls the bible. It was encrypted as
7	far as we knew. I do know that they watched that and if
8	you ever got caught printing it you pretty much it
9	printed by accident sometimes but the documents would
10	get shredded because just of the way it was set up on
11	Word or whatever.
12	MR. BRIESMEISTER: That's all for me.
13	BY MS. EDWARDS:
14	Q Is there any reason that you would have to be
15	saying things that are not truthful here?
16	A No.
17	Q Is there any reason that you can think of for
18	anyone at David Stern's office would say that you would
19	say things that were not truthful about what went on
20	there?
21	A They could say a lot of things about a lot of
22	people there and most of the people that would say that
23	were the ones that were being compensated. But no.
24	Q Were there any personal relationships that you
25	were aware of that might have caused problems within the

		Page 88
1	firm?	
2	A	As far as people in the firm?
3	ō	Yes.
4	A	Yes.
5	Q	Could you describe that to us.
6	A	Well, David Stern had quite a few little
7	girlfriend	ds in the firm. David Vargas and Cheryl Samons
8	were very	involved.
9	Q	Are you talking about romantically involved?
10	A	Yeah. I believe there were people actually
11	fired for	questioning it.
12	Q	Who else was involved in those sort of
13	relations	nips?
14	A	There were boyfriends and girlfriends within
15	the firm.	The policy was that fraternizing wasn't
16	allowed.	If it happened you'd have to let HR know and
17	they would	d separate you in teams. I mean you put that
18	many peopl	le in one building you're going to have
19	relations	nips.
20	Q	Did you say also that sort of thing was going
21	on with Da	avid Stern and other people that worked there?
22	A	Oh yeah.
23	Q	How do you know that?
24	A	Because those conversations I was privy to.
25	Q	Could you describe the nature of those and the

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people involved.

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- A There was a few young girls that he was very generous with and purchased properties, cars, jewelry. They would go in and out of his office, get roses, be in there for two hours. I would hear the conversations with him and David Vargas in reference to taking them on plane rides and he was going to get in trouble because he's married and things like that.
 - Q Who were those girls?
- A Christina was one of them. I'm not sure of her last name because there were a few of them.
 - Which division did she work in?
- A There was another girl named Christina Dispersio (ph). The first Christina worked in I want to say Countrywide side. She was a very very young girl. Very pretty girl. She had a four-year old daughter if I'm not mistaking. The second that the firm was aware of it because there were plenty of times when Cheryl would go storming in his door and screaming at him about the fraternizing going on and the whole firm knowns about it. Of course people talk, especially when your boss is doing that

They removed her from the company. Just one day you came in to work and she was gone. There were people that were there that were friends with her. The

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Page 91 Vargas.

So you would overhear conversations between him and Vargas?

- Oh veah.
- Q And this was the nature of the conversations you heard?
 - A Yes.
- And that Vargas was involved with Cheryl Samons?
- A That was just something that was known and never said. Like I said, there was somebody who said it and they got fired.
- Q But you never heard any actually conversations where Vargas said that or Cheryl?
- A Well, he made a couple of innuendos that were inappropriate. Sometimes when I was trying to learn stuff from Chervl and I was still in the training she would be bending over the desk and he would say something that was inappropriate about her. They would spend three and four hours in the office together. He was the only paralegal in the entire building that would sit there with the door closed. He would throw anybody out of the office and walk in there. You're guess is as good as mine about what's going on behind closed doors. That's about as privy as I was and that was too much.

grapevine is long and it would come back. Apparently I know his right hand Paula Beachman, which has changed now because she got married, had made a comment to me one time about I don't want to know anything, I don't want to hear anything because I've already been deposed one time before because of his sexual misconduct.

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- Was he involved in sexual misconduct there?
- A As far as I know, yes.
- Q Did it involve anyone other than the two women that you've described?
- A I'm sure there were numerous of them but I was only aware of that because it was on the fourth floor.
 - That was right outside from where you worked?
- Yes. When that became a whole situation 14 15 because -- how it was was David's Stern office and there was a cubby and then a cubby. The first cubby was David 16 Vargas and I was the second cubby. So I would hear 17 everything. He would always lean over sometimes and say 19 you're not hearing any of this and I would just hear no evil, see no evil, say no evil. The conversations were there. We were there a couple months and then we got 21 22 moved up to the sixth floor, our whole team. We actually expanded and there was no more room in that 24 particular spot. So after that I wasn't aware of anything other than Stern coming up and hanging out with

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Page 92 MS. EDWARDS: I don't have any other questions

to ask. BY MS. CLARKSON:

Q The only thing I'd like to know is how you left? What terms you left on?

A They terminated my employment and said that it wasn't working out. That was approximately two weeks after I refused to do the military documents. I was one of those people that just didn't believe in the practices. If I thought something was wrong I would question it. I think that they don't like that.

- So you were fired?

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- Did you leave on a good note or a bad note?
- Good note. The HR girl was crying her eyes out when I left.

MS. CLARKSON: Okay. Thank you for coming in. I think I'm going to have this typed up. Would you like to read or waive?

MR. LYONS: Read.

(Thereupon, the deposition was concluded at 1:58 p.m.)

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1	STATE OF FLORIDA)
2	COUNTY OF BROWARD)
3	
4	I, the undersigned authority, certify that TAMMIE
5	KAPUSTA appeared before me and was duly sworn.
6	
7	WITNESS my hand and official seal this 22nd day of
8	September, 2010.
9	. ,
10	Ku Ch
11	- Pen One
	Kalandra Smith
12	Notary Public - State of Florida
	My Commission No.: EE3599
13	My Commission Expires: 06/23/14
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Page 94 CERTIFICATE The State of Florida, County of Broward I, Kalandra Smith, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that aforementioned witness was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition; and that the foregoing pages are a true and correct transcription of my reporting of said deposition. I further certify that said deposition was taken at the time and place herein above set forth and that the 10 taking of said deposition was commenced and completed as 11 herein above set out. I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected 13 with the action, nor am I financially interested in the action. The foregoing certification of this transcript does 1.4 not apply to any reproduction of the same by any means unless under the direct control and/or direction of the 15 certifying reporter. IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of September, 2010. 17 18 OKEL State 19 20 Kalandra Smith Notary Public - State of Florida 21 My Commission No.: EE3599 22 My Commission Expires: 06/23/14 23 24 25

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1	READ AND SIGN
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5	I have read the foregoing pages and except for
6	the corrections or amendments I have indicated on the
7	sheets attached for such purposes, I hereby subscribe to
8	the accuracy of this transcript.
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14	Signature of Deponent
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Page 96 ERRATA SHEET 1 2 Deposition of: Date taken: DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE Page # Line # Change Reason 11 12 15 16 Under penalty of perjury, I declare that I have read my 17 deposition and that it is true and correct subject to 18 any changes in form or substance entered here. 19 20 21 Date: 22 Signature of Deponent: 23 24 25

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nswer (5) 4:2,8 42:18 63:15 75:15 A A's (3) 16:19 28:5 39:21 A,B,C,D,E,F,G (1) 42:18 63:15 75:15 nybody (11) 14:14 24:5 30:22 39:5 45:1,2 55:9 59:3 76:10 77:15 91:22 15:11 abstract (1) 83:4 Acceptance (1) 56: accident (1) 87:9 account (2) 74:11 86:7 accuracy (1) 95:8 accurate (1) 69:10 76:10 77:15 91:22 anybody's (1) 34:16 anymore (3) 13:16 22:24 40:20 anyways (1) 79:20 Apex (1) 1:24 Apparently (1) 90:1 APPEARANCES (1) accurate (1) 69:10 acknowledged (2) 48:16,18 acknowledging (I) 48:19 2:1 appeared (2) 59:9 93:5 apply (1) 94:14 appreciate (1) 48:23 acted (1) 51:6 action (4) 16:9 69:7 94:13,13 actions (1) 79:8 activities (1) 42:15 actual (3) 14:6 17:13 18:10 add (1) 16:3 additional (2) acted (1) 51:6 appreciate (1) 48:23 approximately (8) 8:10 9:13 11:16 27:13,18 85:3,12 92:7 92:7 arranged (1) 57:11 arrangements (2) 56:24 75:17

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APEX REPORTING GROUP

EXHIBIT G TO THE DECLARATION OF JOHN W. SMITH T

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Supreme Court Case No. SC-Complainant, The Florida Bar File Nos. v. 2010-51,725(17I); 2011-50,154(17I); 2011-50,213(17I); 2011-50,216(17I); DAVID JAMES STERN, 2011-50,511(17I); 2011-50,695(17I); 2011-50,850(17I); 2011-50,949(17I); Respondent. 2011-51,192(17I); 2011-51,322(17I); 2011-51,329(17I); 2011-51,369(17I); 2011-51,433(17I); 2011-51,497(17I); 2011-51,696(17I); 2011-51,868(17I); 2012-50,144(17I).

COMPLAINT OF THE FLORIDA BAR

The Florida Bar, complainant, files this Complaint against David James
Stern, respondent (also referred to as David J. Stern), pursuant to the Rules
Regulating The Florida Bar and alleges:

- 1. Respondent is, and at all times mentioned in the Complaint was, a member of The Florida Bar, admitted on November 27, 1991 and is subject to the jurisdiction of the Supreme Court of Florida.
- 2. Respondent's law office was located in Broward County, Florida, at all times material.
- 3. The Seventeenth Judicial Circuit Grievance Committee "I" found probable cause to file this Complaint pursuant to Rule 3-7.4, of the Rules

Regulating The Florida Bar, and this Complaint has been approved by the presiding member of that committee.

4. During all times material, respondent was the managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. (also referred to as the Stern law firm or Stern firm).

COUNT I

[The Florida Bar File No. 2010-51,725(17I)]

- 5. The Law Offices of David J. Stern, P.A. has prosecuted mortgage foreclosure actions in various judicial circuits within the state of Florida on behalf of lenders, financial institutions and other mortgage services-related entities, including Mortgage Electronic Registration Services (c/k/a MERS), as well as on behalf of Freddie Mac and Fannie Mae.
- 6. During all times material, respondent elevated several staff to managerial/supervisory positions in the Stern law firm, including, but not limited to, attorneys Beverly McComas and Miriam Mendieta, and nonlawyer, Cheryl Samons, who was the office manager of the foreclosure department and/or manager of operations.
- 7. Said individuals occupied high-ranking managerial, administrative and supervisory positions with the Stern law firm. Each reported directly to David J. Stern as the managing attorney and sole shareholder. Each position was above

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those held by other firm employees, both lawyer associates and non lawyer support staff, which included a bevy of paralegals and notary publics.

- 8. In their said capacities, David J. Stern charged these supervisory personnel with the duties and responsibilities attendant to the administration, management, supervision and oversight of the firm's foreclosure attorneys on a daily basis.
- 9. In their supervisory capacity, Mendieta, McComas, and Samons were accountable and answerable only to David J. Stern as the managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A.
- 10. Eventually, the Stern law firm employed in excess of 1,500 employees, of which approximately 150 were attorneys.
- 11. The aforesaid supervisory echelon employees (who hereinafter may sometimes be referred to as the "supervisory echelon" or simply as "supervisors") were under the direct supervision, management, and oversight of David J. Stern.
- 12. In addition to their supervisory authority, the supervisory echelon of the Stern law firm were charged with quality control functions and responsibilities that included, inter alia, management of the preparation of client files for summary judgment hearings wherein they were ultimately accountable for any deficiencies in the contents of a file that would forestall the entry of the final judgment.

- 13. From on or about 2008, the Stern law firm's foreclosure case volume sky-rocketed, the success of which depended upon stringent start-to-finish timeline requirements which imposed substantial oversight and managerial responsibilities on David J. Stern and his supervisory level personnel.
- 14. Ultimately, the firm's supervisory echelon employees such as Mensieta, McComas, and Samons, due to their extensive supervisory and managerial duties and responsibilities were given annual salaries that ranged from \$200,000 to \$600,000.
- 15. David J. Stern knew, or with the exercise of reasonable diligence, should have known that during Mendieta's and McComas' tenures as a managing attorneys, Mendieta and McComas failed to make reasonable efforts to ensure that she and the lawyers under her authority and supervision conformed to the applicable Rules of Professional Conduct.
- 16. David J. Stern's lack of supervisory oversight, together with that of the supervisory echelon, contributed to many allegations of misconduct, including many judicial referrals to the Bar, on the part of the Stern law firm and its associates, which included, but were not limited to:
 - A. Missed hearings, trials, case management conferences and other court proceedings of which the Stern law firm had been duly noticed but for which no attorney appeared;

- B. Improperly executed and/or improperly notarized documents, including, but not limited to, assignments of mortgage, and affidavits of reasonable attorneys' fees;
- C. Improperly drafted and filed ex parte motions to cancel foreclosure sales, set aside final judgments of foreclosure and to restore cancelled loan documents involving real property in various counties of the state of Florida;
- D. Hundreds of attorneys handling thousands of mortgage foreclosure files with substandard administration, direction, supervision, oversight or control; and
- E. Thousands of pending foreclosure cases and clients left without proper representation in the courts of various judicial circuits of the state of Florida.
- 17. Further, in attempting to perform managerial and supervisory duties and exercise of authority, David J. Stern failed to make reasonable efforts to ensure that the Stern law firm had measures in effect that would give reasonable assurances that the professional conduct of those handing the firm's files was compatible with the professional obligations conferred upon an attorney by the Rules Regulating The Florida Bar and the applicable Rules of Court Administration.

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- 18. David J. Stern failed to take sufficient steps to prevent wrongdoing by the firm's employees despite the multiple allegations of misconduct and judicial referrals alleging such conduct as backdating and/or changing of dates on documents.
- 19. Due to the aforesaid lack of proper management, administration, supervision, oversight and control, of which David J. Stern knew or should have known, David J. Stern failed to take sufficient steps to otherwise prevent misconduct that resulted in constant allegations and judicial referrals alleging that documents were frequently submitted to courts on behalf of the firm's clients that were incomplete, contained substantial inaccuracies and unconfirmed data, were backdated, improperly notarized and contained other improprieties.
- 20. The above practices, along with the aforesaid failures to appear and/or to be properly prepared for hearings, gave rise to many judicial referrals to the Bar that contained allegations of fraudulent and improper practices and procedures and which resulted in the issuance of rules to show cause and sanction orders.
- 21. In David J. Stern's capacity as managing attorney and sole shareholder in charge of all activities and functions of the Stern law firm, David J. Stern either knew or should have known that inaccurate and/or improperly executed documents were regularly being provided to courts throughout the state

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of Florida and took insufficient action to investigate the activity or to stop or prevent the improprieties.

22. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the

Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that

would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

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COUNT II

[The Florida Bar File Nos. 2011-50,154(17I); 2011-50,216(17I); and 2011-50,511(17I)]

- 23. During all times material, Cheryl Samons was the office manager for the foreclosure department and/or manager of operations of the Law Offices of David J. Stern, P.A., among other things.
- 24. During all times material, Cheryl Samons occupied a desk and/or office in close proximity to respondent's office.
- 25. Respondent, David J. Stern, was regularly present in the Law Offices of David J. Stern, P.A.
- 26. In the hierarchy of the staff of the Law Offices of David J. Stern, P.A., Cheryl Samons answered directly to respondent.
- 27. Cheryl Samons and respondent communicated openly during regular working hours.
- 28. During all times material, Cheryl Samons, as Assistant Secretary of Mortgage Electronic Registration Systems (c/k/a MERS), or in some other official capacity, did execute thousands of documents, including assignments of mortgage, which were filed in courts throughout the state of Florida in foreclosure cases or recorded in the public record.

- 29. Associate attorneys in the Stern firm utilized those assignments through filings in courts throughout the state of Florida in the firm's endeavor to foreclose these properties on behalf of the firm's lender clients.
- 30. On a given day, Cheryl Samons executed approximately 500 documents which were either filed in courts throughout the state of Florida or recorded in the public record.
 - 31. Each assignment indicated that it was prepared by David J. Stern, Esq.
- 32. Numerous assignments were not executed by Cheryl Samons on the date reflected on the document.
- 33. The false representation of the execution of the assignment is evidenced by the date of the expiration of the notary commission. (Attached hereto and incorporated herein as **The Florida Bar Composite Exhibit A** are copies of some of the assignments of mortgage.)
- 34. A review of the first document in The Florida Bar Composite Exhibit P reflects, as an example, that Cheryl Samons executed an assignment of mortgage regarding Lots 9 and 10, Block 4461, Unit 63, Cape Coral, Lee County, Florida on May 25, 2007. Said document reflects it was notarized by another individual, Michelle Camacho, whose notary commission expires on March 24, 2012. A notary term is four years. As such, Michelle Camacho possessed that stamp from

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March 25, 2008 to March 24, 2012, making it impossible to have notarized the document on May 25, 2007, nearly a year before.

- 35. Although the documents Cheryl Samons executed, which were filed in courts throughout the state of Florida or filed in the public record, indicated that they were signed in the presence of a notary, in truth and in fact many of the documents were not executed in the presence of a notary.
- 36. Although the documents Cheryl Samons executed, which were filed in courts throughout the state of Florida or filed in the public record, indicated that they were executed in the presence of a notary, in truth and in fact many of the documents were not necessarily notarized by the reflected notary as the notaries in the office routinely exchanged their notary stamps to accomplish mass notarizing.
- 37. Many of the documents purported to be executed by Cheryl Samons were in truth and in fact executed by others mimicking Cheryl Samons' signature, at Cheryl Samons' instructions and directive. Those documents did not indicate for the reader that Cheryl Samons was not the signatory. Those documents were filed in courts throughout the state of Florida or filed in the public record.
- 38. Although the documents Cheryl Samons executed, which were filed in the courts throughout the state of Florida or filed in the public record, included witnesses' signatures which indicated that they witnessed Cheryl Samons as the

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signatory, many witnesses did not actually observe Cheryl Samons sign the document.

- 39. The documents heretofore mentioned were stacked side by side on long conference room tables on each of the four floors of the space occupied by the Law Offices of David J. Stern, P.A.
- 40. On a daily basis during the material times, Cheryl Samons would approach each conference room table, generally twice a day, morning and midafternoon, and execute each document.
- 41. Respondent knew or should have known that the aforementioned improprieties and irregularities committed by his office manager and other staff occurred on a regular basis.
 - 42. Cheryl Samons was rewarded for her loyalty and malfeasance.
- 43. The rewards to Cheryl Samons included payment of many of Cheryl Samons' household bills and the purchase and/or lease of new automobiles.
- 44. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as

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constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct

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supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT III

[The Florida Bar File No. 2011-50,695(17I)]

45. On or about July 29, 2008, an assignment of mortgage prepared by David J. Stern, Esq. was filed in the public records in Citrus County, Florida on behalf of Mortgage Electronic Registration Systems (c/k/a MERS) concerning

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property described as a portion of Section 35, Township 20 South, Range 20 East, Citrus County, Florida. (Attached hereto and incorporated herein as **The Florida Bar Exhibit B** is a copy of the assignment of mortgage.)

- 46. The assignment was executed by Cheryl Samons, as Assistant Secretary, on behalf of MERS.
- 47. Cheryl Samons, as previously referenced and during all times material, was the office manager for the foreclosure department and/or manager of operations of the Law Offices of David J. Stern, P.A.
- 48. The assignment contained a false representation as to the date it was executed since the witnessing notary's term could not have been in existence on September 18, 2007, the date Cheryl Samons executed the assignment.
- 49. The notary's term of four years ran from March 25, 2008 until March 24, 2012. The purported date of the execution of the assignment was on September 7, 2007.
- 50. On or about September 8, 2009, a corrected assignment of mortgage prepared by David J. Stern, Esq. was filed in the public records in Citrus County, Florida on behalf of MERS, as to the same property referenced above. (Attached hereto and incorporated here as **The Florida Bar Exhibit C** is a copy of the corrected assignment of mortgage.)

- 51. The "corrected" assignment did not appear to contain any false representations.
- 52. The corrected assignment was respondent's attempt to conceal and correct the prior fraudulent assignment filed in the Citrus County public records on July 29, 2008.
- 53. The respondent knew or should have known that the aforementioned improprieties and irregularities committed by his office manager and others occurred.
- 54. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a

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cause for discipline.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to

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violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT IV

[The Florida Bar File No. 2010-51,725(17I)]

- 55. Respondent employed attorneys Richard Toledo and Jorge Suarez as independent contractors in the role of experts concerning the assessment of reasonable, acceptable, and appropriate attorneys' fees in the mortgage foreclosure actions that were being prosecuted by respondent's firm.
- 56. Between 2006 and 2011, Toledo and Suarez executed between 200-225 attorneys fee affidavits per week.
- 57. Many of the affidavits were not notarized in the presence of either Toledo or Suarez.

- 58. Despite stating under oath that files were reviewed prior to the execution of the affidavits, Toledo and Suarez did not review all files.
- 59. Between 2006 and 2011, attorney Richard Toledo was paid approximately \$240,000 by the Law Offices of David J. Stern, P.A. for the execution of attorneys' fee affidavits and the purported review of files.
- 60. Between 2006 and 2007 attorney Jorge Suarez was paid approximately \$59,101 by the Law Offices of David J. Stern, P.A. for the execution of attorneys' fee affidavits and the purported review of files.
- 61. Between 2008 and 2010 attorney Jorge Suarez was paid approximately \$782,269 by the Law Offices of David J. Stern, P.A. for the execution of attorneys' fee affidavits and purported review of files, as well as other work performed on behalf of the Stern law firm.
- 62. These affidavits of reasonable attorneys' fees containing falsehoods were filed by the Law Offices of David J. Stern, P.A. in various court cases throughout the state of Florida.
- 63. The respondent knew or should have known that the aforementioned improprieties and irregularities committed by employees and independent contractors occurred on a regular basis.
- 64. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A.,

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respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files or preparing documents to be filed in various court cases throughout the state of Florida in those firm files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.

65. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to

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Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is

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compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors,

witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT V

[The Florida Bar File No. 2011-51,497(17I)]

- 66. The Law Offices of David J. Stern, P.A. represented the plaintiff, BAC Home Loans Servicing, in its foreclosure action against Christine Noonan-Smith, et al. in Gilchrist County, Florida, Case No. 2009CA000126 (hereinafter referred to as <u>BAC v. Noonan-Smith</u>) beginning on or about September of 2009.
- 67. On or about October 20, 2009, the Honorable Stanley H. Griffis III, Circuit Judge of the Eighth Judicial Circuit of Florida, entered an Order Scheduling Case Management Conference and/or Non-Jury Trial in which a Case Management Conference in BAC v. Noonan-Smith was scheduled for December 15, 2009 at 11:00 a.m., in the Gilchrist County Courthouse. (Attached hereto and incorporated herein as **The Florida Bar Exhibit D** is a copy of the Order dated October 20, 2009.)
- 68. On or about December 15, 2009, Judge Griffis entered an Order of Dismissal for Failure to Comply and Order Directing Clerk to Close File in <u>BAC v.</u>

 Noonan-Smith. (Attached hereto and incorporated herein as **The Florida Bar Exhibit E** is a copy of the Order dated December 15, 2009.)

69. Judge Griffis found the following, among other things, in the

December 15, 2009 Order in BAC v. Noonan-Smith:

THIS CAUSE came before the Court on December 15, 2009, for Case Management filed on the 20th day of October, 2009. The Court, being otherwise fully advised in the premises, **FINDS**:

- a. Good cause was not shown at the hearing why the action should not be dismissed for failure to comply with the Order Scheduling Case Management Conference and/or Non-Jury Trial filed on October 20, 2009, by the Plaintiff's attorney who is responsible for the file in this case failing to appear at the Case Management Conference in person. The Court shall dismiss this action.
- b. The Court has previously dismissed the following case(s) involving counsel's failure to appear at court ordered hearings.

Case No.: 21-2008-CA-0133 Case No.: 38-2008-CA-1264 Case No.: 38-2008-CA-0906 Case No.: 38-2008-CA-0855 Case No.: 38-2008-CA-0852 Case No.: 21-2008-CA-0113

Case No.: 38-2008-CA-0390 Case No.: 21-2008-CA-0072 Case No.: 38-2008-CA-1169

Case No.: 38-2009-CA-0148

Case No.: 38-2009-CA-0944 Case No.: 38-2009-CA-0950

Case No.: 38-2008-CA-0891

Case No.: 21-2009-CA-0132

Case No.: 21-2009-CA-0131

(See Exhibit E)

70. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and

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activities, practices and procedures of the Stern law firm, respondent either knew, or should have known, that hearings, case management conferences and other duly noticed adjudicative proceedings were being dismissed for failure of the respondent or an associate of the firm to appear after timely notice.

- 71. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 72. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's

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relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-5.1(a) [A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; and 4-5.1(c) [A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.].

COUNT VI

[The Florida Bar File No. 2011-51,696(17I)]

- 73. The Law Offices of David J. Stern, P.A. represented the plaintiff, Aurora Loan Services, LLC, in its foreclosure action against Edward S. Gelman, et al. in Nassau County, Florida, Case No. 2009CA000220 (hereinafter referred to as Aurora v. Gelman) beginning on or about July of 2009.
- 74. On or about October 12, 2010, the Honorable Brian J. Davis, Circuit Court Judge of the Fourth Judicial Circuit of Florida, entered an Order on Motion for Attorney's Fees in <u>Aurora v. Gelman</u> in which the Law Offices of David J. Stern, P.A. was ordered to pay the sum of \$1,225.00 as and for the defendant's attorney's fees. (Attached hereto and incorporated herein as **The Florida Bar Exhibit F** is a copy of the Order dated October 12, 2010.)
- 75. Judge Davis found the following, among other things, in the October 12, 2010 order in <u>Aurora v. Gelman</u>, which is paraphrased below:
 - A. That the Stern law firm had been served with proper and timely notice of the telephonic hearing and had thus been afforded an ample opportunity to be heard.
 - B. That the Stern law firm was familiar with the Court's procedures for such hearings as same had been utilized for a prior motion hearing less than a month earlier, but that the

- firm's associate nevertheless failed to answer the telephone and attend the hearing.
- C. That the bad faith conduct of the Stern law firm's associate unreasonably prolonged the proceeding and increased the cost of representation of both parties.
- D. That the Stern law firm's associate knowingly sent a proposed Order granting the Stern law firm's motion for leave to file an amended foreclosure complaint to the Court without first providing a copy of the proposed Order to opposing counsel of record, an act Judge Davis characterized as a violation of Rule 4-3.5 of the Rules Regulating The Florida Bar. Such ex parte communication was the basis of the Court's granting the said motion.
- E. That the defendants were forced to file a motion to vacate the Order.
- F. On September 28, 2010, following a hearing, Judge Davis also granted the defendants' motion to strike the amended complaint because Judge Davis found it was not properly verified, as required pursuant to Fla. R. Civ. P. 1.110(b).

- G. Further, Judge Davis found that the Stern law firm's associate's letter and proposed Order also violated Rule 4-3.3 of the Rules Regulating The Florida Bar requiring candor towards the tribunal.
- H. That, further, the Stern law firm's associate failed to disclose to the Court that defendants' attorney had previously filed and served an objection to the Motion For Leave to File Amended Foreclosure Complaint and that the Stern law firm's associate also failed to inform the Court of the verification requirement provided by Rule 1.110(b) as required by Rule 4-3.3(c) of the Rules Regulating The Florida Bar. Such rule requires that all facts known to the attorney be disclosed in order to enable a Court to make an informed decision, whether or not the facts are adverse.
- I. That as a result, the defendants' attorney was required to prepare and file a motion to vacate the Order and strike the Amended Complaint, as well as to schedule, prepare for and attend the hearing on the motion.

(See Exhibit F)

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- 76. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures of the Stern law firm, respondent either knew or should have known, that duly noticed hearings were missed, that files were not properly reviewed by firm associates, and that misrepresentations were made by associates to the court due to inadequate and incomplete review of the file and/or an overwhelming number of files assigned to each associate.
- 77. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 78. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall

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the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its

consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT VII

[The Florida Bar File No. 2011-51,868(17I)]

79. On or about November 4, 2010, the Honorable Paul B. Kanarek, Circuit Court Judge for the Nineteenth Judicial Circuit of Florida, wrote to The Florida Bar and forwarded a copy of the order entered striking a certificate of compliance filed by an associate in the Law Offices of David J. Stern, P.A., in Sovereign Bank, Plaintiff v. David A. Bishop, et al., Defendants, Case No. 2010CA010183 (hereinafter referred to as Sovereign Bank v. Bishop).

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(Attached hereto and incorporated herein as **The Florida Bar Exhibit G** is a copy of Judge Kanarek's letter dated November 4, 2010 and attachment.)

- 80. In Judge Kanarek's letter to The Florida Bar, he advised that the certificate of compliance filed in <u>Sovereign Bank v. Bishop</u> was struck because statements made were not true since the certificate indicated that mediation was not mandated due to the date that the underlying action was filed.
- 81. In truth and in fact, mediation <u>was</u> mandated based on the date that the underlying action was filed.
- 82. In response to The Florida Bar, the associate from the Law Offices of David J. Stern, P.A. stated that his review of his own office file was negligent which led to providing inaccurate information to the court in <u>Sovereign Bank v. Bishop</u>.
- 83. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures of the Stern law firm, respondent either knew or should have known that files were not properly reviewed by firm associates and that misrepresentations were made by associates to the court due to inadequate and incomplete review of the file and/or an overwhelming number of files assigned to each associate.

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- 84. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 85. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or

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together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability,

marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT VIII

[The Florida Bar File No. 2011-51,192(17I)]

- 86. The Law Offices of David J. Stern, P.A. represented the plaintiff, BAC Home Loans Servicing, in its foreclosure action against Nannette Fuste, et al. in Indian River County, Florida, Case No. 2009CA012915 (hereinafter referred to as BAC v. Fuste) beginning on or about November of 2009.
- 87. On or about February 22, 2011, the Honorable Cynthia L. Cox, Circuit Court Judge of the Nineteenth Judicial Circuit of Florida, issued an Order in <u>BAC v. Fuste</u> Cancelling Foreclosure Sale 2/24/11 reflecting copies to counsels for the defendant, Law Offices of David J. Stern, and The Florida Bar. (Attached hereto and incorporated herein as **The Florida Bar Exhibit H** is a copy of the Order dated February 22, 2011.)
- 88. Judge Cox found the following, among other things, in the February 22, 2011 Order in <u>BAC v. Fuste</u>:
 - A. Plaintiff's counsel has failed to prosecute this case.
 - B. That the Order Granting Summary Judgment is pending appeal.

- C. That the above-referenced case was set for a foreclosure sale on February 24, 2011; however the Plaintiff failed to publish the sale or pay the Clerk's fees.
- D. This Court reserves jurisdiction over all legal and proper issues, including but not limited to sanctions against Plaintiff's counsel for its lack of diligence, untimely filing and continuous failure to follow the Rules and Administrative Orders of this Court.

(See Exhibit G)

- 89. On or about February 22, 2011, the Law Offices of David J.

 Stern, P.A. was the attorney of record on behalf of the plaintiff in <u>BAC v. Fuste</u>.
- 90. Approximately one month earlier, on or about January 11, 2011, the Law Offices of David J. Stern, P.A. filed a Motion to Withdraw as Counsel and for Continuance in <u>BAC v. Fuste</u>. (Attached hereto and incorporated herein as **The Florida Bar Exhibit I** is a copy of the Motion to Withdraw dated January 10, 2011.)
- 91. The Motion to Withdraw did not enclose a proposed order or substitution of counsel, was not set for hearing, and as a result the Law Offices of David J. Stern, P.A. did not obtain a ruling granting their Motion to Withdraw.
- 92. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of

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Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.16(a)(3) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the

Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT IX

[The Florida Bar File No. 2011-50,949(17I)]

- 93. On or about January 4, 2011, the Honorable Charles A. Francis, Chief Judge of the Second Judicial Circuit of Florida, filed a grievance with The Florida Bar against David J. Stern. (Attached hereto and incorporated herein as **The**Florida Bar Exhibit J is a copy of Judge Francis' grievance dated January 4, 2011 and attachment.)
- 94. In 10 separate cases pending in the Second Judicial Circuit between July 28, 2010 and September 20, 2010 in which the Law Offices of David J. Stern, P.A. was attorney of record, no attorney appeared for court ordered mediations for the following cases: Case No. 2010CA003171 (Leon County), Case No. 2010CA003125 (Leon County), Case No. 2010CA000946 (Gadsden County), Case No. 2010CA000941 (Gadsden County), Case No. 2010CA000304 (Wakulla

- County), Case No. 2010CA002491 (Leon County), Case No. 2010CA002485 (Leon County), Case No. 2010CA000290 (Wakulla County), Case No. 2008CA001907 (Leon County), Case No. 2010CA002382 (Leon County).
- 95. On or about December 16, 2010, in four separate cases pending in the Second Judicial Circuit in which the Law Offices of David J. Stern, P.A. was attorney of record on behalf of U.S. Bank in Case No. 2008CA002458, National City Mortgage in Case No. 2008CA001882, U.S. Bank in Case No. 2008CA001480, and CitiMortgage in Case No. 2008CA002094, no attorney appeared for trial previously set by the court.
- 96. The failure to appear for trial on December 16, 2010 by the Law Offices of David J. Stern, P.A. resulted in dismissal of the four previously referenced cases. (Case Nos. 2008CA002458, 2008CA001882, 2008CA001480, and 2008CA002094). (Attached hereto and incorporated herein as **The Florida Bar Composite Exhibit K** are copies of the Orders Dismissing Case Without Prejudice filed December 16 and 17, 2010.)
- 97. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of

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prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-1.16(a)(3) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT X

[The Florida Bar File No. 2011-51,369(17I)]

- 98. On or about March 10, 2011, the Honorable Martha Ann Lott, then Chief Judge of the Eighth Judicial Circuit of Florida, filed a grievance with The Florida Bar against David J. Stern. (Attached hereto and incorporated herein as **The Florida Bar Exhibit L** is a copy of Judge Lott's grievance dated March 10, 2011 and attachments.)
- 99. On or about March of 2011, approximately 608 cases in which the Law Offices of David J. Stern, P.A. was attorney of record remained pending in the Eighth Judicial Circuit.
- 100. On or about March 4, 2011, David J. Stern wrote to Judge Lott and stated:

A short while ago, we wrote to your Honor advising that our

firm suffered a tremendous reduction of both clients and personnel. Since our last communication, we have continued to file Motions to Withdraw as Counsel in mass and have been attempting to set them as quickly and efficiently as possible. The majority of our clients have terminated the attorney-client relationship and have taken physical possession of their files. The files were taken in November 2010, with the promise from our clients that new counsel would file a stipulation of substitution of counsel with the court and ask for entry of an order substituting counsel within thirty (30) days. To date, in the vast majority of cases, successor counsel has still not been named or identified to us. In the instances where successor counsel has been identified, we have either drafted Stipulation of Substitution of Counsel or have signed the same by the thousands. For reasons unbeknownst to us, of those aforementioned Stipulations, new counsel has failed to file them with the court. In other cases our former clients have simply failed to obtain new counsel altogether.

Given these circumstances, we estimate that we still need to withdraw from approximately 100,000 files statewide. With our extremely limited staff, we have attended as many hearings as possible without new counsel coming forward to shoulder the responsibility for the files they were assigned nearly five months ago. As a result thereof, we have been forced to drastically reduce our attorney and paralegal staff to the point where we no longer have the financial or personnel resources to continue to file the Motions to Withdraw in the tens of thousands of cases that we still remain as counsel of record. Therefore, it is with great regret that we will be ceasing the servicing of clients with respect to all pending foreclosure matters in the State of Florida as of March 31, 2011. If our former clients do not cause new counsel to appear to represent them by March 31, 2011, your Honor should treat the pending cases on the enclosed list as you deem appropriate. We are enclosing a list of all of the active cases we have in your circuit. [Emphasis supplied.] (See Exhibit L)

101. David J. Stern did intentionally abandon the approximately 608 cases referenced above in the Eighth Judicial Circuit despite the knowledge that they remained active, as well as the remainder of the 100,000 cases statewide all of

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which David J. Stern admitted, causing massive and irreconcilable damage to the entire court system.

102. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.16(a)(3) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering

papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT XI

[The Florida Bar File No. 2011-51,329(17I)]

- 103. The Law Offices of David J. Stern, P.A. represented the plaintiff, Deutsche Bank National Trust Company, in its foreclosure action against Paul Wilder and Melody L. Pecot in Brevard County, Florida, Case No. 2007CA020455, beginning on or about July of 2007.
- 104. On or about March 23, 2010, the defendant, Paul D. Wilder, filed a Notice of Appeal in the Brevard County case referenced above with the District

Court of Appeal of the State of Florida, Fifth District (hereinafter referred to as the 5th DCA).

105. On or about December 7, 2010, the 5th DCA issued an order in Paul D. Wilder, Appellant v. Deutsche Bank National Trust Company, Appellee, Case No. 5D10-1022 (hereinafter referred to as Wilder v. Deutsche Bank) reflecting copies to Paul D. Wilder, David J. Stern (with copy of motion), and Clerk of Court, Brevard County (2007CA020455) that provided in part:

ORDERED that Appellee shall file a response to Appellant's Motion for Mediation, filed November 8, 2010, within ten days from the date hereof. A copy of the motion is provided to Appellee with this Order.

(Attached hereto and incorporated herein as **The Florida Bar Exhibit M** is a copy of the Order dated December 7, 2010.)

- 106. Appellee, Deutsche Bank, through its attorney, David J. Stern, failed to file any response to the 5th DCA's December 7, 2010 Order.
- 107. On or about January 10, 2011, the 5th DCA issued an order in Wilder v. Deutsche Bank reflecting copies to Paul D. Wilder and David J. Stern, Esq. that provided in part:

ORDERED that counsel for Appellee, David J. Stern, Esq. shall show cause within ten days from the date hereof, why he shouldn't be sanctioned for failing to comply with the Court's December 7, 2010 Order.

(Attached hereto and incorporated herein as **The Florida Bar Exhibit N** is a copy of the Order dated January 10, 2011.)

- 108. David J. Stern failed to file any response to the 5th DCA's January 10, 2011 Order.
- 109. On or about January 27, 2011, the 5th DCA issued an order in Wilder v. Deutsche Bank reflecting copies to David J. Stern, Esq. by certified mail and to Paul D. Wilder that provided:

ORDERED that attorney David J. Stern shall personally appear before this Court at 10:00 a.m., Thursday February 24, 2011, to show cause why he should not be sanctioned for failing to comply with this Court's December 7, 2010 and January 10, 2011 Orders.

(Attached hereto and incorporated herein as **The Florida Bar Exhibit O** is a copy of the Order dated January 27, 2011.)

- 110. The 5th DCA's January 27, 2011 Order directing David J. Stern to personally appear on February 24, 2011 was received in his office, as reflected by the certified mail receipt dated January 31, 2011. (Attached hereto and incorporated herein as **The Florida Bar Exhibit P** is a copy of the certified mail receipt dated January 31, 2011.)
- 111. David J. Stern failed to appear before the 5th DCA on February 24, 2011.
- 112. David J. Stern did not provide any explanation to the 5th DCA for his failure to appear on February 24, 2011.
- 113. On or about February 25, 2011, the 5th DCA issued an order in Wilder
 v. Deutsche Bank reflecting copies to The Florida Bar (with copy of orders), David

J. Stern, Esq., Paul D. Wilder, and Deutsche Bank National Trust Company that provided:

ORDERED that David J. Stern, Esq. is hereby referred to The Florida Bar, for investigation and consideration of appropriate disciplinary action for failing to comply with the December 7, 2010 and January 10, 2011 Orders of this Court and failing to personally appear before the Court in compliance with the Court's January 27, 2011 Order. Copies of the relevant Orders are provided herewith to The Florida Bar.

(Attached hereto and incorporated herein as **The Florida Bar Exhibit Q** is a copy of the Order dated February 25, 2011 and attachments.)

- 114. On or about February 25, 2011, Susan Wright, Clerk of the 5th DCA wrote to The Florida Bar, at the direction of the 5th DCA referring David J. Stern for appropriate disciplinary action for failures to comply with court orders and failing to appear. (Attached hereto and incorporated herein as **The Florida Bar Exhibit R** is a copy of Susan Wright's letter dated February 25, 2011 and enclosures.)
- 115. Even after the 5th DCA entered the February 25, 2011 Order referring the matter to The Florida Bar for investigation and consideration of appropriate disciplinary action, David J. Stern has <u>never</u> provided any response to the 5th DCA for his failures to comply and appear.
- 116. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of

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Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-3.4(c) [A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account

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of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT XII

[The Florida Bar File No. 2011-50,213(17I)]

- 117. The Law Offices of David J. Stern, P.A. represented the plaintiff, GMAC in its foreclosure action against Pablo Guerra, et al. in Miami-Dade County, Florida, Case No. 2008CA062193 (hereinafter referred to as GMAC v. Guerra) beginning on or about October of 2008.
- 118. On or about November of 2008, Pablo Guerra was served with the lawsuit filed by the Law Offices of David J. Stern, P.A on behalf of GMAC.
- 119. Pablo Guerra, who was served with process, had the same name as the debtor, but was not the debtor. He was "the wrong" Pablo Guerra.
- 120. On or about November 21, 2008, counsel for Guerra spoke with an associate of the Stern law firm by telephone to apprise of the error.
- 121. A Stern associate advised Mr. Guerra's attorney to provide a copy of his client's driver's license and social security information to confirm that "the wrong" Pablo Guerra was served with process.
- 122. According to the Stern associate, upon receipt and confirmation of the requested identifying information, "the wrong" Pablo Guerra would be removed as a defendant.

- 123. On or about November 21, 2008, Mr. Guerra's attorney promptly provided the requested information together with a letter to the same associate from the Law Offices of David J. Stern, P.A. (Attached hereto and incorporated herein as **The Florida Bar Exhibit S** is a copy of the letter and attachment from Mr. Guerra's attorney dated November 21, 2008.)
- 124. Despite immediate compliance with the Stern associate's requested identifying information, "the wrong" Pablo Guerra continued to receive documents from the case.
- 125. On or about June 23, 2009, Mr. Guerra's attorney sent another letter to the Stern law firm once again seeking the firm's assistance with regard to the firm's suing and moving for summary judgment against "the wrong" Pablo Guerra. (Attached hereto and incorporated herein as **The Florida Bar Exhibit T** is a copy of the letter and attachment from Mr. Guerra's attorney dated June 23, 2009.)
- 126. Despite Mr. Guerra's attorney's repeated requests for the Stern law firm to correct their known mistake, "the wrong" Pablo Guerra continued to be copied on documents filed by the Stern law firm in the foreclosure case despite assurances by multiple Stern law firm employees that the mistake would be corrected.
- 127. On or about July 27, 2010, Mr. Guerra's attorney once again communicated this error to the Stern law firm and sent a certified letter directly to

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David J. Stern outlining the numerous failed efforts to correct the Stern law firm's wrongful pursuit of his client, "the wrong" Pablo Guerra. (Attached hereto and incorporated herein as **The Florida Bar Exhibit U** is a copy of the letter and attachment from Mr. Guerra's attorney dated July 27, 2010.)

128. On or about October 27, 2010, the court awarded attorneys' fees to "the wrong" Pablo Guerra, as a result of the complete disregard shown for "the wrong" Pablo Guerra and his attorney by the Law Offices of David J. Stern, P.A. and found:

Case is dismissed against Pablo Guerra. In November 21, 2008, Stern firm was advised that they had served the wrong Pablo Guerra and yet failed to secure service on the proper Defendant or investigate and further submitted the case for S.J. knowing about the issue. The Court took testimony from Pablo Guerra served at 1004 NE 24th Ave., Hallandale, FL 33009. The testimony established he has no relationship with this property in Homestead or the borrowers. The Court awards fees to Mr. Guerra as a sanction [unreadable] an amount.

(Attached hereto and incorporated herein as **The Florida Bar Exhibit V** is a copy of the Order dated October 27, 2010.)

129. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. and in charge of all of the functions and activities, practices and procedures of the Stern law firm, respondent either knew or should have known that members of the Bar representing litigants could not

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effectively communicate with members of the Stern staff in their efforts to resolve issues which would ameliorate prejudice to the administration of justice.

- 130. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 131. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a

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cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial

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authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference,

disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT XIII

[The Florida Bar File No. 2011-50,850(17I)]

- 132. The Law Offices of David J. Stern, P.A. represented the plaintiff, Bank of America, in its foreclosure action against the Estate of Frances J. Vaxmonsky in Indian River County, Florida, Case No. 2009CA012998 beginning on or about November of 2009.
- 133. On or about August 31, 2010, counsel for the Estate of Vaxmonsky reached a settlement with the Stern law firm through one of its associates.
- 134. On or about August 31, 2010, counsel for the Estate, via his letter of August 31, 2010, sent the Stern associate a cashiers check made payable to Bank of America in the amount of \$49,887.84. (Attached hereto and incorporated herein as **The Florida Bar Exhibit W** is a copy of the August 31, 2010 letter and cashiers check from the Estate's attorney.)
- 135. The August 31, 2010 letter confirmed the agreement between the parties the Estate and the Stern law firm that the Stern firm would hold the funds in escrow until a Satisfaction of Mortgage was signed by the Stern law firm associate on behalf of Bank of America and provided to counsel for the Estate.

- 136. In complete contravention of that agreement, the cashiers check was deposited in the law firm's trust account on September 7, 2010 and forwarded to Bank of America without providing an executed Satisfaction of Mortgage to the Estate's attorney.
- 137. The attorney for the Estate of Vaxmonsky made multiple telephone calls to the Stern firm in an effort to obtain the agreed upon Satisfaction of Mortgage.
- 138. Since all efforts were futile, on or about November 29, 2010, the attorney for the Estate of Vaxmonsky was forced to file a grievance with The Florida Bar seeking assistance. (Attached hereto and incorporated herein as **The Florida Bar Exhibit X** is a copy of the November 29, 2010 grievance and attachments filed on behalf of the Estate of Vaxmonsky.)
- 139. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures of the Stern law firm, respondent either knew, or should have known, that members of the Bar representing litigants or others could not effectively communicate with members of the Stern staff in their efforts to resolve issues which would ameliorate prejudice to the administration of justice.
- 140. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A.,

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respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.

141. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial

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authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to

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ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT XIV

[The Florida Bar File No. 2012-50,144(17I)]

- 142. The Law Offices of David J. Stern, P.A. represented Aurora Loan Services in its foreclosure action against Rodcliffe Griffiths, et al. in Broward County, Florida, Case No. 2009CA016554 (hereinafter referred to as <u>Aurora v. Griffiths</u>) beginning on or about March 2009.
- 143. The Stern law firm filed a Notice of Lis Pendens in <u>Aurora v. Griffiths</u> on March 23, 2009.
- 144. The property was sold by Aurora Loan Services and the new owner closed on the property on May 28, 2010.
- 145. Beginning on or about May 28, 2010, the new owner's lender, Mackinac Savings Bank, attempted unsuccessfully to obtain a Release of Lis Pendens from the Stern law firm.
- 146. The inability of the new lender, Mackinac Savings Bank, to obtain a Release of Lis Pendens from the Stern law firm made it impossible to obtain title insurance.
- 147. Since all efforts were futile, on July 8, 2011, the closing supervisor for Mackinac Savings Bank was forced to file a grievance with The Florida Bar.

 (Attached hereto and incorporated herein as **The Florida Bar Exhibit Y** is a copy of the grievance and attachments filed on behalf of Mackinac Savings Bank.)

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- 148. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures of the Stern law firm, respondent either knew, or should have known, that members of the Bar or others could not effectively communicate with members of the Stern staff in their efforts to resolve issues which would ameliorate prejudice of the administration of justice.
- 149. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 150. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance

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thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]: 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take

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reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to

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violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT XV

[The Florida Bar File No. 2011-51,322(17I)]

- 151. The Law Offices of David J. Stern, P.A. represented the plaintiff, CitiMortgage, Inc., in its foreclosure action against Mohammed Siddiqui, et al. in Osceola County, Florida, Case No. 2008CA007307 (hereinafter referred to as CitiMortgage v. Siddiqui) beginning on or about August of 2008.
- 152. Mohammed Shaikh was a tenant who occupied the property subject to the foreclosure action.
- 153. Mohammed Shaikh notified the Law Offices of David J. Stern multiple times both telephonically and in writing of his tenancy beginning as early as March 13, 2010. (Attached hereto and incorporated herein as **The Florida Bar Composite Exhibit Z** are copies of communications provided to the Stern law firm by Shaikh.)

- 154. Subsequently on May 26, 2010, an associate with the Stern law firm filed a Certificate of Compliance with the Protecting Tenants at Foreclosure Act of 2009 in <u>CitiMortgage v. Siddiqui</u> representing that "the subject property is not believed to be tenant occupied." (Attached hereto and incorporated herein as **The Florida Bar Exhibit AA** is a copy of the Certificate of Compliance.)
- 155. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures at the Stern law firm, respondent either knew or should have known that files were not properly reviewed by firm associates, that misrepresentations were made by associates to the court due to inadequate and incomplete review of the file and failure to assure that all communications to the firm were routed properly.
- 156. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 157. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of

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Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer

shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof. ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct 12-12020-mg Doc 8531-22 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit G Pg 71 of 84

supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

COUNT XVI

[The Florida Bar File No. 2011-51,433(17I)]

158. The Law Offices of David J. Stern, P.A. represented the Deutsche Bank National Trust Company in its foreclosure action against Susan M. Thompson, et al. in Seminole County, Florida in Case No. 2008CA003195 beginning on or about June of 2008.

- 159. Susan Thompson was represented by attorneys Wendy Anderson and Kristy L. Harrington.
- 160. Attorneys for Susan Thompson communicated repeatedly on her behalf with the Stern law firm.
- 161. Despite the Stern law firm's knowledge that Susan Thompson was represented by counsel, the Stern law firm communicated directly with Susan Thompson by noticing a sale of the property without providing notice to her attorneys.
- McIntosh, on behalf of Judge Clayton D. Simmons, ordered the parties to mediation and awarded attorneys' fees to Susan Thompson's attorneys in the amount of \$1,050 and sanctions. Said orders dated July 14, 2010 were provided to the Law Offices of David J. Stern, P.A. and Kristy Harrington and Wendy Anderson, attorneys for Susan Thompson. (Attached hereto and incorporated herein as **The Florida Bar Composite Exhibit BB** are copies of the aforementioned orders.)
- 163. Despite the Stern firm's knowledge that Susan Thompson was represented by counsel, the Stern law firm again communicated directly with Susan Thompson by noticing a mediation without providing notice to her attorneys.

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- 164. Ms. Thompson did appear at mediation and the mediator refused to proceed without the presence of Ms. Thompson's attorneys.
- 165. Despite the misconduct committed by the Stern law firm, the firm refused to pay the funds to Ms. Anderson and claimed that Deutsche Bank was responsible, which position is set forth in respondent's attorney's letter dated May 11, 2011 to The Florida Bar. (Attached hereto and incorporated herein as **The Florida Bar Exhibit CC** is a copy of Jeff Tew's letter dated May 11, 2011 and attachments.)
- 166. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures at the Stern law firm, respondent either knew or should have known that files were not properly reviewed by firm associates, that misrepresentations were made by associates to the court due to inadequate and incomplete review of the file and failure to assure that all communications to the firm were routed properly.
- 167. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of

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those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.

168. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the

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Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

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COUNT XVII

[The Florida Bar File No. 2010-51,725(17I)]

- 169. The Law Offices of David J. Stern, P.A. represented the plaintiff, U.S. Bank National Association, et al., in its foreclosure action against the Estate of Clayborn Castle in Volusia County, Florida, Case No. 2007CA011175 beginning on or about June of 2007.
- 170. Beginning in or about 2007, counsel for the personal representative of the Estate of Clayborn Castle requested a reinstatement figure from the Stern law firm. (Attached hereto and incorporated herein as **The Florida Bar Composite**Exhibit DD are copies of the requests.)
- 171. A reinstatement letter from the Stern law firm was finally forwarded to the Estate's attorney on or about April 14, 2008. (Attached hereto and incorporated herein as **The Florida Bar Exhibit EE** is a copy of the letter.)
- 172. On or about April 23, 2008, the personal representative of the Estate sent payment in full to the Stern firm requesting that the Stern firm hold the funds in trust until the foreclosure action was dismissed. (Attached hereto and incorporated herein as **The Florida Bar Exhibit FF** is a copy of the letter and check.)
- 173. The funds were in fact negotiated by the Stern firm without dismissing the foreclosure action.

- 174. The attorney for the Estate sent multiple letters to the Stern law firm to obtain a dismissal of the action. (Attached hereto and incorporated herein as **The Florida Bar Composite Exhibit GG** are copies of the letters.)
- 175. The foreclosure action was dismissed 20 months after receipt of payment in full despite multiple requests causing missed sales opportunities.
- 176. In respondent's capacity as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A. in charge of all of the functions and activities, practices and procedures of the Stern law firm, respondent either knew, or should have known, that members of the Bar representing litigants or others could not effectively communicate with members of the Stern staff in their efforts to resolve issues which would ameliorate prejudice to the administration of justice.
- 177. In respondent's performance of his duties and responsibilities as managing attorney and sole shareholder of the Law Offices of David J. Stern, P.A., respondent failed to make a reasonable effort to ensure that the firm had measures in effect that would provide reasonable assurance that the professional conduct of those handling the firm's files was compatible with the professional obligations and standards conferred on them by the Rules Regulating The Florida Bar.
- 178. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause

for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional

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Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its

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consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Respectfully submitted,

RANDI KLAYMAN LAZARUS

Randi Klagnan Tymo

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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable Thomas D. Hall, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished by United States Mail via certified mail No. 7010 0780 0001 6735 8070, return receipt requested to Jeffrey Allen Tew, Counsel for Respondent, at Tew Cardenas, L.L.P., 1441 Brickell Avenue, Floor 15, Miami, FL 33131-3429, and via electronic mail to jt@tewlaw.com; with a copy by electronic mail to Randi Klayman Lazarus, Bar Counsel, rlazarus@flabar.org, on this 17th day of April, 2013.

9207. MENNETH LAWDENCE N

KENNETH LAWRENCE MARVIN Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Randi Klayman Lazarus, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, (954) 835-0233 and rlazarus@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, kmarvin@flabar.org.

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MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

EXHIBIT H TO THE DECLARATION OF JOHN W. SMITH T

IN THE SUPREME COURT OF FLORIDA (Before a Referee)

THE FLORIDA BAR. Supreme Court Case No. SC13-643 Complainant, The Florida Bar File Nos. ٧. 2010-51,725(17I); 2011-50,154(17I); 2011-50,213(17I); 2011-50,216(17I); DAVID JAMES STERN, 2011-50,511(17I); 2011-50,695(17I); 2011-50,850(17I); 2011-50,949(17I); Respondent. 2011-51,192(17I); 2011-51,322(17I); 2011-51,329(17I); 2011-51,369(17I); 2011-51,433(17I); 2011-51,497(17I); 2011-51,696(17I); 2011-51,868(17I); 2012-50,144(17I).

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee on May 1, 2013 to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, a final hearing was held from September 30 through October 4, 2013.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

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The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar:

Randi Klayman Lazarus
The Florida Bar
Fort Lauderdale Branch Office
1300 Concord Terrace, Suite 130
Sunrise, FL 33323

On behalf of the Respondent:

Jeffrey Allen Tew Tew Cardenas, LLP 1441 Brickell Avenue, Floor 15 Miami, FL 33131

II. FINDINGS OF FACT

The Florida Bar presented a compelling case of conduct that prejudices the administration of justice with the burden of proof being clear and convincing. Conduct prejudicial to the administration of justice is defined as conduct that prejudices our system as a whole. The Florida Bar v. Machin, 635 So.2d 938 (Fla. 1994).

The Florida Bar's seventeen-count Complaint can be broken down into three categories of alleged misconduct. First, the Complaint raises issues with associate attorney mistakes and/or misconduct in the handling of foreclosure matters. *See* Count I (relating to the alleged failure to supervise which the Florida Bar maintains led to the other specifically enumerated acts of negligence or misconduct); Count IV (independent experts failed in some instances to properly review files prior to

executing reasonableness attorneys' fees affidavits); Count V (failure of "Plaintiff's attorney who is responsible for the file" to appear at a Case Management Conference in person in 16 cases); Count VI (associate attorney had ex parte communication with the Court, failed to adequately inform the Court of legal requirement of verifying foreclosure complaints and of opposing counsel's objection to a motion for leave to file an amended complaint, and failed to attend a telephonic hearing); Count VII (associate attorney checked the wrong box in a certificate of compliance, thus failing to indicate that mediation was mandated in the foreclosure case); Count XII (associate attorney failed to correct an error in a foreclosure case where the wrong individual was improperly served with process); Count XV (associate attorney failed to properly indicate to the court that the property was tenant-occupied); Count XVI (associate attorney communicated directly with defendant, despite information that defendant was represented by counsel, by providing a notice of sale and mediation directly to the defendant).

Second, the Complaint raises issues with non-attorney mistakes and/or misconduct in the handling of foreclosure matters. *See* Count I (relating to the alleged failure to supervise which the Florida Bar maintains led to the other specifically enumerated acts of negligence or misconduct); Count II (relating to the filing of documents which were improperly executed and/or notarized by Ms. Samons and/or other staff of the Firm); Count III (improperly notarized assignment

of mortgage filed in public records); Count IV (independent experts were improperly notarizing reasonableness attorneys' fees affidavits); Count XIII (The failure to adhere to a term of settlement payment requiring that funds be held in escrow until a satisfaction of mortgage was provided to defendant); Count XIV (The staff failed to timely release a lis pendens and the same failure as to reinstatement of a mortgage).

Third, the Complaint raises issues with Mr. Stern's failure to tend to and/or withdraw in each of the pending foreclosure cases for which his office was counsel of record after termination. *See* Count VIII (foreclosure sale cancelled in February 2011 for failure to prosecute case or properly withdraw); Count IX (failure to appear at court ordered mediation or trial in sixteen cases during the month of December 2010); Count X (failure to withdraw in 100,000 pending cases); Count XI (failure to respond to order to show cause issued by Court of Appeal in January 2011).

This case aptly illustrates the manner in which one attorney, David Stern, either in his capacity as the sole managing partner of his firm or in his individual capacity, created chaos on the courts of the state of Florida, prejudicing the whole system as a whole. Six circuit court judges testified in these proceedings.¹

¹Former Chief Judge Martha Lott, now retired, intended to appear live but a family emergency prevented her appearance. Judge Lott appeared telephonically.

Respondent's position that "only" six judges complained is evidence of his inability to fully grasp the magnitude of his actions.

Judge Stanley Griffis, Circuit Court Judge of the Eighth Judicial Circuit of Florida, had extensive problems with the attorneys of the Stern law firm. Between July 2009 and December 2009, Judge Griffis dismissed 15 cases for the failure of counsel to appear at case management conferences. Each order referenced the prior dismissals. However, it took five months for Mr. Stern to contact Judge Griffis to arrange a meeting regarding the dismissed cases. No explanation was provided for the failure to appear. Mr. Stern's attempt to resolve the problem by assigning attorneys to the caseload does not absolve him of the responsibility for the commission of violations of the rules for these actions. He failed to determine, if any other administrative procedure, i.e. improper or no calendaring, needed adjusting. Judge Griffis testified that despite the accommodations i.e., telephone hearings and block settings, the competence level remained unacceptable forcing him to "train" Mr. Stern's associate attorneys. The assigned attorney failed to know about the case resulting in resets and delays. The pleadings were not correct. The affidavits were problematic i.e. lost notes. The problems continued resulting in dismissals with prejudice. This problem continued in other circuits as supported by Judges Cox, Davis, Kanarek, and Francis testimony.

Judge Brian Davis of the Fourth Judicial Circuit of Florida was confronted with unethical and incompetent representations by a Stern firm associate who misstated the status of the proceedings and failed to alert the Court of Defendant's objection to the motion. The attorney failed to appear in court despite proper notice and authorized telephonic appearance. Judge Davis awarded attorney's fees as a sanction because of the bad faith conduct.

Judge Paul Kanarek of the Nineteenth Judicial Circuit of Florida was confronted with a Stern attorney who provided incorrect information to the court and his adversary concerning the Florida Supreme Court's requirement of mediation. Judge Kanarek's complaint is not a gripe about "checking the wrong box"; it was a symptom of a pattern of representation causing delays that served to impede the orderly administration of justice.

Judge Charles Francis, Chief Judge of the Second Judicial Circuit of Florida, testified that his concerns with Mr. Stern's firm began in 2007, causing him to issue multiple orders to show cause for failing to appear. Despite repeated admonitions, the problems never ceased disrupting the process. Judge Francis' problems culminated in his grievance to The Florida Bar in which he provided instances of 10 mediation cases in which the Stern firm attorneys failed to appear, as well as four cases set for trial in which Stern firm attorneys failed to appear. These cases resulted in dismissals. Mr. Stern's explanation is that these multiple

failures are justified by withdrawal of his clients' business in November of 2010. However, the termination did not relieve the attorney of responsibility under the Code and he shouldn't have left the problem on the court system to address.

Judge Cynthia Cox of the Nineteenth Judicial Circuit of Florida experienced the same multiple failures to appear resulting in chaos in the sale process. The court and Clerk personnel were consumed with the effects of these failures. Additionally, the failure to appear resulted in loss of funding dollars in having retired judges unavailable for other work.

Former Chief Judge Martha Lott's (retired) complaint addressed the issue of "abandonment". David Stern's firm had a large portion of the statewide foreclosure docket. By his own admission, in The Florida Bar Exhibit 7, his income from 2006 to 2010 was substantial. In fact, his income increased by almost eight times between these years. The volume of business and its increase permitted him to reap this level of earnings. Notably the letter of termination by Freddie Mac to David Stern dated November 1, 2010 explains the downfall:

The reasons for the termination include the much-publicized revelations, as a result of the investigation by the Florida Attorney General, concerning the improper and possibly unlawful practices engaged in by a number of employees of either, or both, the law firm or DJS Processing, LLC. The fact that certain grounds for termination are stated in this letter does not imply that additional grounds for termination or other action by Freddie Mac do not exist... You... continue to be responsible... pursuant to all applicable professional and ethical standards.

(The Florida Bar Exhibit 52)

The clients were now urgently needing to obtain new counsel for thousands upon thousands of files. When Mr. Stern's clients removed their files, the office had a computerized system "tracker" which enabled them to compile sufficient information to file proper motions to withdraw pursuant to the Rules of Judicial Administration. The clients' directive that no further actions be taken on their files did not prohibit the filing of motions to withdraw and requests for court hearings as required by the Rules of Judicial Administration. Further, the fact that there were difficulties obtaining substitutions of counsel from successor attorneys neither prevented nor excused Mr. Stern from seeking to properly withdraw pursuant to the Rules of Court.

With that backdrop, on March 4, 2011, Mr. Stern wrote to the Chief Judges throughout the state announcing his "intention" to take no further action on approximately 100,000 pending files due to a lack of financial resources and personnel. (The Florida Exhibits 6, 8). That stated intention was an abandonment. Judge Lott testified to a multitude of effects on the limited resources of the judicial system both in time, manpower and funds. Volume can be handled efficiently not left for the court system to handle thusly affecting everyone.

The contention that Mr. Stern did not have sufficient funds to file motions to withdraw and have them heard is belied by his professional obligation, his

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financial resources, and his commitment that some bonuses be payable regardless of the employees' status. (The Florida Bar Exhibits 7, 49). Mr. Stern's contention that he did not have sufficient information to file motions to withdraw is belied by the compilations attached to the two lawsuits he filed seeking attorneys' fees and costs from lenders in March and June of 2011, the existence of his computerized system, and the list provided to the Chief Judges (The Florida Bar Exhibits 6, 50, 51) as well as access to the court system.

The motions to withdraw filed in 2010- 2011 were filed without consents and Orders and were not set for hearing. These actions were not diligent and were examples of improperly handling. As the managing attorney, Mr. Stern is required to supervise his subordinates and is responsible that cases are handled reasonably regardless of caseload.

These actions affected the Administration of Justice. For the court system, Judges, staff, and Clerk, there were extraordinary delays resulting in the waste of resources due to inaccurate representations and/or failures to appear. For the borrowers, whether in default or not, the attempt to obtain modifications or settle was impossible. For the lenders, the aim to obtain the collateral was delayed or lost because of the inaction or non-appearance resulting in dismissals. Thusly, creating a denial of equal justice to all parties.

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Mr. Stern's response that his training program sufficiently prepared the associates failed to account for the proper handling of the massive volume resulting in the failure to appear at hearings and/or mediations, and failure to submit the applicable documents. A diligent mentoring and supervision should have corrected the problems. High volume required an increased level of supervision to create consistency and monitoring of that supervision which failed to occur.

James Covey, Richard Taylor, Wendy Anderson, and Patrick Phancao, all longstanding members in good standing of The Florida Bar, attested to the extraordinary difficulties encountered with Mr. Stern's firm beginning as early as 2007. All testified to their inability to obtain results after communicating with members of the firm.

Mr. Covey sent pay off monies in the amount of \$49,887.84 to the Stern firm in August of 2010 for a client with the condition that it not be disbursed until a satisfaction of mortgage was received. In contravention of that condition, the funds were released and a satisfaction was <u>not</u> received. Mr. Covey's client blamed and accused him of misconduct, and cast doubt on the legal system. It took the filing of a Bar grievance and six months for the satisfaction to be provided in February 2011. The inaction in this situation created a cloud in title and the delay resulted in decrease in sale price and additional costs.

Richard Taylor had a similarly disturbing experience with the Stern firm. After months of multiple requests for a reinstatement figure on behalf of his client, he received the figure. Mr. Taylor sent reinstatement monies in the amount of \$41,457.20 to the Stern firm in April of 2008 for a client with the condition that it not be disbursed until a pending foreclosure action was dismissed with prejudice. Just as with Mr. Covey, and in contravention of that condition, the funds were released and the lawsuit was not dismissed. As with Mr. Covey, Mr. Taylor's client blamed and accused him of misconduct. Just like attorney Covey, the filing of a Bar complaint and eight months after payment for the dismissal of the foreclosure. A second foreclosure suit was filed due to the delay and failure to provide instructions for future payments and Mr. Taylor's client did not receive the benefit of the funds forwarded to reinstate the mortgage. Mr. Stern's claim that timely responses were provided to the inquiry were not received by Mr. Taylor. If received, Mr. Taylor would have taken action. Mr. Taylor testified he had to obtain the dismissal in court although it was certified as mailed to him.

Wendy Anderson's client also suffered due to the ineptitude of the Stern firm. Despite Ms. Anderson's office appearing in the case and multiple communications with personnel in the firm, her client was contacted directly and motions were set that had been reset by agreement. Ms. Anderson sought and obtained sanctions and attorneys' fees as a result. Despite a court order, Ms.

Anderson's client was again directly contacted to appear at mediation. The client appeared and was distressed by the absence of her attorney which was not coordinated with her office. The Stern attorney ignored the existence of a defense attorney, a Court Order and directive and failed to make arrangements for timely payment of the sanction.

Attorney Phancao's client, a reputable real estate broker, was served with a lawsuit in foreclosure in 2008 because he has the same name as the actual owner. Mr. Phancao attempted to undo this initial mistake with documentation to support his client was not the proper party. Despite promises and innumerable contacts, even with a letter directly sent to Mr. Stern, no resolution occurred. Ultimately, the intervention of a court order in October 2010 and award of attorney's fees cured the problem. Mr. Phancao's client blamed him for his inability to extricate him from the litigation. The client suffered extreme angst, was concerned of the effect on his credit and licensure even though he had no interest in the legal proceeding.

Judith Young, the closing supervisor for the Mackinac banks in Michigan, could not get the Stern firm to provide a Release of Lis Pendens on a property to get clear title between May 2010 and August 2011. Like many others, who could neither communicate with the firm nor resolve an issue, Ms. Young filed a grievance with the Bar. The filing of a grievance led to the release of the Lis

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Pendens by the subsequent attorney. The delay threatened the loss of a repurchase transaction.

Mohammed Shaikh was a tenant that was the subject of a foreclosure action initiated by the Stern firm. He had multiple contacts with members of the firm including Mr. Stern himself. Despite that, a Stern firm attorney filed a certificate in court stating that the property was not believed to be tenant occupied. (The Florida Bar Exhibits 28, 29). Mr. Stern, although aware of the complaint, forwarded the information but failed to investigate or follow up to see if the problem was resolved.

It is clear that attorneys and members of the public should not be forced to use The Florida Bar for these purposes. The mishandling and inaction are on the Stern firm.

This testimony established that the root cause of the variety of problems encountered by the judiciary, attorneys, and members of the public with the Stern firm was the excessive volume of files taken in by the firm. The control of the volume was within the exclusive authority of its sole managing partner, David Stern. From 2006 until 2008, the total number of active files increased by 48.75%. In 2006, an attorney at the firm handled an average of 784.56 files. That number increased in 2007 to 1,166.64. It reached an apex of 1,645.86 in 2008. In 2009, the number was 1,281.87. (The Florida Bar Exhibit 46). Mr. Stern's contention

that each case was simple belies the mishandling. Most of the firm's foreclosure attorneys were newly admitted to The Florida Bar. Any training program completed could not, and did not, prevent them from improperly handling matters. Without the proper support, mentoring, and supervision, Brian Spector's description that these associates were being "set up for failure" is accurate. No training or skills could save them from the tsunami of work that they faced. The inordinate amount of cases resulted in failure to properly appear and/or handle court hearings and in the failure to properly handle other concerns outside of court.

In reality, it was the entire judicial system, as reflected by the testimony of Judges Griffis, Davis, Kanarek, and Cox, that suffered this failure. Both Miriam Mendieta and Beverly McComas, Mr. Stern's lead attorneys, repeatedly requested of Mr. Stern that the volume of cases be reduced. Mr. Stern failed to take action. (The Florida Bar Exhibit 42, page 84). Mr. Stern refused to listen to his supervisors. He claims to have delegated all supervisory and office duties; however, he failed to monitor if the supervisor and others were properly handling their obligation under the Rules of Professional Conduct.

Mr. Stern's goal was to increase business and the firm income, and the sale of his back office. That business deal began in 2007. David Stern told his most senior attorney employee, Miriam Mendieta, that the business transaction, upon which he received in excess of \$58,000,000 in 2010, was in part contingent on the

volume of files the firm processed. (The Florida Bar Exhibit 49). David Stern had a motive to ignore the advice of his key personnel to reduce the onslaught of cases. His sole occupation, to which he admits, was to serve as a "rainmaker."

Another factor which contributed to the firm's failure was the time deadlines imposed by the lender clients and enforced by the office manager, Cheryl Samons. Mr. Stern directed his staff to move files quicker to satisfy clients which would increase the volume of business. (The Florida Bar Exhibit 42, page 53). The clients' desire to move their matters rapidly is common. This desire cannot be achieved at the expense of competence and ethics.

It is also my finding that the support staff was led by Mr. Stern's most trusted employee and office manager, Cheryl Samons. Miriam Mendieta, Kelly Scott, and Tammie Kapusta² all testified that Cheryl Samons only acted at the direction and with the knowledge of David Stern. (The Florida Bar Exhibit 41, page 26). Miriam Mendieta testified Cheryl Samons and David Stern both admitted that Cheryl Samons received direct instructions from him.

Beverly McComas³ testified that Cheryl Samons was able to run the firm without interference. (The Florida Bar Exhibit 42, page 40). The problems

² Tammie Kapusta's sworn testimony to the Attorney General's office was admitted into evidence.

³ Beverly McComas' sworn testimony to The Florida Bar was admitted into evidence.

encountered were exacerbated by the fact that Cheryl Samons completely supervised the non-legal staff. This conclusion was supported by the testimony of respondent's witness, attorney Michelle Mason and Miriam Mendieta. The Rules Regulating The Florida Bar require that lawyers must make certain that non lawyer assistants are in compliance with the Rules Regulating The Florida Bar. There was no evidence that these non lawyers were aware of the rules or that they abided by them. Rule 4-5.3 of the Rules Regulating The Florida Bar. In fact, it was evident as early as 1999 that the firm's non lawyer assistants were engaging in unethical activity.

Gail Trenk, now a resigned member⁴ of The Florida Bar, had executed reasonableness attorneys' fees affidavits for the Stern firm while a member in good standing of The Florida Bar. Thereafter, when suspended, she offered to assist the firm by providing the services of another member of The Florida Bar, Alan Medof, who was in good standing, to execute these affidavits. In reality, that attorney never agreed to serve in that capacity, never reviewed files or executed affidavits, and never received payment tendered by the Stern firm. Gail Trenk forged that attorney's name and negotiated the funds. There were approximately 5,000 affidavits totaling \$5,000 in payments. These forged and false affidavits were filed

⁴ A disciplinary resignation is tantamount to disbarment. <u>The Florida Bar v. Hale</u>, 762 So.2d 515 (Fla. 2000).

by the Stern firm in court cases. It was revealed that Stern employees in 1999, which remained until 2010, had notarized these affidavits. Clearly, had they been properly notarizing in the presence of the person executing them, they would have known that Alan Medof was not actually signing these documents.

The only remedial action taken by Mr. Stern after this incident was to have the attorneys executing attorneys' fee affidavits review the files in the Stern firm library, and to warn the staff that they must only notarize a document in the presence of the executor. Although these actions seemed reasonable in 1999, these failed to ensure that the Rules Regulating The Florida Bar were followed in light of the problems discovered occurring between 2005-2009. Mr. Stern's action in walking by the library door without reviewing a single document or asking a single question, or monitoring that the previous procedure enacted in 1999 was followed was not sufficient.

This type of misconduct persisted and was again discovered in the spring of 2009. Assignments of mortgages were filed throughout the state which contained fraudulent notarizations. The Bar submitted 40 assignments into evidence which on their face were notarized by 11 different notaries and revealed that they were not notarized on the date reflected. Not only were the dates false, but the evidence established through the testimony of Kelly Scott that Cheryl Samons executed approximately 1,000 assignments per day, moving from floor to floor in the Stern

firm. Kelly Scott testified that there was never any witness or notary present when Ms. Samons executed the document. Tammie Kapusta testified to the same procedure. (The Florida Bar Exhibit 41, page 24). Also, notaries' stamps were freely exchanged between the notaries, according to Tammie Kapusta. Florida Bar Exhibit 41, page 23). Several paralegals actually signed Cheryl Samons' name, according to Kelly Scott on assignments, without any indication of the true signatory. Mr. Stern failed to present any evidence upon which I should disregard this sworn testimony. I find that the circumstances establish Mr. Stern was aware of these procedures as a result of his regular presence at the firm, his direct and imperviable relationship with Cheryl Samons, as well as the fact, as testified to by several witnesses, that he knew everything that occurred at his firm. His corrective action of additional instructions to the notary with the threat of termination did not resolve the problem as indicated by the Toledo and Suarez affidavits.

Mr. Stern testified about one notary, Terry Rice, who executed an assignment with a notary stamp that could not have been in existence on the date the document existed. He recounted Ms. Rice's explanation that although she was actually present when the document was signed and mistakenly notarized months later with her new notary stamp. Although plausible, the existence of the 40 assignments by 11 different notaries with the same defect reflects otherwise.

Further, these false notarizations, witnessing, and backdating are not innocuous. Attorney Michael Wasylik testified to the submission of a corrected assignment prepared by David Stern reflecting that it was filed "to correct the effective date". In fact, the date was not in error. (The Florida Bar Exhibits 16, 17). Rather, the corrected assignment was filed to cover the improper notarization of the original assignment. The "corrected" assignment was a subterfuge and/or fraud.

The preamble to Chapter 4 of the Rules Regulating The Florida Bar provides that actual knowledge can be inferred from the circumstances. Based on the evidence I find that Mr. Stern was aware of the misconduct of Cheryl Samons. She was rewarded by Mr. Stern for her work. In 2009, Cheryl Samons received a bonus which was payable even if terminated. (The Florida Bar Exhibit 37).

Additionally, not only did evidence of improper notarization and witnessing resurface in 2009, but fraudulent attorneys' fees affidavits were again filed with the court. The Florida Bar presented the affidavits of attorneys Richard Toledo and Jorge Suarez. (The Florida Bar Exhibits 35 and Exhibit 36). Mr. Toledo executed approximately 36,000 attorneys' fees affidavits from 2007 until 2011, earning \$240,000. Mr. Suarez executed approximately 53,000 attorneys' fees affidavits from 1997 until 2007. Mr. Suarez also provided coverage work for the Stern firm. He earned in excess of \$840,000. Both attorneys' affidavits submitted in this

proceeding reflect that they failed to review files despite so attesting in their attorneys' fees affidavits as well as allowing improper notarization by Stern staff. Despite the longevity of their employment and size of their remuneration, Mr. Stern never spoke with either of these attorneys. He did nothing to ensure that these two attorneys or his staff behaved in conformity with the Rules Regulating The Florida Bar. This failure to make substantial corrective efforts in supervision and/or monitoring is particularly telling after the problems with Gail Trenk.

Mr. Stern's response to each transgression is a claim of delegation to two senior attorneys, their two subordinates, and his office manager. Mr. Stern misinterpreted his obligation. He was the only partner. As the only partner and sole managing attorney, he has the ultimate responsibility for his firm. Rule 4-5.3(c) of the Rules Regulating The Florida Bar. There is no evidence that Mr. Stern reviewed or took any responsibility for the work product of the non attorneys or the process by which it was produced to ensure compliance with the Bar Rules. There is likewise no evidence that Mr. Stern, pursuant to his obligation of Rule 4-5.1(a) of the Rules Regulating The Florida Bar, made any efforts to ensure that his firm had any measures in place to assure that his attorney staff was in compliance with the Rules Regulating The Florida Bar. In fact, to the contrary, it was Mr. Stern himself, with his desire to bring in more business and to ensure the sale of his

back office, which served to push his staff to performing in a substandard manner in contravention of the Rules Regulating The Florida Bar.

Although Mr. Stern had a supervisory structure, had a training program, had technology and written manuals to assist attorneys in properly performing their duties, the problems persisted. His claim of training, although commendable, fails to address the handling of the volume and coverage of the numerous hearings throughout the state. The office system for calendaring, phone, email referral failed to avoid missed hearings and to correct the handling of cases. The supervisors acknowledged they were supervisors for issues presented to them only however, they disavowed any responsibility for monitoring. Due to the volume, monitoring was impossible and the supervisors received no training as to this responsibility.

Mr. Stern stated the failure to provide release of lien and failure to pay sanction etc were the responsibility of the lenders not the firm. This explanation does not justify Stern's obligation as the attorney for the lenders to notify his client of their obligation to arrange the release or payment.

The failure to take action when he became aware of a problem as reported by the supervisors Miriam Mendieta and Beverly McComas (who reported any serious problem to him) shows Mr. Stern was aware of the numerous problems and failed to take corrective action. Michelle Mason's comment that Mr. Stern was

aware of court imposed sanctions belies Mr. Stern's own claim he was unaware of the sanctions. Additionally, Mr. Stern himself admitted he was aware of dismissals and sanctions and took no action.

Mr. Stern was aware of the Judge's concerns as indicated by his meeting by Judge Griffis. Any problems with Judges were reported directly by Beverly McComas and Miriam Mendieta to David Stern as testified by Michelle Mason and David Stern himself, however he denies awareness of Judges Davis and Kanarek's concerns. Mr. Stern claims human error on Judges Francis and Cox complaints.

By the end of 2008-2009, David Stern was personally aware of the problems as testified by Miriam Mendieta. She discussed with him the specifics of the Show Cause Orders and the volume of cases. His response was to reject the suggestion regarding reduction in business because the sale of the back office would solve the problem. Thereafter, he stopped the contact with the Judiciary until he was terminated by his clients.

As to the obligation to reject cases when one cannot diligently and competently handle, David Stern was aware of the numerous problems and sanctions, therefore, he had knowledge of the problem. He was aware of missed hearings which resulted in sanctions as supported by Michelle Mason's testimony. His claim that 40 mistakes in affidavits out of 237,000 cases was minor is not

appropriate. Although Mr. Stern admitted asking for a reduction, he never refused cases. The attempted changes in 2010 to create another level of supervisor came too late. David Stern was reactive to problems rather than proactive with the monitoring of compliance with firm standards and the Bar Rules.

As to Mr. Stern's claim that supervisory structure may have been an attempt to provide that the paralegal's conduct was compatible with the professional obligations of the lawyer; Cheryl Sammons overrode that structure and was permitted to do so by Mr. Stern.

The evidence established that 42 assignments of mortgage filed in the public records were not properly notarized by notaries and attorneys' fees affidavits were not notarized contemporaneously with their execution by independent expert attorneys. The assignments of mortgage issue came to Mr. Stern's attention in early 2009, although the evidence shows the problem existed in 2005. Re-training of the Firm's notaries to emphasize the requirement of contemporaneous notarization with the execution failed to correct the problem.

In 2010, the improper notarization of attorneys' fees affidavits was discovered. As to whether Mr. Stern was aware of this issue prior to its occurrence, the evidence showed that Mr. Stern saw independent experts in the office purportedly executing affidavits of reasonable attorneys' fees. However, this does not address if the notary was present to properly notarize the affidavits.

Mr. Stern's efforts to ensure that the Firm had measures in place giving reasonable assurance that notaries' and non attorneys' conduct was compatible with the professional obligations of the lawyers was insufficient. By law, each notary had taken an oath as required by Chapter 117, Florida Statutes. Each non attorney/notary was "supervised"; however, the errors in procedure were not caught and corrected.

Mr. Stern failed to establish appropriate monitoring to determine if compliance was occurring after three different discoveries of non compliance with the notary obligation. Mr. Stern "had to know" about these improprieties because of his close working relationship with Cheryl Samons, his frequent presence in the Firm's office, and because any problems were reported to him by the supervisors. Therefore, this evidence is sufficient to carry the Florida Bar's burden of demonstrating a Rule violation by clear and convincing evidence.

With respect to the third category of alleged misconduct - Mr. Stern's failure to tend to and/or withdraw in the pending foreclosure cases, the evidence established that the Firm's clients terminated their relationship in November 2010. The clients withdrew their files, instructed no further action be taken on their behalf, and stated that they would be engaging successor counsel. Despite Mr. Stern's suggestions to complete the cases, the clients decided to remove their files forcing a significant reduction in workforce.

Continuances and motions to withdraw were filed. The Firm signed stipulations for the substitution of counsel when advised of the successor counsel. The Firm attempted to get the motions to withdraw placed on mass hearings in some jurisdictions. However, thousands of other cases remained in limbo and no action was taken because of lack of personnel and financial resources.

The Court finds that Mr. Stern violated the applicable Rule by virtue of his failure to continue handling of the withdrawals on pending foreclosure cases. The Court finds that the various manner of handling, including the attempts to set motions to withdraw for bulk hearings, were an attempt to be reasonable. [See, e.g., Public Defender, Eleventh Judicial Circuit of Florida v. State, 115 So. 3d 261, 274 (Fla. 2013)] However, he stopped these procedures in March 2011 leaving thousands of cases unattended which affected the court system and the parties involved.

Finally, Mr. Stern ignored the Fifth District Court of Appeals when he was ordered to file a response, ordered to show cause, and ordered to appear. All notices were sent to his record Bar address between December 2010 and February 2011 and received. Michelle Mason testified that the office was operating with limited staff. I find Mr. Stern's complete failure to address or acknowledge the authority of the appellate court not only constitutes a violation of the Rules Regulating the Florida Bar, but an affront to the court system.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]; 4-1.16(a)(3) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of

fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-3.4(c) [A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.]; 4-5.1(a) [Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take

reasonable remedial action.]; 4-5.3(b) [Supervisory Responsibility. With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized. business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Ultimate Responsibility of Lawyer. Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals

or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards to be applicable:

Standard 4.41: Disbarment is appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Standard 6.21: Disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another,

and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Standard 7.1: Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

V. CASE LAW

Given the magnitude of the misconduct and its widespread impact on the judiciary and public, disbarment is the appropriate sanction. Most recently the Supreme Court of Florida was confronted with a case in which an office manager of a firm misappropriated funds. The Court addressed the responsibility of the firm's two partners, who they disbarred.

As the referee stated, "Respondents cannot abdicate, by delegation to the bookkeeper, the ultimate responsibility for trust account maintenance...." Their failure to exercise care and discretion in managing the trust account resulted in a massive theft of client funds—approximately \$4.38 million was stolen from the account. If Respondents had adhered to the minimum trust account requirements set forth in the Rules Regulating the Florida Bar, they could have safeguarded their clients from this enormous amount of theft. While recognizing Respondents argument that the funds had been stolen by Bookkeeper, the referee concluded that this argument might hold for an isolated and recent conversion of trust funds, but the sheer size of the \$4.38 million deficit proves that Bookkeeper had been embezzling for many months, if not years. Respondents had tried to delegate their responsibilities to a non-lawyer employee in the firm, and did not effectively monitor the employee or the trust account. As the referee

noted, the ultimate responsibility for the trust account monies rests with Respondents. They are the lawyers.

The Florida Bar v. Rousso and Roth, 117 So.3dd 756 (Fla. 2013)

Mr. Stern is similarly situated. His failure to exercise care resulted in massive injury to the system. The incidents were not isolated, but rather a representation of the culture of the firm, as to the low level of competence and ethics. He is the lawyer. It was his firm. Mr. Stern is responsible.⁵

In <u>The Florida Bar v. Riggs</u>, 944 So.2d 167 (Fla. 2006), that attorney was suspended for three years when he assigned responsibilities to his paralegal and failed to supervise her. Here, the lack of supervision is massive.

In <u>The Florida Bar v. Ribowsky-Cruz</u>, 529 So.2d 1100 (Fla. 1988) the Supreme Court of Florida disbarred an attorney who abandoned her law practice. That is precisely what Mr. Stern did when he announced his intentions to the Chief Judges of this state in his letter dated March 4, 2011 and failed to take any action on the remaining cases in which no withdrawal occured.

⁵ I note that the Supreme Court of Florida recently approved a 91-day suspension for attorney Marshall Watson. The Florida Bar v. Watson, 117 So.3d 413 (Fla. 2013). Although that case did involve lack of supervision in a large foreclosure firm causing problems in the legal system, there are vast differences. Mr. Watson expressed deep remorse and did agree to discipline, without the need for the Bar to proceed to trial. Mr. Watson also suffered consequences when he agreed to and paid a \$2,000,000 penalty to the Attorney General's office. Also, Mr. Watson's case did not involve the intentional abandonment of files throughout the state.

Further, Mr. Stern was publicly reprimanded in 2002. The misconduct involved an affidavit that contained inaccurate information. The instant matter, in part, involves false information in affidavits and assignments in David Stern's office. The repetition of the same misconduct establishes that Mr. Stern has no regard for the requirements and responsibilities of the Rules Regulating The Florida Bar.

Additionally, Mr. Stern's letter of abandonment states that he did not have the financial resources to properly withdraw from his pending cases. Mr. Stern's declaration revealed his net worth and that he did in fact possess sufficient resources to properly withdraw from cases. I am not persuaded by his argument that his reference to lack of financial resources related to the firm's net worth only. David Stern and the firm are one entity. His statement was a misrepresentation. I find it to be an aggravating circumstance in these proceedings.

Mr. Stern has not expressed any remorse in these proceedings. He has taken no responsibility. The mistake or difficulties are the actions of others.

Lastly, Mr. Stern has not presented me with any evidence of mitigation. As such, I have no basis to recede from the Bar's recommendation of disbarment. It is the appropriate result.

VI. <u>RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED</u>

I recommend that respondent be found guilty of misconduct justifying disciplinary measures, and that respondent be disciplined by:

- A. Disbarment.
- B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 53

Date admitted to the Bar: November 27, 1991

- B. Aggravating Factors:
 - 9.22(a) prior discipline: October 24, 2002 public reprimand before the Board of Governors
 - 9.22(b) dishonest or selfish motive
 - 9.22(c) a pattern of misconduct
 - 9.22(d) multiple offenses
 - 9.22(g) refusal to acknowledge wrongful nature of conduct
 - 9.22(h) vulnerability of victim (court system)
 - 9.22(i) substantial experience in the practice of law (admitted 1991)
- C. Mitigating Factors:

None

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Fee	\$ 1,250.00
Investigative Costs	7,340.33
Bar Counsel Costs	8,374.26
Court Reporters' Fees	14,810.73
Witness Expenses	2,992.30
Expert Witness Brian Spector	15,000.00
TOTAL	\$49,767.62

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 28^{μ_3} day of October, 2013.

Nancy Perez, Referee

Original To:

Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927

Conformed Copies to:

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Staff Counsel, The Florida Bar, at his designated email address of kmarvin@flabar.org

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EXHIBIT I TO THE DECLARATION OF JOHN W. SMITH T

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Supreme Court Case

No. SC-

Complainant,

The Florida Bar File

v.

No. 2012-51,389 (17I)

JORGE LUIS SUAREZ,

Respondent.

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Jorge Luis Suarez, and files this Conditional Guilty Plea for Consent Judgment pursuant to R. Regulating Fla. Bar 3-7.9(a).

- 1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
- 2. The respondent is currently the subject of a Florida Bar disciplinary matter which has been assigned The Florida Bar file number above.
- 3. The respondent submits this Conditional Guilty Plea for Consent Judgment prior to the filing of a formal complaint, pursuant to R. Regulating Fla. Bar 3-7.9(a), as a final resolution of this disciplinary matter.
- 4. For purposes of this Consent Judgment, respondent stipulates that the following statements are true:

12-12020-mg Doc 8531-24 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit I Pg 3 of 9

- A. In or about 1997, respondent began executing attorney fee affidavits for the Law Offices of David J. Stern, P.A. Respondent performed these tasks as an independent contractor in the role of expert concerning the reasonable, acceptable, and appropriate attorney fees in mortgage foreclosure actions which were being prosecuted by the Stern law firm. The only cases wherein respondent rendered an expert opinion were in those cases wherein the Stern law firm was charging their client a minimal flat fee for all services rendered and respondent did not render expert opinions on contested cases wherein the Stern law firm was billing hourly for their services. It was respondent's understanding that the expert affidavits respondent provided were never challenged on the reasonableness of the fees charged by the Stern law firm.
- B. In 2008, respondent was also retained by the Stern law firm as "coverage counsel" to attend hearings in the Miami-Dade County Courthouse, and respondent ceased acting as a fee expert for the Miami-Dade County foreclosure cases.
- C. During the years 2006 2010, respondent processed approximately 700 1200 files/affidavits per month on average. The following represents an estimate by year of the total number of

affidavits respondent executed: 2006 - 8,500; 2007 - 8,500; 2008 - 12,000; 2009 - 12,000; 2010 - 12,000. Additionally, respondent was attended up to 300 hearings a month.

- D. For the majority of the time frame at issue, respondent personally appeared at the offices of the Stern law firm and reviewed files. In approximately mid-2010, a new system was begun whereby respondent could review files "remotely" from his home or office computer and download and print the corresponding affidavit. These affidavits done remotely were notarized by respondent's staff and delivered to the Stern law firm.
- E. An unknown number of the affidavits processed by respondent from 2007 2010 were not executed by him in the presence of a notary. After finishing a stack of files and affidavits, respondent would give them to a member of Stern's staff and acknowledge that he had executed the affidavits. On more than one occasion, respondent executed an expert affidavit without reviewing the pertinent file, but would note this was only done on flat fee cases. Due to the passage of time, and the large number of affidavits that were executed over a three year period, respondent is uncertain of the

accurate number of times that he executed affidavits outside the presence of a notary or without having reviewed a file.

- 5. The respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.
- 6. Respondent admits that his participation in the flawed process as set forth above, constitutes a violation of the following Rules Regulating The Florida Bar: 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer

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for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

- 7. Respondent asserts that the following mitigating factors set forth in Florida Standards for Imposing Lawyer Sanctions are applicable:
 - A. Absence of a prior disciplinary record;
 - B. Absence of a dishonest or selfish motive;
 - C. Full and Free disclosure to the disciplinary board or cooperative attitude toward proceedings.
 - D. Remorse.

- 8. Respondent agrees to the following disciplinary sanction as the final resolution of this matter:
 - A. Suspension from the practice of law for a period of 91 days and continuing thereafter until reinstated in accordance with R. Regulating Fla. Bar 3-7.10.
 - B. Payment of The Florida Bar's costs in this matter.
- 9. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.
- 10. If this plea is not finally approved by the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.
- 11. If this plea is approved, then the respondent agrees to pay all reasonable costs associated with this case pursuant to R. Regulating Fla. Bar 3-7.6(q) in the amount of \$1,250.00. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, the respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 if the cost

judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

- 12. The respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding will reflect adversely on any other Bar disciplinary matter in which the respondent is involved.
- 13. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of The Rules Regulating The Florida Bar.

Dated this ______ day of January, 2014.

orge Luis Suarez

Respondent

3735 S.W. 8th Street, Suite 101

Coral Gables, Florida 33134

(305) 445-2944

Florida Bar No. 844950

jorgesuarezlaw@aol.com

Dated this 22~ day of January, 2014,

Kevin P. Tynan
Counsel for Respondent
Richardson & Tynan, P.L.C.
8142 North University Drive
Tamarac, FL 33321-1708
(954) 721-7300
Florida Bar No. 810722
ktynan@rtlawoffice.com

Dated this _____ day of January, 2014.

Randi Klayman Lazarus, Bar Counsel The Florida Bar Ft. Lauderdale Branch Office Lake Shore Plaza II 1300 Concord Terrace, Suite 130 Sunrise, Florida 33323 (954) 835-0233 Florida Bar No. 360929 rlazarus@flabar.org mcasco@flabar.org

EXHIBIT J TO THE DECLARATION OF JOHN W. SMITH T

Supreme Court of Florida

TUESDAY, JANUARY 7, 2014

CASE NO.: SC13-643

Lower Tribunal No(s).: 2010-51,725(17I); 2011-50,154(17I); 2011-50,213(17I); 2011-50,216(17I); 2011-50,511(17I); 2011-50,695(17I);; 2011-50,850(17I); 2011-50,949(17I); 2011-51,192(17I); 2011-51,322(17I); 2011-51,329(17I); 2011-51,369(17I); 2011-51,433(17I); 2011-51,497(17I); 2011-51,696(17I); 2011-51,868(17I); 2012-50,144(17I)

THE FLORIDA BAR

vs. DAVID JAMES STERN

Complainant(s)

Respondent(s)

The uncontested report of the referee is approved and respondent is disbarred, effective thirty days from the date of this order so that respondent can close out his practice and protect the interests of existing clients. If respondent notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the disbarment effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). Further, respondent shall accept no new business from the date this order is filed.

CASE NO.: SC13-643

Page Two

Judgment is entered for The Florida Bar, 651 East Jefferson Street,
Tallahassee, Florida 32399-2300, for recovery of costs from David James Stern in
the amount of \$49,125.02, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this disbarment.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy Test:

John A. Tomasino Clerk, Supreme Court SELECTO DE LA COMPANION DE LA

kb Served:

RANDI KLAYMAN LAZARUS JEFFREY ALLEN TEW LORAYNE PEREZ KENNETH LAWRENCE MARVIN HON. NANCY PEREZ, JUDGE

EXHIBIT K TO THE DECLARATION OF JOHN W. SMITH T

Supreme Court of Florida

MONDAY, FEBRUARY 10, 2014

CASE NO.: SC13-2404

Lower Tribunal No(s).: 2011-50,538 (17I)

THE FLORIDA BAR

vs. MIRIAM L. MENDIETA

Complainant(s)

Respondent(s)

The conditional guilty plea and consent judgment for discipline are approved and respondent is suspended from the practice of law for ninety days, effective thirty days from the date of this order so that respondent can close out her practice and protect the interests of existing clients. If respondent notifies this Court in writing that she is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). In addition, respondent shall accept no new business from the date this order is filed until she is reinstated. Respondent is further directed to comply with all other terms and conditions of the consent judgment.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Miriam L. Mendieta in the amount of \$1,840.95, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy Test:

John A. Tomasino Clerk, Supreme Court

kb Served: RANDI KLAYMAN LAZARUS MIRIAM L. MENDIETA ADRIA E. QUINTELA

EXHIBIT L TO THE DECLARATION OF JOHN W. SMITH T

Filed 04/27/15 Decl. Exhibit L Entered 04/27/15 16:52:56

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September 4, 2010

Florida's High-Speed Answer to a Foreclosure Mess

By GRETCHEN MORGENSON and GERALDINE FABRIKANT

TEN days from now, a four-bedroom house on a cul-de-sac in Middleburg, Fla., is scheduled to be auctioned off at the Clay County courthouse, 25 miles south of Jacksonville.

A judge who recently took over their foreclosure case has ordered Rodney Waters; his fiancée, Terri Reese; and their four children to leave the home they bought in 2006.

Mr. Waters, a supervisor at a local packaging company and the family's sole breadwinner, fell behind on his mortgage two years ago after his property taxes jumped unexpectedly. He now owes \$264,000 on the house; a similar home down the street sold for \$138,500 in February.

The predicament of the Waters-Reese family is common in Florida today. The state routinely sets new records for foreclosures — in the second quarter, 20.13 percent of its mortgages were delinquent or in foreclosure, a national high, according to the Mortgage Bankers Association. And with housing prices still in a free fall, almost half of all borrowers in Florida owe more on their mortgages than their properties are worth, says CoreLogic, a data firm.

While the Waters-Reese case may not be unusual in Florida, the coming auction of the home is still notable: it will be a result of the Florida Legislature's new effort to cut the number of foreclosures inching their way through the state's courts. Earlier this year, Florida earmarked \$9.6 million to set up foreclosures-only courts across the state, staffed by retired judges. The goal of the program, which began in July, is to reduce the foreclosures backlog by 62 percent within a year.

No one disputes that foreclosures dominate Florida's dockets and that something needs to be done to streamline a complex and emotionally wrenching process. But lawyers representing troubled borrowers contend that many of the retired judges called in from the sidelines to oversee these matters are so focused on cutting the caseload that they are unfairly favoring financial institutions at the expense of homeowners.

Lawyers say judges are simply ignoring problematic or contradictory evidence and awarding the right to foreclose to institutions that have yet to prove they own the properties in question.

"Now you show up and you get whatever judge is on the schedule and they have not looked at the file — they don't even look at the motions," says April Charney, a lawyer who represents imperiled borrowers at Jacksonville Area Legal Aid. "You get a five-minute hearing. It's a factory."

But Victor Tobian chief judge in \$561724 Judie in baicantis which includes Bus vers & County, Staffended the effort. "There are more assets devoted to those three foreclosure divisions in Broward than to any other division in the building in terms of case managers and that sort of thing to help the general public," he said. "The people who come get fully, fully heard."

In any event, huge numbers of cases are being handled. In an article last week in The Florida Bar News, Belvin Perry Jr., chief judge for the state's Ninth Judicial Circuit, said that during July, 1,319 cases had been closed by three senior judges in the district's two counties, Orange and Osceola.

Florida's foreclosure mess is made murkier by what analysts and lawyers involved in the process say are questionable practices by some law firms that are representing banks. Such tactics, these people say, have drawn out the process significantly, making it extremely lucrative for the lawyers and more draining for troubled homeowners.

Doctored or dubious records presented in court as proof of a bank's ownership have become such a problem that Bill McCollum, the Florida attorney general, announced last month that his office was investigating the state's three largest foreclosure law firms representing lenders.

"Thousands of final judgments of foreclosure against Florida homeowners may have been the result of the allegedly improper actions of these law firms," said Mr. McCollum in an interview. "We've had so many complaints that I am confident there is a great deal of fraud here."

To be sure, adjudicating foreclosure cases is difficult, complicated by multiple transfers of mortgages and notes when a loan is sold, bewildering paperwork submitted by loan servicers and shoddy record-keeping by the many institutions that touched the mortgages during the byzantine securitization process that fueled the housing boom.

Nevertheless, Florida law requires that before a financial institution can foreclose on a borrower, it must prove to the court that it actually has the standing to do so. In other words, it has to show that it is truly the owner. And this is done by demonstrating ownership of the note underlying the mortgage.

The Waters case offers an example of how wrong things can go in complex foreclosure cases.

While AmTrust, a failed Ohio bank that is now a division of New York Community Bank, said it owned the note and could foreclose, Mr. Waters's lawyer produced documents showing that Fannie Mae, the taxpayer-owned mortgage finance giant, was really the owner.

In spite of the conflicting evidence, Aaron Bowden, the retired judge overseeing the case, made a summary judgment on Aug. 3, ruling that the property should go back to AmTrust.

Mr. Bowden did not return phone calls seeking comment.

Chip Parker, managing partner at Parker & DuFresne in Jacksonville, which represents Mr. Waters, said: "The threshold issue in any foreclosure case is who has the right to foreclose. We presented evidence to the judge that Fannie Mae owns the note and mortgage, and yet the judge ignored this crucial evidence."

Mr. Parker 12 ch2020 and that cooke 31027 eo wilers 024/27/015 mizer the 4/257/215 we a sential king about is railroading homeowners through the rocket docket, he added. Of 8

When contacted by a reporter on Thursday, a spokeswoman for Fannie Mae confirmed that it owned the note.

David Tong, the lawyer representing AmTrust in the case, declined to comment on the matter. But on Friday, he did an about-face, filing papers with the court acknowledging that Fannie Mae owns the note.

Clearing the Backlog

Florida law requires that banks argue their cases before a judge if they want to recover property from borrowers in default, and 471,000 such cases were pending in Florida at the end of July, according to the Florida State Courts administration.

Setting up discrete foreclosure courts statewide was seen as a way to help deal with the issue; consumer law experts say they aren't aware of any other state that has set up a temporary court to work down such a backlog.

But it is paradoxical, say lawyers representing homeowners in the cases, that Florida's attorney general acknowledges problems in the cases while retired judges, intent on reducing caseloads, seem unconcerned about those same problems — like flaws in the banks' documentation of ownership.

"The most shocking thing of all is the A.G.'s office understands the problem and yet the court system turns a blind eye to the fact that mortgage servicers are the problem," says Margery Golant, a lawyer in South Florida and a former executive at Ocwen, a large mortgage servicing company. "In the meantime, neighborhoods are being destroyed, homeowners' associations are being destroyed, and the tax base is being clobbered."

Steven P. Combs, a lawyer at Combs, Greene, McLester, who formerly was general counsel to the Fourth Judicial Circuit as well as a family law magistrate, says the entire process may be unconstitutional.

The Florida Supreme Court has consistently recognized the need to hire retired judges on a temporary basis, Mr. Combs said, and has ruled that such a "temporary" use is constitutional.

But because the retired judges are being given foreclosure assignments "repeatedly and consecutively" to the point of usurping the elected judges' jurisdiction over all residential foreclosure cases, he said, their use may not qualify as temporary and could thus violate the Florida constitution.

The fact that these judges are being paid to reduce the court's case load creates a perception among homeowners that the judges have a financial interest in dispensing cases prematurely, Mr. Combs said, creating a potential bias against borrowers and possibly violating their right to due process.

He pointed to a recent case in Broward County in which a retired judge refused to postpone a borrower's foreclosure sale even though the bank had agreed to it. The judge stated that she was there to "dispose of cases."

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J. Thomas McGrady, chief judge in the Sixth Judicial Circuit, said in a press release announcing the program: "We have to clear these cases because of the negative impact they are having on other civil litigation. The real estate crisis has placed a tremendous burden on our judges, and people with other types of pending litigation are also entitled to their day in court."

Who Owns the Notes?

A foreclosure crisis that has forced millions of delinquent borrowers from their homes across Florida and elsewhere has also created enormous profits for the law firms and foreclosure servicers that represent banks and financial services in these actions.

Among the busiest of these firms are the three under investigation by Florida's attorney general: the Law Offices of Marshall C. Watson; Shapiro & Fishman; and the Law Offices of David J. Stern.

"These law firms appear to be mills," says Mr. McCollum. "They submit false documents, fabricate the documents, or the documents actually don't exist. They wanted to speed the process up because the faster they get the foreclosures done the better."

But Mr. Stern said: "I can't speak for the other firms, but I can assure you there has not been submission of fraudulent documents. We feel a lot of it is politically motivated. We have done nothing wrong and are going to cooperate fully."

Lawyers for the other two firms also disputed the attorney general's contentions, maintaining that they work diligently on behalf of their clients.

Borrowers' lawyers say they confront dubious practices, often involving false documentation "proving" who owns the note on a given property.

Typically, they say, this involves questionable affidavits asserting ownership of a note because the actual document has been lost or cannot be produced. Because the affidavits are often signed by bank representatives who have a stake in the outcome, they should not be allowed as evidence, borrowers' lawyers say.

Yet they routinely are introduced as evidence; the Waters case involves such an affidavit signed by an AmTrust official.

The problem of who owns the note is a result of the process of bundling home loans into securities and selling them to investors — a common practice in the housing boom. This meant that notes documenting ownership on a property were repeatedly transferred, blurring the identity of exactly who controlled the note.

Documents strately that a hove \$53 been assigned to 45 rections to 618 after it for eclosure, Deci. Exhibit L. Pg 6 of 8 meaning that the bank bringing the case may not have the right to for eclose.

Other questions arise involving documents with improper notary stamps and wildly different signatures on legal papers supposedly prepared by the same person, borrowers' lawyers say.

In a case in May 2009, Thomas E. Ice, a defense lawyer at Ice Legal in Royal Palm Beach, Fla., took the deposition of Cheryl Samons, an operations manager at the David J. Stern law firm. He asked her about instances at the firm of backdating the assignment of mortgages to allow foreclosures to go forward.

Mr. Ice and his wife, Ariane, who works with him, had found problems with notary stamps on mortgage assignments. "Many assignments of mortgages were signed and notarized with a stamp that had not been issued at the time of the signing, reflecting that the assignment was backdated," Mr. Ice says.

In her court deposition with Mr. Ice, Ms. Samons testified that she was both an executive of the entity that handles the mortgage transfers and an officer at the Stern firm. Mr. Ice says that this creates a conflict of interest because clients of the Stern firm — most of the nation's major banks — benefit from the transfer.

The law firm helps its own clients by "creating an illusion that the signing took place before and it did not," says Mr. Ice.

Mr. Stern attributed any backdating to sloppiness on the part of paralegals and said that it had since been corrected.

As for Ms. Samons's dual roles at the mortgage transfer registry and the law firm, he responded that, "We believe it is a solid practice."

Ms. Samons did not return phone calls seeking comment.

Another popular practice that ties up courts' calendars occurs after a foreclosure is granted and the property is scheduled to be returned to the bank. As ownership shifts from borrower to bank, so do all the obligations associated with it, like payment of homeowners' association dues.

But few banks want to pay these bills, so firms representing them move to delay the final step in the process by canceling the sale of a foreclosed property at the last minute, court officials say. This does not require the banks to restart the foreclosure process, but it keeps the property in the hands of the borrower, who remains responsible for maintenance and association dues.

Earlier this year, Jennifer D. Bailey, administrative judge in Miami-Dade County, said such cancellations were occurring in 55 percent of cases in her district. In July, she instituted new rules to reduce last-minute cancellations, including a requirement that a judge hear the reason.

"There was huge volume to start with and then with this extra bogus stuff going on, the courts were crosseyed from it," says Ms. Golant. "There is a certain amount of truth to the gridlock, but the reason for the gridlock is the foreclosure firms are practically running the courtrooms."

One Firm, Many Cases

The lawyer 120120elycide Diffe 53112 Floride's G4127 losure Interest is 1274 is 1275. He is name thing of a mystery man within the foreclosure world, ft is impossible to reach him by phone since his name is not in the firm's voice-mail directory and, until recently, there were no publicly available photographs of him.

Several prominent borrowers' lawyers who have litigated against his firm say they have never met him.

Operating out of a gleaming eight-story office building in Plantation, Fla., Mr. Stern, 50, has come a long way from the South Texas College of Law, from which he graduated in 1986. He spent his early career as a quality-control lawyer for Gerald Shapiro, a lawyer who represented mortgage lenders. He opened his own firm in 1994; Fannie Mae voted him attorney of the year in 1998.

Mr. Stern's company, which now includes a law firm and ancillary foreclosure support businesses, employs more than 900 people. The firm filed 70,382 foreclosure cases last year.

Critics say the Stern firm has been able to handle this high volume because its lawyers frequently refuse to work with borrowers and are very aggressive about pushing cases through the courts even when there are questions about the documentation.

Mr. Stern sees it differently. "I refer to us as an efficient law firm with a specialization in mortgage lending," he responded. "Should I feel ashamed that I have built a successful practice?" he asked. "No one references how committed I am, how I built my firm and how I work 20 hours a day."

But some question the thoroughness of the firm's work. Bill Warner, a private investigator in Sarasota, said the Stern firm filed a foreclosure suit against him on behalf of Deutsche Bank Financial Trust in January 2009. But the bank did not own the property and the suit erred by including in its claims a federal tax lien on another person with the same name but a different Social Security number, Mr. Warner said.

Mr. Warner's mortgage was actually owned by Countrywide, which had sold it to Wells Fargo. "I fought them myself for a year and a half," he recalls. "In the meantime, we did a loan modification with Wells Fargo but Mr. Stern's firm pursued the foreclosure on the property anyway."

Last May, Mr. Warner filed a motion to dismiss the case, alleging submission of a fraudulent document because Deutsche Bank was not owner of the note. He filed another motion questioning the credibility of the Stern firm and the lawyer on the case, he said. On June 14, Deutsche Bank withdrew the case.

Earlier this year Mr. Stern, who has profited handsomely from the foreclosure trade, sold the part of his operation that provides support services for his firm's foreclosure work — DJS Processing — to a public company called the Chardan 2008 China Acquisition Corporation. The processing company and affiliates generated revenue of \$260 million in 2009, financial filings show.

Brian Foley, a compensation consultant in White Plains, concluded that Mr. Stern made \$17.8 million in 2008, including \$12.64 million in compensation and nonrecurring benefits of \$4.36 million. In the deal with Chardan, Mr. Stern and his affiliates were paid \$93.5 million: \$58.5 million in cash and \$35 million after the transaction closed, according to government filings. In addition, Mr. Stern got a promissory note for \$52.49 million to be paid out over the next couple of years.

In recent years 2002 Starn and his stife Teanine, 04/27/2018 the meanly \$4/27/18 in \$4/27/

Mr. Stern also spent \$6.8 million last year on a 9,273-square-foot apartment at the Castillo Grand Residences in Fort Lauderdale, part of a Ritz-Carlton complex. He and his wife own two homes in Beaver Creek, Colo.; one was purchased in 2001 for \$4.975 million, and another bought in 2007 for \$14.2 million.

His automobile collection may be worth \$3 million, auto experts said; it includes a 2008 Bugatti, multiple Ferraris, Porsches and Mercedes and a Cadillac.

This being Florida, Mr. Stern also collects boats. A 108-foot Mangusta yacht, Lady J, is for sale at \$5.9 million, Web postings show. It was replaced by a 130-foot yacht that cost about \$20 million, according to an acquaintance who requested anonymity over concerns about Mr. Stern's influence in the community.

In a nod to his foreclosure work, according to the acquaintance, Mr. Stern mused about possibly naming the larger yacht Su Casa Es Mi Casa — "Your House Is My House." But his wife and others cautioned against it, according to this acquaintance, and Mr. Stern named the boat "Misunderstood." Mr. Stern denies that he considered the "Su Casa Es Mi Casa" name.

Resigned to Moving

While Rodney Waters and Terri Reese are resigned to leaving their home and moving their family into a rental, they still face another problem.

Under Florida law, a lender may pursue Mr. Waters for the difference between what it says he owes on the house and what it will fetch in a sale. Thanks to foreclosure fees and other charges, he owes almost double the \$138,500 received in February by the seller of a neighboring house.

Included in the amount that Mr. Waters owes is almost \$10,000 in fees generated by AmTrust's lawyers in the case. Mr. Bowden, the retired judge overseeing the case, ordered Mr. Waters to pay the fees.

His lawyer, Mr. Parker, had hoped to persuade the owner of the note to offer a new loan to his client in a smaller amount to reflect the reduced value in the property. He argued that this would be a better outcome for the lender and the borrower, since a foreclosure usually ends up costing a lender far more than does a principal write-down that leaves the borrower in the home.

But with the judge ruling in favor of the lender, such a deal is unlikely. Mr. Parker filed an appeal late last week, but Mr. Waters may have to file for bankruptcy to stop the foreclosure sale.

12-12020-mg Doc 8531-28 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit M Pg 1 of 4

EXHIBIT M TO THE DECLARATION OF JOHN W. SMITH T

Doc 8531-28 Decl. Exhibit M Pg 2 of 4

Florida's Foreclosure King Investigated For Questionable **Practices**

Multimillionaire Attorney David Stern Amassed Fortune Foreclosing on Homes

By RAY SANCHEZ

Oct. 12, 2010—

A former paralegal with Florida's largest foreclosure law practice has told state investigators that the firm routinely signed court paperwork without reading it, misdated records, forged signatures and passed around notary stamps in the rush to foreclose on homes.

"This is just the beginning really," the paralegal, Tammie Lou Kapusta, told ABCNews.com. "It's the tip of an extreme iceberg."

The allegations are the latest leveled against the firm of multimillionaire attorney David J. Stern, who has amassed a fortune foreclosing on the homes of struggling families on behalf of lenders. The 50-year-old Stern even considered naming his \$20-million yacht "Su Casa Es Mi Casa ??? "Your House is My House," an acquaintance told the New York Times. After his wife and others reportedly cautioned against it, Stern settled on Misunderstood. He denied to the newspaper that he considered "Su Casa Es Mi Casa."

"From David Stern's perspective, he's a lawyer given defaulted mortgages to foreclose in a court proceeding," said his lawyer, Jeffrey Tew. "So it's really wrong to vilify him. Let's put it this way, there is a well-organized defense bar who is making a lot of money keeping people in their homes."

But it's the booming mortgage-servicing industry that is under legal scrutiny. Some 40 state attorneys general are expected to announce this week a joint investigation into the industry in hopes of pressuring financial institutions to rewrite a sea of troubled loans.

Across the nation, mortgage-servicers, which include units of major banks such as Bank of America Corp., have been accused of submitting fraudulent documents in thousands of foreclosure proceedings.

In Florida, Stern is foreclosure king, operating the large law firm plus a foreclosure processing company and other support businesses that he recently sold off.

His Plantation, Fla., firm, which filed 70,382 foreclosure cases last year, is the largest of three under investigation by state Attorney General Bill McCollum for allegedly filing improper documents with courts to hasten the overloaded foreclosure process.

Foreclosure Industry Poster Boy

To detractors, the 50-year-old Stern has become emblematic of the foreclosure crisis, the architect of what they call a giant assembly line that has undermined struggling homeowners at a time of record foreclosures. Nationwide, there were 2.8 million foreclosures in 2009. Florida leads the nation in foreclosures with more than 400,000 filings this year alone.

"He is notorious in Florida and, in the rest of the country, we pay some attention to Florida because the worst behavior often emanates from there," said Linda Fisher, a professor and mortgage-fraud expert at Seton Hall University's law

school. She said sho had ng direct kas 1 e de of the Stands of the Stands of the Stands of the Stands of the said should be said to
To defenders, Stern is a hard worker who has legally reaped enormous profits representing banks and financial services in actions against tens of thousands of delinquent borrowers.

"It's really unfair to make the foreclosure lawyer ... somehow a villain," Tew said. "With the increase in volume, there's no question that David firm's revenues have grown dramatically but there's nothing wrong with that. He's not gouging."

Tew said Stern's firm makes about \$1,400 per foreclosure, totaling about \$98 million last year.

Still, the rising foreclosure tide also meant shortcuts and sloppy legal work, according to Kapusta's sworn statement to the state attorney general.

The paralegal, who worked for Stern a little more than a year, described an office where signatures on notarized documents were regularly forged, legal papers were outsourced to Guam and the Philippines, and shouting matches erupted when cases stalled.

The accusations, in a sworn statement taken late last month by the Florida attorney general, coincide with mounting nationwide criticism of the practices used to take homes from families.

Kapusta, who claims she was fired by the firm in July 2009 after refusing to falsify documents, said Stern's business jumped from about 200 employees to 1,100 in one year as foreclosures skyrocketed and staff struggled to keep up.

Notary stamps were always available, and employees such as Kapusta, who were not notaries, routinely used them on official documents, she said. Those who could best fake the signature of the person who verified foreclosure affidavits were allegedly sought out to forge her name.

"If you focus on the way these businesses operate, it's, at best, sloppy and, at worst, fraudulent," Fisher said of the firms that have become known as foreclosure mills. "The whole system was broken down."

Tew dismissed Kapusta's allegations as simply untrue, the rants of a disgruntled former employee. "You can see she has a real vindictiveness against the firm," he said. Stern's lawyer denied any wrongdoing in the foreclosure process.

"There is no question that there is a necessity to make these foreclosures correct and appropriate," Tew said. "We do not admit that there was any intentional cutting of corners. There may have been some human error on a very small percentage but there was no intentional cutting of corners."

In the past month, GMAC, JPMorgan Chase and Bank of America have halted or slowed foreclosure procedures, after bank employees and affiliates admitted to signing thousands of documents without knowing the details of the cases.

"The problems with these firms ??? and they're very sloppy practices ??? is that they unacceptably cut legal corners and put the burden on borrowers to basically pay whatever these folks have them pay," said Jeffrey Golant, an attorney in Pompano Beach. "They're loading down with junk fees and illegitimate charges, basically putting people who are already struggling, maybe possibly in most cases legitimately behind on their mortgages, but loading up with such abusive fees that people will never get out of foreclosure."

Yachts, Real Estate, Private Island

Still, the crisis has been good for Stern and the rest of the mortgage-servicing industry. Stern and his wife Jeanine have brought nearly \$60 million in real estate in recent years, mostly in Florida, according to property records.

His 16,000-square-foot mansion, valued at more than \$15 million, occupies a corner lot in a private island community on the Atlantic Intracoastal Waterway in Fort Lauderdale, according to the New York Times and Mother Jones magazine.

The mansion 12 ft 200201 mga water 853 1028 of File are 24/27 indest testates dio 21/21/10/25 the 1520 56 of Isyn Itano and billionaire Blockbuster founder Wayne Huize 12/20 fant who from the Peridence of Desi Arnaz and Lucille Ball. In addition to the 130-foot yacht, Stern reportedly has an automobile collection that includes a 2008 Bugatti and multiple Ferraris, Porsches and Mercedes. But Tew declined to discuss his client's assets. "All that does is feed into this scenario that somehow they're taking advantage of poor people who are losing their houses and getting rich off of it," he said. "You could say the same thing about a neurosurgeon that makes millions of dollars a year from people who sustained terrible head injuries."

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EXHIBIT N-1 TO THE DECLARATION OF JOHN W. SMITH T

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

RENAE MOWAT, NIKKI MACK, ARKLYNN RAHMING, and QUENNA
HUMPHREY individually
and on behalf of all other similarly situated

Plaintiffs,

individuals,

F L

CASE NO. 10-62302-CIV-UNGARO

DUSP ENTERPRISES, INC., a Florida Corporation, DUSP ENTERPRISES, INC., a British Virgin Islands Company, LAW OFFICES OF DAVID J. STERN, P.A., DAVID J. STERN, individually, DAL GROUP, LLC, a Delaware LLC, DJS PROCESSING, LLC, a Delaware LLC, PROFESSIONAL TITLE AND ABSTRACT COMPANY OF FLORIDA, a Delaware LLC, and DEFAULT SERVICING, LLC, a Delaware LLC,

Defendants.

VOLUME I DEPOSITION OF DAVID J. STERN

TAKEN ON BEHALF OF THE PLAINTIFFS

APRIL 25, 2011 10:00 A.M. - 5:13 P.M.

REIF KING WELCH LEGAL SERVICES 888 EAST LAS OLAS BLVD., SUITE 508, FORT LAUDERDALE, FLORIDA 33301

SAMANTHA HANSTEIN, Court Reporter

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Exhibit "A"

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DEPOSITION OF DAVID J. STERN APRIL 25, 2011

COURT REPORTER: Okay. We are now on the video record. Today's date is April 25th, 2011. The time is 10:06 a.m. This is the video deposition of David Stern taken in the matter of Mowat, Mack, Rahming & Humphrey v. DSJP Enterprises, Inc. The case number is 10-62302-CIV-UNGARO. We're located at Reif King Welch Legal Services, 888 East Las Olas Boulevard, Fort Lauderdale, Florida 33301. The digital reporter is Samantha Hanstein with the firm of Reif King Welch.

Would counsel please introduce themselves for the record.

MR. JAFFE: Steven Jaffe on behalf of the plaintiffs.

MS. DOUCETTE: Chandra Parker Doucette on behalf of the plaintiffs.

MS. RAPOPORT: Dawn Michelle Rapoport on behalf of the plaintiffs.

MR. SCRUGGS: Frank Scruggs of Berger Singerman for DJSP Enterprises, Inc. and other corporate defendants.

MR. TEW: Jeff Tew for David Stern from the Law Offices of David Stern, P.A.

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MR. STERN: I'm David Stern for David Stern. MR. JAFFE: Good morning. My name is 2 Steven Jaffe. 3 We met briefly this morning. Thank you for coming in this morning. DAVID J. STERN, having been first duly sworn, testified as follows: DIRECT EXAMINATION 10 BY MR. JAFFE: 11 Q Mr. Stern, thanks for coming in this morning. Like I just said, my name is Steven Jaffe. I'll be 12 taking your deposition probably most of today. Has your 13 14 deposition ever been taken before? 15 All right. And now, you are a practicing Q 16 17 attorney? 18 Α And you've taken depositions before? 19 20 So, you know all the deposition admonitions, 21 and there's really no need for me to go over right now; 22 23 I officially waive. 24 Okay. And if you need a break, just tell me. 25

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I'll be happy to break anytime. I'd like to start off, i just going over your background. We could, you know. 2 Born in Chicago, Illinois. And when did you come to South Florida? 0 When I was 30 years old. Where did you go to undergrad? Appalachian State University in North 9 Carolina. 10 Q I couldn't decide if my daughter's finishing 11 12 13 What year did you graduate? o 14 From? 15 Appalachian State University. 16 And then did you go into the workforce or did 17 à 18 you go into the law school? 19 I went straight into law school. 20 South Texas College of Law in Houston, Texas. 21 I graduated 1986. 22 23 And where did you go -- did you stay in Texas Q to begin your career as a lawyer? That's how Texas -- being that three-tier 25

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1 school -- four-tier school. Not that I read any of 2 these articles, but that one came across my desk. 3 That was good. I'm sorry. Q Where did you begin your practice of law? A I actually began my practice of law with the 5 Law Offices of Gerald Shapiro with the acronym of LOGS. 7 Q What year? I went to work for them right out of law 8 school before becoming a member of the bar; ultimately q 10 became a member of the bar in 1991; didn't necessarily practice with them. I was a national operations 11 manager, so I officially started practicing January 1st, 12 13 Q If I heard you correctly, you graduated from 14 South Texas College of Law in 1986; is that correct? 15 Yes, sir. 16 17 When did you first sit for any bar exam? 1990. 18 Α Which bar exam was that? 19 I'm sorry. Scratch that. I sat for the Texas 20 Bar right after graduation from law school while working 21 for my then-previous employer. 22

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working for my previous employer, which is LOGS.

And then I sat for the Florida Bar while

1 0 What year did you sit for the Florida Bar? 2 19902 Let's go back to Texas. So, you sat for the Q Texas Bar in 1986; is that correct? Α I believe that's --Maybe 1987? I believe the next one after I graduated and Α was eligible. 10 Q Okay. And did you pass that bar? Did you ever take the Texas Bar again? 12 13 14 Q I believe you say you moved to Florida 15 thereafter. I don't recall saying that. 16 Fair enough. Where did you move after Texas? 17 Q Graduated from law school, sitting for the bar? Where 18 19 A I moved to Tampa, Florida. 20 Approximately in 1986, 1987? 21 0 22 Α 1986. 23 And if I repeat myself which I'm about to, I 24 apologize, but let's just go with it, with -- where was your first employment in 1986 in Tampa? 25

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i The Law Offices of Gerald Shapiro or, say, the 2 LOGS group And what type of practice did you have? 3 Q Mortgage and lender representation. 4 5 Q In what capacity were you employed there An intern/law clerk. Why did you not sit for the Florida Bar until В 0 9 19902 Because I worked my tail off 24/7 for LOGS. 10 11 Just so the record is clear, LOGS, spell that. 12 o LOGS. L-O-G-S, the acronym for the Law Offices 13 А of Gerald Shapiro. 14 15 Q LOGS. When I first started working for LOGS, 16 I worked for them in their Tampa office for three months. 17 18 After working for them for three months, I've recruited 19 to the national office in Chicago, Illinois. And I was made the quality control representative. When I started 20 with them, I had 13 offices. As I made a name for myself, 21 22 I ultimately was responsible for opening or restructuring some 33 offices. As a result, I was on the road pretty 24 much every day. Literally, every day. I still have my platinum lifetime marguis for Marriott and my 25

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Continental elite for lifetime, so it was worth it. Q Explain to me your job responsibilities as what you just termed the quality control rep for LOGS.

When there was a distressed office, initially, I would go in and make a determination of what the issues were, make recommendations, report back to the national office together with the guy who's from the national office and the managing attorneys, implemented a plan to turn the office around. The duties then grew from dealing with distressed offices to opening up brand new offices. So, during the eight years I was with LOGS, I either opened or dealt with some 33 offices in, like, 27, 28 different states.

٥ So, obviously, during that time, too busy to sit down take the Florida Bar, other things were happening that were of interest to you?

A Correct, ves.

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Q The three months that you were in Tampa before being promoted to the Chicago quality control rep, is it fair to say that you learned as much as you could regarding mortgage lender representation in the Tampa office?

A The day I started in Tampa, it was a distressed office unbeknownst to me, and my first day there, the senior management from Chicago came in and

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read everyone the riot act. My first day. I didn't know much of anything. Certainly, I didn't know mortgage lender representation, but I kind of went for broke and asked them for the opportunity to dive right in it. And long story short, they laughed at me, but at the end of the day, they gave me the opportunity. And during those three months, I worked 24/7, had this neat little SkyPager, because cellphones were so big. Dare I say my age. 1-800 SkyPage and No. 20632. We can publish it. That's on there. How old are you? I'm 50. What's your date of birth? Did you tell him to ask that? May 6th, 1960. But don't ask me where the time went. So, after three months in the Tampa office, I demonstrated, I would assume, qualities that were unique

and valued in the eyes of upper management.

0 Were there lawyers in their office?

Yes, sir.

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How many? Approximately.

I got -- that's like 1986. 20.

And non-legal staff, approximately, how many?

60, 70, I quess.

And you say you worked 24/7, can we be

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literal? What hours did you keep?

Α

Q So, you worked 24 hours a day, seven days a

A I slept for three to four hours. Sometimes, I went to bed at 1:00; sometimes I went to bed at 9:00 and woke up at 1:00. Pretty much the same work ethic I've kept when I went to law school. I went to law school at night, can't afford Tier 4.

Tier 4?

Tier 4. Thank you. And I worked two jobs during the day. I went to law school from 5:30 to 10:30, got home, study for a couple of hours and just kind of develop a sleep pattern of three hours.

Q What type of work did you do during law school? Does it have anything to do with the mortgage industry?

A No, no, sir. Originally, I clerked for the City of Houston, so between clerking and studying law and going to law school. The local high schools were looking for soccer coaches, and I had soccer background. So. I took a job as a soccer coach, which in order to coach, you had to teach and --

-- and I didn't have teaching credentials, so

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i they gave me emergency teaching permit based on some 2 online courses. So, I taught senior government and I 3 coached soccer and cross-country. Q Where did you go to high school? Miami Edison Senior High School. 5 6 0 Did you play soccer? 7 А I did. 8 9 Back then, yeah. 10 0 Did you play soccer at Appalachian State? 11 A I did. 12 All four years. 13 Two years. 14 Were you at Appalachian State all four years? 15 Α Yes, sir. 16 Q At Appalachian State, what degree did you 17 18 Bachelor of Science in Political Science and

> Criminal Justice minor in Sociology. 0 Double major?

Yes, sir. I wanted to get most from my tuition.

0 Were you on scholarship?

Financial aid.

So, not under a scholarship?

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Δ When you went to work at LOGS, I assume, just correct me if I'm wrong, you learned -- you began to

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I was there for eight years, and that's where I А learned it.

Both the non-legal elements of the business 0 and I assume, just correct me, the legal elements of

learn the mortgage lender business.

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And what was LOGS -- or what was your understanding of what a distressed office was?

A In my mind, a distressed office was an office where there was dissatisfaction from clients or failure on behalf of the office to meet milestones for the full time frames that are essential to the industry. And, of course, if you want to find that you're missing milestones before the client does because that could be relationship ending.

O What would you say the three most important things you learned at LOGS were?

A Well, I was single at that time, so there was this secretary. I would say understanding the process from an operations standpoint, understanding the process from the legal standpoint and probably most importantly,

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establishing relationships with clients. All three, I believe, I have mastered and perhaps the basis for my success.

How long did it take you to learn or belief those were the three most critical things in the industry to be a success?

I got to tell you. I probably didn't realize А it until the first year into my own practice.

Okay. Well, then, so, you're saying that in retrospect, that's what you learned at LOGS?

A I loved my job at LOGS. I loved the responsibility. I loved the challenge. I loved something that was getting ready to be kicked under the rug and stopped it from being kicked under the rug. Took something that was a failure and made into a success or started something that was just soil and built it into a successful, profitable learning, if you

Would you agree with me that LOGS was a generally successfully business at the time you went into it?

Α They were a up-and-coming firm -- they had 13 offices. When I left, they had 54 offices, of which 33 were my responsibility.

Could you list some of your clients?

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Sure. Bank of America, Chase, Wells Fargo, Countrywide, pretty much -- they were national firms and they represented pretty much everyone. Some of that are still around. Some of that have car wrecked -- Gold Dome. Once in a while, I see these names, and I said -- I remember that -- National Mortgage in Memphis, but pretty much everyone.

When you say that you learned the process from an operations standpoint, can you explain that?

From an operations standpoint, I became familiar with the movement of a particular action through a process when that required efficiency, vet needed to be done economically. So, from a foreclosure standpoint, I had to move things from the title, area where it starts, to the complaint, which is essential, and a time-driven milestone, milestone being the key component of the foreclosure; how to most efficiently and effectively move through service process, to deal with process servers; how to get judgment centered; how to take property to sale and move things efficiently, My responsibilities were not also limited to judicial foreclosures, but we have power sales states, which are simply -- know this requirements, which are the majority of the states. So, I learned that. And then I learned the bankruptcy processes and the closing processes and

REIF KING WELCH LEGAL SERVICES www.reifkingwelch.com (877) 291-DEPO (3376) the eviction process. That's the operations standpoint.

When you went into LOGS, they already had Q system, operation systems, correct?

They did. Α

Q And did they have policy and procedure manuals?

Very few. I wrote some of them. I chuckle because it goes back to the old computers, to the big. old screens. And when I started my practice eight years later, I hired a computers' consultant and we were designing and had the mouse. I had never seen a mouse. So, I picked it up and I started playing with the ball. And I looked at it, he said, what are you doing? I go, what the hell is this? And he knew he was in trouble. So, I was not the most technological and hopeful that my testimony hasn't led you to believe that I was technologically advanced. Because right now, my 14-year-old daughter handles all the technology in the

0 But from a practical standpoint, you understood quickly how to maximize operations?

A Back then, I thought I did. Back then, I thought, you know, I had it going on. When I started my own practice, I thought I had it going on. I thought people that I had trained, we had it going on. And --

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entire eight years you were there?

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 21 of Were you involved in training staff members at LOGS from an operations, non-legal operations, standpoint? A Yes, sir. So, you developed some of the policy and procedure manuals from an operations standpoint at LOGS? 6 Yes, sir. Α R And then you actually implemented those policy and procedures that you had refined or established? A Refined in some offices, those offices that I 11 created, certainly established, bringing over ideas from other offices that were successful ideas and certainly 12 13 eliminating or actually those that were disastrous. 14 Did you study other competitors' model? 15 16 Q Who were some of the other competitors that 17 you studied? 18 A I don't recall. I -- I know as I created 19 pleadings or recommended forms of pleadings, I would go to courthouses and I would gather up copies of, say, the 20 21 judicial state, complaints from the five largest guys 22 and, you know, kind of piece them together and worked with the senior attorney to make sure that we were in 24 compliance with that particular jurisdictions, laws.

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At LOGS, did you have the same job title the

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I don't remember. Job titles mean nothing 2 3 to me. So, if I would ask you what your job titles 4 5 were at LOGS, you would not remember them? 6 7 Did your job responsibilities increase over 8 the eight years you were at LOGS? 10 When you first went to Chicago -- and I believe you told me that was within three months of 11 12 being employed with LOGS? 13 14 Your job title was quality control rep or is 15 that just an acronym? 16 Quality control manager. 17 Okay. What were your job responsibilities at 19 When I went to Chicago? 20 Yeah. 21 I was in Chicago, as I recall, about two days. 22 And the California operation became distressed and there 23 was a falling out between the partners. One office was 24 in San Diego that handled foreclosures. The other office was in Westwood, California, right down the 25 REIF KING WELCH LEGAL SERVICES

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street from UCLA and the partner that walked out walked out from the Westlake office. So, I was asked to go in make an evaluation, see what staff was staying, what staff was going, review the procedures, see why he walked out, make recommendations to the national office. And ultimately, that project entailed consolidating the San Diego office and the Westwood office to Costa Mesa.

O So, it sounds like that you have a forte for evaluating people within the mortgage industry, employees, deciding who was maybe dead weight, who was a keeper and how to best create a better functioning environment?

MR. TEW: Objection.

MR. SCRUGGS: Objection to form.

MR. TEW: Same objection.

Back at that time, I probably felt that I did, keeping what I've learned and who has come into -- at one time came into our world, I realized that I knew verv little.

(By Mr. Jaffe) When you say "who's come into 0 your world," what do you mean?

A Rick Powers, chief operational officer. The amount of knowledge that he instilled into me in the brief time that I was privileged enough to be with him is just amazing. And I looked back and I say,

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yeah, I have a Political Science degree; I have a

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Sure.

2 Criminal Justice degree, minor in sociology and a law degree. But certainly, no degree from an operational 3 standpoint, managing by matrix and developing charts 4 and -- amazing. Q So, you had a gut. You went with your gut, and at that time frame, at least, it was successful? A I think it was. ß 9 And you were rewarded appropriately from law, just stayed with them eight years, you elevated, they 10 11 opened more offices? Since we're on the record, I would say, I 12 don't believe that they rewarded me adequately. 13 Q I understand. 14 15 Hence, my departure from them. I worked 24/7 to make someone wealthy and profitable. I decided that 16 I might as well do it for myself. So, I --17 18 0 Okav. 19 Since my counsel didn't object, I object. 20 Listen, I don't regret it and it was an invaluable eight 21 years.

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would have known? If I were to stay for nine or 10

years, someone else may have pioneered the industry.

If I would have left after six years, who

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So, you also learned the processes from a legal standpoint within the foreclosure business while at LOGS as well?

- I learned not as a practicing attorney.

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- Or be an authorized practicing one. But I did learn that as well.
- I didn't say you cannot -- I'm certainly not representing to you that you practiced at that time, but you certainly absorbed and understood the process, learn the process, and from an intellectual standpoint, you helieve you were able to create your own systems that would be more efficient for the client?
- And talk to me a little bit about the third element, that is, that you believe that relationships were one of the three most important things that you learned there?
- A Perhaps the most important. In my role as the quality control guy, any time that a file had gone awry, our office had gone awry, it was my watch. I was the captain of the ship. And clients would reach out to me and they would voice their frustrations or concern. And while I don't have the answers to everything, I have -always had the will to find those answers. And T

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certainly to the client; is that correct?

believe that my ability to demonstrate that to the vast majority of the industry which LOGS represented allowed me to be of instant credibility the day I hung my shingle out on January 1st, 1994 where I could reach out to the clients with the results that were beyond my You just mentioned earlier that one of the important elements that you learned was using or creating milestones in the foreclosure process. And that is a very important element to the industry and

A Yes, sir.

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- Please --
 - Not using or creating the milestones that were existent already, a measuring tool that the industry had established. How long does it take you to get the complaint filed, service completed, judgment entered, sale held and sold for you. So, using them or establishing them, they were used as a tool. So, I did adopt that methodology.
 - What milestones were in place at that time as you just laid out?
- - What dates? What's the time frames?
 - It varies, depending upon the state. You've

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got judicial foreclosures, you've got power sale foreclosures. In Texas and Georgia, you can get a foreclosure done in 26 days -- Tuesday. States like Maine, New York, different processes, different procedures, superior court versus circuit court. Some states, you can file in Federal court.

- Back in that time frame in Florida?
- I can answer that. That time frame back then Α was about 270 days --
 - Q
 - A File received.
- o Is that -- I've read that you've used the term
- Well, don't believe everything you read, but, yes.
 - 0 Is that a term you've used?
 - We do use "cradle to grave."
- All right. Is "cradle to grave" a reference to something like this, 270 days?
 - Yes, sir. Α
- 0 All right. Then we'll get to that later. 270 days from time a file was received into the office --
 - Yes, sir.
 - -- to judgment?
 - Sale held.

Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 28 of Okay. And so, my question, with regard to the 2 Florida milestones -- back then, who sets it? Do you

- set them? Does the client set them? Is the industry standard? Please explain it.
 - Fannie Mae and Freddie Mac.
- Thank you. Are they hard milestones? Hard dates or goals?
 - A They are hard dates.
 - And what happens if you don't meet them?
- If you have a excusable delay, like the borrower's debt is problematic to post to tombstone, so you have to -- that that would be an uncontrollable delay. Or if you've got a special in today's environment where everything is litigious and class action attorneys suing people, foreclosure attorneys wiping people out. Those are controllable delays, so we would --
 - Back then, it was --
- It wasn't as litigious. It was just a matter of how people did things. If there was a push and then someone like me came on the scene and said, you don't need 270 days you can do within.
- And so, did you create policy and procedure manuals to reduce those milestones?
 - When I was at LOGS?

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I'm sorry, yes. Q 2 If the milestone was reduced by the investor. 3 then we would have to adjust the policies and procedures to be consistent in that. 5 So, the investor would attempt to control 6 milestones? 7 Α Yes. sir. 8 Were there times where you, on behalf of LOGS, would control the milestones? 10 11 Were there incentives for meeting or exceeding milestones at that time? 12 13 I'm not sure I understand your question. 14 Incentives paid by whom? 15 Were there bonuses to LOGS? Were there 16 bonuses to LOGS if you met or exceeded milestones? 17 Not to the best of my knowledge. 18 Were employees of LOGS given bonuses for 19 meeting or exceeding milestones? 20 Not to the best of my knowledge. 21 Were there quotas, monthly quotas at LOGS? 22 Monthly quotas? I'm not sure I understand the 23 question. 24 0 If you would be kind enough, could you explain 25 to me the process while at LOGS, in a general sense,

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client sends in a file to be foreclosed upon and how it processes through the office. 2 MR. TEW: You're talking about in --3 (By Mr. Jaffe) Fair enough. Florida. Florida? Back in the LOGS days, it was set up 5 by stages. So, if I would come in through the -- given 6 to the type of department, they would have certain period of time to move it to the next stage, which would have been complaint stage. Complaints that needed to go 10 over a certain period of time I don't recall what those time frames were. That was one of the separate set 11 12 of paralegals. The file would then move, once the 13 complaint was filed to service, a different set of 14 paralegals because its stage concept. Assembly line, if you will. Then it'd move to the next stage, judgment. 15 16 Then it moved to the sale stage. And then it moved to 17 the post sale stage. 18 Q Reviewing those stages, where would legal come 19 in? Only at the judgment stage? 20 Yes, sir. 21 Okay. Because you mentioned paralegal on two 22 occasions. I didn't hear the mention of lawyers 2.3 involved? Well, they all involve lawyers because lawyers 24 A 25 have the obligation to supervise paralegals. The

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paralegals can't sign the complaint or review the i 2 complaint, of course. 3 Q Okay. A The service process is reviewed by an attorney. O Let's go back it up. How about the title department? Back at LOGS? Yes, sir, 10 John Stupprich. John Stupprich, 11 S-T-U-P-P-R-I-C-H, was the title mastermind esquire. 12 Title in the State of Florida is not the functionality 13 Q Absolutely. 14 -- practicing law, so it just depends how it's 15 16 set up and what resources you have. Okay. At LOGS, was there title department? 17 John Stupprich was an attorney, but the 18 examiners, I don't recall who's examiner. 19 20 Q And so, maybe I misunderstood. Where was John 21 22 Tampa, Florida. 23 All right. The complaints, those were 2.4 automated at this stage in the chronology --Yes. 25

Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 32 of 277 2 3 All right. Paralegal would take certain data. input it into their computer, complaint would be split out for the review of a lawyer? Lawyer signs the Complaint? Or makes corrections. Makes corrections, complaints finalized, then 10 lawyer signs complaint? Yes. 11 Α 12 All right. And that's time to get service, so 13 paralegal drafts the necessary service papers? 14 Summons complaint unless picked and they'll draft it together. 15 Q Okay. Packaged? 16 Trained, trailed -- Trained, trailed and 17 packaged and then filed together. 18 Explain to me, if you will, if at LOGS, in 19 Florida, how many departments there within a given office? 20 21 A Foreclosure, bankruptcy, eviction, deed and lieu, title, litigation, it just depends that the top of 22 it the industry like today or a while back, loss mitigation research, back in the LOGS days, I don't 24 recall the loss mitigation. 25

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Q Just for the record, kindly define what loss 2 A review of a file to mitigate the loss with 3 Α some sort of remedy. The remedy could either be whole 5 retention, modification, repayment, forbearance or amount of retention, deed and lieu and short sale. Have those departments with the exception of Q loss mitigation stayed consistent in the industry until 10 Α In the State of Florida? 11 12 А Well, it depends. There are firms out there 13 that do things other than just foreclosures. 14 Q In foreclosure only offices, do you -- to the 15 best of your knowledge, А 16 Yes. sir. 17 And while at LOGS, you supervised and reviewed 18 each of those departments from a processes and systems 19 standpoint? 20 I had assistance. 21 Of course, anyone. I'm certainly not 0 22 recommending that you did that alone. But although 23 24/7, you might have been able to. And where you found deficiencies, you were in a position to attempt to 25 remedy via creating new systems and policies and

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procedures and then implementing? A In conjunction with the managing attorney 2 license in that state as well as the national office. 3 So, it's fair to say at the end of eight 4 5 years, working 24/7 for somewhere else, making them lots 6 of money throughout this country, you knew the mortgage 7 foreclosure business at that point? In your mind. A If it's based on where I am today or perhaps 8 where I was six months ago, I would say that I certainly 10 O You sat for the bar while -- excuse me -- you 11 12 sat for the Florida Bar while employed at LOGS? 13 14 Why? Q 15 Α Because when they hired me, they promised me 16 that 70 times, that I take Florida Bar, because I went 17 to Miami Edison, grew up in Florida, loved Florida, had 18 a condo on South Beach and I knew ultimately at the end 19 of the day that I wanted to get licensed and I wanted it 20 to be in Florida. So, after a combination of them 21 sending me off on projects and me prioritizing projects, 22 we finally decided that I would no longer blow it off. 23 Q And so, in 1990, you sat for the bar; in 1991, 24 passed the bar?

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There are good memories in that post. They

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have promised me I could take it. I signed up for it. signed up for BARBRI, dare I say. And various things came up. And they said, we need you. And I said. I'm going to guit unless you give me something in writing that next time, you'll pay for three months, and I would have to look in or see. Since I was already signed up for the bar, during this time period, they said, why didn't you sit for it? You've got nothing to lose. So, I sat for it. I took the two-day cram course. Out of the essay questions, I eliminated the ones I had test on the previous months, crammed the other four essays in, sat for the multi-state, sat for the essay. I remember I finished the multi-state up early. And as I was sitting there, I drew A, B, C, D. In an hour early, I'm spinning my pen. The examiner says, What are you doing?" I said I'm double-checking my answers. And I passed. That's it.

Q Luck or genius?

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- A They didn't know that part. I did -MR. TEW: Put that in your online.
- A Yeah, yeah, my best-selling. But we haven't closed the chapter yet. There's still a lot to be
 - MR. TEW: That's true.
 - MR. JAFFE: That's true.

i (By Mr. Jaffe) So, you passed in 1991? 0 2 3 Worked for LOGS for a few years? 4 Through 1993. 5 At that point, now, you're a licensed attorney 6 in Florida, did you actually go to court? Yes. Α 8 The day you opened your office on January 1st, 1994, had you been in a courtroom as a lawyer? 9 I don't believe I had. I know that I had 10 11 business cards. 12 o Are you married? 13 Yes, sir, 17 years in June 19. 14 Congratulations. 15 Anv kids? Two. Logan, 10. Brianna, 14. 16 17 That's a beautiful thing. The best. 18 When you resigned from -- did you resign from 19 Q 20 LOGS? 21 I did, yes, sir. Α Okay. You weren't fired? 22 23 No, sir, I wasn't fired. When was that? 24 I submitted in resignation July of 1993. My 25

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last day was December 31st, 1993. Q And January 1st, 1994, you opened your own 3 office. Α Literally, on New Year's Day. 2627 Northeast 203rd Street, North Miami Beach, Florida, 800 square feet. Kind of like this. pink walls, blue carpet, 2386 computers, roller stamps, copier we had to move by hand and an old-fashioned 10 checkbook with very little money in it. I love those 11 12 Single at that point? 13 Single. Janine, who was my girlfriend, now my 14 wife. I think we got married -- I know we got married. 15 I know we got married six months after that -- six 16 months after that, June 19. 17 Q At LOGS, would you agree with me that LOGS at 18 that time in 1980s or in 1990s was representing 19 certainly the top 10 lenders in the United States? 20 A In one state or another, but not in every 21 single state. 22 And certainly --23 I knew them all, sir. 24 -- a vast majority of the top 20 lenders 25 actually in the country as well?

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A 2 0 And since customer relations is one, if not the most important elements to a successful business, in 3 4 general, I assume that they knew you were going to 5 6 I don't think they did. I don't think they 7 really thought that I would leave. At that point in time, I was the third man --8 Q My mistake and I'm sorry for interrupting you. 10 But I don't like to waste your time. Okay, Thank you. 11 12 I was speaking about the clients, the lenders. 13 Did you contact them? Did you have some quiet 14 conversations with them, saying, fellas, it's time? 15 Before I left? 16 ø Yes, sir. 17 No, sir. 18 All right. So, we're clear. No contact with 19 any what was to be a hopeful client down the road before 20 you left, telling that you were going to leave? 21 None at that or in the top 20. 22 23 A friend of a friend said, go visit somebody 24 in Orlando. They may have some foreclosures for you. 25 And it's my trip down to turnpike where I got my first

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business, it's hard to make, at the turnpike card i 2 machine back then. 3 All right. So, in January of 1994 in South 4 Florida, David Stern -- David J. Stern, PA is born? A I believe we incorporated in October of 1993. 7 But didn't pay no shingle, didn't have 8 anything. But I had already given my notice and decided 9 to move on. Because I wasn't sure what I was going to 10 11 All right. So, you gave notice in July, 12 incorporated in October-ish, and in January, pulled the 13 14 Yes, sir. Yes, I like it, pull the trigger. 15 16 0 January 1st, 1994, you had no employees. True 17 or false? 18 19 Q Who did you have as employee? 20 Cheryl Sammons. 21 Anybody else? 22 Janine, but she painted her nails and wore a baseball hat but wasn't paid. 24 Careful, this is on. Q 25 I still have that picture of her.

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	39
i	Q Good. Where did you first meet
2	Cheryl Sammons?
3	A Charlotte, North Carolina, with the LOGS
4	offices, probably 1989.
5	Q What was her job at that time in LOGS office
6	in Charlotte, North Carolina?
7	A She's a legal assistant.
8	Q How was it that you met? Just by you being in
9	that office?
10	A Advertisement.
11	Q Okay. Let's go back there for a second. Back
12	to LOGS. Were you responsible in any way in hiring
13	staff?
14	A Every time I got to this is this is
15	pretty good. Hiring staff and
16	Q At the office?
17	A Yes, I was.
18	Q Your office?
19	A Hiring, firing.
20	Q Okay. And so, obviously, there came a time
21	when you were at the Charlotte area and you were
22	interviewing staff members and you met Cheryl Sammons?
23	A Yes, sir.
24	Q Okay. And I assume she was a fine-tuned act?
25	A Yes, sir.

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Q All right. And at that time, was the Charlotte office open? You were staffing it or you just have to getting staff to then open the office?

A I'll save us all some time. There was a Shapiro and Davis law firm. Shapiro and Ron Davis had a falling out. Ron Davis wrote the clients saying, I want the files. And Gerry wrote the clients saying I want the files. And David Stern's job was to go in and find office space, find a managing attorney, hire staff and get the clients comfortable that Gerry's lack of physical presence would not be detrimental to the client -- to the client's files. That's where I put the ad in the paper, and amongst others, I met Cheryl.

- Q How many offices did you establish like that?
- A 20.

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Q So, obviously, you were already comfortable in the basics of how to open a foreclosure law office?

A I wouldn't say I was comfortable. I would say I was challenged each and every time. And neurotic ego, hyper-energetic and fearful of defeat or failure, so I was anything but comfortable.

- Q But you knew how to do it?
- A I felt I did. Yes, sir.
- Q And you did it repeatedly.
- A I did, yes, sir.

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Q And the offices that you opened and staffed

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- became profitable for the LOGS?

 A Yes, sir, they did.
- Q It's a good thing, though, that started you on your own.
 - A It did. It did, no regrets.
- Q So, on December 31st, 1993, you knew what you were in for. You knew how to open your own office?
 - A Yes, sir.
- Q Obviously, there was a time in 1993, you spoke to Cheryl Sammons and told her what you were going to do?
 - A I did, yes, sir.
- Q And can I assume that you encouraged her to come and be part of it?

A She looked at me like I was crazy. She said, you're the heir apparent of all these. Why would you ever leave? And she goes, stop joking. And I looked at her and said, I'm not joking. Come down to Florida, you, Robbie, her husband, guys, in a nice, quiet office. There won't be anymore 24/7. We would have clients yelling and screaming. We'll get your house, we'll get your little picket fence and live in a nice, new regular law office practice, which lasted about four days.

Q You didn't tell her you wanted to go big and

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have these big dreams and all that?

- A I didn't have that idea. I didn't have that thought. I never ever imagined.
- Q When you hired her in 1989 in Charlotte in this to be new office, how many people were staffed in that office in 1989?
 - A Well, I started the office from scratch.
 - Q Right.
- $\label{eq:lambda} \boldsymbol{A} \qquad \text{And there were three attorneys, probably a}$ staff of six.
 - Q Can I assume she left in 1993?
- A She did leave in -- at the end of 1993, the same time I left.
- $\ensuremath{\mathtt{Q}}$ Okay. At that time, how many attorneys were in the Charlotte office?
 - A It's a pretty big office, about 20.
 - Q Okay. And how many staff?
 - A 45, 50 power sales, I would say.
- Q Between 1989 and 1993, how much contact did you have with Cheryl Sammons?
- A I spoke to Cheryl -- Cheryl -- I spoke with Cheryl on a -- almost daily basis.
 - 2 Why?
- A Because she left the Charlotte office, probably six months after, her starting there, she was

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great at implementing. She was good with people. She
was great with clients. So, I asked her if she wanted to
be on the national level and help me manage all the
offices that I had and she accepted.

- Q Let me make sure I understood you. With regard to Cheryl Sammons' employment at LOGS, that lasted six months at the Charlotte office that you had just opened?
 - A That is correct. Yes, sir.
- Q She resigned?
 - $\label{eq:Abelian} \boldsymbol{A} \qquad \text{She went to the National Payroll and became a} \\ \text{national employee.}$
 - Q So, you pulled her, so to speak, from the single office. You obviously saw something in her and said she could be of asset to me clarity with the powers to be, assuming, and you put her on to the national
 - A She'd be an asset to the national organization, and first and foremost, to allow me to continue doing what I do.
 - $\ensuremath{\mathtt{Q}}$. All right. But during this entire time, 1989 to 1993, she stayed in Charlotte?
 - A She maintained her residence there, to the best of my knowledge. I think so her husband lived there, and she would be on the road either with me or

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i	helping me do what needed to be done.
2	Q What did she do?
3	A She would go in and do some interviewing, some
4	review of reports. She was key to me in reviewing
5	reports in terms of achieving milestones, how were these
6	offices moving. Can't rely on the offices to
7	self-report, so we go in and do a spot check.
8	Q National Auditors?
9	A National Auditors.
10	Q Since you
11	A But that was that wasn't her name. I can't
12	repeat that. But
13	Q Since you established the policies and
14	procedures, by this time implemented them, you
15	obviously I'll use the word "taught" her your
16	systems, and she was sharp enough to understand that and
17	then follow up LOGS' policies.
18	A Accountability and visibility mean two key
19	components and accountability would be done through
20	reports, as basic as they were back then, vis-a-vis what
21	we're able to establish today, especially someone like
22	Rick Powers. That was exactly what was assumed.
23	MR. SCRUGGS: Can we take a break?
24	MR. JAFFE: Sure.
25	(Thereupon, a short break was

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taken.) 2 (Deposition resumed.) (By Mr. Jaffe) At time that you left LOGS and Ms. Sammons left LOGS, how many attorneys were employed with LOGS around the country? I don't know. Ballpark? I have no idea. More than a thousand? I don't know. 10 11 More than 500? 12 I'm sorry. I don't know. I don't recall. 13 Okay. We do know at least 33 offices at that 14 point, correct? 15 There were, yes, sir. Okay. Do you have a recollection of the 17 average number of lawyers per office? Yes. sir. 18 Α 19 How about the average number of staff per 20 office? 22 Okay. So, is it fair to say that there were at least a thousand staff members nationwide for LOGS at 2.3 24 25 For LOGS, I would -- I would say at least,

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ves. sir. í 2 Q Okay. At the time you left LOGS, what was your job responsibility? A At the time I left LOGS, my job responsibility was to oversee the offices that I had either 6 restructured or -- or in the process of restructuring. The intent lies for me to have offices up and running efficiently without my day-to-day interaction. 9 Q Okay. And what was Ms. Sammons' job 10 responsibility at that time? 11 A To review reports, ensure that time frames were being met, that operational guidelines, policies 12 and procedures were being followed. 13 O Both of you, at that time, "that time" being 14 15 1991, 1992, understood and had business in the state of Florida on behalf of LOGS? 16 17 18 The Tampa office had closed? 19 Yes, sir. But that was not one of my offices. Okay. Did Ms. Sammons -- prior to, Ms. Sammons coming to South Florida to work with you, 21 did she have any training or experience in dealing with 22 23 state of Florida foreclosure process? 24 Not while -- not a while, working with me.

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_	277
i	A At LOGS.
2	Q Okay. Do you know if she had any prior
3	experience, in other words?
4	A I don't know.
5	Q All right. And I believe you testified
6	earlier that you were in daily contact with Ms. Sammons
7	at that time? "That time," again, being late or early
8	1990s up until the time you guys left LOGS.
9	A Pretty much in that.
10	Q Okay. All right. So, your referenced you
11	drove up to Orlando to get your first client in 1994.
12	Did I hear you accurately?
13	A I believe it was either towards the end of
14	1993 or the beginning of 1994 after I had given my
15	notice to LOGS, but was uncertain what type of law I was
16	going to practice.
17	Q Who is your first client?
18	A My first client was three of them:
19	CitiMortgage, Chase and Bank of America, which was
20	Nation's Bank or NCMB, actually.
21	Q And did you get retained during that trip up
22	to Orlando?
23	A No, sir.
24	Q All right. So, you opened in January of 1994.
25	I believe you said within four months, that things

At LOGS?

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started moving, paraphrasing of course. A Certainly, things started moving fairly quickly. Q At what point did you decide that you were going to operate a foreclosure business, legal business? A I guess I always knew at some point that I would do foreclosures, but I wanted to do other types of law --Like what? -- as well. I like criminal law. I like the contract law. When you become a solo practitioner, you do whatever you need to do, as you know. So, I didn't have my sight set on anything, and I really was uncertain, at the end of the day, how successful or how -- how successful, I guess, I would be in taking work for LOGS because we always have long-standing relationships. So. I really wasn't sure where I was going to be.

Q Okay. What did you mean when you said within four months, things changed?

A Almost from Day 1 when I reached out to those three clients, they all agreed to give me work. So, things changed certainly before four months. And I apologize, I don't remember alluding to four months. But if I go back through the history, to the best of my

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recollection, there was something happening positive and not be on a weekly basis. And we continue to grow and

grow and grow.

Q So, you quickly learned that relationships you had established over the last eight years at LOGS were now paying off as it relates to your own personal law

A The relationships were paying off, that is correct.

Q They obviously recognized talent.

A Or they appreciated me on my knees with no direct deposit knee pads on.

Q So, you begged for business?

A I did, yes, sir.

Q And they gave you the business?

A They gave me an opportunity to earn it.

Q Now, Ms. Sammons was your first employee; is that fair?

A She was.

Q How quickly did you begin adding staff to the Law Offices of David J. Stern, P.A.?

A Probably two weeks.

Q Okay. And what type of staff: Staff or lawyers or both?

A Yes, both.

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Q Do you recollect who your first legal hire

A Legal as in law -- lawyer?

Q Yes. I'm sorry.

A There was an attorney by the name of
Michael Chase that was across the hall and he was
looking for extra work, so I hired him as a counsel and
paid him on a case-by-case basis. As court appearance
were needed, telephonic hearings were needed. His
wife, Barbara Chase, also an attorney, was my first
lawyer hire.

 $\ensuremath{\mathbb{Q}}$. Did you ever actively go to court as a lawyer in Florida?

A Yes, sir.

Q Okay. And how quickly into your own personal practice did you appear in court? Or was -- you opened at January 1st, 1994. Do you have a recollection of how quickly you were in --

A I believe 30 days on the motion to dismiss.

O Okav.

A This is why it's totally different. They are LOGS', because I wasn't an attorney. Now, I've become an attorney -- or I became an attorney going in, arguing cases, familiarity with case law, familiarity with the rules of civil procedure. Everything was done

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differently from the LOGS.

Q Because now, you're a practicing attorney?

A Well, because I'm a practicing attorney and -remember, everything I did at LOGS had to come with the
scrutiny of the national office. In that one day when
Gerry didn't want me to do what I needed to be done or
felt needed to be done, it was a series of on-going
denials. No, you can't do it this way; no, you can't do
it this way; no, you can't do it this way. And then one
day, he said, "No, you can't do it this way. If you
think you can do it better, then go out and do it." And
that's exactly right. I said goodbye and created things
that I wanted to do my way.

Q Right. Okay. So, how quickly did you institute the David J. Stern systems into your now new law office?

MR. SCRUGGS: Objection to form. Vagueness. Undefined terms.

A What do you mean David J. Stern way of doing things?

Q (By Mr. Jaffe) Well, during the eight years you're with LOGS, you've established policies and procedures on how you believe to best run a foreclosure practice, and you've instituted those policies and procedures. Did you take what you learned there and

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established at LOGS and instituted in your law office in January of 1994? A No. sir. Not for the most part because the

states that I established policies and procedures were states different than Florida.

Okay. 0

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А There were things that were the LOGS -- in way of the LOGS' philosophy, LOGS' budget constraints and lots of things that I wanted to do that I couldn't do. And, of course, Florida was a -- a totally different sort of state. So, I was able to come up with different ideas, different technology, different reports, and I didn't have the accountability to the national office. My accountability became direct to the client. So, processes -- the collar was taken off me, the rains were cone and I was free to run as I felt, ves.

Explain this to me though. My only confusion is when you first came into the LOGS Group, you were out at the Tampa office which you turned into a distressed office where you were with for three months. And I thought your job responsibility when you went nationally was to clean up, for lack of a better word, distressed

A When I started in Tampa, it was a distressed office. My primary focus there was -- it was distressed

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because there were issues in post-sale and evictions. So, I was able to go in, and in my mind, create systems. It wasn't, here's what I want to do and it's blast. It was like David, you need to sit down. Take a deep breath. You need to understand that, A, you have no experience; B, you're not a lawyer and C, there are established quidelines that are uniform. That's why clients used the LOGS Group because they have uniformity and guidelines were appropriate within the given states. Q So, when you opened up your Florida office in January of 1994, did you put into place your idea of how you wanted to run David J. Stern. P.A.? A I did, yes, sir. Okay. And Ms. Sammons and yourself worked on a daily basis to establish those guidelines and protocols? Yes, sir. And when was the first time you created a policy and procedure manual for your law office? I would say almost from Day 1. And was it -- when you first opened your what title company did you use? Attorney's title, abstract, attorney, the fund. By the end of 1994, how many attorneys did you

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i have working on, ballpark? I don't recall. 2 Α 3 Q Counting myself? Who will be part of the team? 85. In late -- end of 1994, how much staff did you have, non-legal staff, approximately? Α 10 Had you moved locations already? 11

Don't hold me to the time frame, but we quickly moved from North Miami Beach to Hollywood,

Where in Hollywood?

4600 Sheridan Street, Hollywood, Florida.

From 800 square feet in North Miami to how much in Hollywood?

North Miami, went from 800 to 1,600 --

Q

-- to 2,400 to 3,200. We then outgrew the space. We were hated because we took all the parking. So, we moved to Hollywood where we took 6,000 square

Was that in 1994? Right when you moved into 1995-ish --

If I'm guessing, we moved into early 1995-ish.

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Okay. How long did you stay in Hollywood? i 2 I've -- I'm thinking about a year, and then we moved to Plantation, Florida, 801 South University 3 Drive, Plantation, Florida 33324. We --

I'm sorry. When was that?

That was 1990- -- I want to say 1995, 1996.

Oh, so, you only stayed in Hollywood a very short time?

We outgrew the space. Α

Okay. How much square feet did you take at your first Plantation office, the 801 space?

Either -- I think it's 32,000 square feet. More than we needed, but space was like \$7 per square foot or it's \$5 per square foot plus cam charge of \$7. It was owned by a Trust and the Trust wanted us to take the whole thing. It used to be a Stein Mart. So, at the end of the day, they ended up probably paying me

Timing is everything. When you moved to Plantation, approximately how many lawyers did you have work for you?

When I first moved there? Α

10, 12. I -- I can't remember.

And approximate staff?

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	50	5
i	A A hundred.	l
2	Q What was Ms. Sammons' job title at that point?	l
3	I know you don't like job titles but just	l
4	A No, she had one. Everybody has to have one,	۱
5	you know. She was the office manager.	
6	Q More importantly, what were her job	1
7	responsibilities?	l
8	A When we moved to Plantation?	l
9	Q Yes, sir. Oh, actually, did they change from	l
10	at the time you moved in North Miami to Plantation?	
11	A Well, when we were in North Miami, she did	
12	everything. She did proofs of claims in bankruptcy, she	
13	wrote checks, she helped me do closings. She did it	
14	all. When we moved to Plantation, she was the office	l
15	manager in charge of hiring and firing in all areas.	İ
16	She we developed a whole new set of tracking,	
17	processes. Everything had changed from the LOGS' days.	l
18	So, she would assist me as a liaison with speaking	l
19	with clients, which, in the past, would never have	l
20	happened. And she did interviews	l
21	Q At this stage in her career, it sounds like	
22	she could effectively do every aspect of the business	ĺ
23	except appearing to court?	ĺ
24	MR. SCRUGGS: Objection to form.	l

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MR. TEW: Yeah, same objection.

25

I disagree. 2 (By Mr. Jaffe) Okay. What couldn't she do 3 effectively at this point in 1996? She didn't have relationships with client, she couldn't do client development. She could speak to them to answer a status question but she couldn't go out and draw up a business. Fair enough. Let's carve out business development. 10 Okav. 11 In-house back office stuff, she could 12 effectively run each element of the business of 13 14 No, she couldn't do the accounting, she 15 couldn't do the evictions, she couldn't do the 16 bankruptcies, she couldn't do the contested cases, she 17 couldn't do the title, the searches or the exams, she could, certainly, if I needed her to do a proof of 18 19 claim. But at that point in time, things became 20 electronic-based or -- so, that wasn't her -- her job 21 description. So, I have to disagree. Did you have somebody that would review titles 23 at that point? 24 I did, yes, sir. Who -- or how many? Who? Excuse me.

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	277 5
i	A What period of time.
2	Q Fair enough. Early 1996, if you remember.
3	A Sam Silverglate, attorney with me almost from
4	the beginning. In my opinion, he's one of the leading
5	authorities with title and helped established our title
6	operation and maintained the relationship with
7	attorney's title.
8	Q When did he become employed by David J. Stern,
9	P.A.?
10	A 1994, early.
11	Q Okay. And Sam later headed up what was then
12	to be known as Professional Title & Abstract?
13	A That is correct, yes, sir.
14	Q And so, is it fair to say that you had daily
15	contact with Sam 1994 to, certainly, 1996, you had
16	daily contact with Sam?
17	A No.
18	Q And why is that?
19	A Title title, there's no reason for me to be
20	involved or anything.
21	Q Was he on your physical plant, Sam, at that
22	time frame?
23	A In our facility?
24	Q Yeah.
25	A In our office? Yes, sir.

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	277 5	9
í	Q Okay. Sam was employed by you and paid by you	1
2	at that time.	1
3	A I'm not sure if he was paid by the law	
4	offices. I I I don't recall. He was he was	
5	obviously paid, not by me individually or personally.	
6	He was either paid by the Law Offices of David J. Stern	
7	or Professional Title & Abstract.	
В	Q When was Professional Title & Abstract	
9	incorporated?	
10	A 1994.	١
11	Q And who incorporated it?	1
12	A I don't know.	1
13	Q Who were its officers?	ľ
14	A Myself.	
15	Q Who were its directors?	l
16	A Myself.	1
17	Q Was there anybody besides yourself on the	l
18	board?	
19	A I don't believe so.	
20	Q Okay. Can you give me an idea of the volume	l
21	that David J. Stern was opening on a monthly basis in	١
22	1996 once you've moved to Plantation?	
23	A 1996 I I can't. I'm sorry.	
24	Q In 1996, when you moved into Plantation, can	
25	you tell me what departments you had? When I say "you,"	
		1

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I'm taking about David, the law office.

A Well, there was Professional Title & Abstract, there was foreclosure department, there was a bankruptcy department, there was an eviction department. There would be essential departments that were necessary to provide full capacity record, mortgage lend direct presentation.

Q And at this point, you had instituted the systems with no-collar on your ability to create systems, like you had a lot, you would get instituted those systems within to -- into your law office.

A With any practice, there is going to be systems, processes and procedures. I did not like the way of LOGS, their methodology, their technology. I liked a very little from there. So, as I've said, if you said my reigns were removed and I was free to do things consistent with my dream.

- Q And you did that?
- A And I did that, yes, sir.
- Q And Ms. Sammons instituted those systems as adjunct to you?
 - A What time period?
 - Q 1996.

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A She would not have instituted all of them. It would have been -- with LOGS, they've -- LOGS had

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central accounting, central HR. We have our own accounting. Cheryl couldn't do that. HR, Cheryl couldn't do that. Insurance, workman's comp, Cheryl couldn't do any of that. Totally different, totally — totally different world. Cheryl didn't have the expertise to implement requirements under the bankruptcy code or in litigation department, just things that she couldn't do. They were more in the foreclosure area and perhaps working with HR, assisting in some hiring, second interviews, whatever the case may be.

- Q With regard to the foreclosure department, she was able to institute your systems in a foreclosure department?
 - A Correct, Correct.
 - Q And that had been her specialty with you reviously?
- A Well, it -- it had, but that was with the Shapiro vision, not with my vision. So, I had to say, no, no, we're not going to do it that way.
 - Q Right
- ${\tt A}$ ${\tt A}$ and she learned quickly before she went down that road more than not. We actually went the opposite direction.
 - Q Were you working 24/7 at this point?
 - A Yes, sir.

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Q You can't change. And --

A I've been working 24/7 since I was 10 years

Q I assume Cheryl Sammons worked similar hours as you did?

A No, sir. I don't require sleep or food. She requires sleep and food.

Q Okay. With respect to when she do work, there was a plenty of time for you to explain and express your vision to her?

A Yes, sir.

Q Okay. And now that the collar is off, you did that and you established the systems that you wanted to place within your law office?

A Better procedures than LOGS had, more effective, more efficient, all the way around.

Q And taught into her or she'd learned and --

A Taught into her, she learned, she threw in her two cents.

O And then carried them out through staff?

 $\label{eq:lambda} \textbf{A} \qquad \text{The policies and procedures, sometimes without}$ her two cents and sometimes her two cents.

Q Okay. In 1998, did your business take a turn for the better?

A My business took a turn for the better every

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i year.
2 Q Fannie Mae named you t

- $\ensuremath{\mathtt{Q}}$ Fannie Mae named you to the attorney network in 1998?
 - A I'm not sure which year.
- Q Was that of any significance to your ability to grow your business?
 - A For Fannie Mae?
 - Q Yes

Certainly nice to have on your resume but when we were selected as Fannie Mae attorney, there was no requirement that the services use Fannie Mae attorney network. I believe at that point in time, we had established very solid client base. And had we not been selected under the -- the structure of the program back then, we didn't feel that it would really hurt us because relationships had been established. It could certainly help us as new services or potential new clients go into the Fannie Mae service or approve. Attorney Weston said, "Hey, if you're good enough for Fannie, we'd use you." So, if -- if your year of 1998 is correct in that, and I don't recall if it is, if we have just starting off that year, it would have probably been a great thing. But had we already been established, again, under your timeline, four years earlier, I don't think it made no difference.

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Q The fact that you were named attorney of the year in 1998 and 1999 by Fannie Mae, did that have any positive impact on your business?

A I'm not certain if -- if it was those years, but it was certainly something I believe that the industry recognized. It's something that I, again, put on my resume. I unfortunately, while in attendance at the Mortgage Banker conferences, didn't have clients, you know, like poodle on my legs saying, oh, my God, you are the attorney of the year. Come and get my files. But from a personal achievement and the achievement of my folks and a part of success is sharing it with the people that have gotten where they are. And I felt, I think, more proud for them in their accomplishments necessarily than for me.

Q When is the last time you handled a foreclosure in a courthouse in person?

A You guys are supposed to object. What do you mean "handle"?

Q Went to the courthouse on behalf of a client.

A Six, seven months ago.

Q So, would you agree with me that you yourself have maintained an active courtroom presence in the South Florida market handling foreclosures on behalf of clients?

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A I wouldn't -- . Given the fact that we have thousands and thousands and thousands and tens of thousands of cases and the fact that I went seven months ago, I would not say that I personally maintain activity or really any hands -- just take hand -- hands-on activity from an operations standpoint in -- in several years.

 ${\tt Q}$ Let's see if I can put some brackets on these. You went to court when you opened your own office in

A Ves. sir

Q Did you maintain an active courtroom practice for any period of time when you had your own office?

A I'm going back, obviously, further than I care to say, 17 years. But in the beginning where it was just myself and my chains of counsel, I did go to court for a few months. My focus at that point in time became quite clear. Do I go to court or do I take care of the clients in the client relations? I can hire people all day long to go to court. I could not nor did I have any desire to try to hire any marketing folks. That has always been my forte. So, it was very quickly that I relinquished my court functionality. It's nice to go every once in a while. It's actually or it was quite flattering to go to court.

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Q When did you think you relinquished? Approximately what year? It was in the 1994?

A From 1994 till seven months ago, I went to the court with some frequency. Maybe -- I went to court at some point that maybe or it's just once every month, once every three months. In 1994, I was doing telephonic hearings and I was appearing in the tri-county. If I go back, you know, two or three times a week, certainly, in 1995, that was not what I -- I

Q How about 1996? All I'm trying to get through is the time frame in which you became, like you said, less involved in the court system operations of your business and more involved in client development and overall running of the operation.

A Certainly, 1996, 1997 --

Q Okay.

A -- simply because trying to keep up with case law, trying to find time -- David, you're visiting a city in St. Louis, you need to sign this pleadings. At the training, that is necessary -- necessary. As local rules change, judge requirements change. So, it got to a point where it was quite clear in my mind and the minds of the trusted attorneys from the senior level that I better not be the cook in the kitchen anymore.

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Q What was your best guess what year that was?

A More so sooner than later. I -- I would say

Q Okay. Who was your first managing attorney?

A $\mbox{Well, when it was just Cheryl and I, it was me. It was Marv Mendieta.}$

Mary was hired in 1994.

Q Okay. So, Cheryl Sammons and Mary Mendieta where with you since 1994. I quess you just said that.

A On full circle, I haven't. Well, yes, sir, that's correct.

Q So, keeping good staff is an important part of your business?

A Keeping good, educated, hard working staff is key to any business. It doesn't matter if it's the 7-Eleven or Walmart or AutoNation.

Q 1998, your office was sued in a class action and that class action resolved; is that correct?

A In 1998, our offices -- my office was sued in the Bryant class action as where two other big competitor law firms, the Codilis Law Firm and the Shebria Law Firm.

Q And that case was resolved?

A That case was resolved, yes, sir.

Do you recollect, as you sit here today, what

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i the allegation was in that case? And I say the 2 allegation. Allegations? Fair enough. 5 Overcharging for title, which in Codilis case, the Judge said 325 is fine. Because that's what Fannie and Freddie said could be charged. They alleged that we needed to keep time records, which in the Codilis --Beck v. Codilis the court said they will need to do. 10 The only issues that we had unresolved that never went 11 to hearing because they were settled or they did not 12 like the way that Professional Title & Abstract was 13 structured, they felt who was a shelf corporation 14 because it wasn't formalized. Period of settlement, we 15 agreed to formalize it. We also --When you say "formalized," what does that 17 mean? 18 They didn't like the way that it -- that 19 payroll was set up or the lack of payroll was set up. They didn't like the way -- that it need the appearance 20 21 of a shelf corporation. What they did conceive was the amount that Professional Title and the law firm charged 22 23 for Title was reasonable and customary. 24 You ultimately paid 2.2 million to settle that

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case?

Insurance company, yes, sir. 2 Unfortunately, in 2002, there was a bar 3 grievance filed against you? Yes, sir. Q In 2002, were you publicly reprimanded? And what was the basis of that, if you recollect? A It was Professional Title & Abstract, the fact 10 that the court felt we were misleading by providing 11 invoices from Professional Title & Abstract when 12 Professional Title & Abstract appeared to be a shelf corporation. And again, the Florida bar, in terms of my 13 1.4 public reprimand, did recognize that the charges were customary and reasonable. They just didn't like the 15 16 fact that we said Professional Title bill the law firm 325 when they were an area of Professional Title but no 17 true Professional Title & Abstract employees. 18 Q At what point did your law office begin using 19 20 a centralized computer system? It seems like a stupid 21 question, but please answer it. Well. Chervl and I had two 386s hooked 22 A 23 together. So, I would say January 1st, 1994. Q Okay. And did your law office and each of its developing departments over the years continue to use a

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í centralized computer system? 2 MR. SCRUGGS: Objection to form. 3 I'm not sure what your definition of "centralized" is, if one cord goes to the other cord. 4 5 Yeah, but that's a -- a techie question. And you would 6 need Norman Gottschalk to help me. (By Mr. Jaffe) All right. Let's go there and 8 get that out of the way. Who would be the person with the most knowledge to answer IT-type questions of mine? 10 The chief information officer, Norman. 11 Full name, please. Norman Gottschalk. 12 13 Spell the last name for the court reporter. 14 G-O-T-T-C-H ---15 MR. BERNSTEIN: -- S-C-H-A-L-K. 16 -- A-L-K. I'm lost without my Blackberry, the piece of technology I do know. 17 18 (By Mr. Jaffe) Okay. MR. BERNSTEIN: Just for clarification, he is 19 20 the chief information officer at DJSP Enterprises. It's not a law firm. 21 22 (By Mr. Jaffe) How long was he been employed 23 24 MR. SCRUGGS: Objection to form. MR. TEW: Same objection. 25

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í	A He went public in January of 2010. Created
2	the back office 13 months, 12 months, something like
3	that.
4	Q (By Mr. Jaffe) So, in the 2000 areas, 2001,
5	2002, 2005, in that time frame, who ran your computer
6	system?
7	A Vince Petrov.
8	Q Okay. And what years did he work for the law
9	office?
10	A Vince worked for the law office, I'm guessing,
11	somewhere in 1986 1996. 1996. And then he became an
12	employee of DJSP on October on January 15th.
13	MS. DOUCETTE: January 15th?
14	A January 15th I'm sorry 2010.
15	MS. DOUCETTE: I'm sorry, I didn't hear him.
16	MR. JAFFE: It's okay,
17	Q (By Mr. Jaffe) And you don't like job titles,
18	so I'm going to just ask it this way, he ran your
19	computers up until January 15th, 2010, your computer
20	systems?
21	A Yes, yes. I don't I don't know what his
22	title.
23	Q That's why I didn't ask. To the best of your
24	knowledge, is he still employed with DJSP?
25	A He is not.

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Q Do you know where he is? 2 T do not. Α Are you able to tell me on an annual basis what type of caseload your law office maintained in the mid-2000s, for example, 2005, 2006? A As I sit here today, no. Okay. If I were to say to you that I've read somewhere -- and again, that's why I'm asking, I've read somewhere that you've handled approximately 15,000 10 foreclosures, you, your office in 2006 throughout the 11 State of Florida, does that sound accurate? 12 I'm sorry, all the years all run together. 13 Okav. Did there come a time after 2006 where 14 your business took a dramatic increase? 15 A And when would that have occurred? We've been in our existing space, 900 South 1.7 Pine Island Road, Plantation, Florida 33324 for three or 18 four years. So, that's when the husiness had dramatic 19 20 growth. So, doing some math, I would say 2007, 2008. 21 All right. Let me back up a little bit. I'm 22 sorry for not doing that earlier. You moved into, I 23 believe, 801 space in Plantation in 1996, correct? 24 A Well, let's see, we have a 10-year lease there. Simply, we stayed there until 1996, 2006 but

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then we had somewhere near about that years -- or a couple of years. 2 3 Okay. All right. Now, then you moved into 4 the 900 South Pine Island Road space? 5 Yes, sir. Okay. In approximately 2006, 2007? 6 7 2007, 2008. 8 Okay. Did you vacate the 801 space completely at that point? Yes, sir. 10 11 0 Did you have any other space in Plantation at that point other than the 900 space? 12 13 For what? 14 Anything. 15 Yes, sir. 16 What would that have been? А 17 I had default servicing in Louisville, 18 Kentucky. 19 20 This is when I moved in, 2008. A couple of 21 storage areas, that's all Arena Default Servicing. 22 Professional Title and the law offices -- Professional 23 Title was with the law offices at that time. O Okav. Default servicing, what was that? In 24 25 this time frame? 2007?

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i It was a company that I created that 2 specialized in real estate owned liquidation on behalf 3 of lenders You created it when? 1999 -- 1998, 1999, Who were the officers and directors? 8 And were you the managing member? I believe, veah. 10 MR. SCRUGGS: Okay. Managing member, I think 11 default services of the corporation. 12 MR. JAFFE: Right. That's what I know. 13 MR. SCRUGGS: All right. So, it wouldn't be 14 managing --15 MR. JAFFE: Correct. That's why I didn't 16 follow up on it. 17 (By Mr. Jaffe) Would you agree with me that 18 between 2006 and 2009, your staff triples from 19 approximately 400 to approximately 1200? 20 MR. SCRUGGS: Object to the form of the 21 22 question. 23 What were the dates again? 24 (By Mr. Jaffe) 2006 to 2009. There's huge increase. I don't -- I don't 25

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i know if it tripled. I have to check with HR on that.

Q Let's talk about HR for a second. Who was
your first director of HR? Cheryl Sammons, 1994?

A Or me.

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Q Or you?

 ${\tt A}$ — Gosh. There were a couple of people. I -- I cannot remember their names. And then Shameeza Ishahak.

Q Please try to spell that for the court reporter.

A I should know how to spell all these names, but Shameeza's been gone for a while. I don't want to -- I don't want to butcher it. Okay.

S-H-A-M-E-E-Z-A then I-S-H-A-H-A-K.

MR. JAFFE: Ladies and gentlemen, it's 12:05. I think we should break for lunch. At this point, certainly, I have lots more to cover, but I think we should probably grab some lunch. And I'd like to be back 1:00. Is that doable?

MR. SCRUGGS: Yeah.

MR. JAFFE: All right.

(Thereupon, a short break was

taken.)

(Deposition resumed.)

Q (By Mr. Jaffe) All right. We're back on the record for our afternoon session. I'm going to pick up

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 77 of 277 with your move into the 900 South Pine Island Road i 2 location. Okay? A Yes, sir. All right. And just for time frame purposes, that's some time between 2007, 2008, correct? Yes, sir. All right. At that time -- and that is the space that up to about recently or maybe even now is currently occupied with the Stern operations; is that 10 correct? 11 MR. SCRUGGS: Objection to form. When you say "Stern operations," what 12 13 operations? 14 o (By Mr. Jaffe) You know what, let's leave that 15 alone. We'll get through to that in its natural course. When you moved into the 900 space, the law office and Professional Title and Abstract moved into that space, 17 18 correct? 19 Α 20 And how many floors did you occupy initially? 21 Initially, one floor. And did there come a time where you occupied 22 more than one floor in the 900 space? 23 24 Α And how many floors ultimately did you occupy

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at its height? A When you say "floors," you're talking about 2 four floors or portion of it? 3 Fair enough. Let's just keep it globally and then I'll narrow it down. Any portion of any floor. Okay. So, any reports that you occupied eight floors or any portion of eight floors is grossly A We -- we did not occupy, in any way, shape or 10 form, eight full floors. 11 12 Q How about eight partial floors? I'm sorry. Everything to do with this is --13 14 is -- is grossly magnified and outstretched. But having said that, we occupied all of four, all of five, all of 15 six and all of seven and just a very small portion of 16 17 All right, Floor two? 19 20 Q All right. So, all of four, all of five, all 21 of six, all of seven, eight, to use your word, small 22 portion of Floor No. 2? 23 A Yeah, But, you know what, I think ultimately we did make it to floor number eight. 24 MR. TEW: Now we're talking Pine Island in 25

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i 2006? 2 Α Pine Island, uh-huh, 900. No, he said at any point in time. MR. TEW: Well, then let's differentiate --MR. JAFFE: At its height. 5 MR. TEW: All right. MR. JAFFE: We're okay? All right. 8 At its height, we would have occupied a small 9 portion of --MR. TEW: And you're talking about the law 10 firm, not the --11 12 I was saying Stern --MR. JAFFE: -- operations. 13 MR. TEW: Well, I object to that. There is no 14 15 such thing as Stern operations. 16 MR. JAFFE: All right. MR. TEW: It was a law firm until 2010, then 17 there was DJSP Enterprises and subsidiaries and 18 19 there was a law firm. MR. JAFFE: I'll rephrase. 20 (By Mr. Jaffe) Up until December 31st, 2009, 21 how many floors did the Stern Law Office and 22 23 Professional Title and Abstract occupy? MR. BERNSTEIN: Can I just clarify that you're asking in the 900 South Pine Island Road address 25

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 80 of only? MR. JAFFE: Sure. 2 In December 31st, 2009, so that would have 3 been 10. To the best of my recollection, we occupied four, five, part of six and all of seven. (By Mr. Jaffe) And nothing on floor number two at that point? A I do not believe so. Okay. As of December 31st, 2009, did you have leases on any other space other than the 900 space, in 10 different building? 11 The Law Offices of David J. Stern? A 1.2 13 Yes. We may have had some month-to-month leases in the building next door on a small scale. 15 What would that have been? What address would Q 16 17 that have been? A 1000 Pine Island. 18 As of December 31st, 2009, Default Servicing 19 was still in Kentucky? 20 Yes, sir, I believe. 21 Q Okay. How many employees did the law office 22 have in December 31st, 2009 to the best of your recollection? 24 I don't recall. 25

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 81 of ٥ How many lawyers? 2 А I don't recall. 3 Who is your managing attorney or attorneys in 2009 -- December 2009? Α Miriam Mendieta and Beverly McComas. 0 When did Ms. McComas become employed by you, approximately? Α 0 How often would you meet with Cheryl Sammons 10 in the Year 2009? 11 А For what purpose? 12 Any. 13 Which can typify any of the agreements in a 14 while, once a month maybe. 15 Q At that point in 2009 -- during the period of 16 2009, did she have the authority to hire and fire? 17 She did have the authority to hire and fire, 18 yes. 19 Q Both lawyers and non-lawyers? Not lawyers. 20 21 Who had the authority to hire and fire 22 lawyers? 23 Miriam Mendieta and Beverly McComas. 24 Okay. Is it your testimony that you did not 25 meet with Cheryl Sammons on a daily basis in 2009?

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i Absolutely, 100 percent, my testimony. 2 Let me clarify my question a little bit. Is 3 it a fair statement to say that any day you were in the 4 office you would at least have a meeting with Chervl 5 Sammons? 6 Inaccurate statement. 7 All right. Did you, as part of Cheryl compensation, buy her a new BMW on an annual Sammons' 9 basis? 10 I did not. 11 Did you buy her -- did you lease her a BMW on an annual basis? 13 Short term. Short term. She didn't want it. After she got it, she didn't want it. 14 15 Okay. Have you ever leased Cheryl Sammons a 16 17 MR. TEW: "You" meaning who, the law firm? 18 19 (By Mr. Jaffe) "You" being you, personally? Q 20 No, I did not. "You" being the law office? 22 Yes, sir. 23 ٥ How many times? 24 Three times, four times. 25 Approximate years?

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I don't recall.
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              Α
 2
                   Late 2000s?
              Q
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                   Did you commonly pay her bills including her
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              Q
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         mortgage?
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                   MR. TEW: When you say "you" --
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                   (By Mr. Jaffe) You, personally.
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                   MR. TEW: Okay.
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                   (By Mr. Jaffe) The law office?
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                   Pay which -- what bills?
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                   No, sir.
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                  Did you, on a regular basis, take her on
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         business trips with you?
                  How do you define regular basis?
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                  At least twice a year.
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                  Twice a vear, ves, sir.
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                  Would you describe your relationship with
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         Cheryl Sammons in 2009 as one wherein that you would
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         often be found yelling at each other within your office
         or her office?
22
23
                 No, sir.
             Q In 2009, how would you describe her role
24
         within your law office?
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	83
i	A In 2009, she was the operations manager. She
2	have responsibility for the foreclosure side in
3	conjunction with HR and worked on a day-to-day basis
4	with Miriam and Bev to run the firm. It was her watch,
5	Miriam's and Bev's watch.
6	Q You were no longer the captain of the ship at
7	that point, in your mind?
8	A I would like to say I'm the admiral and then
9	turned the command over.
10	Q You earlier said that ultimately you are the
11	captain of ship with regard to the logs operation. Were
12	you always the captain of the ship with regard to your
13	law office?
14	A Based on what I just said, no.
15	Q And you gave up being the captain of the ship
16	in your mind when?
17	MR. TEW: Let me get a definition of "captain
18	of the ship."
19	MR. JAFFE: It's his term.
20	Q (By Mr. Jaffe) What is your definition of
21	"captain of the ship" when you used it referencing the
22	logs operations?
23	A Who who's on watch, who's got the
24	day-to-day control, who makes the business decisions.
25	Q Okay.

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 85 of 277 i When we moved into the 900 South Pine Island. when volumes increased dramatically -- you said three 2 3 times and I said dramatically, I don't know what amount -- at that point in time, if not, prior, but certainly at that point in time, the day-to-day operations were turned over to Miriam and Bev. under 7 their structure of supervision, there are other attorneys. And the operations, non-legal side, were turned over to Cheryl and her host of assistant 10 managers. 11 O In any one time in 2009, Ms. Sammons would 12 have up to 60 people reporting to her? Does that sound 13 correct? 14 Α How do you define "reporting to her"? 15 0 Supervisors, managers. I don't -- I -- I -- it wasn't my day-to-day 16 17 involvement at that point in time, so I have no idea. All right. And so I'm clear, it's your 18 ٥ 19 testimony that as far as your day-to-day involvement 20 with the running of your law office, you had turned that over to Ms. McComas and Ms. Mendiendez at the time 21 22

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-- Mendieta at the time you moved into your

Mendieta.

900 South Pine Island space?

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i I believe it was some time prior. I don't 2 know exactly when, but it was about that time. Why did you do that? 3 0 Because I was busy drumming up the business, in your words, that huge increase, again, not three times. And that's a full-time role, going out, wining, dining, clients, putting on the seminars, speaking, R taking care of the clients, being there, being present, accountable. And that's what I do. 10 And from the operation side of the business, 11 Ms. Sammons is running the office; is that correct? 12 The non-legal -- non-legal matters. 13 From the legal operation standpoint of the 14 business, your two managing attorneys whose names are ---- Miriam Mendieta and Beverly McComas --15 -- were running the operation at that point? 16 17 Α The legal side? 18 19 20 And you would agree with me that, ultimately, you're responsible for all three of those people's 21 22 actions and behaviors? 23 A Ultimately, I am responsible to ensure that 24 there's adequate supervision. If they go out and kill

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somebody. I'm not responsible for that.

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i Q Within the context of running your office -2 your law office?
3 MR. TEW: Object to the form of the question.

Calls for a legal conclusion.

A Yeah. You lost me on that one. I'm sorry.

Q (By Mr. Jaffe) Who was your -- who was the manager or person in charge of Professional Title and Abstract when you moved into the 900 South Pine Island Road?

 $\label{eq:A} A \qquad \text{From the attorney standpoint, Sam Silverglate.}$ From the non-attorney standpoint, Carol Whitlow.

 $\ensuremath{\mathtt{Q}}$ $\ensuremath{\mathtt{A}}\ensuremath{\mathtt{A}}\ensuremath{\mathtt{d}}$ that stayed consistent up until 2009 --late 2009?

A It did stay consistent.

Q Okay. Who supervised them?

A They were supervisors, they were managers, they were over their own department, they were over Professional Title and Abstract. To the degree that foreclosure overlapped or meshed with or had to work with, Cheryl Sammons work with Carol Whitlow to smooth — to ensure smooth transition of the work, Sam Silverglate work with Miriam Mendieta and Beverly McComas. So, if there were problems, Sam would go to Miriam or Bev, or if things weren't getting done. It was a combination then of Sam, Carol, Cheryl Sammons,

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Miriam and Bev.

Q With regard to your meetings with your two
managing -- co-managing attorneys in 2009, how often did
you meet with them in person or by telephone to discuss
the operations of your law office?

A Once a month, with certainty and as needed
with any manager. If a client called and said, "I'm
going to pull the work if this doesn't happen," blah,
blah, blah, blah, they had to come to me with that.

Q And how often do that happen, approximately?

A Maybe once a month, twice a month, where they

A Maybe once a month, twice a month, where they felt the need to bring it to me. It may have happened more, but where it got elevated to me, thankfully, we have very solid relationships with the clients. And if the clients had issues, they would reach out to me really at the end of the day because I'm the one that cultivated and maintained the relationships.

Q Did Ms. Sammons expressed to you difficulties in properly staffing the law office once you move to 900 Pine Island?

A Cheryl stressed to me that if I was going to continue to bring in additional volumes it would require additional staff. And with additional staff comes additional space, hence, the growth that we outlined and eight, nine, 10.

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Q Did she express to you the inability to find staff with any experience?

A I don't recall.

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- Q Or said another way, was she complaining to you that the staff that she was hiring was inexperienced?
 - A I don't recall.
- Q Did she express to you that it was just too much work for the staff to properly be able to manage?

A No -- ah, let me take that back. She did. In 2008, I want to say, she did come to me and said -- it was October, I believe, October 2008, maybe on October 2007 -- and said, "David, the paralegals have too much work." And I go, "Which paralegals?" She told me what teams, because we were broken in by teams. And that was the result of -- in -- in January, I think it's 2008, I brought on three new clients that were supposed to be relatively small in numbers.

- o who
 - A Who?
 - Q Yes. Who, the clients?

A The three clients, Saxon, Wachovia and Homac. Each month, so what she did was she assigned those clients to an existing team that handled other clients' files. In October, she came to me and said the

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paralegals are flipping out, the clients are blank. blank and blank, the three I just told you, Wachovia, Homac and Saxon. And I pulled up my volume report and I'm like -- I'm not surprised. Where they started off giving us 100, ultimately, it turned into 500 or 600 a month. So, the paralegals were overwhelmed. I picked up the phone and I contacted all three of the clients and asked them to stop sending us referrals. At this point in time, we cannot handle and I did not want to disappoint or fail them. They were originally taken back, because I'm the quy that comes in with knee pads and begs for more. At the end of the day, they praised me and said, "When you're ready to take the work back, let me know." We assured them that we would finish of what we had and did so. And the volumes just continue to grow. With Fannie Mae and Freddie Mac, we wanted to make sure that we kept those teams solid. And those teams were the beneficiaries of those three new clients. So, when Cheryl brought to me attention that her group of paralegals were overwhelmed, I did the right thing and contacted the client and told them we can't do it anvmore.

Q Did Cheryl ever express to you that the new staff was receiving little to no training?

A No, she did not. As a matter of fact, we had

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groups of people that were in to do training. There were -- on -- on both the attorney side and on the non-attorney side, there were groups of trainers whose sole purpose was to do training.

Q And that training was established -- those protocols for training were established both at the lawyer and the non-lawyer levels by you?

Α When you say "protocol," we wanted to make certain that we maintained our reputation as best in class and the best in the industry. And as bodies were brought on, we wanted to make certain that there was nothing lost in the -- in translation. So, I instructed Cheryl to designate three or four people of her choosing -- as I sit here today, I -- I -- I'm not sure who it is. I told Miriam Mendieta and Beverly McComas on the attorney side that based on the volumes, based on the number of attorneys, based on the case load, we needed attorneys to -- experienced attorneys to handle training of the new attorneys, just like I did with Cheryl. Both the attorney side and the non-attorney side, as I understand it, selected their trainers. And the attorneys, for a fact, before they were released to go to court, went through, I believe, a 60 or 90-day training period with Billi Pollack and Maria Solomon, two most senior attorneys being used to train.

- Q And who trained them?
- A Miriam and Bev. And they have been --
- Q And who trained them?
- A Trained -- who trained Miriam and Bev? Gosh, they kind of learned it on their own. I mean, in the beginning, there's foreclosures.
- Q Well, Miriam started with you in 1994, so I assume that you would have been the one to train her since she -- since you were the one who was establishing the protocols since your collar was unleashed to do things the way David J. Stern wanted them done within his law office?

MR. BERNSTEIN: Argumentative.

A I -- I -- I agree. Miriam role versus -Miriam role -- Miriam's role is to go to court. My
collar was never on in terms of court because I wasn't a
practicing attorney. Miriam was a practicing attorney.
And while I did it in its infancy I was smart enough to
realize two things, that my opportunity for success
would be greater if I focused on client relations and
the other thing that went off is I'm not an attorney.
I'm not into case law. I'm not into sitting down and
reading briefs. So, in the infancy, Miriam got a very
solid handle on the way practice should be done. And as
the industry evolved and case law became greater and

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circumstances changed, Miriam got that really from the i beginning. 2 3 (By Mr. Jaffe) Did you ever object to anything she ever did as a practicing lawyer under your watch? 4 I don't recall. А 5 6 o You don't recall objection? 7 I don't recall if there's nothing that she's done. I -- I don't recall anything. Oh, okay. So, no? 9 Q Well --10 11 Nothing to your recollection? At what point in time? 12 Sure. Up until -- from 1994 up until 2008. 13 0 The answer would be "no." Because if that was 14 Α 15 the case, she would have been gone. 16 Were your clients requiring foreclosures to be 17 complete within six months for sending you the file? No, sir. At what point? Let me ask you that. 18 19 Between the period of 2006 and 2009. 20 At some point in time, Fannie Mae and Freddie 21 Mac lowered the foreclosure processing -- processing time for uncontested/controllable foreclosures from 180 22 days to 150 days. So, based on the custom and practice, 23 24 it was necessary for the law office to complete the foreclosure within the insurer/investor time frame 25

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absent any uncontrollable matter, which would include i 2 litigation or delays that are beyond the law firm's 3 control. Between the time you moved into the 900 South Q Pine Island Road location in December of 2009, would you agree with me that the only entities -- the only David J. Stern entities was the law office and the Title and Abstract company? MR. TEW: Objection to form. 10 A Would I agree with you that those were the 11 only entities? 12 (By Mr. Jaffe) Yes. I'll rephrase. When you first moved into 900 Pine Island Road, the two entities 13 14 that went with you, "you" being the Law Offices of David 15 J. Stern, were this office and Professional Title and 16 17 A No. sir. 18 O Okay. What other entities went with you at 19 that point? 20 Stern and McSurdy. 21 Okay. What is that? That's another law firm that I have for 22 23 commercial foreclosures. 24 Spell the last name, please. M-C-S-U-R-D-Y. 25

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- Their role was what? o
- Commercial foreclosures and appellate work.

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- Default Servicing had a couple of employees located in Plantation as an extension to Louisville for check processing, accounting.
 - What address?
 - 900.
 - Okay. All right.
 - That's -- that's it.
- Okay. As of December 31st, 2009, those four entities still occupy the space that you originally moved into except maybe expanded; is that fair?
 - Yes, sir.
- Okay. And I apologize, I have not been out there, okay, believe it or not, I've seen pictures. How many entrances and exits are there in the building? I don't mean emergency exits.
- A Just one. One with four elevators -- no. wait a minute, no. I take that back. You got two emergency exits and you got a delivery.
- Let me help. Excluding emergency, excluding delivery, just for common -- for the workers and
 - Yeah. One -- one entrance, four elevators,

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slow elevators, junky, people always get stuck, should

Q We'll talk later.

be the next class action.

- I just wanted to get frank to laugh. That's all, I'm finished, we're -- we're done. Okay.
- O Was the -- was Professional Title and Abstract on a particular floor in 2009?
 - Yes, sir.
- Q What floor?

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I think that was it. Again, I was not day to day. And when I was in the office, I usually stay put, but I think they're on five.

I believe five. Don't hold me to it, but I --

Well, prior to December 30th, there was the

- O What floor are you on?
- Four.
- Was the entire law office on four?
- law office and it would have been on whatever floors we had. Professional Title, I can't tell you if they -because of growth got spread to a second floor. Stern and McSurdy were on -- on one floor. And Default Servicing, he was on one floor, they -- I think there's a couple of people.
- O Is that as clear as you can be? What I mean is, what floor was Default Servicing even if there's

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i	only two officers?	
2	A I I I don't remember. I that just	
3	wasn't what I did.	
4	Q Sure. Who would know that, Cheryl Sammons?	
5	A I would go I would have gone to Cheryl to	
6	ask her where are the Default Servicing people, but that	
7	was granular. So, as, you know, the owner of a 14,000	
8	or 12,000-person law firm, I didn't deal with the two	
9	Default Servicing people that were on to deal with	
10	Checks.	
11	Q I know and I appreciate that. And I	
12	definitely understand how busy you are and how big the	
13	company you got. If I just want to know who I would	
14	ask, the right person, to get the right answer.	
15	A Well, I guess you could ask them. You could	
16	ask the Default Servicing people.	
17	Q Name them, please?	
18	A David Obata.	
19	Q Spell his last name.	
20	A O-B-A-T-A. And I don't even know who the	
21	second person was. And you may want to know that David	
22	Obata is deceased.	
23	Q It's tough to ask him.	
24	A You guys are good at what you do, so	
25	Q I appreciate that. Who did they report to?	

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They would have reported to Jenny Johnson, 2 who is the Default Servicing manager in Louisville, Kentucky. 3 Q And who did she report to? She would report to me. Q So, ultimately, you were responsible for the actions of Default Servicing? MR. TEW: Object to the form of the question. Calls for a legal conclusion. 10 A I would be responsible for putting procedures 11 in place and expect that they be implemented. If Jenny 12 didn't get her tickets to Kentucky Derby and killed 13 someone, I would not be responsible. 14 (By Mr. Jaffe) Fair enough. Were you also 15 responsible for putting policies and procedures in place 16 for Professional Title and Abstract? 17 A That would have been Carol and Sam. 18 And who would they report to? 19 Sam reported to Miriam. And Carol reported to Chervl. 20 21 Q The law office appears to have had space on 22 all of the floor number four as of 2009? 24 O All of floor number four and all of floor 25 number six: is that correct?

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A There was one floor that they had only half. So, I think all the four, all the five, half of six, maybe half of seven. I -- I can't recall.

Q And the other half of seven would have been efault Servicing?

- A Default Servicing only have two people, so they were stuck God knows where but they wouldn't have had a floor.
- Q All right. Now, you just said that the law office had all the five. How much of five was Professional Title and Abstract?
- A I don't know. I just believe that professional Title and Abstract was located on the fifth floor. To what degree it was split between the two, I don't know.
- Q Are you able to tell me how many employees were employed by Professional Title and Abstract in 2009, approximately?
 - A 60, 80.

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- Q Okay. Would you agree with me that the law office and Professional Title and Abstract shared the same file system in 2006 to 2009?
 - A I'm not sure what you mean, "file system."
 - The actual file itself.
 - A Okay. They did to some degree but not fully

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i because Professional Title and Abstract had been the 2 first to become paperless. So, there would not have 3 been a file to a large degree. 4 Q Would the law firm be able to access 5 Professional Title and Abstract electronically? A Access What? 7 0 Their file. 8 Yes, sir. 9 As of December 31st, 2009, there was one 10 e-mail system being used; is that correct? 11 For which entities? 12 All. ٥ 13 Α No. sir. 14 Okay. How many e-mail systems were being 15 used, to the best of your knowledge, in December of 16 2009? 17 А T believe two. 18 Okay. One would have been the person's A Dstern -- dstern.com. 20 21 Okay. What would the other have been? 22 It was a separate e-mail for Default Servicing 23 24 Okay. So, Professional Title and Abstract and

the law office use the same e-mail system as of December

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 101 of í of 2009? A Actually, I don't know. To the best of your recollection. 3 Yeah. To the best of my recollection, yes. but I -- I don't know. When I -- I don't look at e-mail addresses because I'm sure none of us really do. If it's in our Blackberry, it's in our Blackberry. So --O Who did the HR department report to? MR. TEW: You're talking about up to 2009? 10 MR. JAFFE: Fair enough. Fair enough. Fair 11 enough. 12 0 (By Mr. Jaffe) As of December -- from 2009 13 going backwards, who did the HR department director 14 15 A They would have reported to Cheryl and to 16 Miriam and Beverly. 17 Q Depending if it was a lawyer or a non-lawyer; 18 is that fair? 19 A It depends what the issue was. They perhaps 20 would go to everybody and say, "What do you think about this?" 21 22 ٥ Okay. As of December 2009, there was one HR 23 department for the law office, and Professional Title 24 and Abstract, and Default Services; is that correct? Yes, sir, that is correct. 25

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And there were common policies and procedures 2 that the HR department used and applied to those three 3 entities as of December 2009? 4 A Where the law would provide it. There may have been some differences because Default Servicing 5 6 was -- was in Kentucky and we would have to go by what 7 Kentucky required. 8 O But executed out of that one HR department? q 10 Q One HR department for hiring and firing, 11 again, of those three entities; the law office. 12 Professional Title and Abstract, and Default Services? 13 No. eir 14 Same question. Same HR department for hiring 15 and firing for law offices and Professional Title and Abstract? 16 17 A No. sir. 18 Q All right. Explain that, please. 19 Going by your question, HR may not have always done the firing. They may have processed the paperwork 20 to do the firing, but the -- the firing may have been 21 22 done by Miriam or Beverly or Jenny Johnson or Cheryl 23 Sammons. 24 0 Same HR department would have processed the 25 paperwork for those three entities?

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A They could have done the termination or they could have processed the paperwork amongst other responsibilities.

Q Who did your IT department report to? Let me ask a predicate question. Did you have an IT department

A Yes, sir. As we indicated, Vince Petrov head up -- headed up that department.

Q How many people were employed in that department working with him?

Ballpark, more than two?

Yes. sir.

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Okay. Who would have the IT department have Q reported to?

Miriam, Beverly McComas and Cheryl Sammons.

Q HR department that we have previously

discussed would have been responsible for that

A Yes, sir. Well, when you say "responsible," they would have made sure they're paid, they would have given adjustments, they would have taken care of insurance, workmans' comp, et cetera.

Q And if there were terminations, they would have either handled the termination and/or handled the paperwork associated with termination? i Did Stern, P.A. have a 401(k)? 3 0 Α Yes, sir. Was -- were all the departments we previously talked about allowed to participate in the Stern, P.A. 401(k)? Α Departments, like foreclosure, bankruptcy and IT, ves, sir. 9 10 Who would not -- what department would not 11 have been able to? 12 A I'm not sure I understand -- I -- I don't 13 believe that any department within the Law Offices of David J. Stern would not have been allowed to 14 15 participate. Q And would Professional Title and Abstract be 16 17 allowed to participate? 18 I don't know if they had their separate plan 19 or not. I -- I don't -- don't know. Sorry. 20 0 Would Default Services been able to 21 participate? 22 A I don't know. 23 IT would have been able to participate, correct? 24

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Right.

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1 You don't know about the 401(k) with regard to Q 2 what you just testified to. Who would? 3 Don't ask me about the 401(k). Back in Α 2009? 4 Correct. Q The HR director. And at that point, who would that have been? Ali Rhonda, R -- R-H-O-N-D-A. 0 Okay. Let me ask you a couple of more 10 questions about the HR department as it relates to --11 excuse me -- the 401(k). I don't know what floor they were on. 12 A 13 0 Okav. Fair enough. 14 А Sorry. 15 I don't think the 401(k) had a floor. Where 16 was the HR department located? A I -- I don't know, no, seriously. The good 17 18 thing is never got called to HR for --19 You were never recommended by HR? 20 Well, that's not true. I did see a sexual 21 harassment videotape in the fourth floor conference 22 room. 23 0 You actually were sued for sexual harassment, 24 right? 25 Years ago. We won.

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1 Good. Congratulations. As of September 2 2009 -- okay? Time frame-wise, are okay with that? 3 Α Go ahead. 4 ٥ -- DJSP, P.A. existed, correct? 5 A The Law Offices of David J. Stern, P.A. existed. Okay. Did DJS Processing, LLC exist? Q 8 No. it did not. Α When did that -- when did DJSP Processing, Ç 10 LLC -- DJS Processing, LLC, when was that born? 11 A I believe January 15th, 2010. 12 All right. So, if I found some documents that 13 appeared to register DJS Processing, LLC on 14 September 15th, 2009 in Delaware, would that refresh 15 A I -- you know what, when it comes to that, Tom 16 17 Vaughn of Dykema handled pretty much everything, so I would defer to Tom. Logic would have it that you don't 18 19 close a transaction on January 15th and all the 20 paperwork be done on January 15th. As far as the dates 21 that the work was done. I have no idea, recollection. 22 knowledge. 23 Q All right. I agree that the documents speak 24 for themselves. I'm just trying to understand your 25 understanding. And you've clearly expressed --

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Α Yeah, yeah, yeah. That's -- that's Tom 2 Vaughn. 3 0 Just so the record is clear. Tom Vaughn of --Α -- Dykema out of Detroit, Michigan --0 -- suggest that -- Dykema Law Office or Dvkema Gossett, what's the name of the law firm? 7 Dykema Gossett. I can give you its hourly Α я rate. c Okay. I'm sure you're -- are you aware that 10 you are the managing member of DJS Processing, LLC as of 11 September 2009? A I would have to defer to Tom. 12 13 Are you aware that you are the registered 14 agent of DJS Processing, LLC as of September 2009? Α 15 Are you aware that DJS Processing, LLC's 16 0 17 principal place of business as of 2009 in September was 900 South Pine Island Road, Plantation, Florida? 1.8 I was not aware. 19 Why -- do you know why DJS Processing, LLC was 20 0 21 formed? 22 DJSP Processing --23 Let me rephrase. DJS Processing, LLC, do you 24 know why it was formed? 25 It was formed because I was interested in

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doing the transaction. And under our Florida Code of Ethics, a transaction which involve the law firm, vis-à-vis Default Servicing or Professional Title, a law firm cannot be sold to non-attorneys. So, the way similar transactions were able to occur was the creation of a back office dealing with the non-legal aspect of the particular business. So, DJS Processing was created in order to allow for a transaction to occur consisting with the Florida Ethics guidelines, rules and regulations.

Q Please define what the transaction that you wanted to accomplish was.

A I wanted an opportunity to expand beyond the borders of Florida and get into additional businesses, both typical and, perhaps, unrelated. And probably three years before the transaction, I was approached by some financial advisors from a whole host of companies. They came in by the rushes. Before I -- originally, I said, "No, I don't want to do it," like what I've got going. Then, reached out to a gentleman by the name of David Trott, the law firm of Trott & Trott out of Detroit, Michigan, who I'm fairly good friends with. And I said, "All right. David, you've done a transaction. Why? What's the ups, what's the downs, where are the land mines and, you know, who should I

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use? Because I'm getting phone calls from everybody." at least for exploration purposes. So, he told me the pluses, he told me the minuses, he told me why he did it. And he said, "David, you should go with my deal makers, my financial advisors because they've already done the deal, they've already done the documents, they know where the lands mines are," et cetera. So, I contacted Plante Moran out of Detroit. I contacted them although they had called me a few times. And I said, "Look, I'm interested in meeting with you. Tell me how it works. Tell me what it's about. Give me some idea dollar-wise. How do we structure the deal? How we don't structure the deal?" And it became, as you can imagine, very labor-intensive in terms of picking the right partner. Do you go public? Do you go private? Do you go equity? Do you go hedge? What is the lesser of the two evils? What are the greater of everything? At the end of the day, no matter what sector we went, there would be a requirement as was the case with the previous six or seven law firms that have done what I did, that a back office specializing in or creating a non-legal entity. And that would be the entity that would be subject to the transaction. In my case, we created DJS Processing and, of course, Professional Title and Abstract to Default Servicing were stand-alone

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1 companies where we didn't have to do any split-off from 2 the law firm. 3 So, the record is clear, DJS Processing, LLC stands for David J. Stern Processing, LLC? 4 5 Sure. Yes. 6 Professional Title and Abstract Company of 7 Florida, LLC was formed in September of 2009 in 8 Delaware. Are you aware of that? I am not. 10 Are you aware that it was registered in 11 Florida on September 2009? I am not. Just like Processing and the same 13 thing for Default Servicing. 14 0 Are you aware that you were the sole director 15 of Professional Title and Abstract Company of Florida, LLC in September of 2009? 17 I am not. 18 0 Are you aware that you were the managing 19 member of Professional Title and Abstract Company of 20 Florida, LLC in September of 2009? I am not. 22 What is the Stern Holding Company? 23 I have to get the specifics from Tom Vaughn. 24 Have you ever heard of the Stern Holding 25 Company?

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A Yes, I have.

Q What is your understanding of it?

A It's a company that was established to put the -- what used to be the previous Default Servicing and Professional Title, Inc. into that holding company for purpose of -- of wind down is what I understand.

Q Default Servicing, LLC was formed in 2009 in Delaware -- or reformed in 2009 in Delaware. Are you aware of that?

A No, I'm not.

Q And registered in September 2009 in Florida.

Are you aware of that?

A I'm not.

Q With DAL, D-A-L, as a managing member, are you

aware of that?

A No, I'm not.

Q As long as we're here. Let's ask -- what is

DAL, D-A-L?

A I don't recall.

Q Just so I'm clear, DAL, D-A-L, Group, are you

familiar with what that is?

A In the structure of the transaction, it is a holding company that holds the newly formed operating subsidiaries; Professional Title and Abstract, DJS Processing, Default Servicing. Professional and

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i Default, veah. Q I'll ask it. If you don't know or you know 2 3 the answer, I'll ask it anyway. Why was DAL the 4 managing member of Default Servicing in September of 5 2009? I don't know. 7 Who would know? Thomas Vaughn. 9 Up to 2009 -- December 2009, just so I 10 understand this, your two managing attorneys could hire 11 and fire attorneys without consulting you? 12 13 Did they have salary parameters on hiring? They did not have salary parameters unless it 14 15 was going to cost some astronomical amount. Because in my day-to-day functionality, I have no idea how much 16 17 associates made really at any level. 18 O The same question with regard to non-lawver. 19 Ms. Sammons have the ability to hire staff --20 Yes, sir, she did. 21 -- without consulting you? 22 That is correct, part of her day-to-day Α 23 operation. 24 Q Did you place upon Ms. Sammons or the co-managing attorneys any limitation on staffing?

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i	A No.
2	Q Certainly, the inherent limitation would have
3	been space available; is that fair?
4	A I didn't put that limitation. That was an
5	obvious one.
6	Q Okay. Did they ever come to you and ask
7	permission to hire a particular lawyer or a particular
8	staff member?
9	A Not that I recall.
10	Q Did you have a management team?
11	A How do you define "management team"?
12	Q Key employees that have been with you more
13	than a decade.
14	A That would be Miriam and Cheryl and Beverly.
15	And depending upon what they were looking to do, it may
16	include Sam. It could it could have included Maria
17	Solomon. It could have included Billi Pollack. It
18	would depend upon what they were looking to do. If it
19	was something general, then they would bring all the
20	managers in.
21	Q And how often do that happen?
22	A I don't know. You have to ask them.
23	Q And who established your budget prior to
24	December 2009?
25	A We never had a budget.

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i	Q So, as we sit here today, you're telling me
2	you never had budget meetings with any of your key
3	staff?
4	A That's correct. Whatever it took to get the
5	job done, they have carte blanche. That presumes that
6	question is December 31st, 2009.
7	Q Absolutely. Mr. Stern, I apologize in advance
8	for the next question. I believe I asked it but I want
9	to make sure that I covered it. The system in place in
10	your law office to take a foreclosed foreclosure case
11	from cradle to grave was created by you?
12	A I specifically said in my answer that cradle
13	to grave concept was not a word that was used to take
14	the foreclosure from the beginning to the end. So, the
15	answer to your question is "no."
16	Q Define "cradle to grave" in the context you
17	said it meant it when you said it,
18	A When I speak of cradle to grave, that would be
19	that we provide services that may become necessary on a
20	default of loan on behalf of the client, so it generally
21	come in as a foreclosure. If the foreclosure is
22	interrupted by a bankruptcy, we will handle that

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then continue on with the foreclosure. Once the

bankruptcy. Once the bankruptcy has been concluded and

we're free -- sorry -- from the automatic stay, we would

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foreclosure is complete and title invest in the servicer, we would then handle any evictions where necessary. Once the eviction is complete and it becomes a real estate-owned property, we would then open the title work and handle the closing on behalf of the grantor, the bank as the seller, to the grantee.

Q And those systems that were used by the Law Offices of David J. Stern, P.A., you developed?

A I -- the day one, I developed them; day two, they continued to be expanded and improved upon by people that were smarter than I was in those particular areas.

Q Okay. But would you agree with me certainly until 2006, you were the captain of the ship with regard to your office and how it ran and the systems that were to be used?

A I would agree that I was the captain of the ship. I would strongly disagree that processes were put in — that were put in were put in by me. The development, better practices, things like that, Miriam, Sam, Beverly, when she joined, and Cheryl, did a lot of that. So, there was — in 2000 — even in 2000, there were procedures and policies put in place that they were comfortable in doing and realized that I would have no objection. If I had to deal with every granular change

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that results from Fannie or Freddie guidelines or a local rule or a judge making some sort of requirement, that by definition would be an impossibility. Hence, development expanding processes and procedures very quickly fell on Miriam, Beverly and -- and -- and Cheryl. I was there for the day-to-day probably up until 2006. He had my nose and things, but it didn't take long to realize that. Sometimes you can't be the rainmaker and be involved in procedure because very quickly, I did not know or have knowledge as to the capabilities of the staff that was in place.

Q Did you ever object to any of the policies or procedures that were put in place by others beside yourself.

A I don't -- I don't recall. Apparently, not very long or hard or I'll stay with them in there.

 $\ensuremath{\mathtt{Q}}$. Effective January 15th, 2010, you went public; is that correct?

MR. SCRUGGS: Objection. Form.

MR. TEW: Yes. Same objection.

A We created a processing company, new

Professional Title, new Default Servicing that was part
of DJSP Enterprises. DJSP Enterprises went public.

Q (By Mr. Jaffe) In January -- actually, let's backup, okay? Tell me what Chardan 2008 China

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Acquisition Corporation is or was? It's traced in the NASDAQ as CACA. I'm sorry. Α

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It's true. It's true. For the record, it's true. I'm sorry. I -- I love that part. Anyway, Chardan Capital was a -- a -- a company that, I guess, went public. Through Chardan, it was their sixth or seventh spec where they raised money looking for opportunities. My understanding, the previous facts all went to China-based opportunities. When my transaction was made known to the Chardan folks, they fell in love with the opportunity. And we ended up getting together and negotiating a deal. Chardan then changed its name to DJSP Enterprises.

Q Personal place of business as of January 15th, 20102

A No. I -- I believe Enterprises is a -- is a Bridge, Virgin Islands company. DAL would be, I think, Florida-based. And then you've got Default Servicing and all the other companies. I think they're Delaware corporations but we obviously do business in Louisville, Kentucky and Plantation, Florida.

Q You also have an operation in Puerto Rico or

MR. SCRUGGS: Excuse me. Objection. You said you --

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i (By Mr. Jaffe) Was there any -- to the best of 2 your knowledge, was there any operation of any kind in 3 dealing with DJSP Enterprises in Puerto Rico? Can you read that back, please? 4 5 (Thereupon, the record was played A I didn't know you were playing that back. I thought he was like -- that's pretty good, you know. It 8 9 didn't seem --10 (By Mr. Jaffe) Well, that's the technology of 11 today. And I lost you over there. 12 As of January 15th, 2010, you were the sole 13 owner of David J. Stern, P.A. -- Law Offices of David J. 14 15 A Yes, sir. 16 17 Q And its registered agent? 18 I believe that is the case. Yes, sir. 19 As of January 15th, 2010, you were DJS 20 Processing managing member? 21 I -- between all of that, DJSP, the A 22 Enterprises, the Processing, the -- I -- I have to 23 ask Tom before we get to the total chart and what to what. I can't keep up with my role as officer or director or just -- way too much. 25

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Indulge me then while I go through them and 0 you gave that same answer then.

Okay. Α

As of January 15th, 2010, you were the president, registered agent and managing member of DJS Processing Enterprises, Florida?

MR. SCRUGGS: Objection. Form.

A I'm sorry. With everything that there is out there between DJSP, Default Servicing, Professional Title, Enterprises, it's more than I know. I'd have to defer to Tom Vaughn and look to some sort of chart for quidance because I can't keep up --

(By Mr. Jaffe) Do you know if the chart exists?

Α

As of January 15th, 2010, you are aware that 0 DJS Processing Enterprises BBI was created?

MR. SCRUGGS: Objection. Form.

MR. TEW: Same objection.

A I'm not sure. I'd have to defer to Tom Vaughn because --

(By Mr. Jaffe) Okay. But you know it existed 0 at that point; is that fair?

А Yes.

And are you aware that you were the president

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and CEO of DJS Processing Enterprises BBI from January 15th, 2010 until approximately November of 2010? MR. SCRUGGS: Form. 3 MR. TEW: Same objection. 4 I'm not sure about the dates. 5 (By Mr. Jaffe) As of January 15th, 2010, are 6 7 you aware you were the managing member of Professional 8 Title and Abstract? 9 A I'm sorry. I'd have to defer to Tom Vaughn. 10 Q As of January 15th, 2010, are you aware you 11 were the chairman of the board and president of the DAL 12 group? 13 MR. TEW: Form. 14 I'm not sure of the dates but I think so, yes, 15 16 (By Mr. Jaffe) Are you aware whether or not 17

you were the registered agent for the following companies, DJSP Enterprises, Florida?

A I do not know. I'd have to defer to Tom Vaughn.

O DJSP Enterprises BBI?

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I do not know. I'd have to defer to Α Tom Vaughn.

DJSP -- DJS, P.A.? 0

The Law Offices of David J. Stern?

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	120
i	Q Yes.
2	A As of what time period?
3	Q January 15th, 2010.
4	A I was.
5	Q The DAL Group, LLC?
6	A I'd have to defer to Tom Vaughn. I'm sorry.
7	Q DJS Processing?
8	A I'd have to defer to Tom Vaughn.
9	Q Professional Title and Abstract?
10	A Registered agent. And I'm I'm sorry. I'd
11	have to defer to Tom Vaughn.
12	Q Default Servicing?
13	A I'd have to defer to Tom Vaughn. I was a busy
14	guy.
15	Q Who has possession of the corporate books and
16	records for the entities I've just asked you about?
17	A The Law Offices of David J. Stern, they've
18	been in our office in Plantation 900. Everything else,
19	I'd have to ask Tom Vaughn.
20	Q So, you are not aware where the corporate
21	books and records are for DJSP Enterprises BBI?
22	A No, sir, I'm not.
23	Q Are you aware that DJSP Enterprises EBI
24	acquired 71 percent of the DAL Group on January 15th,
25	2010?

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i	A I'm sorry, I'm not.
2	Q Do you know whether or not you were a member
3	of the board of directors of DJSP Enterprises BBI?
4	A I believe I was a member of the board and
5	chairman of the board.
6	Q Until when?
7	A I don't recall.
8	Q Why were were you removed?
9	A At the advice of legal counsel, we felt
10	they felt it would be better for me to step down.
11	Inconsistent with counsel's direction, I voluntarily
12	stepped down. I was not removed.
13	Q Would you agree with me that as of July 1st,
14	2010, The Law Offices of David J. Stern, P.A. was the
15	sole client of DJSP Enterprises BBI?
16	MR. SCRUGGS: Objection.
17	A DJS, with the Law of Offices of David J.
18	Stern, the sole client of Enterprises, I would disagree.
19	Q (By Mr. Jaffe) Who were the other clients at
20	that time?
21	A Part of DJSP Enterprises would include
22	Professional Title and Abstract. And it would include
23	at someday Timeos and it would include Default
24	Servicing. Each of those entities had their own
25	separate clients. For example, Default Servicing on its
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i own, independent of The Law Offices of David J. Stern, 2 represented PNC Mortgage and two or three other smaller 3 companies. Timeos represented a significant number of 4 clients. When did -- when was Timeos acquired? I don't recall the close date. Would it refresh your recollection if I told you August of 2010? A Sounds about right. There's -- I'm not 10 certain because there's some variables before the actual 11 transaction closed. 12 Q So, let's go back to my question. Would you 13 agree with me that as of July 1st, 2010, The Law Offices 14 of David J. Stern, P.A., Professional Title and Abstract 15 and Default Services were the sole clients of DJSP Enterprises BBI7 16 17 MR. SCRUGGS: Objection. Form. 18 MR. TEW: Same objection. 19 No, I would not. 20 (By Mr. Jaffe) At that time, July 1st, 2010, 21 what other clients did DJSP Enterprises BBI have besides 22 23 A Professional Title and Timeos and Default 24 Servicing were not clients of DJSP Enterprises. They 25 were dropping down through DAL and were holding on the

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subsidiaries. Within those holding on subsidiaries, they had their own client base. For example, Default Servicing had relationships for our real liquidation with PNC and -- and a few others. Timeos had 20. 30 different relationships. So, I would disagree that the sole clients of DJSP Enterprises were Professional Title, DJS Processing and Default Servicing because they -- they are not, in any way, shape or form, Would you agree with me that as of January 2010, you owned 33,15 percent of DJSP

Enterprises BBI?

A When in January?

After the 15th.

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I don't know. You'd have to ask Tom Vaughn.

How about February of 2010, did you own Q 33.15 percent?

A I'm not sure. I'm not sure what the percentage is or what my ownership was, if it dropped through to another company. I'd have to ask Tom Vaughn.

Q DAL was a holding company for DJSP, Florida; DJS Processing; Professional Title and Abstract and Default Services; is that correct?

At what point?

After January 15th, 2010.

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1	A What were the the operating subsidiaries
2	that you mentioned?
3	Q DJSP Florida, DJS Processing, Professional
4	Title and Abstract and Default Services.
5	A I'm not familiar with DJSP, Florida. Of
6	course, it's DJSP Processing, because I don't know what
7	DJSP, Florida is.
8	Q All right. How about the others?
9	A DJSP Processing, Default Servicing and
10	Professional Title and Abstract. As of January 15th,
11	DAL was a holding company for those three entities, yes.
12	Q You received \$58.5 million in cash and another
13	\$88 million in notes in exchange for the DAL Group
14	obtaining the Stern businesses that we just referenced;
15	is that correct?
16	A Can you repeat that, please?
17	Q The DAL Group became the holding company for
18	DJS Processing, Professional Title and Abstract and
19	Default Servicing in January 15th, 2010; is that
20	correct?
21	A Yes.
22	Q And in exchange for that, you received
23	\$58.5 million in cash?

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I'd have to double check on that amount.

What do you believe the amount to be?

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I don't recall. 2 In excess of \$55 million? 3 Yes. sir. And in addition, an \$88 million in notes? I'd have to look back in paperwork and see how that translates out in terms of notes. Greater than \$80 million, would you agree with that? I guess we could say there weren't a note and 10 then the note that I took back, that's correct. Yes, 11 12 I would like to take a bathroom break at this 13 point. 14 (Thereupon, a short break was 15 taken.) 16 (Deposition resumed.) 17 (By Mr. Jaffe) Explain to me please what DJS 18 Processing once it was established and born in January 19 of 2010 did? What was its role? What did it do? It did non-legal services on behalf of the Law 20 Offices of David J. Stern. How did those services differ on January 16th, 2010 than December 31st, 2009? 24 How did they differ? Uh-huh. Differ. How the services differ? 25

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İ	A On December 30th, 19 or 2010, the services
2	were rendered by
3	Q 2009.
4	A 2009, thank you by employees of the Law
5	Offices of David J. Stern, the attorneys.
6	Q And they would do what, for example?
7	A They would do the non-legal work. They would
8	prepare complaints. They would do proofs of claims.
9	They would do eviction pleadings. Once the transaction
10	occurred, DJS Processing was governed by a services
11	agreement. Services agreement, of course, was a
12	negotiated document that defines services, compensation,
13	facility agreement amongst other things. And it clearly
14	indicated that the way it used to be done by a single
15	entity was no longer the case, there was no longer one
16	entity. There were it was not a one entity
17	enterprise. There were two entities with a definition
18	of what Processing was to do and what the law firm was
19	to do. In essence, became a vendor/client relationship
20	with the vendor being DJS Processing and the client, of
21	course, being the Law Offices of David J. Stern.
22	Q Fine. Now, would you agree with me that the
23	actual day-to-day physical work that the employees did

It cannot do that. It was not --

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i	Q	Why?
2	A	Because when Processing was born, a whole new
3	concept v	was brought it. Norman was brought in, Rick
4	Powers wa	as brought in. The process
5	Q	Rick Powers was brought in on July of 2010.
6	A	Well, there was interim CEOs or interim COOs
7	that came	e in, a gentleman by the name of Phil Cobb.
8	So, Phil	began to guide Processing to do things that
9	were, in	essence, fabulous, unprecedented, in terms
10	of measur	ring by the matrix, better training, those
11	sort of t	hings.
12	Q	They still drafted complaints?
13	A	Yes, sir. But with greater efficiency.
14	Q	They still dealt with service process?
15	A	With greater efficiency.
16	Q	They still dealt with obtaining judgment?
17	A	With tremendously greater efficiency. Up
18	four-fold	ı .
19	Q	Still dealt with sales?
20	A	With greater efficiency.
21	Ω	And post sales?
22	A	With greater efficiency.
23	Q	And the same people that were previously
24	employed	by the law office?
25	A	And some others.

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i	Q And, in fact, they worked the same desks?
2	A And some others were too.
3	Q And on the same floors?
4	A Correct.
5	Q And using the same phones?
6	A Pursuant to a facilities management agreement,
7	yes, sir.
8	Q And using the same e-mail?
9	A Pursuant to a facilities services agreement.
10	Q And directed by the same HR department?
11	A HR was a functionality of DJS Processing. And
12	pursuant to the terms in the services agreement, the HR
13	functionality was outsourced from the law firm to DJS
14	Processing, correct, yes.
15	Q Same people?
16	A Absolutely.
17	Q Same director?
18	A No, sir.
19	Q Chris Simmons?
20	A Chris Simmons was not there prior to
21	January 15th.
22	Q Okay.
23	A So, not the same people. Different people.
24	Q A vast majority of the same people?
25	MR. SCRUGGS: Objection to form.

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1	Q (By Mr. Jaffe) With regard to HR? That was a
2	bad question.
3	A I disagree.
4	Q Okay.
5	A I totally disagree.
6	Q All right. Professional Title and Abstract.
7	A Okay.
8	Q Same people employed in a leadership role.
9	Sam, right? He was employed before January 15th, 2010
10	with Professional Abstract and Title.
11	A Sam Silverglate, correct.
12	Q And was employed with them in the same
13	capacity after January 15th, 2010?
14	A Sam was employed with the law firm, not DJS
15	Processing.
16	Q Okay.
17	A You've lost me on that one.
18	Q It's okay.
19	A So, I disagree.
20	Q Okay. I've tried to lose you a couple of
21	times, not intentionally. Was there a finance
22	department in the law office prior to January of 2010?
23	A How would you define finance?
24	Q Right. An accounting department, same
25	difference. I'm trying to
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	130
i	A There was an accounting department.
2	Q Okay. Did that include finance?
3	A I don't know what finance means. I mean, we
4	didn't finance anything.
5	Q It's a bad question.
6	A The law firm
7	Q What did the accounting department do?
8	A The accounting department had multiple
9	functionality.
10	Q Accounts payable?
11	A Accounts payable.
12	Q Accounts receivable?
13	A Accounts receivable, collections. Statement
14	balancing in all the accounts. It was for both the law
15	firm and for Processing and for Professional Title and
16	for Default Servicing.
17	Q Okay. And those payrolls payroll was
18	outsourced, right, to was payroll outsourced?
19	A Payroll was outsourced to ADP.
20	Q The people in accounting who were employed by
21	the law firm in December of 2009 were still employed in
22	the same building and in the same space at their same
23	desks in January of 2010?
24	A Some were, some weren't.
25	Q Do you know where the IT department physically

i was within the building? 2 A The servers were on the fourth floor and some 3 of the people, the IT folks, were on the fourth floor. But for efficiency, my understanding was that there were a couple of technicians on each floor for quick response. Q The employees of the IT department remained employees of the IT department after January 15th, 2010? MR. SCRUGGS: Object to the form. A Some did, some didn't. 10 11 Norman, a CIO, highly compensated employee was brought in. Several people were let go, just like the accounding department, a CFO, Kumar Gushani, was brought 13 in. Esther was brought in to replace Shameeza. So, 14 15 there were lots of changes. 16 (By Mr. Jaffe) How about a guy named Vince? 17 Vince Petrov is or was the head of the IT, without a title, prior to the January 15th, 2010 date. 18 19 Q And he remained employed in the IT capacity 20 Reporting to Norman Gottschalk. 22 Did he change desks? 23 I don't know. 24 Changed phones? No -- I have no idea.

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- Q Came in the same door downstairs?

 A I'm sure he came into the same door.
- Q How about Jack Brookshaw?
- A Jack Brookshaw was a member of the IT team.

 Vince did more programming and Jack did more hardware.

O And Jack was employed in 2009 and 2010 as

well?

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A Prior to January 15th, 2010, Jack Brookshaw was employed by the Law Offices of David J. Stern as senior person that did soft -- that did the hardware. On or about January 15th, he became an employee of DJS Processing in a non-managerial, non-supervisory role. And given the changes, reported to Norman and Norman's group.

Q After January 15th, 2010, who supervised DJS Processing?

MR. SCRUGGS: Objection. Form.
MR. TEW: Same objection.

A DJSP Processing was supervised by a whole host of areas, or a whole host of individuals depending upon the nature of the department, certainly consisted with the services agreement that existed between the Law Offices of David J. Stern and DJS Processing.

Q (By Mr. Jaffe) What was Cheryl Sammons' title on January 16th, 2010?

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January 16th, 2010, as the transaction А evolved, it was originally my plan for Chervl to be the operations manager over enterprise, over everything. And as time evolved and more and more developed, and I became educated into new matters or new -- new ways to manage, greater technology, measuring by the matrix, stronger -- stronger management skills that Phil Cobb. who came in as an initial COO, certainly as Rick Powers came in as the C -- as a subsequent COO. It became abundantly clear that neither Cheryl or even me on my best day could ever be an operations manager over all of those entities, quite simply because Chervl didn't have the pay grade, expertise, knowledge, education, I'm not saving she couldn't learn it. So, while originally she was the operations manager over enterprises, she subsequently became the operations manager over DJS Processing. For the non-legal side, obviously, which was Processing by its definition and for the purposes of the services agreement. I don't know what date the enterprise was taken off the table for her and the Processing placed as her pretty much sole responsibility with no oversight or intervention into Professional Title. Default Servicing or at the right date for After January 15th, 2010, how often would you

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meet with Chervl Sammons on property unplanned?

A Scheduled meetings, once a month. If she needed something in which she popped her head in, then obviously I would meet with her. But for the most part, Cheryl worked with the heads of the other departments within DJS Processing and together they managed the day-to-day operation. And where there is overlap with the Law Offices of David J. Stern pursuant to that services agreement, Miriam Mendieta and Beverly McComas would come in. Without violating the terms in the services agreement, they work together to orchestrate the initially smooth running operation.

Q I asked you how often you would meet with

Cheryl Sammons. Now, I'm going to ask you how often you
would speak to Cheryl Sammons after January 15th, 2010?

A If I spoke with her, it would have been a meeting with her. She came in and if she had a question, what about this client or David are you aware that, you know, these circumstances took place, I just want to let you know in case you get a call from ABC Bank, that was our forte. The rules were that if there was a problem, a severe problem, I want to get to the client before the client got to me. Fortunately, early on that did not happen all that much. So, there were times where I didn't speak to Cheryl for two weeks,

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three weeks because I was on the road, she had a different schedule, I had a different schedule, I had meetings. Of course, after January 15th, we did a lot of investor presentations, so I was gone pretty much non -- nonstop or I was visiting my clients.

- Q Would you talk to her on the cell?
- A If there's a problem, yes, sir.
- Q How frequently?
- A Infrequently.

Q With regard -- I'm jumping back for a second. With regard to the 401(k) issue and contributions, after January 15th, 2010, are you aware whether or not the DJS Processing employees were able to participate in the Law Offices of David J. Stern, P.A. 401(k)?

- A I have absolutely no idea how that worked out.
- Q Are you aware whether or not there was shared administrative costs between the DJS Processing, Professional Title and Abstract and Default Services with regard to their participation in the 401(x)?
 - A I'm sorry. I have no idea.
- Q In 2009 prior to going public, obviously -prior to going public -- going public in January 2010,
 would you agree with me that the volume of new business
 continued to rise?
 - A I would -- I would not agree with you.

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i	Q So, you would agree then that in 2009, the
2	volume of new business began to drop?
3	A Business began to drop despite our
4	expectations in 2010.
5	Q I said 2009.
6	A Business was greater in 2009 than it was in
7	2010.
8	Q Did business increase in 2009?
9	A Over 2008?
10	Q Yes.
11	A Yes, sir.
12	Q Do you remember being told that there were
13	hundreds of phone calls from people that your law office
14	was foreclosing upon complaining that they had never
15	been served their foreclosure notice?
16	A Told by whom?
17	Q Cheryl Sammons.
18	A No. I remember that
19	MR. TEW: There's no pending question.
20	A Okay.
21	Q (By Mr. Jaffe) Who is Tammy and I'll spell
22	it instead of butchering the pronunciation of them after
23	the K-A-P-U-S-T-A?
24	A I believe that's Tammy Kapusta who I do not
25	know.

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,	137
1	Q You are aware though that she worked at as
2	a paralegal?
3	A I'm aware that she worked at my office. I
4	don't know her functionality.
5	Q Nor any of her responsibilities, roles while
6	she was there?
7	A I only know that she was escorted out by the
8	police and she lost her only child to her blind husband.
9	Q So, it's your inference that she wouldn't tell
10	the truth?
11	A My inference is that she has no credibility
12	based on what I understand or understood her to say. As
13	I sit here today, my testimony is that I did not read
14	her deposition. As I glanced at it, to me, it was just
15	a blog because it was such garbage. I went to Cheryl
16	because I knew clients would call, and Cheryl said
17	David, she's a fruitcake, she got fired, she got
18	escorted out by the police and to say how bad she is,
19	she, in a custody, lost her child to her blind husband.
20	Q Did you read Cheryl Sammons' deposition?
21	A Which deposition?
22	Q How about the one in May of 2009?
23	A You have to tell me what it was. What case it
24	was.
25	Q No, I don't it could be any of her
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i	depositions.
2	A No.
3	Q Are you familiar with what case on this?
4	A Yes, sir.
5	Q Did you, in any way, developed it?
6	A With Shapiro or with my office?
7	Q Good question. Your office.
8	A With my office, we created a case summary,
9	"we" being Cheryl and I, that listed from the referral
10	any bits of information that would be necessary to
11	create a merged document. Client, client address,
12	borrower, borrower's address, loan number, UPB, anything
13	that would merge into any pleading. That case sum
14	document saved us a lot of time, tremendously efficient.
15	From the time that Cheryl and I created it, probably was
16	two months, three months as Miriam started that I never
17	really looked at a case sum again, and I'm sure that it
18	got expanded a hundred times over without my sign-off
19	because I don't need to sign off on the cases.
20	Q What is UPB?
21	A Well, in my profession, it's unpaid principal
22	balance. I guess, if you're playing basketball or
23	sports. Unpaid principal balance.
24	Q Well, I know what it means in sports.
25	A Yeah. I mean, it's true it's out there for

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i	something.
2	Q Would you agree with me that there was
3	pressure put on Cheryl Sammons by you to get judgments
4	entered so that the reports in the bank showed completed
5	transactions?
6	MR. TEW: Object to the form.
7	A No, I wouldn't. If Cheryl had issues, she
8	would come to me as she had done in the past and I would
9	rectify the situation by getting rid of clients or
10	calling clients to tell them you can turn off the
11	volume. Cheryl knew if there was a problem, she could
12	come to me. And that's why they had pretty much carte
13	blanche, no restrictions on salary, no restrictions on
14	hiring, take whatever space you need to take, no budget.
15	They had they had the best of all worlds.
16	Q (By Mr. Jaffe) It sounds like a great place to
17	work. During 2008, 2009, would Fannie Mae auditors come
18	on property?
19	A In 2008, Fannie Mae created a new designated
20	counsel program or network. They came on property to
21	interview each of the firms and to review our operation,
22	kick the tires if you will. I am not aware of any other
23	Fannie Mae visit or on site, until probably June or July
24	of 2010 when
25	MR. TEW: Wait a minute. You've answered the

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question.

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-- when Fannie Mae came in to visit law firms. А

(By Mr. Jaffe) Did Fannie Mae come on property in 2008, Fannie Mae auditors?

Fannie Mae auditors did not come out. I do Α not believe Fannie Mae auditors came on property. I believe their audit was a mail away audit.

Q Okay. Did Fannie Mae auditors come on property in 2009?

A I'm not -- let me -- let me go back. I don't think they came on in 2008. I think they came -they -- I'm sorry. They never came on, to the best of my knowledge. I am not aware of an audit of any sort on property or mail away in 2008. I believe it was 2009 that they did an audit but it was a mail away audit.

Q When Fannie Mae -- and I'm sorry, I was interrupted so I lost the answer to the question that I wanted to hear the answer to. 2009, did Fannie Mae come on property?

For what purpose? A

0 Any.

Α Yes, sir.

0 And did they let you know before they were coming on property that they were coming?

They came on property they let us know for

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0 Okav. So, you knew they were coming?

A Yes, sir.

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Okay. Did you instruct Cheryl or any staff members to extend hours in order to -- did you instruct staff to extend hours in anticipation of their meeting?

A That -- that's not what I did. That would be a day-to-day operation or decision. To the best of my knowledge, I wouldn't have any reason to do that and I would not do that. That would be Cheryl.

Q Okay. So, if it happened --

A I'm not saying it didn't, but I'm telling you I did not.

Q Sure. But I'm acknowledging that and say, if, in fact, it happened, that would have -- Chervl would have been the person at the top that would have authorized that behavior?

A It depends if you're talking about Processing --

> Q Yes.

-- or you're talking about one of the other Α entities.

o Processing.

It would have been Chervl.

Do you have any knowledge with regard to the

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instruction of staff members to rip stickers and client codes off the Fannie Mae files replacing them with those of a different lender?

O Have you ever heard that accusation?

Ripping the sticker off and replace it with a different client, no, I haven't. The files are \$3 and 80-some odd cents, I -- it's been so long I know the price of them. But once the files were done because they're so expensive, the items would be documented, it would be put into a manila folder and we would re-use the folder again for a brand new case.

Q So, that's no?

That's -- the answer to your question is no.

Are you aware that staff was instructed to remove the Fannie Mae files and put them into a remote back room?

MR. TEW: Object to the form.

No. I'm not.

(By Mr. Jaffe) When Fannie Mae did come on property, what was your role? Did you meet with them?

A When Fannie came for loss mitigation, they asked that I be there simply to share best practices on what I see in other states with other law firms and give them benefit of my knowledge of what I understand to

work or not work. So, from a loss mitigation standpoint, I would have been in attendance at that meeting, but that, again, was not an audit meeting. There was a meeting where the higher ups at Fannie Mae came in and ask me to be in attendance as they were going by to see all of their large Florida firms. And wanted to impress upon us the need to stay fully staffed, anticipations of huge, huge shadow inventory. Inventory that was in default but had not yet been referred for various reasons. And also to get my take on what the issues may be for backup, if any, of files; HEF. HOFA, all Obama initiatives that slowed down the process. So --

Q Why did they want you there?

A Because I'm the guy that knows what's going on with other states. I'm the guv that goes to these seminars. I'm the guy that probably more so than anyone is in touch with the largest 10 lenders in the country, and they were picking my brain to say hey, do you know of any problems that the servicers are having, David, do you know if they are, you know, getting you what you need. Well, I can't tell you if they're getting us what we need unless, you know, Cheryl would say Client ABC would sent 10 affidavits and we haven't gotten them back.

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November 2010.

0 Would Cheryl be in those meetings? Cheryl would be in those meetings, yes. As would Miriam, as would Beth. All good meetings, all positive meetings, all exciting meetings for growth and anticipation of volume. Huge numbers of shadow inventory. Q On site, on the physical plant, 900 South Pine Island --Α 900 South Island, fourth floor conference Big conference room? ٥ Big conference room. ٥ You're aware that, periodically, Cheryl Sammons Α I am. ves. sir. o Again, you've already testified that you never read her depositions, is that accurate? That is accurate, yes. Α

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under her watch and based on my testimony it's very

apparent that I had tremendous trust and confidence in

When was the last time you spoke to Cheryl?

Because as the wheels came off, it came off

Latter part of -- probably, the latter part of

i her and let her run the show. Not knowing that anything 2 was wrong, I watched my world unravel. And as items 3

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came up. I was not aware of certain things and they may or may not have been the reason for Fannie and Freddie pulling the plug at the end of the day. I think it's a major reaction and political. But at that point in time, I terminated her.

- Q When was that? Ballpark, November?
- A End of November, yes. And Miriam as well.
- Q Did you ever disguss with Chervl her deposition testimony in about the time in which they were occurring?
- A I would deal with Jeff too and in-house counsel for Forest McSurdy --
- Don't tell me anything you've talked to those Q guvs about.
- A No, I'm not. I'm not. -- to determine if there were any issues or what needed to be taken if there's going to be any surprises. And Jeff, if anything needed to be fixed, he fixed it. And they educated me on the fix. And that was that.
 - Q So, that's a yes?
- Did I talk to Cheryl about her depo? Not specifics. How did it go. That's about it.
 - Well, was it about how was it kind of go?

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Yeah, how did it go. But again, it wasn't a big deal for me because Jeff would have been present in those depos. And Jeff would have come if there were problems and said these are the problems, or these are going forward with would be our best practices. So, I had it from him, I didn't need to go see Cheryl.

O So, whatever occurred during the Sammons depositions, you were made aware of?

- A If they were problematic, I would be made aware of them and what measures to take to -- to fix the issue, I would be made aware of. Nothing that I sat down and said oh, my God, I'm going to read this deposition myself because I have Jeff.
 - Q Just for the record, Jeff is Jeffery Tew --
 - Jeffrey Tew.
 - -- sitting next to you? 0
- Jeffrey Tew, Tew Cardenas, attorney extraordinaire. And from those depositions and depositions of others, Jeff would come and say everything good but I have some recommendations for best practices due to changing environments. And for the
- Q Would you -- were you told that with regard to the Sammons depo in Deutsche Bank v. B-E-L-O-U-R-D-E-S. P-I-E-R-A that Sammons testified that there were at

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i times the wrong party of interest in certain documents? 2 MR. TEW: If any of your lawyers told you 3 that, you shouldn't answer. That's privileged.

> A I don't know even know which case you're talking about. I'm sorry.

- Q (By Mr. Jaffe) Is it your testimony that at Cheryl Sammons' depositions, Jeffrey Tew of Tew Cardenas was her lawver?
- A I don't think in every single one. There may have been Forest McSurdy from our firm or Michelle Mason or Donna Glaick, I'm not sure. That wasn't a day-to-day thing that I was involved in. I would venture to say that Jeff was brought in at the request of Forest -- Jeff Tew was brought in at the request of Forest McSurdy depending upon the nature of the -- of the deposition or the nature of the case.
- Q Do you know whether or not Jeff Tew was in attendance at the Sammons deposition taken on May 20th,
 - I don't.
- Do you know if Jeff Tew was in attendance in the Sammons deposition that was taken on April 29th, 2010?
 - I do not.
 - Were you made aware from Ms. Sammons that she

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i testified in April of 2010 that her signature does not 2 mean the contents of the document she signed was 3 accurate and truthful? 4 A I'm sorry? Would you read that back. (Thereupon, the record was played 6 back.) (Deposition resumed.) I don't even understand the question. (By Mr. Jaffe) Was one of Ms. Sammons' roles 10 in 2008, 2009 to sign certain documents? 11 Certain types of documents, yes. Not all of 12 2009 and only for certain clients. 13 What type of documents? Assignments of mortgage for MERS, mortgage 14 electronic registration, and -- and that, of course, was 15 executed pursuant to a MERS corporate resolution 16 17 empowering Cheryl and others to sign. 18 A Cheryl also -- Cheryl and others, pursuant to 19 20 power of attorneys from various clients, would have 21 executed affidavits of indebtedness after their review 22 of the contents of the affidavits pursuant to power of 23 attorney that were, of course, set out under the 24 signature line. 25 Q Okay. And are you aware -- did Ms. Sammons

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í	ever tell you that she testified that my signature on
2	certain documents doesn't mean that the contents of the
3	documents are either accurate or truthful?
4	MR. TEW: Object to the form of the question.
5	Misstates the testimony.
6	A I she actually never told me that.
7	Q (By Mr. Jaffe) Okay. When the stock when
8	you went public and the stock was issued, what was the
9	trade price, approximate trade price?
10	A \$8.81.
11	Q 10 \$10?
12	A I think it was \$8.81. I don't recall. I
13	mean, it went to \$10, it went to \$12.50, it went to \$15.
14	Q All right. Would you agree with me that by
15	February of 2010 it was trading at half that?
16	A February of 2010?
17	Q Yes.
18	A It was trading at
19	Q \$5-ish.
20	A I don't I don't believe so.
21	Q By April 15th, 2010, it was down by almost 88
22	percent?
23	A I don't recall that, no.
24	Q July 20th, 2010, you were sued in an investor
25	class action security suit?

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When you say "you," who's you? 2 Fair enough. Stern -- Law Offices of David J. 3 Stern, P.A. Question? А DJSP Enterprise, BBI? I have to look back and sign up a complaint. But you are aware that there was a securities case filed? A I am, yes, sir. 10 Also in July 2010, there was a RICO class 11 action filed against you? 12 Who's you? 13 Fair enough. There was a RICO class action 14 filed against certain -- Stern, P.A., DJSP and others? 15 A So, not me. The 23 MERS members, yes, sir. 16 Which the court dismissed. 17 Q Are you aware that July 27th, 2010 DJSP Enterprises, BBI announced through a press release that 18 19 new referrals had decreased? I'd have to see the press release of the time. 20 21 I understand there was a press release made, but I $\operatorname{don't}$ 22 know if it's July 27th. If you say there's one done, then we can stipulate to that.

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I'll get it if you want to.

Okay.

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i	MR. JAFFE: Frank, you want a copy?
2	MR. SCRUGGS: Yes, please. Thank you.
3	Q (By Mr. Jaffe) Thought we're going to get
4	through without it because it looks
5	A No. No. We we
6	Q Plaintiff's 1.
7	(Thereupon, Exhibit 1 was entered
8	into the record.)
9	A I don't mind. You said guys, I'm good, in
10	there.
11	MR. BERNSTEIN: You already made the copies,
12	so might as well hand them out.
13	Q (By Mr. Jaffe) All right. I just handed you
14	what's been marked as Plaintiff's Exhibit 1 for
15	identification purposes. Take a look at it and then I
16	will ask a question. I would direct your attention to
17	the second paragraph oh, the first paragraph where it
18	has a date and then the second paragraph.
19	A Okay. Yes, we did send out that press release
20	dated July 27th.
21	Q All right. So, back to my question. Let's
22	just be clear on the record. As of July 27th, 2010,
23	DJSP Enterprises, BBI announced that new referral
24	business had decreased?
25	A Yes.

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Okay. Are you aware that August 10th, 2010 the attorney general of the State of Florida began investigating your law office?

I'm sorry.

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(Thereupon, Exhibit 2 was entered into the record.)

(By Mr. Jaffe) I'm going to show you what's now been marked as Plaintiff's 2 for identification purposes. And ask you if you recomize that.

A This is a press release that announces investigate -- new investigations against Law Offices of Marshall Watson, Shapiro & Fishman, Law Office of David J. Stern.

Q So, does that refresh your recollection that on August 10th, 2010 the attorney general of the State of Florida began an investigation?

A No, sir, it does not.

Okav.

I don't know if I have personal knowledge when they started it. I just know when the release came out.

0 Okav. In August of 2010, were you made aware by anybody that the AG was investing you, "you" being the law office?

A I don't know if it was on the 11th or the 12th or the 13th.

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	153
i 2 3	Q So, you were made aware? A I was made aware but I don't know if it was August 10th.
4	Q Okay. All right. So, sometime in August you
5	were made aware that the attorney general's office had
6	begun an investigation of your law office?
7	A Based on this press release that would I
8	would know, somewhere around there, yes, definitely in
9	the month of August.
10	Q So, then you had a conference call with
11	investors on September 8th, 2010, correct?
12	A Sorry?
13	Q Okay. If we could go back to Plaintiff's 1.
14	Specifically referring to paragraph five that begins
15	with "Rick Powers". Let me know when you're ready.
16	A Okay
17	Q Would you agree with me that in a July 27th,
18	2010 press release, DJSP Enterprises announced that
19	there would be no immediate plans for significant
20	staffing changes?
21	MR. SCRUGGS: Object to the form.
22	MR. TEW: Object to the form.
23	A Rick was quoted to saying, "We have no
24	immediate plan for significant staffing changes that
25	would reduce our response time or our ability to handle

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the volume."

Q (By Mr. Jaffe) Do you understand what he means when he says. "We must also focus on our legacy population"?

Α

MR. TEW: Object to the form.

(By Mr. Jaffe) You can answer. 0

А

What does he mean?

He means that there are files that had been in the office that our legacy files, meaning they've been around for a while. Generally, on -- on hold for HEF and HOFA. And Fannie and Freddie were pushing servicers to get these files off hold. So, we're seeing huge numbers of files by the -- by the thousands coming off hold with proceeds. Hence, he saving that while we have no immediate plans for staff changes, we're going to use that existing staff to handle those files that had come off of hold from HEF and HOFA and get those moving through the system.

Q And let's move back to a question I asked you previously. And I'll ask a better question.

Would you agree with me that the Law Offices of David J. Stern, P.A. was the principal customer of

1 DJSP Enterprises, BBI? 2 MR. SCRUGGS: Object to the form. MR, TEW: Same objection. Form. 3 Α

> (By Mr. Jaffe) No? All right. Let me direct your attention down to the bottom of this press release, last paragraph.

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Q And if you could read to me, beginning with the word "the company's principal customer is."

A "The company's principal customer is the Law Office of David J. Stern whose clients include all of the top 10 and 17th of the top 20 mortgage servicers in the United States many which have been" -- I'm sorry --"customers of the law firm for more than 10 years. The company has approximately a thousand employees and is headquartered in.

O Does that refresh your recollection that the Law Office of David J. Stern, P.A. was a principal customer of DJSP Enterprises?

A It is the principal customer of DJS Processing.

So, this is inaccurate?

It's not inaccurate. It's DJS Processing is then part of DJSP Enterprises. But DJSP Enterprises has

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i	other clients.
2	Q So, it's less than complete?
3	A I think it's complete, I understand it.
4	Q Okay. With investors?
5	A Other clients.
6	Q Investors in the stock?
7	MR. TEW: Object to the form.
8	A I'm sorry. One, I can't speak for the
9	investors.
10	Q (By Mr. Jaffe) All right. Have you ever been
11	become made aware of the attorney general of the State
12	of Florida's investigation into your law firm as to what
13	they're investigating?
14	A I have.
15	Q Are you aware that one of the things their
16	investigating is the creation of false legal documents?
17	A False legal documents. What's a false legal
18	document?
19	Q Documents containing false information.
20	A I I'm I'm not aware of that. And they
21	may be investigating it but I'm not aware if if
22	that's one of their obligations in the business.
23	Q Right. That's all I'm asking you, of what
24	you're aware of, whether or not they're investigating
25	your law firm regarding inflated fees.
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I had heard that on -- on -- on a list of one i 2 of the items, that's correct. 3 O The AG is investigating your law office for referring business to companies that the law firm owns or has a financial interest in? A I haven't heard that one. Filing foreclosures without proving the bank owns the loan? A I've heard that they're investigate -- they were investigating that. Q Investigating the allegations that there were 11 12 false mortgage assignments? 13 A False mortgage assignments, I have not heard that. I don't know what a false mortgage assignment is. 15 A mortgage assignment containing false 16 information. A I -- they're maybe investigating. I'm not 17 18 aware of that. 19 Q Investigating false or fraudulent signatures? I'm aware of that. 20 21 Q Falsifying notarizations? 22 A I wouldn't say falsifying but questioning notarizations in the notary's presence while the party 23 is signing it. 24 25 Q Are you aware that the attorney general's

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office is investigating foreclosures on people without verifying their identities? A I don't know how you do that, I'm not aware of that. But the AG wouldn't surprise me.

O Are you aware that the attorney general is investigating the law office for foreclosing on people without verifying the amount that is owed?

A I guess that would be part of the review of the affidavits. So, yes.

Q Are you aware that the attorney general's investigating the law office or you, individually, for paying kickbacks to banks?

A I did hear that one.

Let's move on to September 8th, 2010. Do you have a recollection of having a conference call with

MR. SCRUGGS: Asked and answered.

I'm not sure what day but let's look at the press release.

> (Thereupon, Exhibit 3 was entered into the record.)

(By Mr. Jaffe) Let me show you what has now en marked as Plaintiff's Exhibit 3 for identification purposes. Take a look at that.

Do you want me to read the whole thing?

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	159
i	Q No. No. No.
2	A Okay.
3	Q Let me direct your attention to page four of
4	this document, entitled "conference call information."
5	Please read that paragraph to yourself.
6	A Okay.
7	Q Does that refresh your recollection that there
8	was an investor conference call on September 8th, 2010?
9	A It does.
10	Q Do you recollect where you were, when you
11	participated in that conference call?
12	A I don't. I don't.
13	Q Can I refresh your recollection by suggesting
14	to you that you're on your boat?
15	A Absolutely not.
16	Q Do you have a recollection of being live on
17	the premises or on the plant facility at 900 South Pine
18	Island Road?
19	A I don't know if we were on the road, I would
20	think, given the sensitivity I don't recall, but I
21	can say I was not on my boat.
22	Q Let me ask you some questions. Do you have an
23	independent recollection of the content of that call,
24	what you said?
25	A I believe I said very little. Rick Powers

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i handled that call to the best of my recollection. 2 0 Okay. And certainly, the tape recording of 3 the contents of that call speak for themselves and with regard to who spoke and how much they spoke, correct? 5 Α Correct. Okay. Do you have a recollection of saving 7 that DJSP Enterprises had 20 percent of the market share in Florida? MR. TEW: Object to the form. 9 10 I don't recall saying that ever, or at what A 11 point in time -- are you saying I said that on this 12 13 (By Mr. Jaffe) I'm asking you if you did. I don't believe I -- I don't recall. 14 15 Do you recall saying that there was 1,200 16 employees in DJSP Enterprises? 17 I don't recall what I said on that particular 18 call. 19 Do you believe -- do you have a recollection 20 of whether or not you said that DJSP Enterprises was the largest provider of processed services to the mortgage 22 lending industry in the State of Florida? MR. TEW: Object to the form. 23 24 I don't recall what I said. 25 (By Mr. Jaffe) Do you have a recollection

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whether or not you said DJSP Enterprises is believed to 2 be the largest in the country in terms of judicial 3 foreclosures? MR. TEW: Object to the form. I don't recall what I said on that call. (By Mr. Jaffe) Would you agree with me that Wells Fargo, GMAC and Goldman Sachs were some of your top clients as of September 2010? 10 0 Would you agree with me that BOA. Citigroup 11 and HSBC were some of your top clients as of September 12 20102 13 14 Would you agree with me that PNC. Freddie Mag 15 and Fannie Mae were some of your top clients as of 16 September 2010? 17 How -- define "some of your top clients." 18 Were you doing work for any of those lenders? 19 Okay. That doesn't -- yes, I was doing work 20 for -- well, the answer to your question is no. 21 As of September of 2010, you weren't doing any 22 work for any of those lenders? 2.3 A Fannie Mae and Freddie Mac are not lenders. 24 And you put the three of them together, therefore the 25 answer is no.

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i Q Were you doing any work for Wells Fargo? 2 Α 3 Were you doing any work for GMAC? 4 Yes, sir. Were you doing any work for Goldman Sachs? Not that I know of. Yes, sir. MR. TEW: These are referring to the law firm 10 of David Stern, right? MR. JAFFE: This --11 12 MR. TEW: Then I'm going to object to all these questions you -- unless it means the Law 1.3 14 Offices of David Stern. MR. JAFFE: I didn't mean him, individually. 15 MR. TEW: Well, there's no other law firm that 16 could be rendering services. I'll object to all of 17 18 those questions, unless you mean the Law Office of 19 David J. Stern. MR. SCRUGGS: You know, I'll join. I'll move 20 to strike the answers on the basis that -- of the 21 questions. 22 23 (By Mr. Jaffe) Would you agree with me that the following clients had been your clients, yours being 24 the Law Office of David J. Stern since 1994, Bank of 25

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í	America?
2	A No, sir.
3	Q When did they become a client of your law
4	firm?
5	A I'd have to look and see when Bank of America
6	came on the scene. There's NCNB and there's
7	NationsBank. In 1994, Bank of America, I don't think
8	they existed. They certainly weren't our client.
9	Q Okay. Citigroup?
10	A Citigroup?
11	Q When did they come out
12	A As a client of the Law Offices of David J.
1.3	Stern?
14	Q Yes, sir.
15	A 1994.
16	Q HSBC?
17	A There may be referrals that come from clients
18	where HSBC is a plaintiff, but a direct relationship
19	with HSBC, I don't recall. Not in 1994 though.
20	Q Is it fair to say though on that conference
21	call of September 2010, you held yourself out to
22	represent all of the top 10 lenders?
23	A I don't recall what I said on that call.
24	MR. TEW: Yeah. Same objection as you.
25	Q (By Mr. Jaffe) You, as it relates to a

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conference call, were you speaking is what my reference i 2 is to you, that you said that the law office or DJSP 3 enterprises represents all the top 10 lenders? MR. TEW: Same objection. I don't recall what I. David J. Stern, said on 5 А that call. (By Mr. Jaffe) Okay. Do you recollect saying on that call that you expected growth to be at historical heights between 2012 and 2017? A I. David J. Stern, do not recall anything that 10 11 I said or that call. I may have said hi, this is David 12 13 I think you might have said a little more than 0 14 that. 15 (Thereupon, a short discussion was 16 had off record.) (Deposition resumed.) 17 (By Mr. Jaffe) Now that we have been speaking 18 19 about the conference call on September 8th, 2010, do you 20 recollect if you were reading from script? 21 22 0 Do you recollect if what documents, if any, 23 you were referring to and looking at while you were 24 25 A I don't. I'm sorry.

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i Is there anything that would refresh your 2 recollection as to what you were looking at and 3 referencing during that call? A I assume that if we read off the script, then 5 we could find the script. O Is that something that was done on 6 7 investor-cost, that is, reading off the script at times? 8 A At times. Q Assuming you said we have direct source for 10 Wells Fargo and for GMAC, what does that mean? A Assuming I said it? Direct source is a 11 12 relationship whereby services have retained law firms to 13 handle both law firm functionality as well as servicer functionality. It results in increased volume, better 14 control over the files, closer relationships with the 1.5 16 clients and it avoids payment of any outsourcing fees. 17 Q What does GSE mean to you? 18 A Government-sponsored entity, Fannie Mae, 19 Freddie Mac. 20 Q Do you recollect telling people on the other end of the phone call, the conference call, that one of 21 22 the GSEs that was with us the other day in our office, 23 they actually were there to kick the tires. Do you 2.4 remember making that statement?

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A I don't remember anything I said on that call.

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Q Do you remember GSE being in your office a few 2 days prior to September 8th, 2010? A I would have to look back at my calendar and 3 see which GSE and what it was. As I -- yeah, that's 4 a11. What are lien searches? Lien searches are searches that people may have against themselves, generally attaches to the 8 property. So, if you want to give somebody a credit 10 card, you're going to want to do a lien search to see if these people have any judgments or liens against them. 11 O Is that a business that DJSP Enterprises was 12 1.3 looking to get into? 14 A Yes, sir. Do you remember telling the investors that 15 that would create a \$100 to \$150 a pop? 16 A I don't recall. "At what point in time," 17 18 would be my first question, "What investors were?" 19 The September --20 0 21 A I can't tell you. I don't recall what I said 22 on that call. 23 Q I'm still -- I'm only talking about the September 2000 --

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A I don't have any recollection of what was said

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i on that particular call. 2 Q Generally speaking, do you believe you gave a positive forecast for the future of DJSP Enterprises on 3 that September 8, 2010 phone call? A I don't recall what I said on that particular 5 6 day in terms of anything. 7 Q On September 8th, 2010, the date of that 8 conference call, were you aware that two weeks later, approximately, Ms. Kapusta's deposition was being taken 9 10 by the attorney general? A Was I aware at that time of this call, that 11 two weeks after, they were going to take her deposition? 13 Q Sure. A Sorry. My crystal ball was broken that day. 14 Q But generally, there's some notice given? 15 No, there's not. There's no notice. There's 16 no right for us to cross-examine. There's no right for us to be there. There's no nothing. So, the answer is 18 19 20 Q I appreciate you clearing that up. A Keep asking your questions. Q Do you recollect -- referring to Plaintiff's 22 Exhibit No. 3 for identification purposes. A press 23 24 release sent out, September 7th, a day before the investor conference call by DJSP Enterprises. I'm

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So, here, explain to me, if you can, the purpose of that paragraph.

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directing your attention to page three under "Operation Discussions". Okay. I'm sorry. What was your question?

- I haven't asked you vet. 0
- Okav. All right.

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Is it fair to say that you were telling your investors by this press release that DJSP Enterprises believed file volume would increase over the third quarter?

MR. TEW: Object to the form of the question. That's an incomplete sentence or part of a sentence.

- Q (By Mr. Jaffe) All right. Based on the objection, I'll torture you, and then ask you to read, please, for the record, beginning with "As of" -- or "As
- "As a result of management's discussion with our largest clients" -- "client, the law office of David J. Stern PA, and with the major lenders and servicers for whom DJSP process foreclosure files, we believed file volume would increase in the third quarter and we previously decided to maintain current staffing levels; however, file volumes continued to be delayed and existing staffing levels are not sustainable indefinitely."

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It was the belief that volume would increase in the third quarter. And DJS Processing had decided to maintain current levels. At this point in time, the volume hasn't come back or they continued to be delayed. And as such, the existing staff levels are not sustainable indefinitely. Q Were you involved in any way in disseminating

- any of that information to anyone?
- A I don't recall what I said on the conference call. I didn't put these in envelopes and mail them out to anybody.
- What I mean by this is, this is obviously produced on September 7th and sent out, okay?
 - А Yes.
- 0 Right?

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- Yes, sir.
- Okay. And the information contained within this press release was obviously obtained before September 7th. Could have been the day before?
 - Yes. sir.
- Okay. My question was, did -- were you part of creating the data in any way that is contained in this September 7th press release?

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- I don't recall.
- Is it fair to say, paraphrasing, that the existing staffing levels may not be sustainable indefinitely, is what part of this message is?
 - That is correct.
- Is it also fair to say, looking at the next paragraph, Mr. Powers is commenting and saving. "We're prepared to create efficiencies and make cuts where appropriate over the next three to six months"?
 - That's what he said, yes, sir.
- Okay. When you say, "make cuts", what does Q that mean to you?
- A Reduce staff. Cut expenses. Overhead would include staff or could include office space or could include copiers or could include lack of efficiency.
- Q In September -- as of September 7th, 2010, did you inform any of your staff of impending cuts?
- A I did not. I, David J. Stern, did not advise my staff of any impending cuts.
 - O Did HR?
 - I have to ask HR. I'm not aware of it.
 - You're not aware of whether HR did or didn't?
 - Correct. Everybody got this press release.
 - Everybody? What's that mean?

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- i Whoever wanted to go look at the press release 2 would have gotten knowledge, but I didn't send the press 3 release out.
 - o Where was it sent?
 - I'm sorry?
 - Q You said everyone got this press release. I'm not sure what that means. I didn't get it.
 - A Whoever wanted it could get it. I guess, they'd go on the SEC website where press releases are released too, and it's there.
 - Q Do you know if any of your staff who -- even knew the existence of an SEC site -- website?
 - You have to ask folks that or the informational officer. I know at the time Chris Simmons kept everybody abreast of where to go and what was going on and commonly-asked-questions. So, that was a Chris Simmons, not a David Stern.
 - Q And is it your testimony that Chris Simmons would send out either e-mail or post HR disseminating notes that, "A new press release has been made available and here's a copy of it, if you want"?
 - A I do not know if that was the way the mechanics work. But I do know that Chris made himself available to all staff if they had questions through a particular e-mail box.

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 173 of i ٥ This press release, who is it intended for. 2 this type of a press release? 3 No idea. Investors. Disclosure to the world, to the SEC. You've got to make the world aware of everything. So, anyone in this world, it's intended Including investors? 8 They're for everybody, including Hugh 9 Bernstein. 10 Q Would you agree with me that on 11 September 29th, Chase suspended referrals to the Law 12 Office of Javid Day Stern, Javid? 13 I got you. 14 David J. Stern. 15 On September 29th? 16 17 I am not aware of any client suspending 18 referrals in September. As I sit here today, I have no 19 20 Are you aware that on October 8th, 2010, 21 25 percent of Professional Title and Abstract employees 22 23 MR. TEW: Object to the form.

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period, given the acquisition of Timeos for efficiency

I am aware of somewhere during that time

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 174 of purposes, a lot of the previous Professional Title and í 2 Abstract work was sent to the Timeos folks out in 3 California to gain efficiencies, better training, better technologies, et cetera. O (By Mr. Jaffe) Would you agree with me that on October 8th, 2010, Freddie Mac told Morgan Services to stop sending work to Stern PA? A Not aware of that. On October 8th? Not aware 9 of that. 10 Are you aware that on October 11th, 2010, 11 Fannie Mae and Citigroup suspended new referrals to 13 A I'm not aware of that. 14 Q Are you aware that on October 14th, 2010, DJSP 15 Enterprises announced a 10 percent reduction in file 16 17 Via what? 18 A press release. 19 I'd have to see that, you know. At that point 20 in time, everything, you know, cuts coming every which 22 So, you're not saying it didn't happen, you're just not aware of it? You don't recollect? 23 24 A I mean, I don't recollect.

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(Thereupon, a short discussion was

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i had off record.) 2 (Deposition resumed.) 3 (By Mr. Jaffe) Let me rephrase. Are you aware on October 14th, 2010, staffing levels had been reduced 4 5 by 10 percent? 6 I certainly don't know the dates specific. I 7 can tell you that that's before, at least to my knowledge, that Fannie and Freddie pulled the files. And I can tell you that staff reductions were 10 contemplated due to a whole host of things, from 11 uncontrollable events, government intervention, 12 robo-signing on behalf of pretty much every major bank 13 out there. MR. TEW: David, he just asked, "Were you 14 15 aware of that?" 16 A I was not aware of the date, but I was aware 17 of the imminent staff reduction. 18 (By Mr. Jaffe) Do you have a recollection when 19 the first time staff reduction issues were brought up in 20 21 I don't. That would have been Rick Powers and 22 Cheryl Sammons and Chris Simmons. I do not. 23 You were not in any of those meetings? 24 To discuss staff reductions or to decide who stays?

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i	Q To discuss the issue of staff reductions.
2	A At what point in time?
3	Q Any.
4	A I've been at meeting where they discuss staff
5	reductions, absolutely.
6	Q 2010?
7	A Yes.
8	Q How early?
9	A First, second week of November 2010.
10	Q That's so, your best recollection is that
11	would be the first time you were animating where a
12	discussion was had regarding staff reductions?
13	A No. I would say I was in meetings for staff
14	reductions given the key words "staff reductions"
15	from the day Phil Cobb came on to the day Rick Powers
16	succeeded him.
17	Q Phil Cobb came on when?
18	A I don't recall. Sometime, I think, just as
19	the transaction kicked off on January 2010.
20	Q Were you ever made aware by anyone after
21	January 15th, 2010 that based on industry events, you
22	might want to consider reducing staff?
23	A Was I made aware at any time after
24	January 15th, 2010 that I might want to consider
25	reducing staff? Anytime after January 10th? Yes.

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Q And before November 2010?

A Yes.

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Q What's your first recollection of when that would have been and by who?

would have been and by who?

A It would have been by Rick Powers in September -- August, September.

Q Under what circumstances was that discussion?

A He presented me with updates on management tools; better training, measuring by the metrics and tremendous technology where efficiency's increased tremendously. And we would continue with staff to handle legacy problems, issues, "volumes" being the keyword. But on a positive, given the technology and the better training and holding people accountable, he was confident that we could reduce staff at some point

Q Was it Rick Powers' idea to outsource backoffice labor to the Philippines?

A No.

in time.

Q Do you recollect espousing that one of the keys to success on an ongoing basis would be to outsource labor for backoffice to the Philippines at one-half the salary of full-time Plantation employees?

A I don't know if I said one-half, but at substantial savings from a Plantation or US-based

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employee, absolutely.

Q And when is your recollection of the first time you would have espoused that type of process?

A I have no idea.

Q 2009?

A No, I think it would have to have been after the transaction. January 15th. 2010.

Q It was in the first half of 2010?

A I don't recall.

Q Did you, in fact, outsource labor to the Philippines?

A We were doing that in 2008, 2007.

Q Did you increase outsourcing of staff, backoffice staff, in the first quarter of 2010?

A Sure. As volumes increased, we had to increase volume there.

Q Did you increase your staff in the Philippines because -- or in a reaction to increased file volume or to reduce expenses?

A I only know that additional bodies were
necessary. That would be Cheryl Sammons, that was her
role. That wasn't my role. So, I can't tell you. I
don't know. That's a day-to-day process that she was
involved in, and I can't even tell you who works in the
Philippines or who's who or what's what. I can only

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tell you from a dollar-and-cents, it's been efficient.

Q You also said at some point that Professional

Title and Abstract was the first entity to go paperless?

A I did, ves. sir.

O Okay. Do you remember when that was?

A No, sir.

Q And did you also recollect saying in reaction to going paperless, We won't need -- there'll be no need for the 90-or-so file clerks running around.

A Did I say that in my testimony today?

Q No.

A Oh, because if I say, "no" --

Q No.

A I don't recall saying that. Yeah, I don't.

Q Are you aware in October 21st and October 22nd of 2010, DJSP Enterprises terminated 190 employees?

MR. TEW: Object to the form.

A I know DJSP Enterprises terminated employees.

I don't know exactly what dates or how many.

Q (By Mr. Jaffe) Were you involved? You've already told me your first recollection of being in a meeting with regard to terminations was in November. So, obviously, my question's dealing with an October date. Is it fair to say you have no recollection being in a meeting to discuss the terminations I've just

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mentioned?

A In October?

Q Yes, sir. Or earlier for that matter.

A You know, I may have been in a meeting, but
Cheryl would have been there at that point in time. So,
Cheryl would have headed up that meeting or worked
hand-in-hand with Chris Simmons and Rick Powers, quite
simply because I would not know who's who, who needs to
stay, who needs to go. Was I in the meeting? I don't
know. Do I know the people? Absolutely not.

Q Would you agree with me that even as late as November 2010, the HR department was still operating off of one e-mail assistant?

MR. TEW: Objection.

A I wouldn't know that.

(Thereupon, a short discussion was had off record.)

(Deposition resumed.)

Q (By Mr. Jaffe) Are you aware that the terminations I just referenced -- the 198 that were conducted or carried out in October 21st, October 22nd, 2010 -- were just carried out by group meetings and employees being given a letter?

MR. TEW: Object to the form.

A I remember knowing that cuts that took place

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on or about that time or as a result of efficiencies gained in the day-to-day operation. I remember expressing concern as to how do you go about terminating whatever number it was. I don't know what the number was, but it wasn't feasible to bring a person in and say, "Look, I'm sorry, blah, blah, blah". And I remember Rick Powers or Chris Simmons reaching out to an outside firm for some guidance on how to best terminate a number of people, a number of people where you can't bring them all in one room and say, "I'm sorry, but the firm's gained efficiencies. It's time to have some cuts, and unfortunately, you're the cuts". So, how it ultimately got done, I understand. I do remember there was letter of notification. That's really about all that I know. (By Mr. Jaffe) Did you sign that letter?

- Q (By Mr. Jaffe) Did you sign that letter? MR. SCRUGGS: Objection to form. MR. TEW: Same objection.
- A I don't recall.
- Q (By Mr. Jaffe) But your name's on the bottom of
- $\mbox{\bf A} \qquad \mbox{\bf Show me the letter.} \quad \mbox{\bf I can let you know.} \quad \mbox{\bf I} \\ \mbox{\bf don't recall.} \quad \label{eq:constraints}$
- \ensuremath{Q} . I show what's been marked Plaintiff's Exhibit No. 4 for identification purposes.

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i	(Thereupon, Exhibit 4 was entered
2	into the record.)
3	Q (By Mr. Jaffe) Actually, take a look.
4	Actually, after you're done looking at it, if you
. 2	recognize it?
6	A I do recollect the letter and that is my
7	signature.
8	Q Okay. And you signed this letter dated
9	October 21st, yes?
10	A I did sign it, yes, sir.
11	Q And you signed it as CEO of DJSP Enterprises?
12	A Yes, sir.
13	Q And what was the reason that you gave the
14	affected employees for their termination?
15	A What was the reason?
16	Q Yes, please read paragraph number one.
17	A "The referral of new businesses decreased by
18	over 75 percent in the last six months. While we're
19	doing everything possible to guide the company
20	successfully through these difficult times, it's unclear
21	what the business will look like in the near future.
22	So, due to loss of business, we regret to inform you
23	that we are laying off a substantial amount".
24	Q Now, is it your testimony that between
25	September 8th, 2010, which is the conference call date

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with investors, to October 21st, 2010, the 75 percent of your referral business have gone away already?

MR. TEW: Object to the form of the question.

A If that's what's in the letter, then that's

- A If that's what's in the letter, then that's what occurred. I don't know if 70 percent went away two days before and 5 percent went away June, July, August.
- $\ensuremath{\mathbb{Q}}$ (By Mr. Jaffe) Right. Because you actually referenced six months earlier.
 - A Right.
- Q So, business had apparently begun to take a downturn six months prior to October 21st. 2010?
- A Correct. When Bank of America had technology changed, volume began to drop off. We, of course, were hopeful that given the promises from clients that volumes would pick up, Fannie Mae coming in the office and saying, "Be prepared for the shadow inventory", that that volume would come back. And we were confident that we could use the existing staff to work on the legacy files. Then --
- Q And the BOA business dropped off? This began

A They had a technology change when Bank of
America and Countrywide merged or Bank of America
acquired Countrywide, they changed their system. And as
a result of that system conversion, half of our

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referrals from them. i 2 Q When? 3 A I'm thinking -- I got to look at the volume. I got to look at the volume. I'm thinking second quarter. Define that for us, not in your world. Oh, no, I'm not in that world neither. Let's see, January, February, March -- so, April, May, June. 9 Okay. Are you aware that on October 22nd, 10 2010, DJSP Enterprises sends out a press release 11 announcing that as of October 22nd, the total number of 12 layoffs were now approximately 300? MR. TEW: Object to the form of the question. 13 (By Mr. Jaffe) Are you aware of that? 14 15 I don't recall. 16 Any reason to question? Are you saying, "I 17 don't agree" or are you saying "I have no knowledge," 18 I have no knowledge. I don't know what the 19 number was. I don't know the date. I simply know that 20 great efficiencies were realized and volume hadn't 21 O On October 25th, 2010, Mark Harmon resigns off 22 23 the board of directors, is that true? I mean, is that 24 your recollection? A I don't know the date, but Mark Harmon did

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 185 of i resign off the board of directors. 2 Do you know why? Q 3 I don't. 4 ٥ How many people did you place on the board of 5 directors? 7 Who were they? Q 8 Α Mark Harmon, Matthew Katon, myself and 9 Kumar Gushani. 10 Was there a reason, other than yourself, why 11 you named those other people to the board? 12 Well. Matthew's a longtime trusted friend Α 13 that -- about the only one -- I'm sorry, Jeff -- that I 14 trust. Mark does what I do or did in Massachusetts. 15 Rhode Island, New Hampshire, so he has tremendous inside 16 expertise. He kind of gets it, he understands. Kumar 17 was a natural fit at the time because we didn't have a 18 COO, so we brought the CFO in to be a director. 19 How long have you known him? 20 Kumar? Six months. Α 21 0 How'd you meet him? 22 He took the job as the COO. 23 Did you interview him? 24 25 Two days later, October 27th, 2010, the

accounting firm resigned. Are you aware of that? Not aware of the date, but I do know that 3 McGladrey resigned. Q Do you know why? I do not. Four days later, November 1st. 2010, DJSP Enterprise and your law office default on the lease at 8 900 Southpine Island Road; is that correct?

A Yes, sir.

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Did either of those entities default on the lease on November 1st, 2010?

I don't know at what point in time Processing. who held the list, was in default.

Q So, it's possible that DAL Group may have held that lease; is that true?

MR. TEW: Anything is possible. You're talking about a document. I object to the form of the question.

(By Mr. Jaffe) Are you aware that DJS Processing defaulted on the list on November 1st, 2010?

I'm not sure if the list was with Processing or Enterprise. I know at some point in time, there was a default on the lease through one of the entities of the public company.

Q You're just not sure what date it was?

I'm not sure what date it was.

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Does November 1st sound accurate

It doesn't.

Q Does not?

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24 25 It does not.

being November 1st time frame, do you have a recollection of having any other meetings regarding further staff reductions and the necessity for that?

At this point, have you had -- at this point,

A I don't recall the time frames. Obviously, as the unexpected catastrophic event occurred, there was a need to have a meeting, but I don't recall at what point in time that was.

Q What "unexpected catastrophic event" did you

Fannie Mae, Freddie Mac coming in and terminating the relationships. And then the rest of -substantial portion of the remainder of the industry following suit.

Q What's your recollection of the date that Fannie and Freddie pulled?

A I want to say November 4th, November 5th.

Okay. What's your recollection of the other entities that pulled following Fannie and Freddie?

Within two weeks, everything was pretty much gone.

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Do you have a recollection of -- I'll come 2 back to that question. Just had a flashback regarding 3 the conference call with investors, where periodically 4 there were scripts that were used to have that type of 5 conference call. My question there is, who drafted the 6 scripts?

> Chris Simmons, director of investor relations, together with input from Kumar, Rick Powers. In many instances, myself, if they didn't know what was going or if they needed a question answered.

> Q So, at this time frame, when you're giving investor calls, you still know what's happening with the business?

I don't understand your question.

You're aware of -- you're reading reports. You're seeing volume. You're seeing new file intakes. You're seeing how fast they're closing. And you're seeing the cash flow in and out of the company,

Q And so, you have -- in 2010, you have a handle on what's happening with the business?

A As the numbers are reported in the quarterly earning calls and the investors or the world, whoever elects to participate in that call is made aware of the day-to-day happenings.

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Right. But you have that information, that institutional knowledge of your own business far in advance of those calls and reports for that matter. Sure. When Fannie Mae comes in and sits down

and says, "David, we have 600,000 shadow inventory loans", we say, "You mean, 60,000"? And they go, "No. We mean, 600,000". And I say, "Oh, that's nationwide"? And they go, "No, 600,000 shadow inventory in the State of Florida". Sure, I know. Yeah, it's exciting.

November 4th, 2010, do you recollect being Q involved in a mass layoff via e-mail?

Α Do I recall being involved?

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I do not recall what particular date. I do know, as a result of this unforeseeable catastrophic event, that there obviously had to be significant lay offs because there's nothing left. It's all gone. Pulled. Whoever thought? Certainly, the industry didn't. If you look at where we are. Six months later, files are still sitting in boxes.

MR. SUGGS: Could you read back the prior (Thereupon, a short discussion was

had off record.) (End of Volume I)

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DATE: April 29, 2011 1 David J. Stern 2 C/0 3 Tew Cardenas, LLP Jeffrey Tew, Esq. Four Seasons Tower 15th Floor, 1441 Brickell Ave., Miami, Florida 33131 4 5 IN RE: Renae Mowat, Nikki Mack, Arklynn Rahming, and Quenna Humphrey individually and on behalf of all other similarly situated individuals v. DJSP Enterprises, Inc., a Florida Corporation, DJSP Enterprises, Inc., a British Virgin Islands Company, Law Offices of David J. Stern, P.A., David J. Stern, individually, DAL Group, LLC, a Delaware LLC, DJS Processing, LLC, a Delaware LLC, Frofessional Title and Abstract Company of Florida, a Delaware LLC, and Default Servicing, LLC, a Delaware LLC, and Default Servicing, LLC, a Delaware LLC 10-62302-CIV-UNGARO 6 9 10 11 12 Dear Mr. Stern, 13 Please take notice that on April 25, 2011, you Please take notice that on April 25, 2011, you gave your deposition in the above-referred matter. At that time, you did not waive signature. It is now necessary that you sign your deposition.

You may do so by contacting your own attorney or the attorney who took your deposition and make an appointment to do so at their office. You may also contact our office at the below number, Monday - Friday, 9:00 AM - 5:00 PM, for further information and assistance. 14 15 16 17

9:00 AM - 5:00 PM, for further information and assistance.

If you do not read and sign the deposition within thirty (30) days, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court. If you wish to waive your signature, sign your name in the blank at the bottom of this letter and return it to us.

Very truly yours,

SAMANTHA HANSTEIN Reif King Welch Legal Services 954-712-2600

I do hereby waive my signature.

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1 David J. Stern 2 Steve Jaffe, Esq. Jeffrey Tew, Esq. Frank Scruggs, Esq. Cc: via transcript: 6 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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CERTIFICATE OF OATH 2 3 STATE OF FLORIDA 4 SOUTHERN DISTRICT 6 I, the undersigned authority, certify that 7 DAVID J. STERN personally appeared before me and was 9 10 Witness my hand and official seal this 25th 11 day of April, 2011. 12 13 Samantha Hanstein, Court Report Notary Public, State of Florida Commission No.: EE 070089 14 15 Commission Expiration: 03/03/2015 16 17 18 19 20 21 22 23 24 25

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

RENAE MOWAT, NIKKI MACK,
ARKLYNN RAHMING, and QUENNA
HUMPHREY individually
and on behalf of all other similarly situated
individuals,

Plaintiffs,

CASE NO. 10-62302-CIV-UNGARO

DJSP ENTERPRISES, INC., a Florida Corporation, DJSP ENTERPRISES, INC., a British Virgin Islands Company, LAW OFFICES OF DAVID J. STERN, P.A., DAVID J. STERN, individually, DAL GROUP, LLC, a Delaware LLC, DJS PROCESSING, LLC, a Delaware LLC, PROFESSIONAL TITLE AND ABSTRACT COMPANY OF FLORIDA, a Delaware LLC, and DEFAULT SERVICING, LLC, a Delaware LLC,

Defendants.

VOLUME II

DEPOSITION OF

DAVID J. STERN

TAKEN ON BEHALF OF THE PLAINTIFFS

APRIL 25, 2011 10:00 A.M. - 5:13 P.M.

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FORT LAUDERDALE, FLORIDA 33301
SAMANTHA HANSTEIN, Court Reporter

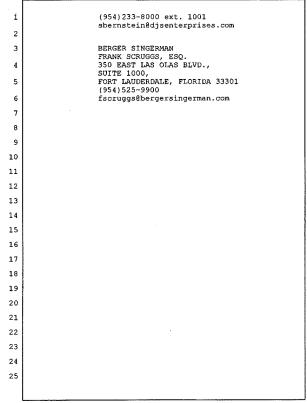
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i	did before you gave us the job. Today, most of us have
2	families, most of us have homes. You've given us good
3	paychecks and you've given us insurance more than anyone
4	would normally give us specially in law firms". And I
5	remember Steven Bernstein got two seats down saying,
6	David, I think I'm going to cry as I was wiping tears
7	away. Anytime someone wanted to see me, I made myself
8	accessible. As far as giving termination notice,
9	however, it went for me. Doing it personally is
10	impossible. And there was others
11	Q I'm sure.
12	A that have come in and gave those sort of
13	accolades.
14	Q I'm sure. You seem like a very nice guy. At
15	the time of these mass layoffs, is it fair to say that
16	DJSP Enterprises had accounts receivable in excess of
17	\$50 million?
18	A How do you define "accounts receivable"?
19	Q Money that's owed to them to DJSP Enterprises
20	that hasn't been paid yet.
21	A But not yet billed?
22	Q Billed and out on the street waiting for the

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A I don't -- I don't know if it was \$50 million.

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I don't recall.

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_	
i	Q There was a certain amount of accounts
2	receivable out at that time?
3	A Yes, of course.
4	Q And obviously, there was the unbilled yet to
5	go out earned, but the bill yet to be sent, accounts
6	receivable also?
7	A That is correct.
8	Q And those numbers combined were in the
9	millions?
10	A Those numbers combined were in the millions,
11	yes.
12	Q And the law firm also had accounts receivable?
13	MR. TEW: I'm going to object. We're not
14	going to get into financials. I don't see how
15	that's relevant.
16	MR. JAFFE: I wasn't going any further than
17	MR. TEW: You're asking financial discoveries.
18	It's not appropriate at this stage, the law firms
19	finances.
20	Q (By Mr. Jaffe) When the unforeseen
21	catastrophic event that you had talked about occurred,
22	you gave a couple of examples when I asked you what you
23	meant and you said robo-signings. What do you mean by
24	that?
25	A Robo-signings in July, August, September

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depositions of clients began to get released. And the gist of what kicked off robo-signing was a GMAC case in Maine, the State of Maine, where the GMAC employee that was responsible for executing affidavits was deposed by borrower's attorney. And the gist of the depo that created this robo-signing concept was borrower's counsel asked Jeff Stephens -- well, according to your affidavit, you say you have actual knowledge you reviewed it, and he came back and said, well, no. I didn't. The attorney was a little bit dumbfounded while you, under oath, said that you did review it. And then a whole new line of questioning ensued, how many of these do you do? How could you possibly do them? Hence, in my mind, the term "robo" was the notary there at the time and the answer was no, no, no, no. Then Bank of America had the issue and then PNC had the issue and a whole host. And as a result, they put a freeze on the referral process until the clients made certain that there was no robo-signing. Now, keep in mind that Florida is a verified complaints state, which would require that the client review the complaint and execute it; and if it needs to be notarized, notarize it in the presence of a notary. So, it caused every lender to stop the wheels. And you are aware that robo-signing occurred

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1 in your office? 2 A It depends which element of robo-signing 3 you're speaking of. But nonetheless, it occurred? MR. TEW: Form of the question. It -- there's a -- robo-signing encompasses a variety of things, not every variety of the occurrence occurred in my office. (By Mr. Jaffe) Which variety occurred in your 10 office? 11 My understanding is that notaries were not 12 present in front of the attorney as the attorney's pen hit the paper. 13 14 Q Is that the only element of robo-signing 15 you're aware of to have occurred in your office? 16 A The same robo-signing concept also, not just 17 affidavits, but assignments. 18 Q And those were -- some were executed by 19 A I don't know if Chervl was present in front of 21 a notary or not. I only know that there are allegations 22 that that occurred. 23 Q Are you aware that there are allegations that

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other paralegals were signing Cheryl Sammons' name?

I am aware of that. But according to Cheryl,

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she said that's absolutely false or without her knowledge. So, I guess, you'd have to ask those other paralegals that may have signed her name.

- Q Are you aware of any paralegals that alleged to have signed her name -- Chervl Sammons' name? I'm
 - Of course not.
- Are you aware also that there's been allegations that Chervl Sammons was signing between 400 and 1,000 affidavits a day at certain times?

MR. TEW: Object to the form.

- I'm not aware of that number.
- (By Mr. Jaffe) Are you aware that she would designate two hours a day to sign affidavits?

MR. TEW: Object to the form.

- I don't reach her in the office. I find your blogs to be false.
- (By Mr. Jaffe) Are you aware that there's been sworn testimony that files would be piled up on given floors and given conference rooms and she would periodically stop in to make the signatures at that point?

MR. TEW: Object to the form of the question.

I am not aware that it actually occurred, I was not involved in the day-to-day operations. I was Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 240 of

i not present in those particular areas. So, whatever allegations are made, I look at them as allegations; and 2 3 as I sit here today, they are unproven. Q (By Mr. Jaffe) And you're telling us under oath that Chervl never came to you to express 5 6 frustration about these acts if in fact they were 7 occurring? 8 MR. TEW: Object to the form of the question. 9 Which acts? Α 10 (By Mr. Jaffe) Signing 400 to 1,000 affidavits 11 a day, working unbelievable hours and so busy that she 12 had other people sign her name. MR. TEW: Object to the form of the question. 13 I'm not -- I'm not aware of that. 14 15 (By Mr. Jaffe) Okay. 16 Of course not. Cheryl would not come to me or 17 never came to me and said, I've had these people signing 18 the names or my name. Absolutely not. 19 Did she ever complain to you that there was so 20 such at work for her to sign that there was no way she 21 could actually read and verify what she was signing? 22 MR. TEW: Object to the form of the question. 23 A No. There was more than one signer. Chervl 24 wasn't just the only signer.

(By Mr. Jaffe) I agree. I'm just talking

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 241 of i about Chervl. 2 Α

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Okay.

Sure. And --

i (By Mr. Jaffe) Let me show you what's now Okav. 2 marked as Plaintiffs' Exhibit 5 for identification purposes. Ask you take a look at that and see if you No. recognize it.

Q All right. Let's go back to the November 4. Α (Looking through papers/files.) 2010 mass e-mail. Have you ever seen it in print? Ready? Q

I have to see it. I don't -- I don't know. So, as you sit here, you have no recollection MR. JAFFE: Mr. Scruggs.

9 of seeing that? 9 (By Mr. Jaffe) You've had an opportunity to 10 A I don't have any recollection of seeing it. 10

look at Plaintiffs' Exhibit 5, which I represent to you I -- I -- if I see it, then I will recognize it or I 11 to be a November 4th, 2010 mass e-mail. Do you won't recognize it. 12 recognize it?

13

A I do.

Α And again, that was done at that level below 14 0 This e-mail came from an e-mail address of HR

mine. 15 department mailbox, correct, that's from? Q That was my next question. You did not author 16

the content of that e-mail? 17 O Okav. And would you agree with me that it was A I'd have to look at it and see if I recall

18 sent to many, many people at one time? giving any of my input. 19 A Yes, sir.

I had the pleasure of counting them. I'm I don't recall and I don't know if it's --21 representing to you it's over 430 people. Did you work

It's okay. I think we're at 5. 22 with anyone to create a list of people that was subject 23 to this termination?

20

(Thereupon, Exhibit 5 was entered 24 A Did I work with anyone? Again, I'm up here into the record.) 25 trying to save the business and I've got Steven, I've

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got Rick, I've got Chris, I've got Cheryl who are familiar with these people, and of them, I would not be familiar with. As this unfortunate unforeseeable catastrophic event occurred, given the ramifications, Cheryl was unable to help make selections.

Q Because?

Because from a physical standpoint, she was in -- she was in denial. She just didn't think it was going to happen.

Q In fact, she's on the list.

She is on the list, but she went from Processing, she also was employed by the law firm. So, she was terminated from Processing with the intent that she be terminated from the law firm shortly thereafter once we had the benefit of her knowledge on who should stay.

٥ So. Cheryl Sammons was employed both by the law firm and by DJSP Enterprises?

Q What was her role with the law firm?

With the law firm, she assisted me in whatever I needed, she assisted Miriam, she assisted Bev. So, at the time, we contemplated the transaction and put together the services agreement. We decided that we would make her an employee of both the law firm and

REIF KING WELCH LEGAL SERVICES www.reifkingwelch.com (877) 291-DEPO (3376) Processing. Q She received two checks? Yes, sir. How did you distinguish her roles and responsibilities? A She did that, Miriam did that. I was not involved in distinguishing her roles between the two. Would you agree with me that prior to going public, you're more involved in the day-to-day 10 operations of your law firm than you were the day after 11 you went public? MR. SCRUGGS: Objection to form. 12 MR. TEW: Same objection. 13 14 No. I went --15 (By Mr. Jaffe) Because your day-to-day 16 involvement ceased a number of years earlier? 17 Α Correct. 18 Q It seems like you put a lot of trust in 19 Ms. Sammons and Ms. Mandieta. 20 Blind faith, blind trust. 21 Tell me what time this e-mail was sent. 22 Well, it says sent Thursday, November 4th at 23 10:30 a.m. 24 Tell me what time the employees', all 435 of 25 them, security badges were deactivated.

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_		201
i	A	If it's not in the letter, I don't know.
2	Q	You will. Keep looking. Page the last
3	page.	
4	A	Security badges will be deactivated at
5	11:30 a.	m.
6	Q	So, is it fair to say that you have now
7	terminat	ed 435 people
8	А	Who is "you"?
9	Q	All right. Let's back up. Who signed the
10	e-mail?	
11	A	I did.
12	Q	Okay. That is you,
13	A	Well, that's me as whatever capacity I was in.
14	Q	Does it say that?
15	A	No, it doesn't.
16	Q	Okay. So, my question is, you fired 435
17	people v	ia e-mail at 10:30 and told them that your
18	badges w	ere deactivated in an hour?
19	A	HR did. HR sent that. From see the top
20	line, fr	om?
21	Q	From HR
22	A	From HR.
23	Q	from you, the CEO of DJSP Enterprises and
24	presiden	t of the law firm.
25	A	I'm sorry. Say that again.
	~	

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Case 0:10-cv-62302-RNS Document 115-1 Entered on FLSD Docket 12/21/2011 Page 246 of 277 You were the CEO of DJSP Enterprises at the 1 Q 2 3 Correct. 4 President and sole owner of the law firm at Q 5 the time? Correct. But this doesn't involve the law Q Okay. But the point is, you signed an 9 e-mail --10 Α Okay. 11 -- that HR sent. 12 Okay. 13 So, my question --14 So, HR and DJSP Enterprises terminated 15 whatever number of people due to a catastrophic 16 unforeseeable event, that's correct. 17 And you gave them an hour to get out of the building? 18 19 A According to what's here, yes. Did that 20 happen in reality? I don't know. 21 MR. BERNSTEIN: I would like to add a clarifying note that --22 MR. JAFFE: Yeah, you're not being deposed 23 24 MR. BERNSTEIN: Okay. Fair point.

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1
                   (By Mr. Jaffe) In the e-mail, it says in the
 2
         first sentence that -- actually, why don't you read the
 3
         second sentence.
             A "It is with heavy heart that I must announce
         that due to the lawsuit" --
             Q I'm sorry. Second sentence, not second
         paragraph.
 8
             Α
 9
                  Paragraph one, "The referral".
10
                 "The referral of new business has decreased by
11
         over 90 percent in the last six months".
12
             Q Okay. So, my question is this, this is an
13
         e-mail sent November 4th. In October 22nd letter,
14
         75 percent of referral business has been reduced over
15
         the last six months. And now by November 4th, it's up
         to 90 percent; is that accurate?
16
17
                 I have to go back and look at the volume
18
         reports to confirm that.
             Q Based upon your review of the e-mail, the
19
20
         contents of the e-mail, did you have any input in
21
         creating the content?
22
             A I asked to see the letter once it was drafted,
         and I recall making a couple of changes in particular.
23
         I don't remember what I changed, but I did see it and I
24
        did give a couple of comments. Once I gave those
25
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i	comments, it circulated back to Rick Powers, I assume,
2	and Steve and Chris and I essentially was done.
3	Q You said to me that this e-mail did not deal
4	with any of the law office employees. Did I understand
5	that correctly?
6	A I'd have to look through. That was my
7	understanding, but let me look and see. As I sit here
8	today, I don't know if this included the law firm, DJSP,
9	DJS Processing or DJSP, what would have been DJSP, or
10	other DJSP Enterprises such as Default Servicing and
11	Professional Title and Timeos.
12	Q Right.
13	A So
14	Q So, the different way, the e-mail doesn't
15	distinguish employee by what department they worked in?
16	A That is correct.
17	Q Or what corporation they worked in or what LLC
18	they worked in or whether it was a law firm employee?
19	A That's correct.
20	Q Whose idea was it to have an HR person on
21	every floor collecting all employees' paperwork, company
22	computers excuse me cell phones, firm files, law
23	firm records?
24	A It was not mine.
25	Q Whose idea was it to have them all out of the

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i building within an hour? 2 A It was not mine. I don't know. 3 The e-mail also contains the name of Miriam Mendieta 5 Okay. Α 6 0 So, she was terminated in mass with 7 Ms. Sammons on this November 4th, 2010 e-mail? 8 A I don't recall if that -- if the fact that if she is in there, if that actually meant she was 10 terminated, she may have been also Processing as well as 11 the law firm. 12 Q So, as you sit here today, Miriam Mendieta may 13 have been receiving two checks as well, one from the law 14 firm and one from DJS Processing? 15 That is correct. 16 What role did she have in Processing? 17 She would work with certain staff, be there to 18 answer any questions. We felt that her salary -- and I'm not sure if it panned out that way, but the original $\ \ \,$ 19 20 process was that part of her process should be bourn by 21 Processing if she is going to be working with 22 Processing, giving them direct oversight or whatever the 23 case may be. 24 Q So, she supervised Processing? 25 Well --

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Q Certain aspects of Processing? 2 She did, yes. Of course. 3 And Sammons served -- supervised certain 4 aspects of Processing? 5 Α Right. 6 Q Sammons also supervised certain aspects of the 7 8 As to non-legal work. And obviously, Ms. Mendieta supervised aspects 9 Q 10 of the law firm? 11 A 12 All aspects of the law firm actually. 13 Absolutely. 14 Who else was dual employed by DJS Processing 15 and the law firm at this time? A Well, certainly, Cheryl was, I'm thinking 17 Miriam was, but I'm not positive. I was. And I'm not sure if Sam because Sam did law firm, and of course, he 18 worked with Professional Title. Beyond that, I think 19 20 that would be -- that would be a -- Tom from Dykema. 21 Q Was Sam employed -- based on what you just 22 said, I think I heard you say Sam was employed both by the law firm and by Professional Title and Abstract at 23 24 the same time. A I'm not sure.

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130 0	277
	207
i	Q But it's possible?
2	A It's possible.
3	Q And that's what you think?
4	A I don't know I don't recall. At the end of
5	the day, given the magnitude of the transaction, if Sam
6	at ultimately came over or not, that's you know,
7	certainly, he sent over an interrogatory and Jeff can
8	get it answered.
9	Q What is your understanding on the basis of our
10	lawsuit?
11	A My understanding on the basis of this lawsuit
12	is that you feel that Processing, DJSP Enterprises
13	wrongfully terminated its employees in violation of WARN
14	and that I'm the mastermind that created it, and I said
15	at this public company to defraud the world and you want
16	to get into my deep pockets as well as the law firm.
17	That's my understanding of this lawsuit.
18	Q Okay.
19	A Is it one of the
20	MR. TEW: You answered the question.
21	A Well but it's too good, Jeff.
22	MR. TEW: No.
23	A Okay. I did get this long. I can make it
24	another two hours.
25	Q (By Mr. Jaffe) Now, you are aware that on

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i November 3rd, 2010, Chris Simmons authored a letter to 2 Gene Rhodes at the REACT Program in Tallahassee? 3 MR. TEW: Object to the form. A I am not aware of that. (By Mr. Jaffe) Okay. This would be quicker then. Are you telling me that you're not aware of whether or not anybody on behalf of DJSP Enterprises sent a WARN notice to Tallahassee in November? A I don't know what date it was sent. I don't recall what date it was sent. 10 11 MR. JAFFE: All right. Please. 12 (By Mr. Jaffe) Let's -- while she looks for the copies -- you are aware a letter was sent, you're 13 just not aware what date it was; is that correct? 14 15 A That's correct. Okay. Were you privy to the development of 16 17 the contents of the letter prior to it being sent? I'd have to look at it to refresh my memory. 18 19 Q Okay. Now, Let me show you what we've now 20 marked Plaintiffs' Exhibit 6 for identification purposes, 22 (Thereupon, Exhibit 6 was entered 23 into the record.) 24 (By Mr. Jaffe) I would represent to you it's -- one, two -- three pages. Tell me if you

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recognize it.

A Yes, sir, I do.

Q Were you involved in the development of the content of these three pages?

Q Did you review this letter -- one-page letter and two-page memo, I'm going to call it, before it was sent out to Tallahassee?

A I did not.

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Q When is the first time you saw this Exhibit 3 -- or Exhibit 6? Excuse me.

No. sir. I was not.

A A few days after it had gone out, just in my stack of my monstrosity of reading.

Q Do you have any knowledge as to how the laying off of 38 law office employees was decided, which 38?

A I'm sorry. Can you repeat the question?

O Bad question.

A Yeah.

 $\ensuremath{\mathbb{Q}}$ Will you agree with me that contained within this letter, there was law office layoffs?

A Yes, sir

Q And specifically, 38 people were laid off, at least that's what the reporting is about.

A Okay.

Q Do you know how that 38 people were selected?

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A Miriam and Beverly would have selected those individuals independent of me.

Q You saved the next question, but I get to ask anyway. Without consulting with you, correct?

A Correct.

Q With regard to the 356 employees that were terminated by DJS Processing, who would have selected those people?

A Well, Cheryl and Rick were supposed to select them, and then we had some issues with Cheryl making those selections. So, they brought it, really, to me and asked how I could help. And I said, it's not what I do. I don't know any of these people. I know very few of these people, and the people that I do know may not be the people that need to be kept. So, I suggested that perhaps they go to Cheryl's managers and have Cheryl's managers help make the decisions because at the end of the day, Cheryl was going to be gone and it would be the managers that would have to -- Cheryl's managers that would have to choose the right people. So, that's how the DJS Processing selections were made.

Q So, back to the law office, though, Miriam fired herself?

A No. I terminated Miriam, but Miriam or -and/or Beverly -- because Beverly stayed through

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whatever, March, I have something like that, and they -- I didn't know any of the attorneys or very few of the attorneys, so I wouldn't have the -- where at all to know who should stay or who shouldn't stay. And that's sort of what Miriam's last day was, but the need to cut was not pushed back with Miriam or -- and/or Bev as it was with Cheryl.

Q At its height, how many lawyers did you have employed at the law office?

A I believe 150, give or take.

Q How many of them did you know?

A Maybe 20. I wasn't there day to day, so I didn't know. I knew the ones that were there in 2005, 2006, but anyone that came after that, I just -- it wasn't what I did.

Q Is it fair to say that after 2005, 2006, the number of staff -- I think your word was "dramatically increased"?

A 2007 when we moved to Plantation, to 900 South Pine Island.

Q When the mass e-mail went out terminating
Cheryl as well, was -- I thought that I understood you
used to say that she stayed on on behalf of the law

A The decision was that Cheryl and Miriam needed

to go and they needed to go immediately. The -- the reality was that with -- at the end of the day, all that would fall back on me. And because I was not involved in the day-to-day, I couldn't possibly under any circumstances do it. As I recall, the intent was to get them off Processing of the public company ASAP, make them aware of that. They would then be -- continue to receive law firm payroll. And after a week, they need to be totally out. And that's kind of how it went down and I -- yeah, couldn't get them out fast enough. But unfortunately, they have the knowledge that -- a lot of them we didn't get, as Steven said, but you're able to do it without them. David and Cheryl had some managers under her and Bev was a godsend.

Q Do you know if it was income-based, the cuts, or was it you start with these most expensive people and work down?

A No, we definitely did not.

Q The first in, first out?

A No. It just who what we needed that could do the best job given the relatively small staff that would be left for an uncertain period of time.

Q You would agree with me that the Exhibit 6 does not identify whether it was sent on behalf of DJSP Enterprises, Florida or DJSP Enterprises, BVI; is that

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	2// 213
i	correct?
2	A Well, the employees that were being laid off
3	worked for DJS Processing, they worked for the Law
4	Offices of David J. Stern and they worked for Timeos
5	because Professional Title had been pushed over to
6	Timeos.
7	Q Sure. But my question wasn't that. My
8	question was, the letter does not identify that it's
9	being sent by either DJSP Enterprises, Florida or DJSP
10	Enterprises, BVI, correct?
11	A It simply shows that it's being sent by DJSP
12	Enterprises, notifying the administrator that three
13	entities
14	Q I understand. But my question is very
15	elementary.
16	A I'm sorry. I'm missing that.
17	Q Let's go back up. See the title, "DJSP
18	Enterprises"?
19	A I do.
20	Q Okay. I understand there to be a DJSP
21	Enterprises, BVI.
22	A Okay.
23	Q And I understand there to be a DJSP
24	Enterprises, Florida.
25	A I'm not aware of the DJSP Enterprises of

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Florida. I only know BVI. 2 You already testified to that. So, my 3 question was, would you agree with me that it does not identify DJSP Enterprises, Florida or DJSP Enterprises, MR, SCRUGGS: Objection, Form, Speaks for itself. I would say that -- first off, who in the heck is DJSP Enterprises, Florida? And if it does exist, what's their address? 10 11 (By Mr. Jaffe) Ask your counsel. 12 Because clearly, DJSP Enterprises does -- does exist at 900 South Pine Island. 14 Q Okay. I'll take that as a yes. You would 15 agree with me that Chris Simmons, the director of HR, 16 signed this letter? 17 I believe that's his signature. 18 Okav. Are you aware that Chris Simmons was a 19 director -- at this time, a director of HR of DJSP 20 21 And at this time in November, that's the -- an 23 entity that you owned 33 percent of? A I'm not sure, as I previously testified, what 24 25 percentage of it that I owned.

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-	277 215
i	Q Was the November 4th, 2010 the last mass
2	layoff?
3	A I don't recall. How do you define "mass"?
4	Q More than 50.
5	A I don't know recall. I don't know. Maybe
6	Chris Simmons, Stephen or Steve, two people down to my
. 7	right.
8	Q And you removed of stepped down shortly after
9	that e-mail, right?
10	A Stepped down from?
11	Q Chairman of DJSP Enterprises.
12	A Somewhere thereabout, yes, sir.
13	Q November 19th, I think.
14	A I don't recall. It's not like an anniversary.
15	It's not a date you want to remember.
16	Q I thought just the opposite. This is your
17	baby that you created, I would expect you to remember
18	the date that it ended.
19	A No. Sorry.
20	Q It's okay. Do you still go to the office?
21	A I do.
22	Q How often?
23	A Maybe twice a week for two or three hours.
24	Q Is there any business left?
25	A There is.
	

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1	Q What are your plans with the office?
2	A I'm shutting it down.
3	Q How soon?
4	A Not soon enough.
5	Q Why do you say it like that?
6	A It's done, it's over. I have no desire to do
7	this anymore. It's a backstabbing business. A guy
8	finds a way to make success and people get thrills of
9	seeing them come crashing down, not the American dream,
10	not the way I am. June 30th is a is a is it
11	existing files we have, we're substituting out or
12	getting clients to get new counsel to substitute out.
13	So, June 30th, we're done. We had advised the clients
14	as of March 31st that we'd no longer be working with
15	them, and then that's it.
16	Q Are you still employed by DJSP Enterprises?
17	A No.
18	Q When did that stop?
19	A I want to say while I was employed by them, I
20	didn't take a salary since.
21	MR. TEW: It's going beyond the question.
22	A Am I still employed by DJSP? No.
23	Q (By Mr. Jaffe) When did that stop?
24	A I don't recall.
25	Q About the same time you stepped down as

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ì Α I don't recall. 2 ٥ Are there any employees at DJSP Enterprises 3 today? Are there any employees at D- -- yes, there 5 are. 6 ٥ Have you had contact with any of them? 7 I see them every day that I'm in the office. 8 MR. JAFFE: I believe that we're done, but I 9 do want to take a break and make sure that we're done before I officially say that. Thanks for your 10 11 time, but give me a couple of seconds. 12 13 (Thereupon, a short break was 14 taken.) 15 (Deposition resumed.) 16 MR. JAFFE: We're done. No further questions. 17 Thank you for your time. Sorry for taking your 18 day. 19 MS. DOUCETTE: No problem. It's okay. 20 MR. JAFFE: Good luck to you in the future. 21 22 THE COURT REPORTER: Are you all going to 23 order? 24 MR. TEW: We'll read. 25 THE COURT REPORTER: You'll read?

i MR. TEW: But I do want a copy. Send me 2 my copy. I'll give it to the witness. Then 3 we'll read it, and then we'll sign. 4 THE COURT REPORTER: Okav. 5 MR. JAFFE: I want mine, but e-mail. 6 THE COURT REPORTER: By e-trans? MR. JAFFE: Yeah, that's all I want. I don't 8 want paper. 9 THE COURT REPORTER: You don't want paper. 10 And standard delivery, would that be all right? 11 MR. JAFFE: Yeah. 12 THE COURT REPORTER: Seven days? 13 MR. JAFFE: Yes. 14 MR. SCRUGGS: Can you send mine that way, 15 e-trans as well? The text only. 16 THE COURT REPORTER: Sure. 17 (Deposition concluded at 5:13 p.m.) 18 (Reading and signing of the 19 deposition by the witness has been 20 21 22 23 24 25

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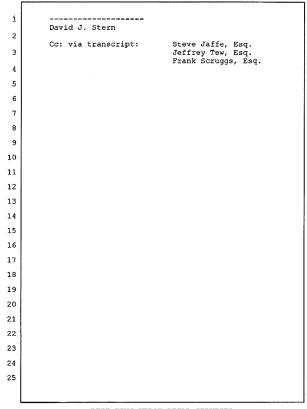
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                                     DATE: April 29, 2011
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                                                               David J. Stern C/O
                                     TO:
     3
                                                                 Tew Cardenas, LLP
                                                               Tew Cardenas, LDF
Jeffrey Tew, Esq.
Four Seasons Tower
15th Floor, 1441 Brickell Ave.,
Miami, Florida 33131
     5
                                                                Renae Mowat, Nikki Mack, Arklynn Rahming, and Quenna Humphrey individually and on behalf of all other similarly situated individuals v. DJSP Enterprises, Inc., a Florida Corporation, DJSP Enterprises, Inc., a British Virgin Islands Company, Law Offices of David J. Stern, P.A., David J. Stern, individually, DAL Group, LLC, a Delaware LLC, DJS Processing, LLC, a Delaware LLC, Trofessional Title and Abstract Company of Florida, a Delaware LLC, and Default Servicing, LLC, a Delaware LLC 10-62302-CIV-UNGARO
     6
                                     IN RE:
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 10
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 12
                                     Dear Mr. Stern,
13
                                   Please take notice that on April 25, 2011, you gave your deposition in the above-referred matter. At that time, you did not waive signature. It is now necessary that you sign your deposition.

You may do so by contacting your own attorney or the attorney who took your deposition and make an appointment to do so at their office. You may also contact our office at the below number, Monday - Friday, 9:00 AM - 5:00 PM, for further information and assistance.
14
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                                    9:00 AM - 5:00 PM, for further information and assistance.

If you do not read and sign the deposition within thirty (30) days, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court. If you wish to waive your signature, sign your name in the blank at the bottom of this letter and return it to us.
18
19
20
21
22
                                                                               Very truly yours,
23
                                                                               SAMANTHA HANSTEIN
                                                                               Reif King Welch Legal Services
954-712-2600
24
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                                    I do hereby waive my signature.
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CERTIFICATE OF REPORTER 2 STATE OF FLORIDA SOUTHERN DISTRICT 3 I, SAMANTHA HANSTEIN, do hereby certify that the foregoing testimony was taken before me; that the witness was duly sworn by me; and that the foregoing pages constitute a true record of the testimony given by said witness. 10 I further certify that I am not a relative or employee or attorney or counsel of any of the parties, 11 12 or a relative or employee of such attorney or counsel, nor financially interested in the action. 13 14 Under penalties of perjury, I declare that I 15 have read the foregoing certificate and that the facts 16 stated herein are true. 17 Signed this 25th day of April, 2011. 18 19 20 21 22 23 24 25

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CERTIFICATE OF OATH 2 3 4 STATE OF FLORIDA SOUTHERN DISTRICT 6 I, the undersigned authority, certify that 7 DAVID J. STERN personally appeared before me and was 8 duly sworn. 9 10 Witness my hand and official seal this 25th 11 day of April, 2011. 12 13 Samantha Hanstein, Court Report Notary Public, State of Florida Commission No.: EE 070089 14 15 Commission Expiration: 03/03/2015 16 17 18 19 20 21 22 23 24 25

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EXHIBIT N-2 TO THE DECLARATION OF JOHN W. SMITH T

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EXHIBIT A

Page 1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA 2 CASE NO: 11-21349-CIV-MORENO THE LAW OFFICES OF DAVID J. STERN, P.A., 4 Plaintiff, 6 BANK OF AMERICA CORPORATION, and BANK OF AMERICA, N.A., Defendants/Counter-Plaintiffs. BANK OF AMERICA CORPORATION, and 10 BANK OF AMERICA, N.A., 11 Third-Party Plaintiffs, 12 13 DAVID J. STERN, individually, 14 Third-Party Defendant. 15 16 Suite 15th Floor 1441 Brickell Avenue 17 Miami, Florida 33131 Thursday, 9:42 a.m. 18 August 16, 2012 19 VIDEOTAPED DEPOSITION OF DAVID STERN 20 21 Taken on behalf of Bank of America before 22 23 Debbie L. Oates, RPR, Notary Public in and for the State of Florida at Large, pursuant to Amended Notice 24 of Taking Deposition in the above cause. Veritext Florida Reporting Co.

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ļ	rage 31	
1	them.	
2	Q. As a result of some of the publicity that	
3	your law firm was receiving and the AG investigation	
4	in September and October 2010, did some of your	
5	clients start pulling back their foreclosure work	
6	with your firm?	
7	A. Yes, sir.	
8	Q. During that time period, September or	
9	October of 2010, who were the largest, say, five	
10	clients of The Law Offices of David J. Stern?	
11	A. The largest five clients. Freddie Mac.	
12	I'm not giving you the order. I'm just giving you	
13	the five.	
14	Q. That's fine.	
15	A. Freddie Mac, Fannie Mae, Bank of America,	
16	Citi, Wells Fargo.	
17	Q. Was Freddie the largest?	
18	A. No, Bank of America was.	
19	Q. And was that in terms of total number of	
20	cases or files that you were handling for the bank?	
21	A. Yes, sir.	
22	Q. At some point in time in October of 2010	
23	as a result of the Florida AG investigation and the	
24	publicity regarding your law firm, did Freddie Mac	
25	and Fannie Mae suspend referrals of new cases to your	

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1	firm?
2	A. No one at Freddie Mac ever told me why
3	they were doing it. I believe I saw a letter from
4	I'm not sure if it came from Fannie or Freddie, but
5	it said as a result of the Attorney General's ongoing
6	investigation, Fannie Freddie suspended the firm
7	and took their files.
8	Q. Was that in the October, early November of
9	2010 time frame?
10	A. Yes, sir.
11	Q. And do you recall representatives of
12	Fannie and Freddie coming to The Law Offices of David
13	J. Stern in the October 2010 time frame to review the
14	status of their cases and files?
15	A. I recall Fannie bringing an individual in
16	to review the practices of the law firm. Fannie had
17	been in there months before in an effort to
18	coordinate the movement of a backlog of files from
19	all of its servicers as a result of the government
20	intervention through various loss mitigation
21	requirements that the Obama administration put in.
22	When the AG article came out, the Fannie
23	representative changed her focus from her efforts
24	were to assist us in getting things from servicers,
25	to what allegations, if any, in this AG investigation
	V-day Plant Brandin C

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- A. My understanding is that the proceeds themselves, the dollars, were assigned to Processing by The Law Offices of David J. Stern.
- O. Now, this agreement references that you conveyed it to assignees which is collectively defined above as both DJS Processing and DAL Group, LLC; is that correct?
- A. The proceeds themselves were assigned to those entities, yes, sir,
- O. And the net proceeds are defined in here as all amounts -- essentially all amounts you obtained, proceeds from the collection cases minus attorneys' fees and costs and a consulting fee to you equal to 10 percent of the gross proceeds; is that correct?
- So hypothetically if you recover a million Q. dollars in one of your collection cases, if the law firm collects a million dollars in one of the collection cases, they would net out the fees and costs they've incurred prosecuting the collection action, plus they would net out 10 percent of that gross to you, and the remainder would be the net proceeds going to DJS Processing and DAL Holdings; is that correct? Or DAL Group.

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BY MR. BILIK: So, Mr. Stern, once the lender, BA Note,

is paid off, the net proceeds will all be disbursed to DJS Processing, correct?

A. If you look at the Exhibit Number 2, 3.3, Settlement of Collection Cases, I'll point to the last sentence in that particular paragraph which says. "Once the indebtedness has been paid in full to the lender. DJS Processing shall retain the exclusive 10 right to settle any collection case."

Q. Okay. But with respect to the flow of funds under the assignment and Exhibit 3, once the lender, BA Note, is out of the picture, all of the proceeds from the collection cases, net of Mr. Tew's fees and costs and net your 10 percent consulting fee, the remainder goes to DJS Processing?

Yes, sir, it does

Nothing comes back to the law firm? MR. TEW: Until that debt is paid.

BY MR. BILIK: 20

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Correct. ο.

Right. Nothing goes back to the law firm A. until the indebtedness of the law firm is paid to DJSP.

The second paragraph of the Assignment, Q.

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nothing I can do.

BY MR. BILIK:

- Q. With respect to this friends and family plan that you referred to, you said Citi and SunTrust both availed themselves of that plan?
- Citi, Wells, SunTrust. Again, it wasn't a A. Brad Quick that came down, it was people higher up that I knew that were -- were sympathetic.
- And you've -- you've sued both Citi and Q. SunTrust, correct?
- We have sued Citi and SunTrust, that is A. correct.
 - You didn't -- did you sue Wells Fargo?
- No. They paid everything, every single penny that was due and owing.
- And prior to the termination and prior to this lawsuit. Bank of America and its predecessors had paid your law firm millions of dollars; is that fair?
- Sure. Yes. And we provided millions of dollars worth of legal services.
- ο. In the 2010 time period -- well, strike that.

At the time Mr. Quick showed up at the law firm's offices in November 2010, had Citibank, Wells

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concluded, from your perspective?

- A year ago. It's been a long time.
- Sometime in 2011?
- I believe so, yes, sir.
- At the time that Bank of America terminated The Law Offices of David J. Stern, the Florida Attorney General investigation was ongoing, correct?
 - Yes, sir.
- Did Fannie Mae or Freddie Mac or any of your other clients give you a reason for why they were pulling the files and terminating their relationship with your law firm?
- A. My understanding from the discovery was attributed to the attorney general investigation.
- O. Did Fannie and Freddie also come in and -and -- we talked about this a little bit. I thought they came in and audited or reviewed your files in October 2010 before they actually pulled the files? 19
 - A. Yes, sir.
- 21 And were there findings from their inspection or audit that they informed you gave them 22 reason for concern and caused them to pull the files? 23
- A. Nothing that they shared with me. 24
 - With respect to the Mother Jones article

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     terms of their foreclosure practices?
          A. Yes, sir.
          Q. And that's -- this press release is
     Exhibit 12, this -- when we've been referring to the
     Florida Attorney General investigation today, is that
     what you're referring to, this -- what this press
     release announced?
              Yes, sir.
          Q. Was there ever a finding or conclusion in
10
     the Florida AG's investigation that you had not
11
     engaged in wrongdoing or was there a determination
12
     that the AG's office lacked jurisdiction?
13
          A. There was a determination that the
14
     attorney general's office lacked jurisdiction and
15
     caused an unauthorized -- without authority
     investigation to be made.
16
17
          Q. I'll mark as Exhibit 13 to your
     deposition, Mr. Stern, a letter to Michael Williams,
18
     the president and chief executive of Fannie Mae,
19
20
     dated September 24th. 2010.
21
                Ask you if you've seen that letter before.
                (Thereupon, Deposition Exhibit 13 was
22
23
     marked for identification.)
                THE WITNESS: I have not seen this letter
24
25
          before.
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provide The Law Offices of David Stern with a scanned copy of the loan paper files that Bank of America was 2 removing from your offices. 3 A. It does. ο. And does that refresh your recollection that that was -- was done at your request or your lawyer's request? A. It does. Thank you. Were you --10 MR. TEW: Go ahead. 11 12 Q. Were you involved, Mr. Stern, in the back 13 and forth in sort of the November/December 2010 time 14 frame with the exchange of information and a 15 spreadsheet that was prepared of all activity that 16 was coming up on any Bank of America files between 17 November and the end of December 2010? 18 19 As I testified earlier this morning, I 20 believe we went above and beyond to assist with a 21 smooth transition of the files despite, you know, 22 give us 20 -- I see it's 18. I think it's 20. I see 23 28. Whatever the number of files are. My testimony was that we assisted them, we created a portal, we 24 gave them spreadsheet of upcoming events, we Veritext Florida Reporting Co. 800-726-7007 305-376-8800

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 1
     continued to notify Mr. Crenshaw of anything that we
     learned of relative to the -- the files.
 3
               When -- this portal that you've referenced
     several times today, when was that completed and
     operational?
                That would have been completed within a
     week or two after our termination.
              So sometime in mid to late November 2010.
                What would -- tell me what the
     functionality was of the portal that you contend your
10
     law firm --
11
12
                When we received --
13
                -- put in place.
14
                -- mail relative to a file, it would be
     uploaded into the portal and sent over to
15
     Mr. Crenshaw.
16
              So he would have access electronically to
17
18
     the mail and incoming activity on the cases?
               They came and took the files, they told us
19
     not to work them. They had not substituted in as
20
     counsel at that point in time. They didn't have
21
22
     time.
                And we wanted to make certain that we
23
     continued to keep them apprised of any pleadings that
24
     we got. So there was pleadings sent over
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1	Q. Do you recall in the early December time
2	frame there being concerns raised by Bank of
3	America's counsel that there were foreclosure sales
4	that had not been identified on the spreadsheet
5	provided by the Stern firm?
6	A. I don't recall.
7	Q. You don't have any recollection of there
8	being issues with an incomplete spreadsheet being
9	provided where activity was occurring in cases where
0	Akerman and Bank of America had not been advised?
1	A. I do not do not recall.
2	What I do recall is they came in, they
3	took the files, and they left us pretty much
4	inoperative.
5	So I'm not aware of I'm aware of
6	spreadsheets going over. I'm not aware of
.7	deficiencies in those spreadsheets. Again, Michelle
.8	was the the liaison.
9	I certainly am aware of Bill's comment on
0	11/24, "Unfortunately the process is taking longer
1	than anticipated."
2	Q. To scan the files?
3	 Scan the files and to substitute in.
4	Q. Well, the the e-mail that Mr. Crenshaw
5	is responding to that you're quoting is in response

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the experts, as I learned, were not complying with

the notary requirements, as dictated by the statute.

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Page 218 1 of the year. She was kind enough that -- she was not, by any means, terminated. She knew that -- she 2 asked me what my plans were, and I told her, "I'm 3 done, " so she moved on. Was Ms. Mendieta terminated in connection with her performance as an attorney manager for the law firm? Yes, sir. A. And what was the nature or the reason for 9 ο. the termination? 10 Her inability to manage the expert 11 Α. attorneys properly and to insure that her attorneys 12 would adhere to the notary guidelines and the 13 attorneys signing things outside of the presence of 14 the notary. 15 MR. TEW: You talking about the expert 16 17 attorney? THE WITNESS: I'm talking about the expert attorneys, yeah. MR. TEW: Okay. 21 BY MR. BILIK: 22 And when you say "expert attorneys," what 23 are you referring to? A. There is an affidavit that is utilized as 24 to the reasonableness of attorney's fees and some of

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Miriam had told me that there was a process in place for the experts to utilize. And I found out that that process had been put into place about a month earlier as opposed to the process that was in place at the time I controlled that area and that -- that went back to 2003, 2004. And I asked her if there were any issues, and she told me there wasn't. 10 And then I had learned through an 31 12 independent investigation conducted by Greenberg 13 Traurig, at the request of the public company's audit 14 company, that several or a couple at least of the 15 expert attorneys were not doing things properly. So I confronted Miriam with it and I told her to leave. 16 17 Q. So Greenberg Traurig performed an independent audit at -- on behalf of DJSP Enterprises, Inc.? 19 20 Q. Was that audit limited to issues related 21 to notaries or was there a broader purpose? 22 A. Broader purpose. 23 What was the broader purpose? 24 A. I don't have the full scope of it because 25 Veritext Florida Reporting Co.

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it was something done by the audit committee. I was just given the findings that they wanted to disclose to me. There was not a written report; therefore. the issues that were brought to my attention involved the expert affidavit defects.

O. Was that prompted by the Florida Attorney General's investigation or another -- do you know what prompted the audit performed by Greenberg Traurig?

A. I believe it was prompted by the AG investigation and the allegations in the deposition of Tammie Kapusta.

Q. Did you advise Bank of America or any of your other bank clients of the results of the audit?

Yes. I did. A.

In what manner did you advise them?

Well, remember the audit -- all that happened as clients were pulling files. So it was too late. I mean when clients came in to review or talk, I told them everything that I knew.

And my agreement with Fannie Mae was anything that I learned or anything that I, A, know of I would disclose to them.

And, of course, anything that I knew of would have been information that when it was brought Case 1:11-cv-21349-FAM Document 132-1 Entered on FLSD Docket 10/22/2012 Page 16 of

Exhibit 1, it's the topics of inquiry. Look at topic 10 at the bottom of the page and it continues onto the next page. A. Okay. O. And the question I have for you, Mr. Stern, is whether as the head of the law firm it would have been brought to your attention if canctions were awarded or entered against Bank of America or one of your other bank clients as a result of your law firm doing or not doing something? 10 11 MR. TEW: Can we have a time frame? BY MR. BILIK: 12 13 Q. 2010. Before the termination. It would absolutely 100 percent be -- my 14 requirement has always been my requirement -- that if 15 there is sanction, award of attorney's fees, default 16 entered that shouldn't be entered, case is dismissed, 17 that that be brought to my attention immediately so I 18 can reach out to the client so they hear it from me 19 and they not find out from one of my associates or by 20 a letter. That was kind of our forte. 21 And certainly with the volume we handled 22 there were mistakes made. When you look at the 23 number of files versus the mistakes, the mistakes 24

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were -- were less than 1 percent. And clients are Veritext Florida Reporting Co.

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1 out. Really wasn't worried about it because I had felt that we had not done anything wrong. 3 I did have a conversation with Bonnie 4 Dunn, vendor manager, about the attorney general 5 investigation, and I told her that my position was 6 that it was unfounded, we were cooperating with them 7 and that if anything came out of it, that I would let 8 her know. And I had that conversation with many of 10 my -- with all of my large clients and some of the 11 smaller clients. I wanted them to hear it from me 12 because that's just the way I always did business. Well, except with respect to the Greenberg 14 Traurig investigation and audit findings, you didn't 15 think it was the way you should do business with Bank 16 of America? I didn't have time, as I previously A. 18 testified. I never said I didn't think I didn't -- I 19 didn't think that I shouldn't tell them. I had 20 previously testified, and will continue to testify, 21 that I did not have an opportunity to disclose that 22 to them, and by the time I had the opportunity, it 23 didn't make any difference. Q. And I understand your testimony, 25 Mr. Stern, that it was your belief that the Florida

BY MR. BILIK: 1 Q. How many clients had terminated your law 2 firm as of November 10th? ٦ A. I -- I'm not sure of the exact date but certainly by the end of November 75 percent of the clients had terminated us. O. At some point in time, you made the decision based on the terminations resulting from or as an outflow from the Florida AG investigation, that 10 you were not going to be able to continue providing 11 foreclosure services? 12 A. No, sir. I made the decision that I did not want to provide foreclosure services. I believe my previous testimony was I really thought Bank of 14 America was going to hang in there with us. They 15 understood because they had the issue with 16 17 Had Bank of America not pulled, and said, 18 "David, keep the work," I would probably be at the 19 office right now working their files. 20 Q. Which -- which of your clients wanted you 21 to continue providing legal services as of 22 December 1st. 2010? 23 A. I don't recall. 24 O. You said there were 25 percent of your

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Page 259 BY MR. BILIK: Q. Second sentence. Okay. The indemnification provisions in this agreement shall survive. Yes. sir. And then it does go on -- this is where you were reading ahead. In the event of termination, the firm -- that would be your law firm -- will forward to Countrywide as soon as possible, and not later than five days of receipt of such notice, a 10 current and updated status report on each loan 11 together with substitutions of counsel for all active handle -- or all active files being handled by the 14 And with respect to the termination in 15 16 November 2010, that did not occur? My understanding is that reports did go 17 out. My understanding is that Norman set up a portal 18 which kept Mr. Crenshaw updated of pleadings that 19 came through. That was my previous testimony. 20 O. Okav. Is it your testimony that this --21 this report or list and portal were set up within 22 five business days of the termination? 23 I don't know when the status was done. And I'm not certain if Norman got it done within five Case 1:11-cv-21349-FAM Document 132-1 Entered on FLSD Docket 10/22/2012 Page 20 of Page 260

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days or if it took ten days. Q. You don't know when -- you don't know when it was completed? 3 A. No. sir, I don't. But it's your testimony that you believe 5 that a portal was actually completed that Bank of 6 America could access electronically? A. I know for a fact that the portal was established and that the documents were transmitted to Mr Crenshaw through that portal. I know that for 10 a fact. I also know for a fact that we provided 11 reports to Mr. Crenshaw. 12 13 Were those reports and that information 14 provided through BAC Connect, the existing Bank of America system for communications with outside 15 foreclosure counsel? 16 A. They were provided to Mr. Crenshaw 17 electronically. 18 Q. Okay. My question was: Was that provided 19 through BAC Connect, which is an existing system that 20 the bank had in place for communicating with its 21 outside law firms? 22 A. No. we'd been --23 MR. TEW: You mean after termination? 24 25

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of America promissory notes?

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A. Well, if we look at Exhibit 17, it concerns that -- it confirms that my client, meaning me, would turn over to BA all files. Let's see, I've reviewed the agreement and consulted with my client. This will confirm that my client intends to turn over the BA files as soon as possible and not withhold

Are we talking files or are we talking original notes?

- Q. Mr. Stern, you're aware that when the Bank of America representatives and the Akerman lawyers were all on site in your offices in November 2010, they were collecting, packaging up, and carrying away original notes?
- A. I thought they were. That was my testimony. So, yeah, I thought they were. And as I read this document request, I'm asking myself what I thought was that incorrect or is this incorrect. So I obviously have testified that I believe they got everything. I think there's enough e-mail here that clearly got -- they got the files because it was taking them longer than anticipated to get them copied. I believe that they got everything, notes and files. So I am questioning my recollection of

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EXHIBIT O TO THE DECLARATION OF JOHN W. SMITH T

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

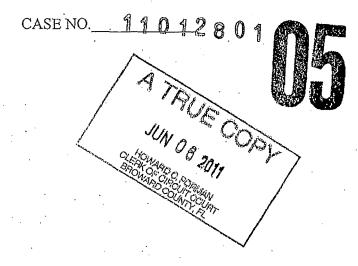
THE LAW OFFICES OF DAVID J. STERN, P.A.

Plaintiffs,

٧.

GMAC MORTGAGE, LLC

Defendant:



COMPLAINT

The Law Offices of David J. Stern, P.A. sues GMAC Mortgage, LLC and alleges:

JURISDICTION AND VENUE

- 1. This is an action in excess of \$15,000.00, exclusive of attorney's fees, costs, and interest, and within the jurisdiction of this Court.
- 2. Plaintiff, The Law Offices of David J. Stern, P.A. ("DJSPA"), is a Florida corporation with its principal place of business in Plantation, Florida.
- 3. Defendant, GMAC Mortgage, LLC ("GMAC"), is a foreign limited liability company with its principal place of business in Pennsylvania that is authorized to do business in Florida.
- 4. GMAC is subject to jurisdiction in this forum because it operates, conducts, engages in and carries on business in the State of Florida; it owns, possesses and holds mortgages and other liens on real property in this State; it breached a contract in this State by

failing to perform acts required by the contract to be performed in this State; and it engages in substantial and not isolated activity within this State.

- 5. Venue is proper in Broward County because the cause of action accrued in Broward County.
- 6. All conditions precendent to filing this action have been performed or have occurred.

Count I. Breach of Contract

- 7. DJSPA realleges paragraphs 1 through 6 as if fully set forth herein.
- 8. GMAC and DJSPA entered into an oral contract for DJSPA to provide legal and related services to GMAC.
- 9. GMAC breached the contract by failing to pay DJSPA for the services it provided to GMAC.
- 10. DJSPA was damaged by GMAC's breach of contract.

WHEREFORE, DJSPA demands judgment for damages against GMAC, plus interest and costs.

Count II. Open Account

- 13. DJSPA realleges paragraphs 1 through 6 as fully set forth herein.
- 14. GMAC owes DJSPA \$6,161,483.70 that is due with interest since February 11, 2011 according to the account, attached as Exhibit A, a copy of the account was previously provided to GMAC in an Excel spreadsheet.

WHEREFORE, DJSPA demands judgment for damages against GMAC, plus interest and costs.

Count III. Account Stated

- 15. DJSPA realleges paragraphs 1 through 6 as fully set forth herein.
- 16. Before the institution of this action DJSPA and GMAC had business transactions between them and on February 25, 2011 agreed to the resulting balance.
- 17. DJSPA rendered a statement of it to GMAC and GMAC did not object to the statement. The statement rendered was comprised of Exhibit B and Exhibit A attached hereto.
- 18. GMAC owes DJSPA \$6,161,483.70 that is due with interest since February 11, 2011 on the account.

WHEREFORE, DJSPA demands judgment for damages against GMAC, plus interest and costs.

DATED:

June 2, 2011

TEW CARDENAS LLP

Counsel for The Law Offices of David J. Stern, P.A.

The Four Seasons Tower 1441 Brickell Avenue, 15th Floor Miami, Florida 33131-3407

Telephone: 305.536.1112 Facsimile: 305.536.1116

By:

JEÉERÉY A. TEW

Florida Bar No. 121291 MATIAS R. DORTA

Florida Bar No. 770817

551825.1

EXHIBIT P TO THE DECLARATION OF JOHN W. SMITH T

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA FT. LAUDERDALE DIVISION

THE LAW OFFICES OF)
DAVID J. STERN, P.A.,)
Plaintiff,) Case No.: 11-CV-61526
VS.) DEFENDANT'S ANSWER
GMAC MORTGAGE, LLC,) WITH COUNTERCLAIM)
Defendant.)

ANSWER AND COUNTERCLAIMS OF DEFENDANT

Defendant GMAC Mortgage, LLC ("GMACM"), by its undersigned attorneys, for its Answer to Plaintiff's Complaint in this action, hereby states the following:

Jurisdiction and Venue

- 1. Paragraph 1 of the Complaint states a legal conclusion to which no response is required, but to the extent a response may be required, GMACM admits that this Court has jurisdiction over the controversy.
 - 2. Admitted.
 - 3. Admitted.
- 4. GMACM admits that it is subject to jurisdiction in Florida, including because it engages in certain business activities in Florida, but GMACM denies that "it breached a contract in this State by failing to perform acts required by contract to be performed in the State," as alleged in Paragraph 4 of the Complaint.

- 5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required, but to the extent a response may be required, GMACM admits that venue is proper in this District.
- 6. Paragraph 6 of the Complaint states a legal conclusion to which no response is required. GMACM is otherwise unaware of the "conditions precedent" as alleged by Plaintiff in paragraph 6 and can not admit or deny such allegations.
- 7. With respect to the allegations contained in paragraph 7 of the Complaint, GMACM realleges paragraphs 1 through 6 above.
- 8. GMACM admits that it hired DJSPA to provide various legal services to GMACM pursuant to a Master Services Agreement, Statements of Work and Change Orders, as amended, all of which speak for themselves.
 - 9. Denied.
 - 10. Denied.
 - 11. The Complaint omits paragraph 11.
 - 12. The Complaint omits paragraph 12.
- 13. With respect to the allegations contained in paragraph 13 of the Complaint, GMACM realleges paragraphs 1 through 12 above.
 - 14. Denied.
- 15. With respect to the allegations contained in paragraph 15 of the Complaint, GMACM realleges paragraphs 1 through 14 above.
- 16. GMACM admits that it has had business transactions with DJSPA. GMACM otherwise denies the allegations of paragraph 16.
 - 17. Denied.

18. Denied.

DEFENSES

First Defense

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Second Defense

2. Plaintiff has failed to mitigate its damages.

Third Defense

3. Plaintiff's claims are barred by the applicable statute of limitations.

Fourth Defense

4. Plaintiff has failed to join indispensable parties to this action.

Fifth Defense

5. Plaintiff's claims are barred and/or limited by Plaintiff's own material breach of its professional and contractual duties to GMACM.

Sixth Defense

6. The monetary relief sought by Plaintiff is unavailable to the extent that GMACM is entitled to set off and/or recoup monies from Plaintiff, including but not limited to, sums that exceed any amounts which Plaintiff might otherwise be entitled to recover.

Seventh Defense

7. Plaintiff is barred from recovery on the grounds of waiver, estoppels, laches, unclean hands and unjust enrichment.

Eighth Defense

8. The alleged "account" attached to the Complaint as Exhibit A does not satisfy the legal requirements of an open account.

Ninth Defense

9. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to perform the services and/or costs referenced in the alleged "account" attached to the Complaint as Exhibit A in accordance with the terms and conditions of the parties' contract.

Tenth Defense

10. Defendant is entitled to a set-off for any monies paid to Plaintiff by third parties with respect to the services and/or costs that Plaintiff seeks to recover herein.

Eleventh Defense

11. Plaintiff's claims are barred, at least in part, because the Plaintiff has already received the compensation due and owing regarding at least certain of the files at issue.

COUNTERCLAIMS BY DEFENDANT

For its Counterclaims against Plaintiff, Defendant GMACM hereby states the following:

- 1. Defendant GMACM asserts these Counterclaims to redress Plaintiff's breach of contract and Plaintiff's wrongful conduct including Plaintiff's failure to meet the minimum standard of professional care in the performance of legal services to and/or on behalf of GMACM, which has resulted in substantial damage to GMACM.
- 2. The Court has original jurisdiction over Defendant's Counterclaims pursuant to 28 U.S.C. § 1332.

Jurisdiction and Venue

3. At all relevant times, Defendant-Counterplaintiff GMACM has been a Delaware limited liability company with its principal place of business in Pennsylvania. No member of Defendant is a citizen of Florida.

- 4. At all relevant times, Plaintiff-Counterdefendant the Law Offices of David J. Stern, P.A. ("DJSPA") has been a professional association formed under the laws of the State of Florida, consisting of one or more persons licensed to practice law in the State and maintaining its principal place of business at 900 S. Pine Island Road, Plantation, Florida 33324.
- 5. At all relevant times, DJSPA held itself out as specializing in handling residential mortgage foreclosures, bankruptcy, evictions, the sale of real estate owned ("REO") properties by foreclosing lenders, and foreclosure-related complex litigation in the State of Florida.
- 6. At all relevant times, David J. Stern ("Stern") has been an attorney duly licensed to practice law in the State of Florida and the principal or owner of DJSPA.
- 7. In or about 2007, GMACM hired DJSPA to provide legal services of the kind described in paragraph 5 above.
- 8. Pursuant to the parties' attorney-client relationship, DJSPA executed a Master Services Agreement and Statement of Work which was amended and modified from time-to-time.
- 9. During the period from about 2007 until November 2010, DJSPA performed legal work on behalf of GMACM. At relevant times, nonlegal support services for the legal work provided by DJSPA to GMACM was performed by one or more separately-incorporated entities in which David Stern held a substantial interest and/or over which David Stern maintained substantial control. Such nonlegal work was done at the direction and under the oversight of DJSPA.

Disclosures of Plaintiff's Practices Failing to Meet the Minimum Standard of Care

10. On or about August 4, 2010, Mother Jones, a nonprofit news organization that styles itself as specializing in investigative, political and social justice reporting, published an

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article written entitled "Fannie and Freddie's Foreclosure Barons." The Mother Jones article was highly critical of DJSPA's practices in handling mortgage foreclosures in Florida and reported on allegations that DJSPA was backdating assignment of mortgage documents in foreclosure cases and allegedly "lying to the court."

- 11. The Mother Jones article quoted a written ruling by a Pasco County judge, who, "upon discovering that [DJSPA] had fudged an assignment of mortgage in a case before her court . . . dismissed the case with prejudice" in March 2010, stating in her written ruling that "[t]he execution date and notorial date" on the document "were fraudulently backdated, in a purposeful, intentional effort to mislead the defendant and this court."
- 12. The Mother Jones article described a deposition under oath, taken by a foreclosure defense firm on May 20, 2009 of Cheryl Samons, whom the article described as DJSPA's "top deputy." According to the article, Ms. Samons was allegedly confronted during this deposition with a number of "backdated documents," which "looked like a pattern," but which the witness allegedly described as "just a mistake."
- 13. Since in or about 1994, Cheryl Samons has been employed by DJSPA as operations manager, reporting directly to Stern. Ms. Samons has also served as operations manager during relevant periods for DJSPA's processing division and/or for DJS Processing, LLC, a corporate entity created by DJSPA and/or Stern to provide non-legal services required to process foreclosure files and ancillary services for DJSPA.
- 14. On or about August 10, 2010, following the Mother Jones article, Florida Attorney General Bill McCollum announced that his office had launched an investigation into allegations of unfair and deceptive actions by DJSPA regarding its handling of foreclosure cases in the State of Florida. Upon information and belief, this investigation is ongoing.

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- 15. On or about September 4, 2010, the New York Times published a comprehensive article on the unprecedented number of home mortgage delinquencies and foreclosures being handled in the State of Florida. It reported that according to "analysts and lawyers involved in the process" some law firms representing banks were engaged in "questionable practices" and specifically referenced DJSPA and the fact that it was being investigated by the Florida Attorney General.
- 16. Public reports emerged during this same time frame of additional deposition testimony that had been elicited from current or former employees of DJSPA, witnesses that were questioned under oath by foreclosure defense attorneys or by the Florida Attorney General's office as part of its investigation. This deposition testimony raised additional concerns about the foreclosure-related practices engaged in by DJSPA.
- 17. Transcripts became publicly-available of the deposition testimony taken under oath of certain present or former employees of DJSPA. In these depositions, the witnesses described foreclosure-related practices by Stern and/or DJSPA, which, as described, involved acts of professional malpractice and/or breaches of professional duties owed by attorneys subject to the Rules for Professional Conduct for Florida Lawyers.
- 18. The sworn deposition testimony of these witnesses contained accusations against DJSPA and/or Stern that included, among other accusations, the following:
 - (i) causing and/or permitting DJSPA's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) causing and/or permitting DJSPA's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;

- (iii) causing and/or permitting DJSPA's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
- (iv) causing and/or permitting DJSPA's employees to sign the name of another person on foreclosure-related documents without any indication of that fact on the documents;
- (v) charging clients such as GMACM substantial fees and costs for legal services that DJSPA knew or should have known fell below the minimum standard of professional care owed by DJSPA.
- 19. Upon information and belief, Stern himself has admitted that allegations made about DJSPA's improper procedures are true.
- 20. In light of the on-going investigations by the Florida Attorney General, as well as other events and information, GMACM contacted DJSPA and conducted an on-site review of many of GMACM's files maintained by DJSPA.
- 21. On or about November 16, 2010, GMACM terminated its relationship with DJSPA and sought to recover its files from DJSPA.
- 22. DJSPA refused to release any files to GMACM until GMACM placed funds allegedly owed to DJSPA into escrow. In order to obtain its files as quickly as possible, GMACM agreed to this arrangement, without conceding that any amounts were owed to DJSPA.
- 23. Since recovering its files from GMACM, GMACM has expended significant time and money transitioning files to other law firms. Upon information and belief, GMACM has expended over \$1.5 million in order to recover and transition files previously handled by DJSPA.
- 24. Because of its concern over the allegations and evidence of unprofessional practices followed by DJSPA, GMACM directed these newly-assigned law firms to review the recovered files and to take appropriate steps to attempt to remedy errors committed by DJSPA, as well as re-initiating foreclosure proceedings, in whole or part, due to concerns over the

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documents previously filed by DJSPA.

- 25. GMACM has since learned that DJSPA committed gross malpractice in the handling of GMACM matters. For example, in one foreclosure matter assigned to DJSPA for handling, DJSPA failed to communicate to GMACM that counterclaims had been brought. Indeed, DJSPA neglected to put forward any defense to such counterclaims, with the result that a default judgment was entered on or about May 5, 2011 for over \$450,000. DJSPA's conduct in this and other instances has been wanton or reckless.
- 26. By reason of the foregoing, GMACM has incurred, and may continue to incur in the future, substantial costs attributable to the following: (i) costs associated with conducting its review of DJSPA's files, policies and practices; (ii) costs associated with the need to seize numerous files previously maintained and handled by DJSPA; and (iii) costs associated with having newly-assigned law firms to conduct a review of the recovered files seized from DJSPA and to correct errors and re-initiate foreclosure proceedings as appropriate.
- 27. By reason of the foregoing, GMACM has also incurred, and may continue to incur in the future, substantial additional costs attributable to the following: (i) the cost of paying duplicative legal fees and court costs to the newly-assigned law firms for handling the files from DJSPA; (ii) the time value cost of money lost due to any additional delays in prosecuting the files from DJSPA; and (iii) the cost of foreclosure-related fees and costs previously incurred and paid on the recovered files when handled by DJSPA.

COUNT I (Legal Malpractice)

28. GMACM repeats and realleges the allegations of paragraphs 1-27 of this Counterclaim as if fully set forth herein.

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- 29. During the relevant period, an attorney-client relationship existed between DJSPA and GMACM.
- 30. DJSPA, including its attorneys individually, owed a duty of professional care to GMACM with respect to the legal services provided by DJSPA, including the duty to comply with all applicable Rules Regulating the Florida Bar, including: (1) the duty to control the law firm's workload so that each matter can be handled for the client adequately and within the accepted standard of professional care for a law firm in the State of Florida in accordance with Florida Bar Rule 4-1.3; (2) the duty to take reasonable measures to ensure that non-lawyer conduct is compatible with professional obligations of the lawyer in accordance with Florida Bar Rule 4-5.3; (3) the duty to keep a client reasonably informed and to explain a matter to the client to the extent reasonably necessary for the client to make informed decisions about the lawyer's professional handling of the client's matters in accordance with Florida Bar Rule 4-1.4; (4) the duty to deal honestly with third parties when acting on behalf of the client in accordance with Florida Bar Rule 4-4.1; and (5) the duty not to engage in conduct otherwise involving dishonesty or misrepresentation in accordance with Florida Bar Rule 4-8.4.
- 31. DJSPA negligently, recklessly and/or wantonly breached its professional duties owing to GMACM by, among other things:
 - (i) causing and/or permitting DJSPA's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) causing and/or permitting DJSPA's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
 - (iii) causing and/or permitting DJSPA's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;

- (iv) causing and/or permitting DJSPA's employees to sign the name of another person on various foreclosure-related documents without any indication of that fact on the documents;
- (v) charging GMACM substantial fees and costs for legal services that DJSPA knew or should have known was not in accordance with the terms and conditions of its agreement with GMACM and that fell below the minimum standard of professional care owed by DJSPA to GMACM;
- (vi) providing legal work on behalf of GMACM as to various files assigned to DJSPA that fell below the applicable standard of care; and
- (vii) committing acts or omissions that have subjected GMACM to claims, losses and liabilities of third-parties.
- 32. As a result of the DJSPA's breach of its professional duties to GMACM, GMACM has suffered, and may continue to suffer in the future, substantial damages in an amount to be determined, but believed to be well in excess of \$75,000 not including interest or costs.

COUNT II (Defendants' Breach of Contract)

- 33. GMACM repeats and realleges the allegations of paragraphs 1-32 of this Counterclaim as if fully set forth herein.
- 34. By reason of the Master Services Agreement ("MSA") and Statement of Work, as subsequently modified and amended, a valid contract existed between and among the DJSPA and GMACM. Among other things, pursuant to the contract between DJSPA and GMACM, DJSPA -- which is designated as "Company" in the MSA agreed as follows:
 - 6.1 Company represents and warrants that the Services will be performed in a diligent and workmanlike manner in accordance with good industry practices, by individuals of suitable training and skill.
 - 6.2 Company represents and warrants that the Services and all Deliverables provided under this Agreement shall comply with and function in accordance with the requirements set forth in this

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Agreement and the Statement of Work.

- 6.4 Company represents and warrants that Company's actions and performance of the Services are and will be in full compliance with all applicable federal, state, and local requirements, including but not limited to, federal banking laws, federal consumer protection and privacy laws; all applicable state laws and regulations; any valid and effective order (including regulatory orders), verdict, judgment, consent decree or agreement.
- 6.6 Company represents and warrants that it has, and will maintain throughout the Term of this Agreement, all licenses, franchises, permits, authorizations and approvals materially necessary for the lawful conduct of its business.
- 8.8 Company shall take appropriate measures to select, supervise and monitor the personnel performing Services. Company shall maintain current employment eligibility verification records, including necessary certification and documentation and insurance for its employees performing Services hereunder. Company will not conduct disciplinary actions with respect to Company personnel while on Client's premises, including but not limited to terminating employment of Company personnel.
- **Indemnification.** Each party (each an "Indemnitor") shall, at its 13.2 own expense, defend, indemnify and hold harmless the other party and its employees, officers, directors, licensees, representatives, attorneys, parents, subsidiaries, successors, assigns and agents (each of the foregoing an "Indemnitee") from and against any and all liabilities, claims, actions, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising out of any third-party claims(s) for bodily injury to or death of any person or for damage, loss or destruction of tangible real property or tangible personal property caused by the negligent acts or omissions, recklessness or willful misconduct of Indemnitor and its employees, agents, and representatives. The Indemnitor will defend Indemnitee against such claims at Indemnitor's sole expense and pay all court awarded damages relating to such claims. The Indemnitee agrees to notify the Indemnitor in a timely manner in writing of the claim, and grant Indemnitor the right to control the defense and disposition of such claims provided that no settlement requiring any financial payment from Indemnitee or admission of liability by Indemnitee shall be made without Indemnitee's prior written approval.

- 35. DJSPA breached its material contractual obligations owed to GMACM by, among other things:
 - (i) causing and/or permitting DJSPA's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) causing and/or permitting DJSPA's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
 - (iii) causing and/or permitting DJSPA's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
 - (iv) causing and/or permitting DJSPA's employees to sign the name of another person on various foreclosure-related documents without any indication of that fact on the documents;
 - (v) charging GMACM substantial fees and costs for legal services that DJSPA knew or should have known fell below the minimum standard of professional care owed by DJSPA to GMACM;
 - (vi) providing legal work on behalf of GMACM as to various files assigned to DJSPA that fell below the applicable standard of care; and
 - (vii) committing acts or omissions that have subjected GMACM to claims, losses and liabilities of third-parties.
- 36. As a result of DJSPA's breach of its material contractual obligations to GMACM, GMACM has suffered, and may in the future continue to suffer, substantial damages in an amount to be determined, but believed to be well in excess of \$75,000 not including interest or costs.

COUNT III (Defendants' Breach of Fiduciary Duty)

37. GMACM repeats and realleges the allegations of paragraphs 1-36 of this Counterclaim as if fully set forth herein.

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- 38. As a result of the attorney-client relationship that existed between DJSPA and GMACM, DJSPA further owed a fiduciary duty to act in the interest of and for the benefit of GMACM.
 - 39. DJSPA breached its fiduciary duty to GMACM by, among other things:
 - (i) causing and/or permitting DJSPA's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) causing and/or permitting DJSPA's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
 - (iii) causing and/or permitting DJSPA's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
 - (iv) causing and/or permitting DJSPA's employees to sign the name of another person on various foreclosure-related documents without any indication of that fact on the documents;
 - (v) charging GMACM substantial fees and costs for legal services that DJSPA knew or should have known fell below the minimum standard of professional care owed by DJSPA to GMACM; and
 - (vi) providing legal work on behalf of GMACM as to various files assigned to DJSPA that fell below the applicable standard of care.
 - (vii) failing to handle the matters assigned to DJSPA with honesty, forthrightness, loyalty and fidelity.
- 40. As a result of DJSPA's breach of its fiduciary duty to GMACM, GMACM has suffered, and may continue to suffer in the future, substantial damages in an amount to be determined, but believed to be well in excess of \$75,000 not including interest or costs.

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COUNT IV (Florida's Deceptive and Unfair Trade and Practices Act)

- 41. GMACM repeats and realleges the allegations of paragraphs 1-40 of the Counterclaim as if fully set forth herein.
- 42. This cause of action is brought by GMACM for DJSPA's violations of the Florida Deceptive and Unfair Trade Practices Act, Florida Stat. § 501.201, et seq.
- 43. GMACM is a "person" entitled under Florida Stat. § 501.211(2) to recover actual damages, plus attorney's fees and court costs, for a loss suffered as a result of the DJSPA's violation of the Florida Deceptive and Unfair Trade Practices Act.
- 44. At relevant times, DJSPA committed unconscionable acts or practices and/or unfair or deceptive acts or practices in the conduct of their trade or commerce in violation of Florida Stat. § 501.204(1).
- 45. DJSPA's unconscionable acts or practices and/or unfair or deceptive acts or practices in the conduct of their trade or commerce include, among other things, the following:
 - (i) on numerous occasions during the relevant time period, DJSPA charged GMACM substantial fees and costs for legal services that DJSPA knew or should have known fell below the minimum standard of professional care owed by the DJSPA to GMACM; and
 - (ii) DJSPA committed reckless or wanton acts of misconduct in the handling of legal matters entrusted to DJSPA by GMACM.
- 46. As a direct result of the foregoing practices and acts committed by the DJSPA in violation of Florida Stat. § 501.204(1), GMACM has suffered a substantial loss in an amount to be determined, but believed to be well in excess of \$75,000 not including interest or costs.

47. By reason of the foregoing, GMACM is entitled to recover its actual damages from DJSPA, plus its court costs and attorneys' fees, pursuant to Florida Stat. § 501.211(2).

COUNT V (Misrepresentation/Suppression)

- 48. GMACM repeats and realleges the allegations of paragraphs 1-47 of this Counterclaim as if fully set forth herein.
- 49. On numerous occasions during the existence of the attorney-client relationship between DJSPA and GMACM, DJSPA submitted to GMACM invoices, each of which purported to accurately state DJSPA's legal fees and expenses incurred to perform the work in a competent, professional manner.
- 50. In each instance, DJSPA submitted the invoices with the intent that GMACM would reimburse DJSPA for the legal fees and expenses set forth in the invoices.
- 51. In many instances, DJSPA submitted invoices that contained descriptions of work not actually performed, work that had previously been paid for, and work that had previously been rejected as unnecessary, untimely or excessive, in an effort to obtain payment that DJSPA knew or should have know was improper. Such invoicing was therefore false and deceptive.
- 52. DJSPA was at least negligent in making the representations contained in each of these invoices.
- 53. DJSPA submitted these invoices intending that GMACM would rely upon the representation that was false.
- 54. DJSPA reasonably or justifiably relied upon these false representations contained in the invoices, making payment that should not have been made.
- 55. DJSPA further had a duty to disclose material information to GMACM, including information relating to the legal work DJSPA was responsible for handling on behalf of

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GMACM.

56. DJSPA failed to disclose such material information to GMACM which has subjected GMACM to claims, losses and liabilities.

57. As a proximate result of DJSPA's misrepresentations and/or suppressions, GMACM has suffered and/or will suffer substantial damages in an amount to be determined, but believed to be well in excess of \$75,000 not including interest or costs.

WHEREFORE, GMACM respectfully requests the following relief:

1) With respect to DJSPA's claims, judgment in GMACM's favor dismissing the claims with prejudice, together with GMACM's costs and disbursements;

2) With respect to GMACM's Counterclaims, a judgment awarding compensatory and punitive damages in favor of GMACM and against DJSPA, together with such pre-judgment and post-judgment interest as may be awarded according to law, GMACM's attorney's fees, and GMACM's costs and disbursements; and

3) Such other and further relief as may be just and proper.

DATED this the 15th day of July, 2011.

/s/D. Brian O'Dell

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Decl. Exhibit P Pg 19 of 19

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ATTORNEYS FOR DEFENDANT GMAC MORTGAGE, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing on:

Jeffrey A. Tew
Matias R. Dorta
Tew Cardenas, LLP
The Four Seasons Tower
1441 Brickwell Avenue, 15th Floor
Miami, FL 33131-3407
305-536-1112
jt@tewlaw.com
mrd@tewlaw.com

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to his regular mailing address, on this 15th day of July, 2011.

/s/ D. Brian O'Dell
OF COUNSEL

EXHIBIT Q TO THE DECLARATION OF JOHN W. SMITH T

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No.: 11-60623-CIV-SEITZ/SIMONTON

THE LAW OFFICES OF DAVID J. STERN, P.A.,

DEFENDANT/COUNTER-PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiff/Counter-Defendant,

VS.

FEDERAL HOME LOAN MORTGAGE CORP.,

Defendant/Counter-Plaintiff,	
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FEDERAL HOME LOAN MORTGAGE CORPORATION'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT AND DEFENDANT/COUNTER PLAINTIFF'S COUNTERCLAIM

Defendant, Federal Home Loan Mortgage Corporation ("Freddie Mac"), by its undersigned attorneys, files its Answer, Affirmative Defenses, and Counterclaim to the Amended Complaint docketed by Plaintiff The Law Offices of David J. Stern, P.A. ("the Stern law firm"), on March 21, 2012 at docket entry no. 62 (the "Amended Complaint"), and Freddie Mac hereby states the following:

Jurisdiction and Venue

- 1. Paragraph 1 of the Amended Complaint states a legal conclusion to which no response is required, but to the extent a response may be required, Freddie Mac admits that this Court has jurisdiction over the controversy pursuant to 12 U.S.C. § 1452(f).
- 2. Freddie Mac admits the allegations contained in paragraph 2 of the Amended Complaint.

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- 3. Freddie Mac admits the allegations contained in paragraph 3 of the Amended Complaint.
- 4. Paragraph 4 of the Amended Complaint states a legal conclusion to which no response is required, but to the extent a response may be required, Freddie Mac admits that venue is proper in this District pursuant to 28 U.S.C. § 1391(b).
- 5. Paragraph 6 of the Amended Complaint states a legal conclusion to which no response is required, but to the extent a response may be required, Freddie Mac denies the allegations contained in paragraph 5.

Count I. Breach of Contract

- 6. With respect to the allegations contained in paragraph 6 of the Amended Complaint, Freddie Mac realleges paragraphs 1 through 5 of this Answer as though set forth at length herein.
- 7. Freddie Mac admits the allegations contained in paragraph 7 of the Amended Complaint, except respectfully refers the Court to the contract that is attached as Exhibit A to the original Complaint, which speaks for itself.
- 8. Freddie Mac denies the allegations contained in paragraph 8 of the Amended Complaint.
- 9. Freddie Mac denies the allegations contained in paragraph 9 of the Amended Complaint.

Count II Open Account

10. With respect to the allegations contained in paragraph 10 of the Amended Complaint, Freddie Mac realleges paragraphs 1 through 9 of this Answer as though set forth at length herein.

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11. Freddie Mac denies the allegations contained in paragraph 11 of the Amended Complaint.

AFFIRMATIVE DEFENSES

First Defense

15. The Stern law firm is not entitled to recover on its open account claim as the open items identified concern services allegedly provided to Freddie Mac directly and services allegedly provided to certain financial institutions that serviced loans owned by Freddie Mac (the "Freddie Mac Servicers"), that are subject to and governed by express terms and conditions contained in written contracts between Freddie Mac and the Stern law firm and/or between each of the Freddie Mac Servicers and the Stern law firm. Those written contracts are the subject of the Stern law firm's own breach of contract claim asserted against Freddie Mac in this action and the Stern law firm's breach of contract claim asserted against each of the Freddie Mac Servicers in numerous other federal and state court actions commenced by the Stern law firm.

Second Defense

16. Insofar as the Stern law firm's open account claim is an equitable claim, the Stern law firm is barred from recovery based on the doctrine of unclean hands due to the Stern law firm's unconscionable conduct related to the services for which it seeks recovery. This defense is based on the Stern law firm's unconscionable conduct as described in factual allegations and legal claims contained in Freddie Mac's Counterclaim against the Stern law firm and Freddie Mac anticipates developing additional facts during the course of discovery and/or through further investigation.

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Third Defense

15. If and to the extent that the Stern law firm is otherwise entitled to any recovery on its claims, which Freddie Mac denies, Freddie Mac is entitled to a set-off with respect to any and all transactions between the Stern law firm and Freddie Mac that are extrinsic to the transactions that are the subject of the Stern law firm's claims against Freddie Mac in its Amended Complaint. Freddie Mac's right to a set-off regarding any such extrinsic transactions is based on factual allegations and legal claims contained in Freddie Mac's Counterclaim against the Stern law firm and Freddie Mac anticipates developing additional facts during the course of discovery and/or through further investigation.

Fourth Defense

16. If and to the extent that the Stern law firm is otherwise entitled to any recovery on its claims, which Freddie Mac denies, Freddie Mac is entitled to a right of recoupment with respect to any and all transactions that arise out of the same transactions that are the subject of the Stern law firm's claims against Freddie Mac in its Amended Complaint. The right of recoupment is based on factual allegations and legal claims contained in Freddie Mac's Counterclaim against the Stern law firm and Freddie Mac anticipates developing additional facts during the course of discovery and/or through further investigation.

Fifth Defense

17. If and to the extent that the Stern law firm is otherwise entitled to any recovery on its claims, which Freddie Mac denies, the Stern law firm's recovery should be barred based on public policy grounds. This defense is based on factual allegations

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contained in Freddie Mac's Counterclaim against the Stern law firm as well additional facts Freddie Mac anticipates developing during the course of discovery and/or through further investigation.

Sixth Defense

18. The Stern law firm's claims are barred to the extent that its damages were caused, in whole or in part, by the Stern law firm's own breach of the contract or contracts upon which it bases its breach of contract claim in the Amended Complaint against Freddie Mac. This defense is supported by factual allegations contained in Freddie Mac's Counterclaim against the Stern law firm, which show the Stern firm's own breach of its contract with Freddie Mac, and Freddie Mac anticipates developing additional facts during the course of discovery and/or through further investigation.

Seventh Defense

20. Freddie Mac respectfully reserves the right to raise such other and additional affirmative defenses as may be appropriate upon further investigation and discovery in this matter.

COUNTERCLAIM BY FREDDIE MAC

For its Counterclaim against Plaintiff/Counter-Defendant, Defendant/Counter-Plaintiff Freddie Mac, by its attorneys, hereby states the following:

1. Defendant/Counter-Plaintiff Freddie Mac asserts this Counterclaim for compensatory damages, including pre- and post-judgment interest, to redress the breach of contract and wrongful acts and omissions committed by Plaintiff/Counter-Defendant, The Law Offices of David J. Stern, P.A. The Plaintiff/Counter-Defendant law firm was retained by and on behalf of Freddie Mac to provide "high quality" legal services that are

"always in the best interests of Freddie Mac" in a manner that would "strictly avoid any conflicts or apparent conflicts of interest with Freddie Mac" with respect to tens of thousands of Freddie Mac mortgage loans in default and warranting or necessitating proceedings in foreclosure. The Plaintiff/Counter-Defendant law firm instead provided legal services to and/or on behalf of Freddie Mac that fell below the minimum standard of professional care owing to Freddie Mac, resulting in substantial damage to Freddie Mac.

2. The Court has original jurisdiction over Defendant's Counterclaim pursuant to 12 U.S.C. § 1452(c) and 28 U.S.C. § 1331.

Background and Freddie Mac's Attorney-Client Relationship with the Stern Law Firm

- 3. Defendant/Counter-Plaintiff Freddie Mac is a corporate instrumentality of the United States of America pursuant to the Federal Home Loan Mortgage Corporation Act, Title III of the Emergency Home Finance Act of 1970, 12 U.S.C. §§ 1451-1459 and has its principal place of business in McLean, Virginia. Freddie Mac was placed in conservatorship under the Federal Housing Finance Agency on September 8, 2008, pursuant to 12 U.S.C. § 4617(a).
- 4. Freddie Mac was created by Congress in 1970 to develop a secondary mortgage market for conventional residential loans. To achieve this congressionally mandated purpose, Freddie Mac, in relevant part, has been engaged in the business of purchasing conventional mortgage loans (the "Freddie Mac mortgage loans"), from mortgage sellers who have been approved by Freddie Mac.
- 5. At all relevant times, Freddie Mac mortgage loans have been serviced by mortgage servicers that are approved by Freddie Mac (hereinafter, "Servicer" or

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"Servicers"). The servicing of these Freddie Mac mortgage loans are performed pursuant to the terms and conditions contained in certain purchase documents consisting of in relevant part, a purchase contact, Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide") and Guide Bulletins that are periodically issued by Freddie Mac to its Sellers and Servicers which supplement the agreement of the parties.

- 6. At all relevant times, Plaintiff/Counter-Defendant The Law Offices of David J. Stern, P.A. (the "Stern law firm" or the "law firm") has been a professional association formed under the laws of the State of Florida, consisting of one or more persons licensed to practice law in the State and maintaining its principal place of business at 900 S. Pine Island Road, Plantation, Florida 33324.
- 7. At all relevant times, the Stern law firm specialized in handling residential mortgage foreclosures, bankruptcy, evictions, the sale of real estate owned ("REO") properties by foreclosing lenders, and foreclosure-related complex litigation *inter alia*, in the State of Florida.
- 8. At all relevant times, David J. Stern ("Stern") has been an attorney duly licensed to practice law in the State of Florida and the principal or owner of the Stern law firm.
- 9. In or about 1997, Freddie Mac established in Florida a Designated Counsel Program (the "Program") and, following a competitive selection process, retained a number of Florida law firms for the Program.
- 10. The Stern law firm was selected as a Program firm and executed a Freddie Mac Retention Agreement with Freddie Mac, which was amended and modified from time-to-time through 2007. Each Retention Agreement executed, amended, and/or

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modified by and between Freddie Mae and the Stern law firm was signed, on behalf of the Stern law firm, by Stern.

- 11. At all relevant times, when there was a default under a Freddie Mac mortgage loan necessitating or warranting commencement of a foreclosure proceeding to recover mortgaged property located in the State of Florida, as required by the Guide, Servicers could choose to select legal counsel to provide legal representation in the foreclosure proceeding by drawing from the list of attorneys participating in Freddie Mac's Program.
- 12. At all relevant times, fees, costs, and disbursements charged by Program participants providing legal representation pursuant to a Freddie Mac Retention Agreement with respect to Freddie Mac mortgage loans were submitted to and paid, in the first instance, by the Servicers. At the conclusion of the foreclosure proceedings, the law firm would submit an invoice to the Servicer and a Form 104DC to both Freddie Mac and the Servicer, at which time Freddie Mac would reimburse the Servicer for said costs. In each Form 104DC, the law firm set forth the legal counsel's fees and charges for its legal services and certified that the information contained in the 104DC was true to the best of the law firm preparer's knowledge and belief.
- 13. On or about April 4, 2007, Freddie Mac and the Stern law firm, acting through Stern, as owner or principal of the Stern law firm, entered into an amended and revised Retention Agreement under which the Stern law firm continued to be retained to participate in the Florida Designated Counsel Program of Freddie Mac (the "Stern Retention Agreement"). A true copy of the Stern Retention Agreement as executed on or about April 4, 2007 by Stern, acting on behalf of the Stern law firm, together with a cost

limitations modification agreed to in or about August 2007 and a supplemental agreement entered into on or about December 3, 2008, are attached hereto collectively as Exhibit A.

- 14. The Stern Retention Agreement set forth the parties' understanding, set forth in the provision identified as "1. General Provisions," that, among other things, Freddie Mac expected the Stern law firm to be "high quality," that the Stern law firm would "conduct itself so that the services rendered on Program Loans" are "always in the best interests of Freddie Mac," and that the Stern law firm would "strictly avoid any conflicts or apparent conflicts of interest with Freddie Mac."
- 15. The Stern Retention Agreement specified in the provision identified as "1. General Provisions" that it would be working with the Servicers but that the Stern law firm would have its "primary client relationship . . . with and obligation . . . to Freddie Mac." The Stern Retention Agreement specified in the provision identified as "3. Freddie Mac/Servicer/Designated Counsel Attorney-Client Relationship" that an "attorney-client relationship exists between Designated Counsel [the Stern law firm], Freddie Mac and its Servicers." The Stern Retention Agreement specified in the provision identified as "4. Contacts" that Freddie Mac expect[ed] you [the Stern law firm] to provide a high level of client service to [Freddie Mac's] Servicers."
- 16. During the period from in or about April 2007, when the Stern Retention Agreement was executed, until in or about November 2010, the Stern law firm performed legal work on behalf of Freddie Mac and the Servicers pursuant to the terms and conditions of the Stern Retention Agreement regarding foreclosure and related proceedings involving tens of thousands of Freddie Mac mortgaged properties located in the State of Florida, including evictions and REO closings. At relevant times, non-legal

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support services for this legal work was performed by one or more separately incorporated entities in which David Stern held a substantial interest and/or over which David Stern maintained substantial control.

17. During the period January 2009 until in or about October 2010, Freddie Mac, through its Servicers, paid the Stern law firm more than \$6.6 million in judicial foreclosure fees alone, as well as substantial additional fees for legal services regarding Freddie Mac's REO properties.

Disclosures Regarding Practices of the Stern Law Firm That Were Improper, Unprofessional and Failed to Meet Minimum Standards of Care

- 18. On or about August 4, 2010, Mother Jones, a non-profit news organization that styles itself as specializing in investigative, political and social justice reporting, published an article written by Andy Kroll entitled "Fannie and Freddie's Foreclosure Barons." The Mother Jones article was highly critical of the Stern law firm's practices in handling mortgage foreclosures in Florida and reported on allegations that the Stern law firm was backdating assignment of mortgage documents in foreclosure cases and allegedly "lying to the court."
- 19. The Mother Jones article quoted a written ruling by a Pasco County judge, who, "upon discovering that [the Stern law] firm had fudged an assignment of mortgage in a case before her court. . . dismissed the case with prejudice" in March 2010, stating in her written ruling that '"[t]he execution date and notorial date" on the document "were fraudulently backdated, in a purposeful, intentional effort to mislead the defendant and this court."

- 20. The Mother Jones article described a deposition under oath, taken by a foreclosure defense firm on May 20, 2009 of Cheryl Samons, whom the article described as the Stern law firm's "top deputy." According to the article, Ms. Samons was allegedly confronted during this deposition with a number of "backdated documents," which "looked like a pattern," but which the witness allegedly described as "just a mistake."
- 21. Since in or about 1994, Cheryl Samons has been employed by the Stern law firm as operations manager, reporting directly to Stern. Ms. Samons has also served as operations manager during relevant periods for the Stern law firm's processing division and/or for DJS Processing, LLC, a corporate entity created by the Stern law firm, and/or Stern to provide non-legal services required to process foreclosure files and ancillary services for the Stern law firm.
- 22. On or about August 10, 2010, following the Mother Jones article, Florida Attorney General, Bill McCollum, announced that his office had launched an investigation into allegations of unfair and deceptive actions by the Stern law firm regarding its handling of foreclosure cases in the State of Florida. This investigation is believed to be still pending.
- 23. On or about September 4, 2010, the New York Times published a comprehensive article on the unprecedented number of home mortgage delinquencies and foreclosures being handled in the State of Florida. It reported that according to "analysts and lawyers involved in the process," some law firms representing banks were engaged in "questionable practices" and specifically referenced the Stern law firm and the fact that it was being investigated by the Florida Attorney General.

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- 24. The New York Times article cited accusations by "critics" that the Stern law firm lawyers were "very aggressive about pushing cases through the courts even when there are questions about the documentation."
- 25. Public reports emerged during this same time frame of additional deposition testimony that had been elicited from current or former employees of the Stern law firm, witnesses that were questioned under oath by foreclosure defense attorneys or by the Florida Attorney General's office as part of its investigation. This deposition testimony raised additional concerns about the foreclosure-related practices engaged in by the Stern law firm.
- 26. Transcripts became publicly-available of the deposition testimony taken under oath of certain present or former employees of the Stern law firm, specifically: witness Cheryl Samons, who was deposed again on April 29, 2010; witness Tammie Lou Kapusta, deposed on September 22, 2010; and witness Kelly Scott, deposed on October 4, 2010. In these depositions, the witnesses described foreclosure-related practices by Stern and/or the Stern law firm, which, as described, involved acts of professional malpractice and/or breaches of professional duties owed by attorneys subject to the Rules for Professional Conduct for Florida Lawyers.
- 27. The sworn deposition testimony of these witnesses contained accusations against the Stern law firm and/or Stern that included, among other accusations, the following:
 - (i) Causing and/or permitting the Stern law firm's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) Causing and/or permitting the Stern law firm's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness, and/or other affidavits on a daily basis prior to and without actually witnessing execution of

the document by the person whose signature was to be witnessed and/or notarized;

- (iii) Causing and/or permitting the Stern law firm's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
- (iv) Causing and/or permitting the Stern law firm's employees to sign the name of another person on foreclosure-related documents without any indication of that fact on the documents; and
- (v) Charging Freddie Mac, through its Servicers, substantial fees and costs for legal services that the Stern law firm knew or should have known were not in accordance with the terms and conditions of the Stern Retention Agreement and fell below the minimum standard of professional care owed by the Stern law firm to Freddie Mac and its Servicers.

Freddie Mac's Response to Disclosures About the Stern Law Firm's Practices

- 28. In early August 2010, after becoming aware of the August 4, 2010 Mother Jones article, Freddie Mac communicated with the Stern law firm about the article's accusations. On August 10, 2010, Stern represented to Freddie Mac that the allegations of "back-dated documents" described in the Mother Jones article were the result of an inadvertent one-time error made by a single notary employed by the law firm, who neglected to timely notarize 21 assignments of mortgage after personally witnessing them being signed. Stern assured Freddie Mac that the practice that led to this one-time error by the law firm employee had not been repeated again.
- 29. When the Florida Attorney General's office opened its investigation into the practices of the Stern law firm on or about August 10, 2010, and served a subpoena on the law firm for production of documents, Stern and Forrest McSurdy, general counsel for the Stern law firm, communicated with Freddie Mac, indicating that they were "fully cooperating" and, Stern, again denied any wrongdoing.

- 30. On or about October 7, 2010, Freddie Mac became aware of the deposition testimony of former Stern law firm employee Tammie Lou Kapusta, and Freddie Mac spoke with Stern on or about October 8, 2010 about the Kapusta deposition and related matters.
- 31. Stern told Freddie Mac on or about October 8, 2010, that Ms. Kapusta's allegations concerning the law firm's misconduct or improprieties were fabrications being made by a disgruntled former employee of the Stern law firm.
- 32. Also on or about October 8, 2010, Freddie Mac, in light of the on-going investigations by the Florida Attorney General, as well as other events and information, instructed Stern that, effective immediately, the Stern law firm was, among other things, to "take no further action to prosecute any foreclosure or bankruptcy cases" relative to Freddie Mac's files.
- 33. On or about Friday, October 15, 2010, Freddie Mac notified the Stern law firm of its intent to conduct an on-site review of Freddie Mac files maintained by the law firm (the "On-Site Review"). A team of Freddie Mac representatives arrived at the Stern law firm on or about Monday, October 18, 2010 to begin the On-Site Review and the On-Site Review continued thereafter until the end of the month.
- 34. Freddie Mac's On-Site Review included, without limit, a review of mortgage loan files randomly selected by Freddie Mac, interviews with Stern and other individuals employed by or representing the Stern law firm, the review of certain practices and procedures of the Stern law firm, and observations of the Stern law firm operations.

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- 35. Because of the Stern law firm's scope and size, Freddie Mac was assisted in its On-Site Review by the U.S. audit, tax and advisory services firm of KPMG, LLP.
- 36. On or about October 18, 2010 through October 20, 2010, in various meetings, Stern and the Stern law firm's representatives, including Cheryl Samons, insisted to Freddie Mac's representatives that allegations concerning law firm misconduct or improprieties were attributable to fabrications by disgruntled former employees of the law firm.
- 37. On or about October 20, 2010, however, Stern admitted to Freddie Mac's representatives that allegations made by others about the law firm's improper procedures were true and stated that he "may have to make a very large donation."
- 38. Freddie Mac's representatives met again with Stern on or about Friday, October 28, 2010. By this time, Stern was admitting to Freddie Mac's representatives that all of the allegations made by others against the Stern law firm were true, although Stern denied having had any prior personal knowledge of the improprieties alleged.
- 39. On Monday, November 1, 2010, Freddie Mac hand-delivered to the Stern law firm a letter terminating the Stern Retention Agreement effective 6:30 p.m. that evening, as a result of which the law firm was no longer part of Freddie Mac's Florida Designated Counsel Program (the "Termination Letter"). A true copy of the Termination Letter is attached hereto as Exhibit B.
- 40. Freddie Mac's termination was for cause based upon many factors, including the admissions made by, among others, Stern and other employees and/or representatives of the Stern law firm, Freddie Mac's On-Site Review of the Stern law firm, the ongoing investigation by the Florida Attorney General into the law firms'

practices, and the publicized reports and deposition testimony about Stern and the Stern law firm's unprofessional practices.

- 41. Beginning November 1, 2010 and continuing until November 3, 2010, Freddie Mac pulled and recovered from the Stern law firm approximately 22,512 Freddie Mac mortgage loan foreclosure files that had been maintained and handled by the Stern law firm, including electronic and hard-copy files, Freddie Mac's mortgage notes and foreclosure-related files (the "recovered Freddie Mac foreclosure files"), and also pulled and recovered roughly 2,500 additional Freddie Mac REO files that had been maintained by the Stern law firm (the "recovered REO files").
- 42. Freddie Mac thereafter reassigned and delivered the 22,512 recovered Freddie Mac foreclosure files and the roughly 2,500 recovered REO files to 13 different law firms in the State of Florida. Because of its concern over the allegations and evidence of unprofessional practices followed by the Stern law firm, Freddie Mac directed these newly-assigned law firms to review the recovered Freddie Mac foreclosure files and to re-initiate the foreclosure proceedings, in whole or part, as appropriate, due to concerns over the documents previously filed with the foreclosure court by the Stern law firm.
- 43. By reason of the foregoing, Freddie Mac has incurred, and may continue to incur in the future, substantial costs attributable to the following: (i) costs associated with conducting its On-Site Review of the Stern law firm's files, policies and practices with the assistance of KPMG, LLP; (ii) costs associated with the need to seize approximately 22,512 recovered Freddie Mac foreclosure files and roughly 2,500 recovered REO files previously maintained and handled by the Stern law firm; and (iii)

costs associated with having the 13 newly-assigned law firms conduct a review of the recovered Freddie Mac foreclosure files seized from the Stern law firm and re-initiate foreclosure proceedings, as appropriate, based upon concerns raised over the documents previously filed with the courts by the Stern law firm.

44. By reason of the foregoing, Freddie Mac has also incurred, and may continue to incur in the future, substantial additional costs attributable to the following: (i) the cost of paying duplicative legal fees and court costs to the newly-assigned law firms for handling the approximately 22,512 recovered Freddie Mac foreclosure files; (ii) the time value cost of money lost due to additional delays in prosecuting the approximately 22,512 recovered Freddie Mac foreclosure files; and (iii) the cost of foreclosure-related fees and costs previously incurred and paid on the recovered Freddie Mac foreclosure files when handled by the Stern law firm.

COUNT I (Legal Malpractice)

- 45. Freddie Mac repeats and realleges the allegations of paragraphs 1-44 of this Counterclaim as if fully set forth herein.
- 46. During the period in or about April 2007, until at least in or about November 2010, an attorney-client relationship existed between and among the Stern law firm, its attorneys, including Stern, and Freddie Mac with respect to legal services provided by the Stern law firm to and/or on behalf of Freddie Mac pursuant to and in accordance with the Stern Retention Agreement.
- 47. Under the Stern Retention Agreement, the Stern law firm understood and agreed, among other things: (i) to provide work to and/or on behalf of Freddie Mac that was of "high quality," to take "appropriate actions" to comply with Freddie Mac's

foreclosure requirements, to "conduct [itself] so that the services rendered on Program Loans" were "always in the best interests of Freddie Mac," and to "strictly avoid any conflicts or apparent conflicts of interest with Freddie Mac" (Agreement, provision 1. General Provisions); (ii) that the law firm's "primary client relationship" was with and its primary obligation was to Freddie Mac (Agreement, provision 1. General Provisions); (iii) that there was an attorney-client relationship between the Stern law firm and Freddie Mac and its Servicers (Agreement, Provision 3. Freddie Mac/Servicer/Designated Counsel Attorney-Client Relationship); and (iv) that Freddie Mac expected the law firm to "provide a high level of service to [Freddie Mac's] Servicers" (Agreement, provision 4. Contacts).

- 48. The Stern law firm and its attorneys, including Stern, owed a duty of professional care to Freddie Mac with respect to the legal services provided by the Stern law firm pursuant to and in accordance with the Stern Retention Agreement, including, without limit, the duty to employ the legal knowledge and skill required under the circumstances in the performance of their legal services to and/or on behalf of Freddie Mac, the duty to act in the interest of and for the benefit of Freddie Mac, and the duty to comply with all applicable Rules Regulating the Florida Bar, including the Rules for Professional Conduct for Florida Lawyers.
- 49. In performing their legal services to and/or on behalf of Freddie Mac, the Stern law firm, including Stern, owed Freddie Mac, more specifically, the following professional duties of care, among others: (1) the duty to control the law firm's workload so that each matter can be handled for the client adequately and within the accepted standard of professional care for a law firm in the State of Florida in accordance with

Florida Bar Rule 4-1.3; (2) the duty to take reasonable measures to ensure that non-lawyer conduct is compatible with professional obligations of the lawyer in accordance with Florida Bar Rule 4-5.3; (3) the duty to comply with a client's reasonable requests for information and to explain a matter to the client to the extent reasonably necessary for the client to make informed decisions about the lawyer's professional handling of the client's matters in accordance with Florida Bar Rule 4-1.4; (4) the duty to deal honestly with third parties when acting on behalf of the client in accordance with Florida Bar Rule 4-4.1; and (5) the duty not to engage in conduct otherwise involving dishonesty or misrepresentation in accordance with Florida Bar Rule 4-8.4.

- 50. The Stern law firm negligently breached its professional duties owing to Freddie Mac by, among other things:
 - (i) Causing and/or permitting the Stern law firm's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) Causing and/or permitting the Stern law firm's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
 - (iii) Causing and/or permitting the Stern law firm's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
 - (iv) Causing and/or permitting the Stern law firm's employees to sign the name of another person on various foreclosure-related documents without any indication of that fact on the documents; and
 - (v) Charging Freddie Mac directly, and through its Servicers, substantial fees and costs for legal services that the Stern law firm knew or should have known was not in accordance with the terms and conditions of the Stern Retention Agreement and fell below the minimum standard of professional care owed by the Stern law firm to Freddie Mac and its Servicers.

51. As a result of the Stern law firm's breach of its professional duties to Freddie Mac, Defendant Freddie Mac has suffered, and may continue to suffer in the future, substantial damages in an amount to be determined, but believed to be well in excess of \$10 million.

COUNT II (Breach of Contract)

- 52. Freddie Mac repeats and realleges the allegations of paragraphs 1-51 of this Counterclaim as if fully set forth herein.
- 53. By reason of the Stern Retention Agreement, a valid contract existed between and among the Stern law firm and Defendant Freddie Mac.
- 54. The Stern law firm breached its material contractual obligations owed to Freddie Mac, including, without limit, the provisions set forth in paragraphs 14, 15 and 47 of this Counterclaim, by, among other things:
 - (i) Causing and/or permitting the Stern law firm's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) Causing and/or permitting the Stern law firm's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
 - (iii) Causing and/or permitting the Stern law firm's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
 - (iv) Causing and/or permitting the Stern law firm's employees to sign the name of another person on various foreclosure-related documents without any indication of that fact on the documents; and
 - (v) Charging Freddie Mac, through its Servicers, substantial fees and costs for legal services that the Stern law firm knew or should have known was not in accordance with the terms and conditions of the Stern Retention Agreement and

fell below the minimum standard of professional care owed by the Stern law firm to Freddie Mac and its Servicers.

55. As a result of the Stern law firm's breach of its material contractual obligations to Freddie Mac under the Stern Retention Agreement, Freddie Mac has suffered, and may in the future continue to suffer, substantial damages in an amount to be determined, but believed to be well in excess of \$10 million.

COUNT III (Breach of Fiduciary Duty)

- 56. Freddie Mac repeats and realleges the allegations of paragraphs 1-55 of this Counterclaim as if fully set forth herein.
- 57. From in or about April 2007 until at least in or about November 2010, a fiduciary duty existed between and among the Stern law firm, its attorneys, including Stern, on the one hand, and Freddie Mac, on the other hand, under which the Stern law firm owed Freddie Mac a fiduciary duty to act in the interest of and for the benefit of Freddie Mac.
- 58. The Stern law firm breached its fiduciary duty to Freddie Mac by, among other things:
 - (i) Causing and/or permitting the Stern law firm's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
 - (ii) Causing and/or permitting the Stern law firm's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
 - (iii) Causing and/or permitting the Stern law firm's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;

- (iv) Causing and/or permitting the Stern law firm's employees to sign the name of another person on various foreclosure-related documents without any indication of that fact on the documents; and
- (v) Charging Freddie Mac, through its Servicers, substantial fees and costs for legal services that the Stern law firm knew or should have known were not in accordance with the terms and conditions of the Stern Retention Agreement and fell below the minimum standard of professional care owed by the Stern law firm to Freddie Mac and its Servicers.
- 59. As a result of the Stern law firm's breach of its fiduciary duty to Freddie Mac, Freddie Mac has suffered, and may continue to suffer in the future, substantial damages in an amount to be determined, but believed to be well in excess of \$10 million.

COUNT IV (Negligent Misrepresentation)

- 60. Freddie Mac repeats and realleges the allegations of paragraphs 1-59 of this Counterclaim as if fully set forth herein.
- 61. Between in or about April 2007 through in or about October 2010, the Stern law firm submitted to Freddie Mac and its Servicers completed and signed Forms 104DC, which purported to accurately state the Stern law firm's legal fees and expenses incurred to complete the foreclosure and foreclosure-related proceedings in a competent, professional manner. In these completed and signed Form 104DC, the Stern law firm certified that the information contained therein was true to the best of their knowledge and belief.
- 62. The Stern law firm submitted the completed and signed Forms 104DC to the Servicer and Freddie Mac with the knowledge and expectation that Freddie Mac would reimburse the Servicer for the legal fees and expenses set forth by the Stern law firm in the completed and signed Form 104DC.

- 63. The Stern law firm certified to Freddie Mac and the Servicer in the signed and submitted Forms 104DC that the Stern law firm was entitled to recover legal fees and recoverable costs for services that the law firm had rendered pursuant to and in accordance with the terms and conditions of the Stern Retention Agreement, which representations were false.
- 64. The Stern law firm was negligent in making the representations contained in these signed and submitted Forms 104DC because it knew or should have known that the representations were false.
- 65. The Stern law firm made the representations contained in these Forms 104DC intending that the Servicer and Freddie Mac would rely upon the representations that were false.
- 66. Freddie Mac justifiably relied upon the false representations contained in these Forms 104DC signed and submitted by the Stern law firm to Freddie Mac.
- 67. In addition to the foregoing negligent representations made by the Stern law firm in their signed and submitted Forms 104DC, the Stern law firm also made the following statements of fact to Freddie Mac, each of which were false when made:
 - (i) On August 10, 2010, in an email, David Stern stated to representatives of Freddie Mac that the allegations of "back-dated documents" described in the Mother Jones article was the result of "inadvertence" and was a onetime error made by a single notary employed by the law firm, who neglected to timely notarize 21 assignments of mortgage after personally witnessing them being signed.
 - (ii) Between on or about August 4, 2010 and on or about August 10, 2010, during a telephone conversation, Stern also falsely stated during a conversation with Freddie Mac representatives that this one-time error was limited to the one law firm employee;
 - (iii) On or about October 8, 2010, during a telephone conversation, Stern stated to representatives of Freddie Mac that the deposition testimony of Tammie Lou

Kapusta on September 22, 2010 concerning the Stern law firm's misconduct or improprieties were fabrications being made by a disgruntled former employee of the Stern law firm; and

- (iv) On one or more occasions between on or about October 18, 2010 through October 28, 2010, during meetings in the Stern law firm's offices in Florida, Stern, and the Stern law firm's Cheryl Samons, falsely represented to representatives of Freddie Mac that allegations concerning the Stern law firm's misconduct or improprieties were attributable to fabrications by disgruntled former employees of the law firm.
- 68. The Stern law firm was negligent in making the false statements set forth in paragraphs 67(i) through (iv) above because the Stern law firm knew or should have known that the statements were false.
- 69. The Stern law firm made the statements set forth in paragraphs 67(i) through (iv) above intending that Freddie Mac would rely upon the statements that were false.
- 70. Freddie Mac justifiably relied upon the false statements set forth in paragraphs 67(i) through (iv) above.
- 71. As a direct result of the Stern law firm's negligent misrepresentations and negligent misstatements as set forth above, Freddie Mac has suffered and/or will suffer substantial damages in an amount to be determined, but believed to be well in excess of \$10 million.

COUNT V (Fraud and Intentional Misrepresentation)

- 72. Plaintiff repeats and realleges the allegations of paragraphs 1-71 of the Counterclaim as if fully set forth herein.
- 73. Between in or about April 2007 through in or about October 2010, the Stern law firm charged Freddie Mac directly, and through its Servicers, substantial fees

and costs for legal services that the Stern law firm knew were not in accordance with the terms and conditions of the Stern Retention Agreement and fell below the minimum standard of professional care owed by the Stern law firm to Freddie Mac and its Servicers.

- 74. The Stern law firm did so by submitting Forms 104DC to Servicers and Freddie Mac during the aforesaid time period containing factual statements which the Stern law firm knew to be false but which the Stern law firm falsely certified were true.
- 75. The Stern law firm's false statements were made to induce Freddie Mac and its Servicers to pay Plaintiff substantial fees and costs for legal services that the Stern law firm knew were not in accordance with the terms and conditions of the Stern Retention Agreement and fell below the minimum standard of professional care owed by the Stern law firm to Freddie Mac and its Servicers.
- 76. In making these false statements in the Forms 104DC, the Stern law firm intended to induce Freddie Mac to rely upon the false statements contained therein and Freddie Mac did reasonably rely upon each of those statements.
- 77. As a result thereof, Freddie Mac has suffered damages in an amount to be determined.

WHEREFORE, Defendant/Counter-Plaintiff Freddie Mac respectfully requests the following relief:

(1) With respect to the Stern law firm's Amended Complaint, judgment in Freddie Mac's favor dismissing the Amended Complaint in its entirety, together with an award of Freddie Mac's costs and disbursements:

- (2) With respect to Freddie Mac's Counterclaim, a judgment awarding compensatory damages in favor of Freddie Mac and against the Stern law firm, on each of Freddie Mac's Counts I, II, III, IV, and V, together with such prejudgment and post-judgment interest as may be awarded to Freddie Mac according to law, as well as an award of Freddie Mac's costs and disbursements; and
- (3) Such further relief that this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant/Counter-Plaintiff Freddie Mac hereby demands a trial by jury of all triable issues relating to Plaintiff/Counter-Defendant's Stern law firm's Amended Complaint and to Defendant/Counter-Plaintiff Freddie Mac's Counterclaim.

Dated this 30th day of March, 2012.

/s/ Rory Eric Jurman

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Chante bowser@freddiemac.com

Counsel for Defendant Federal Home Loan Mortgage Corporation

CERTIFICATE OF SERVICES

I hereby certify that on March 30, 2012, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Avery A. Dial
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Avery A. Dial
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532419

SERVICE LIST

THE LAW OFFICES OF DAVID J. STERN, P.A. v. FEDERAL HOME LOAN MORTGAGE CORPORATION <u>CASE NO.: 0:11-CV-60623 – PAS</u>

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12-12020-mg Doc 8531-33 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit O Pg 31 of 33 Case 0:11-cv-60623-RSR Document 63-2 Entered on FLSD Docket 03/30/2012 Page 1 of 3

EXHIBIT B



5200 Josep Breach Open McLoon, VA, 22102 3110

November 1, 2010

David J. Stern, Esq. The Law Offices of David J. Stern, P.A. 900 South Pine Island Road Suite 400 Plantation, Florida 33324

Re: Termination of Retention Agreement and Recovery of Files

Dear Mr. Stern:

Pursuant to paragraph 2 of the Retention Agreement, Billing Policy and Fee Agreement ("Retention Agreement") entered into on April 4, 2007 by and between Federal Home Loan Mortgage Corporation ("Freddic Mac") and The Law Offices of David J. Stern, P.A., I hereby give notice that the Retention Agreement is terminated effective at 6:30pm, November 1, 2010. As a result of the termination, The Law Offices of David J. Stern, P.A. are no longer part of Freddie Mac's Designated Counsel Program ("Program").

The reasons for the termination include the much-publicized revelations, as a result of the investigation by the Florida Attorney General, concerning the improper and possibly unlawful practices engaged in by a number of employees of either, or both, the law firm or DJS Processing, LLC. The fact that certain grounds for termination are stated in this letter does not imply that additional grounds for termination or other action by Freddie Mac do not exist.

As we discussed this morning, because of circumstances that have developed over the course of the past several weeks, you believe in any event that you are no longer in a position to continue to manage our files and you have agreed to cooperate fully in the prompt delivery of those files to our employees and contractors. We plan to distribute the files to other law firms. We appreciate your continuing cooperation as we work with you and your staff to locate and take possession of those files, and to assist us and these law firms with such matters as substituting counsel and alerting us to any important events or occurrences with respect to individual cases.

David J. Stern, Esq. November 1, 2010 Page 2

The termination of the Retention Agreement should not be considered to be a waiver or relinquishment of any rights that Freddie Mac may have, and Freddie Mac reserves whatever rights it may have with respect to The Law Offices of David J. Stern, P.A. You, and the other attorneys of your law firm, continue to be responsible to Freddie Mac and our Servicers pursuant to all applicable professional and ethical standards. Please contact me if you have any questions.

Yours sincerely,

Graham H. Kidner

Managing Associate General Counsel

(703) 903-2492

cc: Hyacinth G. Kucik

Senior Vice President and Principal Deputy General Counsel

12-12020-mg Doc 8531-34 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit R Pg 1 of 4

EXHIBIT R TO THE DECLARATION OF JOHN W. SMITH T

12-12020-mg Doc 8531-34 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T

Decl. Exhibit R Pg 2 of 4

Case 0:11-cv-61526-MGC Document 44 Entered on FLSD Docket 02/03/2012 Page 1 of 3

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

THE LAW OFFICES OF DAVID J. STERN, P.A.

Plaintiff/Counter-Defendant,

Case No.: 0:11-CV-61526

VS.

GMAC MORTGAGE, LLC,

Defendant/Counter-Plaintiff.

PLAINTIFF'S AND DEFENDANT'S JOINT STIPULATION

Plaintiff, The Law Offices of David J. Stern, P.A. ("DJSPA"), and Defendant, GMAC Mortgage, LLC ("GMACM"), hereby stipulate as follows:

1. This lawsuit addresses disputes between DJSPA and GMACM regarding the alleged legal services and related work performed by DJSPA in connection with loans owned and/or serviced by GMACM. Certain of the loans that were initially a part of the lawsuit were serviced by GMACM but owned by Federal Home Loan Mortgage Corporation ("the Freddie Mac loans") or Federal National Mortgage Corporation ("the Fannie Mae loans"). Pursuant to a Joint Motion for Severance and Transfer (ECF No. 24) of the parties, by and with the consent of Freddie Mac, the Court severed and transferred the claims and/or counterclaims with respect to the loans owned by Freddie Mac to the pending action between DJSPA and Freddie Mac (ECF No. 25). The parties are in the process of finalizing the list of Freddie Mac and Fannie Mae

¹ The Freddie Mac Action is pending as *The Law Offices of David J. Stern, P.A. v. Federal Home Loan Mortgage Corporation*, Case No. 0:11-cv-60623-Civ-PAS. The dispute between DJSPA and Fannie Mae, styled *Federal National Mortgage Assoc. a/k/a Fannie Mae v. The Law Offices of David J. Stern, P.A.*, No. 32-194Y-0016411, is currently pending before the American Arbitration Association ("the Arbitration").

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Decl. Exhibit R Pg 3 of 4

Case 0:11-cv-61526-MGC Document 44 Entered on FLSD Docket 02/03/2012 Page 2 of 3

loans to be severed and transferred. However, the parties desire to stipulate that certain work that was allegedly provided by DJSPA with respect to some of the Freddie Mac and Fannie Mae loans, should and will remain to be litigated in this lawsuit, as further described below.

- 2. Specifically, in connection with some loans, including certain Freddie Mac and Fannie Mae loans, GMACM requested that DJSPA provide legal services that were distinct from the legal services performed by DJSPA in the ordinary course of foreclosure proceedings ("the remediation work"), and the remediation work was separately invoiced by DJSPA to GMACM. Accordingly, DJSPA and GMACM are able to segregate the remediation work from the alleged ordinary foreclosure legal services provided with respect to Freddie Mac and Fannie Mae loans. The remediation work is identified by the summary of invoices provided by DJSPA attached hereto as Exhibit A.²
- 3. Accordingly, DJSPA and GMACM hereby agree and stipulate that the alleged remediation work identified in Exhibit A (including DJSPA's claims for damages owed on such work, as well as GMACM's defenses and counterclaims relating to such work) will remain a part of this action.
- 4. As agreed to previously, alleged legal services and related work performed in the ordinary course of foreclosure proceedings will be transferred to and litigated in the Freddie Mac Action and Fannie Mae Arbitration respectively.

² By entering into this Stipulation, GMACM is not stipulating to the accuracy of the information in Exhibit A, nor does GMACM waive any defense as to the nature or amounts of charges contained in Exhibit A. Exhibit A, which was prepared by Plaintiff, is intended only to facilitate the identification of the remediation work that is being claimed by Plaintiff and that will remain a subject of the present litigation.

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5. Freddie Mac and Fannie Mae have been advised of the parties' stipulation and have stated no objection to the claims arising from the remediation work described above remaining in this litigation for determination.

/s/ Matias Dorta

Matias Dorta Florida Bar No. 770817 mrd@tewlaw.com

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Telephone: (305) 536-1112 Facsimile: (305) 536-1116 /s/ John W. Smith T

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EXHIBIT S TO THE DECLARATION OF JOHN W. SMITH T

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: RESIDENTIAL CAPITAL, LLC, <i>et. al.</i> ,)
Debtors.) CASE NUMBER:) 12–12020
)

EXHIBIT S TO THE DECLARATION OF JOHN W. SMITH T

- 1) Deutsche Bank Trust Co. Americas as Trustee for RALI 2007QS3 v. Barry F. Mack, et al., Case No. 09-7336-CA, Circuit Court for Collier County, Florida. DJSPA filed a foreclosure lawsuit on August 20, 2009 on behalf of Deutsche Bank Trust Co. Americas as Trustee for RALI 2007QS3 Trust ("DBTC") against Borrowers. The subject loan was serviced by GMACM. Borrowers filed counterclaims on September 11, 2009, but DJSPA failed to file any response, resulting in a default. The suit remained pending for over eighteen months during which time DJSPA failed to respond to discovery, motions, and other communications relating to the suit. Ultimately, on May 5, 2011, a final judgment was issued by the court against DBTC, awarding Borrowers \$469,470.27 in damages. GMACM referred the matter to new counsel who was able to get the default partially set aside. GMACM has thus far incurred \$500,231.37 in fees and costs as a result of DJSPA's error.¹
- 2) GMAC Mortgage, LLC v. Michael Montroy, et al., Case No. 52-2008-CA-005375, Circuit Court for Pinellas County, Florida. DJSPA filed a foreclosure lawsuit (the "Montroy Lawsuit") on behalf of GMACM in 2008 against a borrower in default. The Montroy Lawsuit filing was supported by an assignment of mortgage that was improperly notarized by DJSPA). The borrowers moved to dismiss the action. GMACM referred the matter to new

¹ In addition, on August 8, 2012, Borrowers submitted a proof of claim in this matter in the amount of \$32,850,000.00. This claim is pending.

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counsel for handling. A corrected assignment was submitted and the motion to dismiss was denied as moot. GMACM incurred \$7,300 in fees and costs as a consequence.

- 3) Bank of New York Mellon Trust Company v. Dana Joy Allen, et al., Case No. 2010-985-CA, Circuit Court for Bay County, Florida. DJSPA filed a foreclosure lawsuit on April 8, 2010 on behalf of BONY against borrower. The subject loan was serviced by GMACM. A junior lien holder (Sunnyside Beach and Tennis Club Condominium Assoc. ("SBTCCA")) challenged BONY's priority status and filed a motion for summary judgment. DJSPA failed to oppose the motion which was granted as a default against BONY, awarding SBTCCA \$25,000. GMACM referred the matter to new counsel who was able to have the default set aside, but GMACM incurred \$5,977.70 in fees and costs to handle.
- 4) Deutsche Bank and Trust Co. v. Danny Armstrong, Case No. 16-2008-CA-015892, Circuit Court for Duval County, Florida. DJSPA filed a foreclosure lawsuit in 2008 on behalf of DBTC against borrower. The subject loan was serviced by GMACM. The borrower filed a counterclaim on Feb. 1, 2009, but DJSPA failed to file any response, resulting in a default judgment against DBTC on April 22, 2009. GMACM referred the matter to new counsel who was able to get the default set aside, but GMACM incurred \$19,645.40 in fees and costs, before reaching a settlement.
- 5) U.S. Bank, N.A. v. Margaret Lipinski, Case No. 10-15855-CI, Circuit Court for Pinellas County, Florida. DJSPA filed a foreclosure lawsuit on October 27, 2010 on behalf of U.S. Bank against borrower. The subject loan was serviced by GMACM. DJSPA failed to respond to requests for admissions which resulted in summary judgment for borrower and attorney's fees in the amount of \$5,280, all of which were affirmed on appeal. GMACM

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incurred \$46,815.28 in additional fees and costs in seeking to have the summary judgment vacated and in handling the appeal.

- 6) Bank of New York Mellon Trust Co., N.A. v. Eric Tamayo, Case No. 09-2229-CA, Circuit Court for Collier County, Florida. DJSPA filed a foreclosure lawsuit in 2009 on behalf of BONY against borrower. The subject loan was serviced by GMACM. DJSPA failed to respond to borrower's discovery or motion to compel, resulting in an order for sanctions against BONY in the amount of \$4,200, which GMACM paid. In addition, DJSPA lost the original note, and replacement counsel had to facilitate the execution of a new affidavit of indebtedness and a lost note affidavit to move forward with summary judgment. GMACM referred the matter to new counsel and incurred \$7,300 in fees and costs as a consequence.
- 7) GMAC Mortgage, LLC v. Carrie Gasque, Case No. 16-2008-CA-012971, Circuit Court for Duval County, Florida. DJSPA filed a foreclosure lawsuit on October 1, 2008 on behalf of GMACM against borrower. The borrower filed counterclaims. DJSPA signed and filed an assignment of mortgage but admitted in a deposition that the dates were falsified. Further, DJSPA lost the original note sent to it by GMACM. To investigate and litigate the lost note and falsified assignment issues, GMACM incurred \$11,246.81 in fees and costs.
- 8) GMAC Mortgage v. Patrick Hopper, Case No. 2009-011026-CA, Circuit Court for Collier County, Florida. DJSPA filed a foreclosure lawsuit on December 28, 2009 on behalf of GMACM against borrower. Stern used a standard-form foreclosure complaint, which erroneously stated that GMACM was the "owner" of the note. This error led to all of the borrower's subsequent counterclaims and defenses to the foreclosure. GMACM referred the matter to new counsel and incurred \$104,112.26 in fees and expenses to litigate against the borrower, and was required to pay \$13,500.00 to settle these claims.

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9) GMAC Mortgage, LLC v. Christopher Contreras, Case No. 2010-2868-CA, Circuit Court for Sarasota County, Florida. DJSPA filed a foreclosure lawsuit on behalf of GMACM against the borrower in default. The borrower asserted putative class action counterclaims against GMACM and similar putative class action cross claims against DJSPA on November 23, 2010. Borrower alleged that DJSPA had submitted "false assignments and affidavits created by or at the instruction of DJSPA in connection with past and pending foreclosure actions in Florida. Borrower asserted claims under the Florida Deceptive and Unfair Trade Practices Act, the Florida Consumer Collections Practices Act, and the Fair Debt Collection Practices Act, and for "fraud on the court." After extensive motion practice and briefing, the counterclaims were voluntarily dismissed. GMACM incurred \$139,495.51 in fees and costs in seeking to have the counterclaims dismissed.

Total: \$865,104.33

EXHIBIT T TO THE DECLARATION OF JOHN W. SMITH T

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT, IN AND FOR COLLIER COUNTY, FLORIDA GENERAL JURISDICTION DIVISION CASE NO:

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3

PLAINTIFF

VS.

BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK: CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A CHERYL MARGARET MACK; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES OR OTHER CLAIMANTS; JOHN DOE AND JANE DOE AS UNKNOWN TENANTS IN POSSESSION

DEFENDANT(S)

COMPLAINT TO FORECLOSE MORTGAGE

Plaintiff, sues the Defendant(s) and alleges:

COUNT I

- 1. THIS IS AN ACTION to foreclose a Mortgage on real property in COLLIER County, Florida.
- 2. This Court has jurisdiction over the subject matter herein.
- On OCTOBER 6, 2006 BARRY FRITZ MACK A/K/A BERRY FRITZ MACK AND CHERYL 3. MARGRET MACK A/K/A CHERYL MARGARET MACK executed and delivered a Promissory Note and a Mortgage securing payment of the Note to the Payee named thereon.
- The Mortgage was recorded on OCTOBER 17, 2006 in Official Records Book 4123 at page 804, of the 4. Public Records of COLLIER County, Florida, and mortgaged the property described in it, then owned by and possessed by the Mortgagors, a copy of the Mortgage AND NOTE ARE attached hereto as "Exhibit "A". Said mortgage was subsequently assigned to DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3 by virtue of an assignment to be recorded.
- The Plaintiff owns and holds the Note and Mortgage. 5.
- The property is now owned by the Defendant(s), BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A б. BERRY FRITZ MACK AND CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A CHERYL MARGARET MACK, if living and if dead, the unknown spouses, heirs and beneficiaries of BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK AND CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A CHERYL MARGARET MACK who hold(s) possession.
- 7. There is a default under the terms of the note and mortgage for the AUGUST 1, 2009 payment and all payments due thereafter.
- 8. All conditions precedent to the acceleration of this Mortgage Note and to foreclosure of the Mortgage have been fulfilled or have occurred.
- 9. The Plaintiff declares the full amount payable under the Note and Mortgage to be due.

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- The borrowers owe Plaintiff \$989,405.75 that is due in principal on the Mortgage Note and Mortgage, together with interest from JULY 1, 2009, late charges, and all costs of collection including title search expenses for ascertaining necessary parties to this action and reasonable attorney's fees.
- I'll Plaintiff is obligated to pay its attorney a reasonable fee for his services rendered.
- 12. Defendants, John Doe and Jane Doe, may claim an interest in the property described in the Mortgage as tenants pursuant to a lease agreement, either written or oral. Said interest is subject, subordinate, and inferior to the lien of the Mortgage held by Plaintiff.
- 13. In addition to all other named defendants, the unknown spouses, heirs, devisees, grantees, assignces, creditors, trustees, successors in interest or other parties claiming an interest in the subject property by, through under or against any of said defendants, whether natural or corporate, who are not known to be alive or dead, dissolved or existing, are joined as defendants herein. The claims of any of said parties are subject, subordinate, and inferior to the interest of Plaintiff.

WHEREFORE, Plaintiff prays: That an accounting may be had and taken under the direction of this Court of what is due the Plaintiff for principal and interest on said Mortgage and Mortgage Note, and for the costs, charges and expenses, including attorney's fees and title search costs, and advancements which Plaintiff may be put to or incur in and about this suit, and that the Defendants found responsible for same be ordered to pay the Plaintiff herein the amounts so found to be due it; that in default of such payments, all right, title, interest, claim, demand, or equity of redemption of the Defendants and all other persons claiming by, through, under or against said Defendants since the filing of the Lis Pendens herein be absolutely barred and foreclosed and that said mortgage property be sold under the direction of this Court; that out of the proceeds of said sale, the amounts due the Plaintiff may be paid so far as same will suffice; and that a deficiency judgment be entered if applicable and only in the event no Order of Discharge of Personal Liability in Bankruptcy has been entered as to any of the Defendants who signed the subject Note and Mortgage and a Writ of Possession be issued.

TO ALL DEFENDANTS; PLEASE NOTE EFFECTIVE OCTOBER 13, 2006, 15 U.S.C. §1692G OF THE FAIR DEBT COLLECTION PRACTICES ACT HAS BEEN AMENDED AS FOLLOWS:

(a) LEGAL PLEADINGS -- Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding at the end the following new subsection:

"(d) Legal Pleadings -- A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a)."

ELSA HERN.

Bar #: 29554 / Miriam Mendieta

Bar #: 0866880

Law Offices of David J. Stern, P.A.

Attorney for Plaintiff

900 South Pine Island Road SUITE 400

Plantation, FL 33324-3920

(954) 233-8000

09-75969 GMAP

IMAGE(1); FL-09-6291-2 07/30/2009 02:36:15pm DOC: OR 4123/804



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PALM TITLE ASSOC 12590 1 WHITEHALL DR FT MYBRS FL 33907 4680

Return To:

PRIMARY RESIDENTIAL MORTGAGE INC. 4750 WEST WILEY POST WAY #200 SALT LAKE CITY, UTAH 84116 Attn.: SHIPPING DEPT/DOC. CONTROL This document was prepared by: DANETTE NIX PRIMARY RESIDENTIAL MORTGAGE INC. 4750 WEST WILEY POST WAY, #200 SALT LAKE CITY, UTAH 84116

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MORTGAGE

738-6 MERS TELEPHONE: (888) 679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated October 6, 2006, together with all Riders to this document.

(B) "Borrower" is BARRY FRITZ MACK AND CHERYL MARGRET MACK, JOINT TENANTS. Borrower is the mortgagor under this Socurity Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is PRIMARY RESIDENTIAL MORTGAGE INC., Lender is a corporation organized and existing under the laws of the State of NEVADA. Lender's address is 4750 WEST WILEY POST WAY #200, SALT LAKE CITY, UTAH 84116.

(E) "Note" means the promissory note signed by Borrower and dated October 6, 2006. The Note states that Borrower owes Lender Nine Hundred Ninety Thousand And 00/100 Dollars (U.S. S 990,000.00)

FLORIDA - Single Family - Fennie Mee/Freddle Mac UNIFORM INSTRUMENT WITH MERS

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plus interest.	Borrower has promised	to pay this debt	in regular l	Periodic P	ayments and	to pay the	e debt in
full not later t	than November I, 2036.						
ZETS 24 Tr	M			41 1	1. W- 0		4 - 1 - 41

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[]	Adjustable Rate Rider	[]	Condominium Rider	[] Second Home R	lider
[]	Balloon Rider	()	Planned Unit Development Rider	[] 1-4 Family Ride	<u>r</u>
[]	VA Rider	[]	Biweekly Payment Rider	[] Other(s) [specify	/]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to

FLORIDA - Single Family - Famile Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note, For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction] of COLLIER [Name of Recording Jurisdiction):

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number:

which currently has the address of

287 EGRET AVE

NAPLES [City], Florida 34108 [Zip Code] ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the properly. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Londor including, but not limited to, releasing and canceling this Security Instrument.

FLORIDA - Single Family - Fannie Mae/Freddle Mac UNIFORM INSTRUMENT WITH MERS

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BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment of partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and

FLORIDA - Single Family - Fanole Mac/Freddle Mac UNIFORM INSTRUMENT WITH MERS
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the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually

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analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender,

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (e) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination

FLORIDA - Single Family - Funnic Muc/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's exponse. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Proporty, or the contents of the Proporty, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until L'ender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day

FLORIDA - Single Family - Fannie Mae/Freddle Mac UNIFORM INSTRUMENT WITH MERS Page 7 of 18

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period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

- 6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.
- 7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

- 8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.
- 9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and

FLORIDA - Single Family - Famile Mae/Freddie Mae UNIFORM INSTRUMENT WITH MERS

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rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Scourity Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Bottower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be nonrefundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or carnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Montgage Insurance in offect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Londer, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage' Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds. Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Londer otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in

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exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or proclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of proteoting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting

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Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

- 17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.
- 18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or excrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of

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Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer. Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the

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following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration: Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by Judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies

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provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

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	prower accepts and agrees to the terms and covenants contained in this executed by Borrower and recorded with it.
Signed, sealed and delivered in the pi	Barry Fritz Mach (Seal) BARRY FRITZ MACK -BOTTOWET
â	287 EGRET AVE NAPLES, FLORIDA 34108
	Charyl Margaret Frank (Seal) CHERYL MARGRET MACK BOTTOWET
	CHERYL MARGRET MACK Borrower
	(Address)
	(Seal) -Borrower
	(Address)
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	(Address)

FLORIDA - Single Family - Famule Mae/Freeddie Mat Uniform INSTRUMENT WITH MERS Page 17 of 18

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STATE OF FLORIDA,

County ss:

The foregoing instrument was acknowledged before me this 674 by W OND BER By by RARRY FRITZ MACK and CHERYL MARGRET MACK, who is personally known to me or who has produced FL by LIGENSE as identification

as identification.

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COUNTY OF	LPC	1	

CHE AL

Erica M. Samocs



GMAC MORTGAGE, LLC

GMAC MORTGAGE, LLC 1100 VIRGINIA DRIVE FT. WASHINGTON, PA 19034

Loan No.:

7259

Mortgagor (s):

BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY

FRITZ MACK

CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A

CHERYL MARGARET MACK

Property Address:

287 EGRET AVE., NAPLES, FL 34108

Original Balance:

\$990,000.00

Origination Date:

OCTOBER 6, 2006

Payment Amount:

\$5,874.60

Interest Rate (Percent):

7.125%

Loan Term (mo/yr):

360 term

EXHIBIT "B"

EXHIBIT U TO THE DECLARATION OF JOHN W. SMITH T

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CROUTT IN AND FOR COLLIER COUNTY, FLORIDA GENERAL JURISDICTION DIVISIONS HE BANK TRUST COMPANY AS AS TRUSTEE FOR RALI 2007QS3,

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3,

Plaintiff,

v.

Case No.: 09-7336-CA

BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK, ET AL.

Defendants.

ANSWER TO COMPLAINT TO FORECLOSE MORTGAGE, AFFIRMATIVE **DEFENSES AND COUNTERCLAIM**

COME NOW the Defendants, BARRY F. MACK and CHERYL M. MACK, by and through the undersigned counsel, and for answer to Plaintiff's Complaint to Foreclose Mortgage would state as follows:

COUNT I

- 1. Admitted for jurisdictional purposes only.
- 2. Admitted.
- 3. Admitted.
- 4. Denied.
- 5. Denied.
- Admitted, in that BARRY F. MACK and CHERYL M. MACK are the current 6. owners and possessors of the property.
- Denied. 7.
- 8. Denied.
- 9. Denied.
- 10. Denied.
- 11. Denied.

- 12. Denied.
- 13. Denied.

WHEREFORE, Defendants, BARRY F. MACK and CHERYL M. MACK, pray that this Complaint be dismissed, that Defendants, BARRY F. MACK and CHERYL M. MACK, be awarded their reasonable attorney's fees and costs herein expended.

FIRST AFFIRMATIVE DEFENSE

No default has occurred, but if a default has occurred, the note holder has waived such default and accepted payments not only for the principal and interest, but all late fees and costs associated with such late payments.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is a stranger to the note and mortgage owed by Defendants MACK and has no right, title or interest in the note or mortgage, and has filed this foreclosure without authority.

THIRD AFFIRMATIVE DEFENSE

If Plaintiff has actually acquired an interest in the note and mortgage by assignment, it has not done so according to the terms of law, and Defendants MACK have never been notified of such transfer. Therefore, Plaintiff is not entitled to bring this action, as it has no standing.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff, by filing this foreclosure action, has damaged the credit of Defendants MACK, and should be liable in setoff for any such damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has slandered the title of Defendants MACK and should be liable in setoff for any such slander of title.

COUNTERCLAIM

COME NOW the Defendants, BARRY F. MACK and CHERYL M. MACK, by and through the undersigned counsel, and sue Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR RALI 2007QS3, and allege:

- 1. This is an action for damages which exceed \$15,000.00.
- 2. Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS, ("Plaintiff DEUTSCHE BANK") is a Foreign Corporation registered to do business in the State of Florida.

3. Defendants, BARRY F. MACK and CHERYL M. MACK, ("Defendants MACK") are residents of Naples, Collier County, Florida.

COUNT I

(Violation of 12 U.S.C. §2601, et seq. – Real Estate Settlement Procedures Act)

- 4. Defendants MACK reallege the allegations contained in paragraphs 1 through 3 as though fully stated herein.
- 5. Defendants MACK signed and delivered a Mortgage to Primary Residential Mortgage, Inc. on or about October 6, 2006 (Exhibit "A").
- 6. Defendants MACK have a claim against Plaintiff DEUTSCHE BANK pursuant to 12 U.S.C. §2601 et seq. (Real Estate Settlement Procedures Act). This Court has jurisdiction pursuant to 12 U.S.C. §2614.
- 7. Plaintiff DEUTSCHE BANK was required by 12 U.S.C. §2605(c) to provide notice that the loan which Plaintiff DEUTSCHE BANK seeks to foreclose on had been assigned to them within fifteen (15) days of the assignment.
- 8. Plaintiff DEUTSCHE BANK failed to give notice of such transfer to Defendants MACK within fifteen (15) days.
- 9. Because Defendants MACK were never notified of a transfer of the loan in question from the predecessor banking institution, GMAC, to Plaintiff DEUTSCHE BANK, Defendants MACK continued to make monthly payments to GMAC, and is, in fact, current with their payment obligations under the mortgage of October 6, 2006.
- 10. Plaintiff DEUTSCHE BANK wrongfully filed a mortgage foreclosure action against Defendants MACK because they had not received the mortgage payments that were paid by Defendants MACK directly to GMAC, and not to Plaintiff DEUTSCHE BANK.
- 11. The institution of this mortgage foreclosure action has damaged the credit of Defendants MACK.
- 12. Plaintiff DEUTSCHE BANK has attempted to impose late fees on Defendants MACK in violation of 12 U.S.C. §2605(d).
- 13. 12 U.S.C. §2605(f)(3) provides for attorney's fees to be awarded to Defendants MACK should they be successful in this matter.
- 14. Defendants MACK have been forced to hire the services of an attorney licensed in the state of Florida to defend the foreclosure and to bring this Counterclaim, and to pay him a reasonable fee therefor.
- 15. Pursuant to 12 U.S.C. §2605(f), Defendants MACK are entitled to actual damages as well as additional damages in the amount of \$1,000.00.

WHEREFORE, Defendants MACK pray that Plaintiff DEUTSCHE BANK's foreclosure action be dismissed, that Defendants MACK be awarded their damages plus \$1,000.00, as well as their attorney's fees and costs herein expended.

COUNT II (Slander of Title)

- 16. Defendants MACK reallege the allegations contained in paragraphs 1 through 3 as though fully stated herein.
 - 17. This is an action for slander of title with damages that exceed \$15,000.00.
- 18. Defendants MACK own the following described property in Collier County, Florida:

Lot 36, Block S, of that certain Subdivision known as Conner's Vanderbilt Beach Estates, Unit No. 3, according to the plat thereof recorded in Plat Book 3, Page 89, Public Records of Collier County, Florida

- 19. Plaintiff DEUTSCHE BANK filed the instant foreclosure action against Defendants MACK and caused a notice of lis pendens to be recorded against the property on or about August 17, 2009 (Exhibit "B").
- 20. Defendants MACK are not, and have not been, in default under the terms of the mortgage attached hereto as Exhibit "A".
- 21. Defendants MACK are currently in the process of trying to sell their property, but such efforts have been severely hampered due to the wrongful recordation of the notice of lis pendens against the property, which serves to discourage potential purchasers.
- 22. Plaintiff DEUTSCHE BANK's recordation of the notice of lis pendens against Defendants MACK's property has caused Defendants MACK to suffer actual damages.
- 23. Defendants MACK have been forced to hire the services of an attorney licensed in the state of Florida to defend the foreclosure and to bring this Counterclaim, and to pay him a reasonable fee therefor.

WHEREFORE, Defendants MACK demand monetary damages against Plaintiff DEUTSCHE BANK, for slander of title and all such other relief this Court deems just and proper.

12-12020-mg Doc 8531-37 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit U Pg 6 of 28

David F. Garber, Esq. Florida Bar No. 0672386

GARBER, HOOLEY & HOLLOWAY, LLP 700 Eleventh Street South, Suite 202 Naples, Florida 34102-6777 (239) 774-1400 Telephone (239) 774-6687 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of this document was faxed and mailed to the person listed below on this $\underline{\mathcal{G}}$ day of $\underline{\mathcal{S}}_{e,d}$, 2009.

Elsa Hernandez Shum, Esq. Law Offices of David J. Stern, P.A. 900 South Pine Island Road, Suite 400 Plantation, Florida 33324-3920 954.233.8333 Facsimile

David F. Garber, Esq.

Attorney for Defendants MACK

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PALK TITLE ASSOC 12590 1 WHITEHALL DR FT MYBRS PL 33907 4680

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PRIMARY RESIDENTIAL MORTGAGE INC. 4750 WEST WILEY POST WAY #200 SALT LAKE CITY, UTAH 84116 Aun.: SHIPPING DEPT/DOC. CONTROL This document was prepared by: DANETTE NIX PRIMARY RESIDENTIAL MORTGAGE INC. 4750 WEST WILEY POST WAY, #200 SALT LAKE CITY, UTAH 84116

<u>/-00-0539-65</u>

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MORTGAGE

MIN MERS TELEPHONE: (888) 679-6377

DEFINITIONS

defined below and other words are defined in Words used in multiple sections Sections 3, 11, 13, 18, 20 and 2 ruled regarding the usage of words used in this document are also provided in Section 16

(A) "Security Instrument rineans this document, which is dated October 6, 2006, together with all Riders to this document.

(B) "Borrower" is BARRY RRITA MACK AND CHERYE MARGRET MACK, JOINT TENANTS. Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems. Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender successors and assigns. MERS is the mortgaged under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is PRIMARY RESIDENTIAL MORTGAGE INC.. Lender is a corporation organized and existing under the laws of the State of NEVADA. Lender's address is 4750 WEST WILEY POST WAY #200, SALT LAKE CITY, UTAH 84116.

(E) "Note" means the promissory note signed by Borrower and dated October 6, 2006. The Note states that Borrower owes Lender Nine Hundred Ninety Thousand And 00/100 Dollars (U.S. \$ 990,000,00)

FLORIDA - Single Family - Famile Mae/Freddle Mac UNIFORM INSTRUMENT WITH MERS

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EXHIBIT

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plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2036.

- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (C) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[]	Adjustable Rate Rider Balloon Rider VA Rider	[] Condominium Rider [] Planned Unit Development Rider [] Biweekky Hawman Char	[] Second Home Ric [] 1-4 Family Rider [] Other(s) [specify]
ĺĺ	VA Rider	1 Bureekdy Parkneur Riller	[] Other(s) [specif

- (I) "Applicable Law" means all centrolling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- non-appealable judicial opinions.

 (J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a confidentialism association, homeowners association or similar organization.
- (K) "Electronic Funds Transfer" means any muster of funds, other than a transaction originated by check, draft, or similar paper instalment, which is initiated through an electronic terminal, telephonic instrument, computer, or mustic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point of sale transfers, automated teller machine transactions, transfers impaired by telephone, wire transfers and automated clearinghouse transfers.
- (L) "Escrow Items" means those items that are described in Section ?
- (M) "Miscellaneous Proceeds" means any compensation, satisfaction, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to

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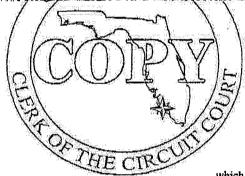
a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument,

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction] of COLLIER [Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE TART HEREOF.



Parcel ID Number: 287 EGRET AVE

which currently has the address of

NAPLES [City], Florida 34108 [Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security instrument.

FLORIDA - Single Family - Fanoic Mac/Freddle Mac UNIFORM INSTRUMENT WITH MERS Page 3 of 18

Initials: BXXX cmm

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments had under the Note and this Security Instrument shall be made in U.S. currency. However, it invelock or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid! Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) each; (b) maney order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by federal agency, instrumentality of entity of (d) Elegaronto Funds Transfer.

reasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by federal agency, instrumentally, or entity, or (ii) Elegenoric Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender infaccordance with the notice provisions in Section 15. Lender may return any payment or partial payment in the payment are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prefidice to its rights to refuse such payment or partial payments in the future, that Lender is not obligated to apply such payments at the time such payments are accepted. If each Remodule Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower dees not displied funds until Borrower makes shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and

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the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellancous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leaseheld payments or ground rents on the Property, if any; (c) premiums for any and all insurance promiums for any and all insurance promiums, if any, or any sums payable of Borrower to tander in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 100. These items are called "Escrow Items." At origination or at any time during the term of the Loan Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay be under the funds for Ecrow Items unless Lender waives Borrower's obligation to pay the funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of auch waiver Borrower shall pay directly, when any where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement domained in this Security Institution, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount the for any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then req

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually

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analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Londer shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens Borrower shall pay all laxes, assessments, dharges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or

attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any; and Community transposition Dues, fees, and Assessments, if any. To the extent that these items are Estrow literis, Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the ordination secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in legal/proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) segures from the holder of the lien are agreement satisfactory to Lender subordingting the lien to this Security Instrument. If Lender determines that any part of the Property is subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority overthis Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan,

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter creeted on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination

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Initials: Barrell comm

and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured of the Section Insurance. These amounts shall bear interest at the Note rate from the date of disburgation and shall be payable with such interest, upon notice from Lender to Borrower requesting payable.

All insurance policies reduired by Lender and renewalls of such policies shall be subject to

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or/as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender tenders, Borrower shall bromptly give to Lender all receipts of paid premiums and renewal netices. If Borrower botains any four of insurance coverage, not otherwise required by Lender, for damage to, or destruction of the Property, such policy shall include a standard mortgage clause and shall make Lender as mortgage ender as arranditional loss payee.

In the event of loss, Borrower shall give promit notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless dender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the inderlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an epportunity to inspect such Property to ensure the work has been completed to bender's sanstaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day

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period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of uncarned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating given the property and Borrower's least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating given the property as Borrower's principal residence.

otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower shorter.

7. Preservation, Maintenance and Protection of the Broperty: Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to descriptate or commit waste on the Property. Whether or not Borrower is residing in the Property. Borrower shall maintain the Property in order to prevent the Property from descriptation or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further descriptation or damage. If insurance or condemnation proceeds are paid in connection with damage to or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application

- 8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.
- 9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and

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rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. Hiese supplies shall be interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires see title to the Property, the leasehold and the see title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance in Flender equired Mortgage Insurance as a condition of making the Loan, Borrower shall pay the promiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender deases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage/coased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lict of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance. If Lender required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination o

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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as a portion of Bonover's payments for Mortgage Insurance, in exchange for sharing or modifying the mottage insurer's risk, of reducing losses. If such agreement provides that an affiliate of Lender whee a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Purther:

(a) Any such agreements will not affect the agreements that Borrower has agreed to pay for

(a) Any such agreements will not affect the appenns that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will car entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has if any - with respect to the Mortgage Insurance under the Hameowners Protention Act of 1998 or any other law. These rights may include the right to receive restain disclosured; to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance ferminated sufficiently, and/or to receive a refund of any Mortgage Insurance premiums that were attenued at the time of such cancellation or termination. termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture All Miscellaneous Proceeds are hereby assigned to and shall be paid to hender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property inunediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking destruction of loss in value of the Property in which the fair market value of the Property immediately before the partial taking destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums agree then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days are the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restolation or repair of the Property or to the sums secured by this Security Instalment, whether or not therefore. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in definit if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property of other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Walver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in

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exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18 any Subjects in Interest of Borrower who assumes Borrower's obligations under this Security instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender risk charges horrower feas for services performed in connection with Borrower's default, for the purpose of projecting flender's interest/in the Property and rights under this Security Instrument, including, but not limited to, attorneys' feed, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument of by Applicable Law.

fees that are expressly prohibited by this Security Instrument at by Applicable Law.

If the Loan is subject by a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) pay such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit sind (b) any came already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting

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Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a probability against agreement by contract. In the event that any provision or clause of this Security Instrument at the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

given effect without the conflicting provision.

As used in this Security/Instruments (a) words of the masculine gender shall mean and include corresponding neuter words or words of the Eminine gender (to words in the singular shall mean and include the plural and vice versal and (c) the word max) gives solv discretion without any obligation to take any action.

take any action.

17. Borrower's Copy, Borrower that be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contact for deed, installment sales contract or escrow agreement, the intent of which some transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property dryany Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without

If all or any part of the Property Frank Interest in the Property is sold or transferred (or if Borrower is not a natural person and a benefitial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of

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Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower; (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a felteral agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Bortower, this Security Instrument and obligations secured hereby shall remain fully effective as it to acceleration had occurred. Florever, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the cutity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and Applicable Law. There also might be one or more changes of the Loan Servicer under the Applicable Law. There also might be one or more changes of the Loan Servicer under the Applicable Law. Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the boar Servicer or be transferred to a successor Loan Servicer and are not

assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may continence; John or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the

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following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not lithited to hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance of Engirenmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including our not limited to all spilling. Jeaking, discharge, release or threat of release of any Hazardous Substance, and (d) any condition caused by the presence, use or release of Hazardous Substance which adversely affects the value distinct Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on

Lender for an Environmental Cleanup

NON-UNIFORM COVENADES: Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedie: Lender shall give reduce to Borrower prior to acceleration following Borrower's breach of any covenant of agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies

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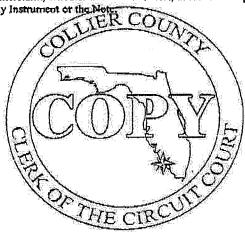
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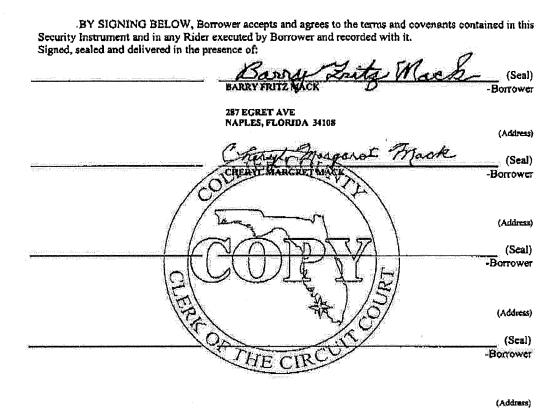
provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.





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STATE OF FLORIDA,

The foregoing instrument was acknowledged before me this 674 Lay of October 15 by BARRY FRITZ MACK and CHERYL MARGRET MACK,

who is personally known to me or who has produced FL ho. LACENSE

as identification.

FLORIDA - Single Family - Faorie Mae/Freddle Mac UNIFORM INSTRUMENT WITH MERS

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STATE OF FL COUNTY OF Lee

The foregoing instrument was acknowledged before me this day of October, 200% by Berry Fritz Mack He is personally known to me or has produced a sidentification and who did not take an oath.

CE AL

*** OR: 4123 PG: 0823 ***

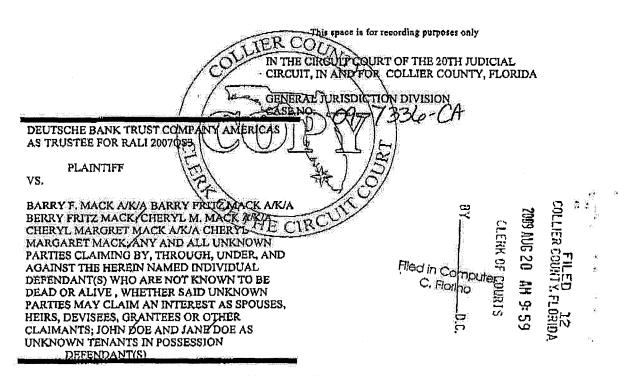
Lot 36, Block S, of that certain Subdivision known as Conner's Vanderbilt Beach Estates, Unit No. 3, according to the plat thereof recorded in Plat Book 3, Page 89, Public Records of Collier County, Florida.



RP-YOB

INSTR 4333096 OR 4484 PG 13 RECORDED 8/20/2009 3:50 PM PAGES DWIGHT E. BROCK, COLLIER COUNT CLERK OF THE CIRCUIT COURT REC \$9.00

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NOTICE OF LIS PENDENS

- 1. TO: The above named Defendants, AND ALL OTHERS WHOM IT MAY CONCERN:
- 2. YOU ARE NOTIFIED of the Institution of this action by the Plaintiff against you seeking to foreclose the Note and Mortgage encumbering the described property and the decreeing of a sale of the property under the direction of the court in default of the payment of the amount found to be due the Plaintiff under the Note and Mortgage, and for other, further and general relief set forth in the Complaint.
- 3. The property involved is that certain parcel, lot or unit situate, lying and being in COLLIER County, Florida, as set forth in the mortgage recorded in Official Records Book 4123, at Page 804, more particularly described as follows:

EXHIBIT

F:\UROUPS\FCDOCS\COMPLAIN\0909-75989.CMP

12-12020-mg Doc 8531-37 Filed 04/27/15 Entered 04/27/15 16:52:56 Smith T Decl. Exhibit U Pg 28 of 28

*** OR 4484 PG 1344 ***

LOT 36, BLOCK S, CONNOR'S VANDERBILT BEACH ESTATES, UNIT NO. 3, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGE 89, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

Dated at Plantation, Broward County, Florida, this day of day of day of

ELSA HERNANDEZ SHUM

Bar #: 29554 Miriam Mendieta

Bar #: 0866880 Law Offices of David J. Stern, P.A.

Attorney for Plaintiff

900 South Pine Island Road SUITE 400

Plantation, PL 33324-3920

(954) 233-8000

09-75969 GMAP

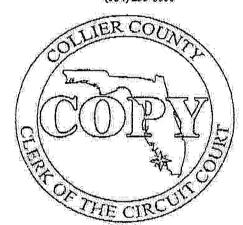


EXHIBIT V TO THE DECLARATION OF JOHN W. SMITH T

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RF0793

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA GENERAL JURISDICTION DIVISION

RECEIVED BY LEGAL DEPARTMENT

MAY 1 1 2011

DEUTSCHE BANK AG NY BRANCH

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3.

Plaintiff.

V.

Case No.: 09-7336-CA

BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK, ET AL.

Defendants.

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FINAL JUDGMENT

THIS CAUSE having come before the Court on May 5, 2011 at 9:00a,m, and upon testimony of witnesses and argument of counsel, and this Court being otherwise advised in the premises, the following findings of fact are made:

- Defendants, BARRY F. MACK and CHERYL M. MACK, filed their Answer to Complaint to Foreclose Mortgage. Affirmative Defenses and Counterclaim on September 9, 2009.
- A Default was entered against Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE AS TRUSTEE FOR RALI 2007QS3, on October 21, 2009.
- On or about August 17, 2011, Plaintiff filed a Notice of Lis Pendens which was recorded in the Public Records of Collier County at OR Book 4484, Pages 1343-1344 on August 20, 2009, and contemporaneously filed a Complaint to Foreclose Mortgage.
- 4. The Mortgage sought to be foreclosed was between Defendants. BARRYFRITZ MACK and CHERYL MARGRET MACK, and Primary Residential Mortgage. Inc., which was recorded in the Public Records of Collier County. Florida on October 17, 2006 at OR Book 4123. Page 0804. There is no assignment of record to Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3.
- Defendants, BARRY F. MACK and CHERYL M. MACK, made each monthly payment as required to GMAC Mortgage, LLC, were never notified of a transfer of the Mortgage from

- GMAC Mortgage, LLC to Plaintiff and continued to make payment to GMAC Mortgage, LLC, and were not in default under the Mortgage sued upon.
- Defendants, BARRY F. MACK and CHERYL M. MACK, entered into a Listing of Residential Improved Property Exclusive Right and Authority to Sell Contract on March 26, 2008 with Gulf Breeze Real Estate for a listing price of \$1,969,000.00.
- The threat of pending foreclosure and the title slandered by Plaintiff's Notice of Lis Pendens.
 Defendants MACK reduced the MLS listing price of their property to \$1,499,000.00 on August 30, 2009.
- Defendants. BARRY F. MACK and CHERYL M. MACK, ultimately sold their property for \$1,156,500.00, which closing took place on January 28, 2010.
- The property of Defendants, BARRY F. MACK and CHERYL M. MACK, had a value of \$1,275,000.00 as of January 29, 2010 according to the appraisal of trial expert and licensed appraiser, Ted Hofferber.
- 10. Defendants MACK suffered actual damages in the amount of \$118,500.00, the difference between the sale price and the appraised price of the property.
- 11. Defendant, CHERYL M. MACK, experienced great metal distress, pain and suffering including physical symptoms, including hospitalization, resulting therefrom as a result of the stress during the foreclosure action wrongfully filed against Defendants MACK.
- 12. Defendants MACK have suffered damage to their credit as a result of Plaintiff's actions.
- Both actual damages and emotional distress damages are awardable under 12 U.S.C. §2601, et seq. (RESPA).
- 14. Due to Plaintiff's filing of a Notice of Lis Pendens, the title to the property of Defendants, BARRY F. MACK and CHERYL M. MACK, was slandered. Plaintiff communicated to a third party a false statement disparaging title which caused Defendants MACK actual damage, including \$2.500,00 in attorney's fees to successfully defend the foreclosure action by Plaintiff. ((See Residential Comms. 1'. Escondido Comm., 645 So.2d 149 (Fla. 5th DCA 1994)).
- 15. Plaintiff violated the provisions of 12 U.S.C. §2601, et seq. (RESPA) in the following regards:

- a. Plaintiff failed to provide notice to Defendants MACK of any assignment within fifteen (15) days of such assignment. Defendants MACK were not notified of the transfer to Plaintiff. DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3.
- Plaintiff seeks to impose late fees on Defendants MACK in violation of 12 U.S.C. §2605(d).
- 16. Under 12 U.S.C. §2605(f) attorney's fees are awardable to a prevailing party. Defendants MACK are the prevailing party.

Based upon the above-stated findings of fact, it is hereby

ORDERED, ADJUDGED and DECREED that

- 1. Judgment is hereby entered in favor of Defendants. BARRY MACK and CHERYL MACK, against Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007Q\$3, for damages to the value of the real estate in the amount of \$296,920.05. for emotional anguish and pain and suffering of Defendant. CHERYL M. MACK, in the amount of \$150.000.00 and prejudgment interest from January 28, 2010 to May 5, 2011 on the real estate damages in the amount of \$22.550.22, for a total of \$469,470.27 which amount shall accrue interest at the legal rate of 6%, for all of which let execution issue forthwith.
- Defendants MACK are awarded their attorney's fees herein. Jurisdiction is expressly reserved for determination of attorney's fees and costs to be awarded to Defendants MACK.

DONE and ORDERED in Chambers at Naples. Collier County, Florida on this 5 day of

May 2011.

HONORABLE DANIEL R. MONACO

Circuit Court Judge



Conformed Copies Provided To:

Judgment Debtor:

Deutsche Bank Trust Company Americas, Trustee

60 WALL STREET

NYC60-4006

NEW YORK NY 10005 US

Debtor Attorney:

Elsa Hernandez Shum, Esq.

Law Offices of David J. Stern, P.A. 900 South Pine Island Road, Suite 400 Plantation, Florida 33324-3920

Judgment Creditor:

Barry and Cheryl Mack 42 Amberfield Drive Delran, New Jersey 08075

Creditor Attorney:

David F. Garber, Esq.

GARBER, HOOLEY & HOLLOWAY, LLP

700 Eleventh Street South, Suite 202

Naples, Florida 34102

EXHIBIT W TO THE DECLARATION OF JOHN W. SMITH T

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA GENERAL JURISDICTION DIVISION

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3,

Plaintiff,

Case No.: 09-7336-CA

BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK, ET AL.

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FINAL ORDER ON PLAINTIFF'S MOTION TO SET ASIDE FINAL JUDGMENT AND SET NEW TRIAL

This cause having come before the Court on Plaintiff's Motion to Set Aside Final Judgment and Set New Trial dated July 13, 2011, and the court having reviewed the submissions of the parties and having received and considered testimony and evidence, and being otherwise fully advised in the premises, finds as follows:

- Plaintiff filed Plaintiff's Motion to Set Aside Final Judgment and Set New Trial on July 13, 2011, seeking to set aside the default Final Judgment entered herein on May 5, 2011.
- Under Fla. R. Civ. P. 1.540(b), Plaintiff was required to satisfy the burden of proof as to three prongs: due diligence, excusable neglect and meritorious defense. See Geer v. Jacobsen, 880 So.2d 717, 720 (Fla. 2d DCA 2004) (citing Coquina Beach Club Condo Ass'n, Inc. v. Wagner, 813 So.2d 1061, 1063 (Fla. 2d DCA 2002)).
 - a. Due Diligence
 - i. Evidence was adduced at hearing that the Final Judgment entered on May 5, 2011 was received by Plaintiff on or about May 11, 2011, and that GMAC MORTGAGE, LLC (hereinafter GMAC) as agent for Plaintiff had the responsibility to investigate the Final Judgment and appropriately respond. GMAC filed a Notice of Appearance on June 29, 2011, and Plaintiff's Motion to Set Aside Final Judgment and Set New Trial on July 13, 2011. Due to confusion at GMAC upon receipt of the Final Judgment, a delay in moving to set aside the Final Judgment of 45 days was reasonable.

b. Excusable Neglect -

 Evidence was adduced at trial that the Law Offices of David J. Stern, P.A. (hereinafter the Stern Firm) received a plethora of pleadings notices and orders sent not only by counsel for Defendants MACK, but also the court. The receipt of the documents by the Stern Firm, as corroborated by their representative, Forrest McSurdy, conclusively shows there was a complete breakdown of the system at the Stern Firm. Although Plaintiff's agent, GMAC, presented evidence they never received notice of Defendants MACK's Counterclaim during one and a half years of litigation, nevertheless it is undeniable that the Stern Firm was guilty of gross negligence. The Stern Firm was repeatedly advised, on both the clerical and attorney level, of the ongoing nature of the proceedings, and still the Stern Firm did not take any action, did not protect rights of their client, GMAC and Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS, TRUSTEE, and therefore their behavior did not amount to excusable neglect. Neither Plaintiff nor GMAC is able to avoid the grossly negligent actions of the Stern Firm.

c. Meritorious Defense -

- As the element of Excusable Neglect is not met, a finding as to whether or not Plaintiff has a meritorious defense need not be considered.
- Plaintiff's Motion to Set Aside Final Judgment and Set New Trial also raises issues as to voidability of the May 5, 2011 Final Judgment, which are addressed as follows:
 - i. Defendants MACK were required to properly plead and prove the causes of action set forth in their Counterclaim. Defendants MACK brought their counterclaims based upon violations of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601, et seq.) and slander of title. The RESPA count alleged that Defendants MACK were not notified of a change of ownership of the loan itself, and that the failure to notify of a change of ownership resulted in damages including emotional pain and suffering. While RESPA does allow for such damages, RESPA requires that the mortgagor be notified upon a change in servicer, but is not required to be notified on a change of ownership of the loan itself. Evidence presented by Plaintiff in its motion to vacate showed GMAC was the servicer of this loan, and remained so throughout the litigation.

- Defendants MACK did not plead or prove a violation of RESPA in this regard, and therefore, having no other basis for an award of pain and suffering damages, the \$150,000.00 in damages for pain and suffering cannot be allowed.
- ii. Defendants MACK did properly plead slander of title in that the publication of the lis pendens and the lawsuit alleging they had failed to pay their mortgage in accordance with its terms led to third parties being reluctant to deal with them in their efforts to sell the property and pay off their loan, and significantly depressed its value. The foreclosure was not warranted because Defendants MACK in fact made their payments timely and servicer GMAC conceded that it mistakenly filed the foreclosure action without justification.
- iii. Although the May 5, 2011 Final Judgment found that there was a difference in the price at sale in Jan 28, 2010, and the appraised price of the property of \$118,500.00 by Ted Hofferber, certified appraiser, evidence was also presented that Defendants MACK initially had listed the property for sale at \$1,969,000.00, but due to the pressure of the foreclosure reduced the listing price to \$1,499,000.00 and ultimately sold the property while under foreclosure for \$1,156,500.00. The Court is not in the position to reevaluate the factual findings in the Final Judgment of May 5, 2011 and finds the award of \$296,920.05 representing real estate damages is not voidable.

IT IS ORDERED, ADJUDGED, pursuant to this Court's extensive oral pronouncement at a hearing held on October 12, 2012, as follows:

- The Final Judgment of May 5, 2011 is confirmed as to the amount of real estate damages in the amount of \$296,920.05, plus prejudgment interest at 6% on the real estate damages of \$22,550.22, plus \$2,500.00 in pre-judgment attorney's fees, for a total of \$321,970.77.
- The portion of the Final Judgment of May 5, 2011 awarding any amounts due to Defendant's counterclaim based on RESPA (including the \$150,000.00 in damages for emotional pain and suffering) is hereby vacated.
- 3. The Order Granting Plaintiff Deutsche Bank Trust Company Americas as Trustee for RALI2007QS3's Motion for Stay of Execution dated November 15, 2011 is hereby modified as follows; Plaintiff shall have 10 days from the entry of this Order to pay the judgment of \$321,970.77. Defendants are permitted to seek payment of the awarded

- amount through enforcement of the Stay Bond posted on November 21, 2011; the remainder of the bond shall remain in place pending a determination of the amount of attorney's fees and costs to be awarded.
- 4. The Court expressly reserves jurisdiction to determine entitlement and amount of any post-judgment attorney's fees and costs as well as the amount of any post-judgment interest. Defendants are given thirty (30) days to submit a pleading and supporting materials requesting post-judgment attorney's fees and costs. Plaintiff is permitted thirty (30) days to submit any response. The Court will schedule a hearing to consider any request for post-judgment attorney's fees.

DONE AND ORDERED in Naples, Collier County, Florida this 26

ruery , 2013.

HONORABLE RAMIRO MAÑALICH

CIRCUIT COURT JUDGE

cc:

David F. Garber, Esq. Garber & Hooley, LLP 700 Eleventh Street South, Suite 202 Naples, Florida 34102

John Smith T, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104

Stanley A. Bunner, Jr., Esq. Salvatori, Wood, & Buckel, P.L. 9132 Strada Place, Fourth Floor Naples, FL 34108

Robert E. Morris, Esq. Morris Law Firm 245 East Washington Street Monticello, Florida 32344

EXHIBIT X TO THE DECLARATION OF JOHN W. SMITH T

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Page 1
      IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
 1
              IN AND FOR COLLIER COUNTY, FLORIDA
2
                GENERAL JURISDICTION DIVISION
                                    CASE NO. 09-7336 CA
 3
 4
    DEUTSCHE BANK TRUST COMPANY
 5
    AMERICAS AS TRUSTEE FOR RALI
    2007QS3,
 6
            Plaintiff,
7
    VS.
8
    BARRY F. MACK A/K/A BARRY FRITZ )
    MACK A/K/A BERRY FRITZ MACK,
    et al.,
10
            Defendants.
11
12
13
14
15
        VIDEOTAPED DEPOSITION OF FORREST G. McSURDY
16
17
    taken before Cindy Hart, Court Reporter and
18
    Notary Public in and for the State of Florida at
19
    Large, at Suite 1500, 1441 Brickell Avenue,
20
    Miami, Florida, on Tuesday, April 17, 2012,
21
    commencing at 11:05 a.m., pursuant to Defendants
22
    Mack's Notice of Taking Videotaped Deposition of
23
    Corporate Representative of Law Offices of David J.
24
25
    Stern, P.A.
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	Page 2	11	Page 4
1	APPEARANCES:	1	VIDEOGRAPHER: We're here today April
2	BRADLEY, ARANT, BOULT, CUMMINGS, LLP.	2	17th, year 2012. Time is approximately 11:05 a.m.
3	(BY MR, JOHN W. SMITH T) One Federal Place	3	We're here for the videotaped deposition of Forrest
3	1819 Fifth Avenue North,	1	
4	Birmingham, Alabama 35203-2104	4	G. McSurdy in the matter of Deutsche Bank Trust
_	On behalf of the Plaintiff.	5	Company versus Barry F. Mack, et al.
5	GARBER, HOOLEY & HOLLOWAY, LLP.	6	Court reporter today is Cindy Hart from
6	(BY MR. DAVID F. GARBER)	7	Porter, Walker & Associates. Videographer is
Ţ.,	Suite 202	8	Sylvanus Holley with Legal Video Services, Inc.
7	700 Eleventh Street South,	9	Would counsel please announce their
8	Naples, Florida 34102 On behalf of the Defendants.	10	
9	TEW CARDENAS, LLP.		appearance for the record.
2	(BY MR. JEFFREY TEW)	11	MR. GARBER: David Garber on behalf of the
10	Suite 1500	12	Defendants, Mr. and Mrs. Mack.
	1441 Brickell Avenue	13	MR. TEW: Jeffrey Tew on behalf of the
11	Miami, Florida 33131 On behalf of the Deponent.	14	witness.
12		15	MR. SMITH T: My name is John Smith T.
	ALSO PRESENT:	16	I'm here on behalf of the Plaintiff, as well as GMAC
13	MP SYLVANUS HOLLEY Videographer	1,000	[1] '[1] [1] [1] [1] [1] [1] [1] [1] [1] [1]
14	MR. SYLVANUS HOLLEY, Videographer.	17	Mortgage.
15		18	Just let me say for the record that this
16	I-N-D-E-X	19	deposition is being made subject to the detective
	WITNESS DIRECT CROSS REDIRECT RECROSS FORREST G. McSURDY	20	order which was approved by the parties and is being
	BY MR. GARBER 5 121	21	entered by the Court.
	BY MR. SMITH T	22	And as a result of the hearing on April
	BY MR. TEW 120	1,000,000	
22		23	11th before Judge Manalich, the deposition also is
23 24		24	subject to certain limitations as to scope. Thank
25		25	you.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A - Master Services Agreement 7 B - Complaint 28 C - Answer and Counterclaims of Defendant 30 D - Answer and Affirmative Defenses To 32 Counterclaim E - Deutsche 000979 - Deutsche 001068 48 F - Response of Law Offices of David J. 48 Stern, P.A. To Defendants' Subpoena Duces Tecum Without Deposition G - Deutsche 001176 - Deutsche 001355 69 No. 2 - New Trak notes history 93 H - Two pages e-mails dated August 25, 2009 107 and August 18, 2010	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	after having been first duly sworn, was examined and testified as follows: DIRECT EXAMINATION BY MR. GARBER: Q. Would you please tell us your full name, sir. A. Forrest, middle initial G. McSurdy. Q. And what year were you born? A. 1956. Q. Where do you live? A. I live in Miami. Q. Are you an attorney? A. Yes. Q. When did you become licensed to practice law? A. 1981. Q. Where did you go to law school? A. University of Miami Law School.
19 20		21	Q. What firm are you employed with now?
		22	A. Law Offices of David J. Stern, P.A.
		23	Q. How long have you been with David Stern'
22			LINEY INTO THEY AND DOCT WILL DUVIN DUCTI
21 22 23			
22		24 25	 A. Since December of 1995. Q. What types of duties have you undertaken

	Page 6		Page 8
1	while working at the Offices of David Stern?	1	review this and I'll ask you a few questions.
2	A. Initially I was hired as a litigation	2	A. Okay,
3	attorney to handle contested foreclosure matters.	3	Q. Have you ever seen this contract before?
4	The firm was approximately five attorneys at that	4	A. I have.
5	point and maybe 10 paralegals.	5	Q. This is a contract that was produced to us
6	As the firm grew, I became the head of the	6	by Deutsche Bank and it's numbered on the bottom
7	litigation department and eventually I also took on	7	right hand corners double 01069 through double 01104.
8	duties of general counsel and doing appellate work.	8	On the first page, which is 1069, is that
9	Q. Were you working there in the summer of	9	the signature of David Stern?
10	2009?	10	A. It looks like his signature, yes.
11	A. Yes.	11	Q. If you'd be so kind as to turn to page
12	Q. And you were head of the litigation	12	1071. Was it the understanding that either party can
13	department at that time?	13	terminate the agreement by default of the other party
14	A. Yes. Well, mostly general counsel but	14	which remains uncured for 30 days after being
15	also head of the litigation department.	15	notified in writing of the default?
16	Q. How many people were employed there at	16	A. Are you asking me is that what the
17	that time?	17	agreement says?
18	A. What time is that again?	18	Q. That's what it says. Is that the practice
19	Q. In the summer of 2009.	19	that you understood would be employed?
20	A. Oh, I would say about between 1,000 and	20	A. I didn't have an understanding with
21	1200.	21	respect to that.
22	Q. That worked at the Offices of David Stern?	22	Q. At the bottom of that page, paragraph 6.1,
23	A. Yes.	23	it says that "Company represents and warrants that
24	Q. How many were lawyers?	24	the Services will be performed in a diligent and
25	A. 125, 130.	25	workmanlike manner" by David Stern's law office. Do
	Page 7		Page 9
1	Q. The rest were support personnel?	1	you see that?
2	 A. Yes, of some fashion, paralegals, clerks, 	2	A. Yes.
3	accounting.	3	Q. And you would agree with me that you
4	Q. We are involved in a lawsuit in which	4	performed your work in a diligent and workmanlike
5	Deutsche Bank is the Plaintiff and my clients,	5	manner as the attorney for GMAC?
6	Mr. and Mrs. Mack, are the Defendants. Deutsche	6	MR. SMITH T: Object to form.
7	Bank's interests have been handled by General Motors	7	THE WITNESS: You mean in all matters that
8	Acceptance Corporation mortgage division.	8	were handled by the
9	Did you handle any cases for General	9	Q. (BY MR. GARBER) Yes, that was your
10	Motors, GMAC, in the summer of 2009?	10	practice?
11	 If I did, it would have been an appeal. 	11	A. That was the attempt, yes, to do that.
12	It would not have been a litigation matter. That is	12	Q. Was that your practice?
13	litigation, but I wouldn't have been involved in the	13	A. The practice?
	actual litigation of the case.	14	Q. Yes.
14			A. I believe it was. We obviously are human
14 15		15	
15	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC?		and make mistakes, but that was the attempt to
15 16	Q. Have you ever seen the contract that the Offices of David Stern entered Into with GMAC?	16	and make mistakes, but that was the attempt to practice.
15 16 17	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it.	16 17	practice.
15 16 17 18	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it. MR. GARBER: I have a couple of copies	16 17 18	practice. Q. Okay. Please turn to the next page, 1072.
15 16 17 18 19	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it. MR. GARBER: I have a couple of copies here, and I would ask the court reporter if she would	16 17 18 19	practice. Q. Okay. Please turn to the next page, 1072. Under 6.4 it says, "Company," that's David Stern,
15 16 17 18 19 20	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it. MR. GARBER: I have a couple of copies here, and I would ask the court reporter if she would be so kind as to mark this as Exhibit A to our	16 17 18 19 20	practice. Q. Okay. Please turn to the next page, 1072. Under 6.4 it says, "Company," that's David Stern, "represents and warrants that Company's actions and
15 16 17 18 19 20 21	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it. MR. GARBER: I have a couple of copies here, and I would ask the court reporter if she would be so kind as to mark this as Exhibit A to our deposition, and a copy for you Mr. Smith T.	16 17 18 19 20 21	practice. Q. Okay. Please turn to the next page, 1072. Under 6.4 it says, "Company," that's David Stern, "represents and warrants that Company's actions and performance of the Services are and will be in full
15 16 17 18 19 20 21 22	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it. MR. GARBER: I have a couple of copies here, and I would ask the court reporter if she would be so kind as to mark this as Exhibit A to our deposition, and a copy for you Mr. Smith T. (Thereupon, Master Services Agreement	16 17 18 19 20 21 22	practice. Q. Okay. Please turn to the next page, 1072. Under 6.4 it says, "Company," that's David Stern, "represents and warrants that Company's actions and performance of the Services are and will be in full compliance with all the applicable federal, state,
15 16 17 18 19 20 21	Q. Have you ever seen the contract that the Offices of David Stern entered into with GMAC? A. Yes, I have seen it. MR. GARBER: I have a couple of copies here, and I would ask the court reporter if she would be so kind as to mark this as Exhibit A to our deposition, and a copy for you Mr. Smith T.	16 17 18 19 20 21	practice. Q. Okay. Please turn to the next page, 1072. Under 6.4 it says, "Company," that's David Stern, "represents and warrants that Company's actions and performance of the Services are and will be in full

	Page 10		Page 12
1	Was that the general practice also of	1	employee of David Stern?
2	David Stern to uphold that paragraph 6.4 with respect	2	A. He was to facilitate the movement of
3	to GMAC cases?	3	foreclosure cases. For example, if the law firm
4	A. Yes, that was the goal.	4	if it were a contested case, a litigated case and the
5	Q. In paragraph number seven on that same	5	law firm had asked for documents to comply with
6	page, it says, "When Company is performing Services	6	production requests and the law firm had not gotten
7	on Client's premises," clients is GMAC. Did the	7	them in a timely manner, he would get involved to try
8	company ever perform services on client's premises?	8	to get GMAC to comply with the requests.
9	A. The company did have at least one person	9	Q. Who was his immediate supervisor when he
10	that I know of on site at the client's premises.	10	worked for David Stern?
11	Q. And where was that?	11	A. I don't know. Other than David Stern, he
12	A. Pardon me?	12	probably came under the jurisdiction of the office
13	Q. Where was that?	13	manager, Cheryl Sammons.
14	A. I don't know which of the main GMAC field	14	Q. Where is Ms. Sammons now?
15	offices that was at. It might have been Horsham, PA	15	A. I have no idea.
16	or it might have been in Iowa. They had many	16	Q. She was the office manager?
17	different	17	A. Yes.
18	Q. Were you aware there's a litigation	18	Q. For how long?
19	department responsible for foreclosures in Fort	19	A. She was office manager when I started in
20	Washington, Pennsylvania?	20	'95 and I believe she was her employment stopped
21	A. Fort Washington, that's near Horsham, yes,	21	sometime in September of 2010.
22	that's the same area. I grew up in Philadelphia.	22	Q. When did Kevin Crecco stop being an
23	Q. Okay. Do you know if that's where David	23	employee of David Stern?
24	Stern maintained its client or its employee?	24	A. I don't know.
25	A. No, I'm sorry.	25	Q. Now, under this paragraph seven of the
	131,747,8112	-	,, p
	Page 11		Page 13
1	MR. SMITH T: Object to form. Asked and	1	contract, it says that the Company will maintain a
2	answered.	2	log of the names of personnel and times when they
3	Q. (BY MR. GARBER) Do you know the name of	3	have possession of such keys or access devices.
4	that employee?	4	Do you know if the company did maintain
5	 Kevin Crecco I believe was his name, 	5	such a log, the company being David Stern?
6	C-r-e-c-c-o.	6	A. No, I don't. Cheryl Sammons probably
7	Q. Do you know when they first maintained him	7	would have noted that.
8	as an employee in Pennsylvania?	8	Q. Under paragraph eight under "Place of
9	A. No, I'm sorry, I don't.	9	Performance," it says that the services shall take
10	 Q. So he was working for the Law Office of 	10	place in any of the 50 states of the United States.
11	David Stern, but he was situated on site with GMAC;	11	Did David Stern represent GMAC in any
12	is that correct?	12	other state other than Florida?
13	A. Which period of time are you speaking of?	13	A. I do not believe so.
14	Q. Well, the summer of 2009.	14	Q. On page 1073 it says, "Company," that's
15	A. I don't know. Initially he to my	15	David Stern, "shall provide assurance satisfactory to
16	knowledge, he started out as an employee of GMAC and	16	Client that Company's personnel meet the rules,
17	at some point he became an employee of the Law	17	regulations of Client pertaining to work history and
18	Offices of David Stern, on site.	18	qualifications." That's at the top under paragraph
19	Q. Okay. When he became an employee of David	19	looks like 8.3. Do you see that?
20	Stern, did he move down to Fort Lauderdale or Miami?	20	A. Yes.
- 1	The second secon	40.7	The state of the s

Q. Did David Stern provide assurances to GMAC

concerning the personnel that worked at David Stern?

MR. SMITH T: I'll just say for the record

A. I have no knowledge of that, sorry.

25 that Mr. McSurdy was not tendered today to interpret

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A. I don't believe so, but I don't know.

Q. He just stayed up in wherever he was?

Q. Okay. What were his functions as an

A. My understanding, he was physically at the

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GMAC facility.

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Florida.

Page 14

this document. I'm not objecting to his answering questions that may be within his personal knowledge, but I do want that on the record.

Q. (BY MR. GARBER) Under paragraph 8.4, "Company shall provide Client with the name of each person assigned to work on Client's premises, and shall immediately update such information whenever changes occur."

Outside of Mr. Crecco, there was no other personnel that worked on client's premises, correct?

- A. I know of no one else, but that doesn't mean that there was not someone before him or after him. Again, Cheryl Sammons would know that. I do not know that.
- Q. If you would be so kind as to turn to page 1074, paragraph 13.1. "Company shall, at its own expense, defend, indemnify, and hold harmless GMAC and its employees." Do you see that paragraph?
- 19 A. Yes.
- 20 Q. Are you aware that a judgment was entered 21 against GMAC in the case of Deutsche -- or against
- 22 Deutsche Bank in the case of Deutsche Bank versus
- 23 Mack, which is the case I'm representing the Macks on
- 24 here? 25

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A. Yes.

1 Work product and attorney-client privilege.

2 I point out that there is pending litigation between GMAC and the law firm, the Stern 3 law firm pending here in the Southern District of

MR. GARBER: I have a series of questions about indemnification and agreements, and can we just agree that you will make a continuing objection to all those and I won't have to ask him?

MR. TEW: Yes.

MR. GARBER: Okay, thank you, sir.

Q. (BY MR. GARBER) Please turn to page 1081, paragraph 3.1. It says that "All Confidential Information, including copies thereof, shall be promptly returned to Discloser upon request."

Do you know if any confidential materials were returned to GMAC at the termination or during the pending Mack case with Deutsche Bank?

19 MR. SMITH T: Object to form.

20 THE WITNESS: No.

- Q. (BY MR. GARBER) You don't know?
- 22 A. I do not know.
- 23 Q. Please turn to the next page, which is 1082. This is a Change Order to the contract. It's 24 25 dated April 18, 2007 and on the next page, which is

Page 15

- Are you aware that that judgment was entered while David Stern was still the attorney of record in the case?
 - A. Yes.
- Q. Has David Stern done anything to indemnify GMAC with respect to the entry of that judgment?

MR. TEW: I'm gonna object and instruct him not to answer. It's beyond the scope of this deposition, it has nothing to do with the case at hand, and it would go into privileged and work product.

12 MR. GARBER: So you're objecting on the 13 basis of attorney-client privilege?

MR. TEW: And work product.

MR. GARBER: And work product.

16 MR. TEW: And it's well outside the scope 17 of the Mack case.

MR. GARBER: Okay. I'll be asking several questions in that area, so please make your objections.

MR. TEW: Okay.

- Q. (BY MR. GARBER) Has David Stern made any efforts to settle claims that Deutsche Bank or GMAC may have with respect to the Macks?
 - MR. TEW: Same instruction not to answer.

Page 17

Page 16

- 1083, it appears to be signed by David Stern. Is 2 that his signature?
 - A. That appears to be his signature, yes.
 - Q. Under the middle portion of the first paragraph on page 1082, the first indentation says that with regard to the client, "Notification of any incident that impacts the confidentiality of Client Information will be made no later than 24 hours after
- 9 the identification of the incident." Do you see 10
 - that, sir?
 - A. Yes, I do.
- Q. Was GMAC notified of any matter that 12 13 impacted the confidentiality of GMAC with respect to 14 the Mack case at any time during its conduct by 15 Stern?
 - A. I did not see any notification of that type.
- 18 Q. Further down in the same paragraph it says, "A representative of the Company will notify 19 the Client security contact Becky Stoffel and 20 21 relationship manager Linda Walton by phone and e-mail 22

within 24 hours" of an incident. Do you know if any phone calls were made 24 to either of those employees of GMAC?

A. No, I do not know.

Page 22		
referring to.	1	paragraph under IX, "If Company fails to
A. I believe they are referring to the Notice	2	the committed SLAs, Client will take the fo
of Default with respect to a pre condition to	3	actions." Can you tell us what an SLA is.
bringing the foreclosure action under the terms of	4	A. I'd have to look back in the agree
the mortgage.	5	see where it was defined.

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Q. I see. Do you know if there was a Notice of Default that was sent out in the Mack case?

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- 8 A. I don't remember seeing one in our file, 9 but that doesn't mean that it was not sent out. 10 Sometimes the lenders, GMAC was one of them, would 11 send it out without our office being given copies.
 - Q. Would you turn now to page 1090, paragraph number VIII, "Invoicing." "Company," that's David Stern, "shall submit all invoices to Client using the electronic invoicing system Client presently uses."

Do you know what that invoicing system 16 17 was?

A. No, I don't know which one was their 18 19 use -- which was the one that they used.

Q. Did David Stern send an invoice to GMAC for handling the Mack case?

A. I did see an invoice in the file, yes.

Q. Do you know when that was sent out?

24 A. No, I don't recall off the top of my head.

Q. Was there only one invoice sent out?

Page 24 meet any of following

ement to see where it was defined.

Q. Now, it says, the "Client will take the following actions," but when you read them, it seems that it's actually company that takes the following actions. Do you know if that's a typo, who was supposed to take those actions?

A. I do not know.

Q. Okay. Well, let's look at the second one, "Report of failure to Client within 48 hours." Was it the agreement of David Stern to report a failure to GMAC within 48 hours?

A. In the Mack case?

Q. Yes.

I do not see any such reports.

Q. Was it the practice of David Stern, and did they follow that practice, with respect to the Mack case, to promptly initiate an investigation to identify the root cause of the failure?

A. My review of the file did not indicate that there was any problem at the time it was being handled.

Page 23

- A. I believe there were at least two sent.
- Q. Would they have been sent by regular mail?
- A. This was in 2009. No, I believe it would have been sent electronically.
- Q. What system would be used to send it electronically?
- A. Again, there were several systems that different clients required us to use. One was called New Invoice, one was called I think, I want to say iClear, but I just got an iPhone and it might not be the right term, so I'm not sure which one GMAC required, but whatever the electronic system was, we would have used it.
- Q. Would that be different than the New Trak system that was referred to earlier in the contract?
 - A. Yes, that's separate.
- Q. Would it also be different than the MS system that was referred to earlier in the contract?
- A. I am not familiar with the MS system. If it goes by another name, I may know it, but MS, Microsoft that means to me.
- Q. Towards the bottom of the page, paragraph 22 23 number IX, if you'd look at that, please.
- 24 A. Okay.
 - Q. In the last sentence of the first

- Q. So at no time while the Offices of David 1 2 Stern was handling the Mack case were they aware of 3 any problem with the case; is that true? 4
 - A. That's true.
 - Q. Okay. So none of these actions would have been taken?
 - A. Not that I had saw in the file.
 - Q. If you'd be so kind as to turn to page 1094. Please look at the bottom of the page, number VI, "Supplier is required to install a hard drive and e-mail encryption on machines, computing equipment which will be used to fulfill GMAC RFG contractual obligations." Now, I believe "Supplier" in this case is David Stern.

Did David Stern supply encryption and hard drives on their machines in order to communicate with GMAC?

- A. I don't know. I never had conversations with our IT people regarding that. I don't know.
- Q. The last -- it's not a sentence but it's a phrase on that page, it says, "All e-mails sent to GMAC with any personal/confidential information on a borrower."

Do you know if David Stern sent any personal/confidential information on a borrower to

Page 25

	Page 26		Page 28
1	GMAC with respect to the Macks?	1	there was an outstanding accounts receivable.
2	 I didn't see anything in the file in that 	2	MR. GARBER: I have a copy of a Complaint
3	regard.	3	here and if I could have the court reporter to please
4	Q. Page number 1098, if you'd be so kind as	4	mark this copy of the Complaint as Exhibit A.
5	to turn to that, paragraph number XIII. It says,	5	MR. TEW; Wouldn't this be B?
6	"Neither Party shall, without the prior consent of	6	MR. GARBER: Yes, B, you're right.
7	the other Party, intentionally solicit for employment	7	(Thereupon, Complaint was marked as
8	any personnel of the other Party." Do you see that,	8	Defendant's Exhibit B, for Identification.)
9	sir?	9	Q. (BY MR. GARBER) Have you ever seen this
10	A. Yes.	10	Complaint before?
11	 Q. Did David Stern solicit Kevin Crecco to 	11	A. Yes.
12	work for them without the permission of GMAC?	12	 Q. Now, I believe there was an attachment to
13	 I don't know how he came to the employ of 	13	it, which was the accounting.
14	David Stern with respect to this sort of agreement.	14	A. I've also seen that.
15	 Q. When he was an employee of David Stern, 	15	Q. And according to this suit, \$6,161,483.70
16	was he paid solely and directly by David Stern, by	16	was due from GMAC since February 11, 2011. That's
17	the Office of David Stern?	17	found on the last page and also the second page.
18	 I don't know if he was paid solely and 	18	A. Yes, I see that.
19	directly by David Stern's office.	19	 Q. To the best of your knowledge, was that
20	 Q. His principal duties, though, remained at 	20	the amount of money that GMAC owed to the Office of
21	the GMAC site that he had previously worked?	21	David Stern for handling foreclosures as of the time
22	MR. SMITH T: Object to form.	22	that date was given, which was February 11, 2011?
23	THE WITNESS: Yes, he did not work in the	23	A. I believe that amount also represented
24	Law Offices of David Stern physical building.	24	the law office represented evictions, bankruptcies,
25	Q. (BY MR. GARBER) Do you know if anybody	25	foreclosures, it was regarding legal services and
	Page 27		Page 29
1	contacted him regarding the Mack case from David	1	costs advanced based on the records in the firm as of
2	Stern's office?	2	this date.
3	A. No, I do not know.	3	Q. And I have reviewed those exhibits. Would
4	Q. Do you know if Cheryl Sammons had any	4	it be fair to say that there were approximately
5	knowledge of the Mack case?	5	16,000 separate accounts on those exhibits?
6	A. I did not see her involvement in the case	6	A. I know it's in excess of 10,000, so I
7	at all.	7	would not be surprised if it were 16,000.
8	Q. Do you know any employees that have any	8	Q. Do you know how many cases David Stern was
9	knowledge of the Mack case that worked for David	9	handling for GMAC in the summer of 2009?
10	Stern?	10	A. I do not know the exact number, no.
11	A. The attorney of record, Elsa Shum, would	11	Q. Do you know an approximate number?
12	have had knowledge. And my review of the New Trak	12	A. No, I never have seen a report on that
13	notes and the comment case history indicated a few	13	number.
14	dozen employees were involved in the file, clerks,	14	Q. To the best of your knowledge, all of the
15	paralegals. So at some point they had some sort of	15	allegations that are contained in this Complaint are
16	knowledge.	16	true and correct?
17	Q. Now, as a result of the representation of	17	A. Today?
18	GMAC Mortgage by the Law Offices of David Stern, a	18	Q. Well, when they were filed.
19	bill accrued that has not yet been paid, didn't it?	19	A. When they were filed I believe it was
20	A. I don't understand the question.	20	based on the firm's records as to what was owed, yes.
21	Q. GMAC owed money to David Stern sometime in	21	Q. Were you the only attorney for David Stern
22	2011, didn't they?	22	at the time this was filed?
23	A. With respect to the Mack case?	23	A. No. This was filed, it looks like in July
	Q. No, with respect to many cases.	24	of 2011. Oh, yes, the last attorney was let go June
24	A. Oh, you're talking about many cases. Yes,	500	30 of 2011 other than myself, so yes, I was the only

Page 30 1 attorney left. 2 Q. So you were aware of this Complaint when 3 it was filed? 4 A. Yes. 5 Q. Now, in response to that Complaint, there 6 was an Answer filed and I'm going to hand you a copy 7 of that and ask if you can identify that, and we'll 8 call that Exhibit C. 9 (Thereupon, Answer and Counterclaims of 10 Defendant was marked as Defendant's Exhibit C, for Identification.) 11 Q. (BY MR. GARBER) Please take a look at 12 13 Exhibit C. Have you ever seen Exhibit C before?

Q. One of the allegations in this Complaint is found in the Counterclaim by Defendant GMAC, paragraph number 25. Do you see that, sir?

A. Yes.

A. Yes.

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Q. I'm going to read it. It says, "GMACM has since learned that DJSPA --" that's David Stern's offices, right?

A. Yes, that's the --

23 Q. (Continuing) -- "committed gross malpractice in handling the GMACM matters. For 24 25 example, in one foreclosure matter assigned to DJSPA

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(Thereupon, Answer and Affirmative Defenses To Counterclaim was marked as Defendant's Exhibit D, for Identification.)

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Q. (BY MR. GARBER) Could you please review that when it's ready.

A. Did you mean to give me a highlighted copy?

Q. No. Actually I meant to keep it for myself.

This particular Answer was filed in answer to the Counterclaims of GMAC and in this Answer many allegations are admitted and denied. I would like if 14 you would be so kind as to turn to the second page in paragraph number 18 where GMAC said in their 15 paragraph 18, the sworn deposition testimony of 16 witnesses contained accusations against David Stern that included, among other things, the following, 18 causing and permitting David Stern's employees to execute, witness, or notarize assignments of mortgage.

Do you know if David Stern's office did that?

MR. TEW: I'm going to instruct him not to answer. We're here as a fact witness on the Mack

Page 31

for handling, DJSPA failed to communicate to GMAC 1 that counterclaims had been brought. Indeed, DJSPA neglected to put forward any defense to such 3 4 counterclaims, with the result that a default 5 judgment was entered on or about May 5, 2011 for over \$450,000. DJSPA's conduct in this and other 6 7 instances has been wanton and reckless." 8 With respect to the Mack case in which a

judgment was entered on May 5, 2011 for over \$450,000, is that paragraph true?

MR. TEW: Let me object. He can answer any factual allegation about the Mack case, but he is not to answer as to any of the legal conclusions contained in that paragraph because he's here as a fact witness, not as a legal expert.

So, for example, I'm not going to permit him to answer as to whether there was a, quote, "malpractice." And you can ask him about the Mack case if you'd like factually, but he's not going to respond to the conclusions in that Counterclaim.

MR. GARBER: Okay, I will get into that in detail in a few minutes.

I have also a copy of the Answer to the Counterclaim which I would like to have marked as our next numbered exhibit. I guess that would be Exhibit

case. I have not heard anything in the Mack case on that subject, so I'm gonna instruct him not to answer. He's not subpoenaed as to those issues and they're totally irrelevant. It's abusive.

MR. GARBER: I don't believe that it's irrelevant, I don't think it's abusive, and ---

MR. TEW: Where is it in the Mack case? Where is that fact at issue in the Mack case?

9 MR. GARBER: I don't know that this 10 witness has a right to object to relevancy in the Mack case. 11

MR. TEW: Well, I have a right to object. You've called him here to testify. Your subpoena requires him to testify about the Mack case. So, anything that isn't involved in the Mack case I don't think is covered by your subpoena.

MR. GARBER: Okay, I think that he can answer he doesn't know if he doesn't know.

MR. TEW: I'm not gonna permit him to answer. This is abusive and has nothing to do with the Mack case. It's a fishing expedition, and it's not covered by your subpoena.

Q. (BY MR. GARBER) With respect to paragraph 18 (i), did David Stern execute any notarized statements or assignments of mortgage that were

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4	Page 34	1 X	Page 36
1	backdated on the Mack case?	1	Q. They never sent a subpoena over to you for
2	MR. TEW: Same instruction on the grounds	2	recovery of that file?
3	previously stated.	3	A. No, not to my knowledge. I never received
5	MR. GARBER: I'm asking on the Mack case. MR. TEW: Oh, well, he can testify as to	4	a subpoena. I was the records custodian.
6	the record.	5	MR. SMITH T: David, let me make sure we're all clear on what you're asking because there's
7	THE WITNESS: David Stern did not, my	7	been subpoenas obviously served recently that I've
8	review of the file, did not sign any documents in the	8	been involved in and Mr. Tew's been involved in. Is
9	Mack case.	9	that what you're asking about, or are you asking
10	Q. (BY MR. GARBER) Okay. And paragraph	10	about previous to all that? Forrest may be confused
11	number two with respect to the Mack case, David	11	and I'm kind of confused.
12	Stern's office did not witness or notarize any other	12	THE WITNESS: Previous, right.
13	documents without having an actual person witnessing		Q. (BY MR. GARBER) We sent out a subpoena
14	the signature, did they?	14	perhaps a month ago asking for the records. I'm not
15	A. I did not see any example of that in the	15	asking about that.
16	Mack case.	16	A. Right, I received that.
17	Q. Did David Stern's office, with respect to	17	Q. Okay. But in 2010, did GMAC ask for a
18	the Mack case, cause or permit their employees to	18	return of its records with respect to the Mack case?
19	prepare and execute any affidavits of indebtedness?	19	A. Not that I'm aware of and my review of the
20	A. In the Mack case, no, the case did not	20	file did not indicate that they did.
21	proceed to that extent. It didn't get to the point	21	Q. Okay. And that's also true of 2011, GMAC
22	where an affidavit would have been prepared or	22	did not ask for a return of the file in 2011; is that
23	executed.	23	correct?
24	Q. So at least with respect to the Mack case	24	MR. SMITH T: Well, I'm gonna object to
25	then, you would say that that paragraph should be	25	the form because that does get into the period of
Ţ	Page 35		Page 37
1	denied?	1	time when I was in discussions with Mr. Tew about
2	A. Yes.	2	obtaining documents relating to this case, and
3	Q. Paragraph number 21, it says that on or	3	Mr. McSurdy may or may not be aware of all that. I
4	about November 16th GMAC terminated its relationship	4	don't know, but anyway, I just want that on the
5	with David Stern and sought to recover its files from	5	record.
6	David Stern. Do you see that, sir?	6	Q. (BY MR. GARBER) But do you have any
7	A. Yes, I do.	7	knowledge whether GMAC asked for a return of their
8	Q. Is that a true statement?	8	file in 2011?
9	 To the best of my knowledge, that's about 	9	A. For the actual return, no. As Mr. Smith
10	the date that they terminated their relationship. I	10	has said, they requested certain documents during
11	don't know exactly the date, but that's what I	11	2011, but the actual file was requested sometime, but
12	recall.	12	I don't know if it was 2011 or 2012. I don't know
13	Q. It says that with respect to the	13	the time frame.
14	relationship that's admitted in your Answer but the	14	Q. Do you know what documents they requested
15	remainder of the allegations of 21 are denied, so I	15	in 2011 from David Stern?
16	guess that would refer to that GMAC sought to recover	16	A. They would have been file documents. Did David Storp maintain a file on the
17	its files from David Stern on or about November 16th.	17	Q. Did David Stern maintain a file on the
18	A. Or possibly the date is not correct. It's	18	Mack case?
19	admitted in the Answer that it was terminated, so the	19	A. Yes.
20	date may not be technically correct.	20	Q. Was that a paper file?
21	Q. Do you know if GMAC sought to recover the Mack file from David Stern?	21 22	A. It was a paper file and it was an electronic file.
22	Plack life Holli David Stelli?	22	C. Was it down to the 2

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Q. Was it duplicative?

A. No, it was not necessarily.

Q. Is there a particular program the

A. I did not -- in my review of the file did

not indicate that GMAC ever asked to review the Mack

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file.

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electronic file was maintained in? 1

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A. The system is called Case Management System. It's a tracking system for files. CMS for abbreviation.

Q. Did David Stern keep track of any telephone calls that they made to GMAC concerning the Mack case?

A. Not specifically. There were notes made in this CMS system in the comment history regarding conversations that were held between GMAC and the law firm, and also New Trak indicated communications back and forth.

Q. With respect to telephone calls, did you 13 just identify a program that there were telephone 14 15 calls with GMAC on the Mack case?

16 A. My review of the comment history indicates that there must -- I believe there must have been 17 telephone conversations because of the notes that 18 19 were written in the comment history.

20 Q. Would that have been with the foreclosure 21 division of GMAC?

22 A. I have no idea. It doesn't indicate.

23 O. Do you know who David Stern would have 24 dealt with at GMAC, which division?

MR. TEW: Are you talking about the law

status of the case was, for example, the loan was current and the only reason the person at the law firm would know that is if they spoke to someone at GMAC.

Page 40

Page 41

Q. So would it be fair to say that not all communications were done by typing in, I would call them e-mails into the New Trak system?

A. Mostly that's how the communication occurred, but there were sporadic instances of -- it looks to me as if there were a few conversations.

Q. I have a copy of a document that was submitted to me. I received it today. It's a response to our subpoena which asks for a copy of all the communications with David Stern or between David Stern and GMAC. Have you ever seen this document before?

A. I can't see it from here.

O. Okay. I only have the one copy. MR. SMITH T: David, here's another copy. THE WITNESS: I did see the draft of this response, yes.

Q. (BY MR. GARBER) Did you participate in preparing this?

A. To the extent of what's attached, I was the one who retrieved it from the system.

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firm?

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17 18 MR. GARBER: Pardon?

MR. TEW: When you say "David Stern,"

you're talking about the law firm?

MR. GARBER: Yes, I am, I am talking about the law firm.

THE WITNESS: I'm sorry. What was the question again?

Q. (BY MR. GARBER) Do you know what division the office would have been dealing with; would that have been the foreclosure division?

12 A. Right, or the default servicing division, 13 whatever they called it.

Q. Is the default servicing division 14 different from the foreclosure division? 15

A. I don't know. Each client was different. They called it -- each client called it different things.

Q. Would there have been a record of any of 19 20 those telephone calls?

A. If there were, it would have been in the 21 22 original file. There would have either been handwritten notes in the original file produced or, 23

as I said, in the comment history there would have 24 25

been an indication. A note would be made that the

Q. Is this a list of all communications between the Office of David Stern and GMAC with respect to the Mack case?

A. Again, I don't know because I haven't looked at the hard file, but if there were other conversations, our practice had been on a sheet of paper it would have been noted the date and the initials of the person who spoke to whomever and there would be hand notes. I don't recall seeing that in this case.

Also, New Trak would have, in addition to this, these two go together, New Trak and this report go together to indicate the history of the case.

Q. Can you please tell us why they have these different dates and entries on this response. What does this mean?

A. This, again, is from our Case Management System called Tracker System and it has different dates because any time -- our policy was any time a person of the firm, paralegals, to the less extent attorneys, should have gone into this computer system and entered why they were in possession of the file, what the status of the file was.

So at any time if I wanted a file or David Stern wanted a file, he could go into the computer

	Deci. Exhibit A		rg 13 01 33
	Page 42		Page 44
1	and he could see the latest date and see where the	1	Q. Did it go missing at a time that it was in
2	file was and what was happening.	2	the custody and possession of David Stern?
3	Q. So any time anybody took possession of the	3	MR. SMITH T: Object to form.
4	Mack file, they would have made an entry that would	4	THE WITNESS: That would be my assumption,
5	appear on this piece of paper?	5	yes, it would have been misplaced.
6	A. That was how it was supposed to work, yes.	6	Q. (BY MR. GARBER) And you would agree with
7	Q. Did it work that way in this case, the	7	me that David Stern, as the lawyer, was responsible
8	Mack case?	8	for maintaining the files of his clients?
9	A. To my knowledge, it seems to have worked	9	A. David Stern the Law Offices of David
10	that way, but again, I don't I wasn't involved in	10	Stern is responsible for maintaining the file, yes.
11	it, so I don't know.	11	Q. Now, if we wanted to find out what was
12	Q. Let's please turn to Deutsche double	12	sent electronically on that date, is there any way to
13	01366, which is the last page, but it has the	13	recover that now?
14	earliest dates. Do you have the last page, that page	14	A. Possibly from GMAC.
15	1366? A. Yes.	15	Q. Only from GMAC?
16		16	A. To my knowledge, yes.
17	Q. The first entry is one from 7-29-2009. Do	17	Q. No way that you can think of that it could
18	you see that, sir? A. Yes.	18	be recovered through the Law Office of David Stern?
19		19	A. You could look at the Complaint terms, you
20	Q. It says, "File received 7-24-2009." Do	20	could look at the Title Information Sheet, and those
21	you know what that means?	21	two documents were a compilation of what would have
22	A. Yes.	22	been on the referral.
23	Q. What does that mean?	23	Q. Do you know if a copy of the note was sent
24 25	A. That means that Glen I don't know how	24 25	on July 24, 2009, the Mack note?
23	to pronounce his last name. I always called him	25	A. My review of the file indicated the title
4	Page 43		Page 45
1	Glen. (Continuing) Glen Lewin on the 29th of July	1	examiner said that they did not have a copy of the
2	entered that comment that the file had been received.	2	note at the time they examined title a few days
3	He was in the new files department, so he would have	3	later.
4	opened the file on the 24th and five days later	4	Q. Was it normal practice that when the file
5	posted to our tracking system that comment.	5	was sent out by GMAC, it would include a copy of the
6	Q. Now, when he received the file, would that	6	note?
7	be an electronic transmission?	7	A. Sometimes it did; sometimes it didn't.
8	A. In this case it was.	8	Q. Do you know why a note was not here?
9	Q. And was a copy kept of everything that was	9	A. No, I don't.
10	received on that electronic transmission?	10	Q. Would somebody at David Stern, in the
11	A. No. Unfortunately, I did not see a copy	11	ordinary course of events, have contacted GMAC about
12	of the electronic transmission.	12	getting a copy of the note?
13	Q. Would it have been the ordinary procedure	13	A. Yes, if the original wasn't delivered a
14	that, in fact, a copy of those documents would be	14	few days later, yeah, someone would have followed up
15	scanned into your system or placed into your system	15	to get a copy.
16	electronically?	16	Q. Okay. So when they got the electronic
17	A. No. It was kept in the hard copy in the	17	download of the documents and it didn't have the
18	file. It was printed by printed by Glen and put	18	note, ordinarily David Stern would not follow up with
19	in the new file and then moved on to the next	19	a question at that time?
20	department.	20	A. No, not at that point.

Q. That was a title search ordered by the Office of David Stern?

Q. It says on the 29th a title search was

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22 ordered?

Q. Did you look to see if there was a

A. I did look and I couldn't find anything.

Q. Does that mean it's missing from the file?A. That would be my assumption.

printing of what was received on the 24th?

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		r	
1	A. Yes.	1	Page 48 be or the next lettered exhibit which would be E,
2	Q. On the 10th of August there's a note. I	2	and show it to you.
3	guess Brittany Patullo, is that who entered that	3	THE WITNESS: What do you want me to do
4	note?	4	with what we were looking at, this Response? Is that
5	A. Yes.	5	an exhibit or not?
6	Q. And it says "7/29 awaiting plaintiff info	6	MR. GARBER: Oh, yes, that should be an
7	via NT," is that New Trak?	7	exhibit, too. We'll mark that
8	A. Yes.	8	MR. SMITH T: I don't think we marked
9	Q. Do you know what that means?	9	that.
10	A. Yes.	10	MR. GARBER: Let's mark that Exhibit F.
11	Q. What does it mean?	11	(Thereupon, Deutsche 000979 - Deutsche
12	A. It means that Brittany was waiting on July	12	001068 and Response of Law Offices of David J.
13	29th to hear from GMAC as to the party that should be	13	Stern, P.A. To Defendants' Subpoena Duces Tecum
14	the appropriate plaintiff.	14	Without Deposition, were marked as Defendant's
15	Q. Why was she waiting from 7-29 if Glen	15	Exhibits E and F, respectively, for
16	Lewin was the one that made the note on 7-29-2009?	16	Identification.)
17	A. Glen was in the new files department. He	17	Q. (BY MR. GARBER) I'd like to refer your
18	simply opened the file.	18	attention to the first two pages of Exhibit E.
19	Q. What did Brittany Patullo do?	19	A. Before you say that, I need to retract my
20	A. I don't know. I assume from the note that	20	testimony. I see the referral in this package of
21	she was in the title department because they could	21	documents that was printed out. I did not see it
22	not complete the title report without knowing who the	22	yesterday when I was reviewing the hard copy of the
23	client wanted the plaintiff to be.	23	file.
24	Q. The next entry is entered by Oral Walters.	24	Q. You see a referral?
25	Do you see that?	25	A. The referral that was printed from New
	Page 47	1	Page 49
1	A. Uh-huh.	1	Trak.
2	Q. And that was on 8-10-2009?	2	Q. From 7-29?
3	A. Yes.	3	A. Yes.
4	Q. It says, "File to cases UM;" is that	4	Q. And where is that located in here?
5	correct?	5	A. It is Deutsche number 1050. It starts
6	A. Case Um.	6	there.
7	Q. What's that?	7	Q. That is the electronic
8	 Case Um is a department where all the data 	8	 A. That's what would have been pulled from
9	from the referral and from the title information	9	the New Trak system, the referral, and printed for
10	sheet would be entered into a mergible document to	10	the new file to be opened in the office.
11	create the Complaint, the lis pendens, and the	11	Q. This was what came in on 7-24-09? Because
12	summonses.	12	at the top of 1050 it says, Received from New Trak
13	Q. And that was done in this case?	13	7-24-09.
14	A. Yes.	14	A. Yes, and the date is also printed on the
15	Q. And is that maintained electronically	15	document. At the very bottom right hand side you
16	somewhere?	16	can it's hard to see, but it is the 24th of July.
17	A. Once it's merged, it becomes the	17	Q. Can you look at this document that looks
18	Complaint, the lis pendens, and the summons. There	18	like it's Deutsche 1050 through 1055 and tell me if a
19	would be a copy of the Case Um where the attorney	19	copy of the note was sent out?
20	would review and there would be checkmarks in the	20	MR. SMITH T: You mean on that day?
21	hard copy of the file.	21	MR. GARBER: Yes.
22	MR. GARBER: I have a copy of documents	22	THE WITNESS: No, I can't tell from
23	that we received from Deutsche Bank and it came	23	whether there was an attachment of a copy of the
24 25	purportedly from the Office of David Stern. I'd like to mark this as the next numbered exhibit which would	24 25	note, in other words, what was printed by Glen on the day that he printed the referral.
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Page 50

- Q. (BY MR. GARBER) So you can't tell if any documents were uploaded into New Trak and then downloaded by David Stern on the 24th?
 - A. No, I can't tell from this printout.
- Q. Would there ordinarily be an electronic way of keeping a record of what documents were downloaded?
- A. I did not have access to New Trak, so I don't know if once you downloaded something you could go back in and see what was downloaded. I don't know.
- Q. Turning to the first page of Exhibit E, paragraph number five, it says, "Plaintiff owns and holds the Note and Mortgage." Do you see that, sir?
 - A. Yes.
- Q. However, in paragraph number four it says, "A copy of the Mortgage AND NOTE ARE attached hereto as 'Exhibit A." Do you see that?
- 19 A. Yes.

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- 20 Q. Now, when we look at the exhibit, Exhibit A is only the mortgage. Do you see that, sir?
- A. Yes, it only references the note on the 22 23 first page.
- Q. So the first page says that the note is 25 attached, but the note was not attached to that

Collier County?

A. I don't know about the day it was filed. It would be indicative that the copy of the note was not in the file the date the Case Um was drafted.

Page 52

- Q. The Complaint was filed in a program you have that merged documents that you received from GMAC to form a Complaint and the lis pendens, correct?
 - A. Correct.
- Q. And since this document refers to the note and mortgage, was it the ordinary practice of David Stern to include the note and mortgage when they filed a Complaint of foreclosure?
- A. Yes. If the mortgage were not in the file, then the Complaint should have been revised, but apparently the attorney who signed this did not catch the fact that there was not a note attached.
- Q. Was Exhibit B placed in substitution for the note?
- A. Exhibit B was commonly used when a lost note count was a part of the Complaint, but in reviewing this Complaint, when it was filed, there was no lost note Count II, so at that point that indicates to me that the law firm must have been in possession -- someone must have seen before the

Page 51

Complaint?

A. Yes.

- Q. That's true?
- A. That's true, I do not see a copy of the note attached.
- Q. Okay. There is, however, an Exhibit B. Do you see that?
 - A. Yes.
 - Q. Okay. Can you tell us what Exhibit B is?
- A. Exhibit B is an outline of the relevant 10 terms of the subject note. 11
 - Q. Do you know who prepared Exhibit B?
 - A. Whoever did the Case Um report.
- 14 Q. Would that have been somebody at David Stern? 15
- A. Yes. 16
- 17 Q. So David Stern prepared this document?
- 19 Q. Where would they have gotten this 20 information?
- From the mortgage document and from the 21 22 referral.
 - Q. Okay. Would this be indicative of the fact that David Stern did not have the note on the date that this document was filed with the Court in

Complaint was filed that the law firm had the note

2 because no lost note was filed, but whoever saw that didn't take it a step further and get the original

3 note copy and attach it to the Complaint before it 4

was filed. 6 Q. Do you have any actual knowledge on which you base that, or is that just your supposition? 7

A. Looking at the comment history report that is attached to the subpoena response, it indicates the original note came in with the law firm.

MR. TEW: No, that's not the right one.

THE WITNESS: This is it. The original note and mortgage and original title policy received by the law firm on August 10, 2009. The Case Um -the Complaint looks like it was completed on August 11th, so what that indicates to me is the original note and mortgage were delivered to the document team, but the document team did not advise the Case Um department that they had the original note and mortgage so that the Case Um department drafted the Complaint thinking that there was no copy of the note available.

- Q. (BY MR. GARBER) Case Um would be a department at the Office of David Stern?

	Page 54		Page 56
1	Q. The program that produced the Complaint	1	associate attorneys.
2	and also the lis pendens, they would have produced	2	Q. Now, at the time Misty Barnes signed this
3	both those documents on the same date?	3	Complaint and by the way, I see the number of 3100
4	 Yes, they were a part of the same 	4	it looks like beneath her name. Do you know what
5	document.	5	that is?
6	Q. I believe we have a copy of the lis	6	A. I believe that's her Bar number. I don't
7	pendens in here. Let me see if I can find it.	7	think it's a complete number there. It looks like
8	 A. It's Deutsche number 1056. 	8	3100 and then another digit, which I can't tell what
9	Q. Okay. I have a copy at 1012. Let me just	9	it is.
10	look and see if the 56 one is the same.	10	Q. At the time that Misty Barnes signed this,
11	Could you please refer your attention to	11	would it have been her responsibility to review the
12	1012. 1012 has a "Filed" stamp on Collier County	12	Complaint for completeness?
13	Circuit Court of August 20, 2009. Do you see that,	13	A. She should have, yes.
14	sir?	14	Q. And so if she signed it on August 17th but
15	A. Yes.	15	the Office of David Stern had received the note by
16	Q. But the one at 1056, it does not have a	16	August 10th, should she have caught that fact?
17	"Filed" stamp.	17	 She would have had to have gone into the
18	A. Yes, correct.	18	electronic computer system and seen that the note was
19	Q. Do you know why they would be different in	19	received, yes, but I don't know that associate
20	that respect?	20	attorneys necessarily did that as a matter of course.
21	 A. The document lis pendens at 1012 is a copy 	21	Q. Would it have been her responsibility, if
22	provided by Provest, the process server, after the	22	she did know there was a note, to attach it as part
23	Complaint was filed with the Court case number on it.	23	of Exhibit A as indicated in the Complaint?
24	The other document, 1056, is simply a copy that was	24	A. Absolutely.
25	signed by the attorney before it was filed with the	25	Q. Do you know how these documents that are
u	Page 55		Page 57
1	Court,	1	Deutsche Bank 979 to 1068 came into the possession of
2	Q. The lis pendens was it had the name of	2	Deutsche Bank?
3	Elsa Hernandez Shum as an attorney, but it was	3	A. Are these copies from the hard file?
4	actually signed by another attorney and that's the	4	Q. I've been told they were copies of the
5	page at 1013. Could you please look at that.	5	hard file.
6	A. Yes, I see that.	6	A. See, I've never seen the hard file. The
7	Q. It says it was signed on August 17, 2009.	7	hard file was taken from our storage facility, so.
8	What is the name of the attorney?	8	MR. SMITH T: I can represent that they
9	A. Looks like Misty Barnes signed it.	9	were. This is the hard file. I haven't looked at
10	Q. Is that B-a-r-n-e-s?	10	the exhibits.
11	A. Yes, I believe so.	11	Excuse me, Forrest. I'm sorry to
12	Q. Who is Misty Barnes?	12	interrupt you.
13	A. She was an associate foreclosure attorney.	13	I have not looked at this entire exhibit,
14	Q. Was she a supervisor of Elsa Shum?	14	but as we said, as we said in the response to the
15	A. No.	15	subpoena, Deutsche 979 through 1068 were obtained
16	Q. Why would she have signed it instead of	16	from Iron Mountain by subpoena.
17	Ms. Shum?	17	MR. GARBER: And I appreciate that, but I
18	A. At that time a lot of Complaints were	18	want to find out what the witness knows.
	being generated and there were more Complaints being	19	MR. SMITH T: I understand.
19	generated for review and signature than we had	20	THE WITNESS: That's my knowledge, if it's
20			
20 21	necessarily attorneys on a particular team to sign.	21	the hard file, it was obtained from Iron Mountain
20 21 22	necessarily attorneys on a particular team to sign. Elsa was on the GMAC team, and for example, a batch	22	storage facility. The law firm did not have
20 21 22 23	necessarily attorneys on a particular team to sign. Elsa was on the GMAC team, and for example, a batch might have come in from GMAC where there were 200	22 23	storage facility. The law firm did not have possession of the hard file.
20 21 22	necessarily attorneys on a particular team to sign. Elsa was on the GMAC team, and for example, a batch	22	storage facility. The law firm did not have

	Page 58		Page 60
1	David Stern for its old files?	1	Q. If you would please turn to Deutsche Bank
2	A. It's a separate storage facility. It's	2	1061. Okay, this is a document that was prepared by
3	not maintained by the Law Offices of David Stern.	3	David Stern?
4	Q. Who pays for it?	4	A. No.
5	A. Nobody pays for it. It's the law firm	5	Q. Who prepared this document?
6	can't afford to pay storage fees anymore.	6	 This was prepared by the title company.
7	Q. Was anybody paying for it in 2009?	7	Q. The title company prepared this?
8	A. Yes, the law firm was paying for storage	8	A. Yes.
9	fees back then.	9	Q. It says down at the bottom, "Note not
10	Q. Who would have had access to that file	10	available" and the date is 8-8-09.
11	besides David Stern once it was placed in Iron	11	A. Okay.
12	Mountain?	12	Q. That would have been the title company
13	A. No one, other than Iron Mountain	13	that would have put that down?
14	employees,	14	A. Yes.
15	Q. GMAC would not be able to get information	15	Q. And again, on the next page, 1062, they
16	out of that?	16	put "Note not available"?
17	A. No. It was our office file. It was not	17	A. Is there a question?
18	their file.	18	Q. Yes, that would have been true as of the
19	Q. Do you have any knowledge of how it came	19	8th of August, 2009 that the note was not available?
20	into the possession of GMAC? A. Just as was stated before, through a	21	MR. SMITH T: Object to form. Lack of foundation. Go ahead.
22	subpoena to Iron Mountain, and Iron Mountain, it's my	22	THE WITNESS: I'm confused. It looks like
23	understanding, produced the hard file.	23	the title examiner did not have a copy of the note on
24	Q. To the best of your knowledge, is the	24	the date that they did the title exam, which was
25	original file still in Iron Mountain?	25	8-8-09.
2 3	A. I don't know where it is. Q. When you were preparing for this deposition, did you review all the documents that are	2 3	Q. (BY MR. GARBER) And looking at the response to the subpoena that we have, it says that the original note and mortgage and TP is that
4	contained in this Exhibit E?	4	title policy?
5	A. I reviewed them on the computer. A copy	5	A. Yes.
6	was sent by Attorney Smith to me to look at what was	6	Q. (Continuing) received on 8-10-2009,
7	produced.	7	correct?
8	Q. Were they divided up into two parts, one	8	 It's reflected received by the law firm.
9	being this part that represents the hard copies from	9	This is the title examination report. Two different
10	Iron Mountain?	10	entities.
11	A. Yes.	11	Q. I see. What was the name of this title
12	 Q. So you have reviewed all these in 	12	company?
13	preparation for this deposition?	13	 A. Professional Title & Abstract of Florida.
14	A. I quickly went through them. Again, I	14	Q. Who would have sent information to them to
15	didn't spend much time on any of them. I just looked	15	prepare that?
16	to see what they were.	16	A. The law firm.
17	Q. Do you know if there was a problem with	17	Q. So they were a private contractor used by David Stern to facilitate the foreclosure process?
18	the Mack referral when it was received by David Stern?	18 19	A. Yes. And if you look at the comment
19		20	history, the title search was ordered on the 29th of
20 21	A. No, I didn't see anything regarding problem in transmission, is that what you mean?	21	July which pre-dated the receipt of the note. So
41	Q. Some problem with handling the file.	22	what the title company got probably was not
22	Q. Some problem with humaning the me.		
22	A. The handling of the file?	23	reflective of what the law firm had at the time the
22 23 24	A. The handling of the file? Q. Yes.	23	reflective of what the law firm had at the time the exam was done.

	n		i i i i i i i i i i i i i i i i i i i
1	Page 62 Title & Abstract; is that correct?	1	Page 64 is the response of David Stern to the Counterclaim of
2	A. Yes.	2	GMAC, all of it's true and correct?
3	Q. Do you know where they're located?	3	A. Yes.
4	A. I don't believe that they are doing	4	Q. Did you participate in its preparation?
5	business any longer.	5	A. Not specifically.
6	Q. Where were they located?	6	Q. Did you provide information for it?
7	A. They were located at 900 South Pine Island	7	 I may have. I don't specifically recall.
8	Road, I believe the fifth floor.	8	 Q. Do you know who did provide information
9	 Q. Is that the same building the Law Office 	9	for it?
10	of David Stern was in?	10	 I would be guessing. Other than myself,
11	A. Yes.	11	possibly David Stern.
12	 Q. Do you know if this was a business that 	12	Q. Paragraph number two of the Affirmative
13	was affiliated with David Stern by cross boards of	13	Defenses, that's found on page five of Exhibit D, in
14	directors or ownerships?	14	paragraph number two the Office of David Stern is
15	A. Yes, I do know.	15	saying GMAC is not entitled to relief because it
16	Q. And it was an affiliated company?	16	breached the contract by, among other things, failing
17	A. Yes.	17	to promptly obtain replacement counsel.
18	 Q. Do you know when they went out of 	18	Do you know if GMAC made attempts to
19	business?	19	promptly obtain replacement counsel with respect to
20	A. No, I don't. It eventually became a	20	the Mack case?
21	public company and I don't know when they stopped	21	 A. That was really not relevant because the
22	doing business.	22	case was closed on our system.
23	MR. SMITH T: David, can we take just a	23	Q. So from David Stern's point of view, when
24	short break	24	they were terminated in November of 2011, David Stern
25	MR. GARBER: Sure.	25	didn't feel that replacement counsel was needed with
-	Page 63	-	Page 65
1	MR. SMITH T: (Continuing) when you get	1	respect to the Mack case?
2	to a point?	2	A. That's correct.
3	MR. GARBER: Can I just get to one point?	3	 Q. In paragraph number three it says that
4	MR. SMITH T: Yeah.	4	GMAC's claims are barred because of GMAC's own
5	MR. GARBER: On this title note there is a	5	negligence caused all or part of its purported
6	naution that has been vedanted on the last 10CC and	- 12	그렇게 얼룩이 독일이 하나 가장 살이 어느셨다면요? 그렇게 하면 하면 하는 것이 되었다면 하는데 하는데 얼마나 하는데 되었다.
	portion that has been redacted on the last, 1065, and	6	damages. Part of those damages are the judgment that
7	Mr. Smith T has objected to that information being	6 7	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the
8	Mr. Smith T has objected to that information being given. Would you also object to it here today, John?	7 8	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case.
8	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has	7 8 9	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any
8 9 10	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to	7 8 9 10	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case?
8 9 10 11	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you	7 8 9 10 11	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case?
8 9 10 11 12	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you would seek to revisit it at this time since the Judge	7 8 9 10 11 12	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case? Q. Yes.
8 9 10 11 12 13	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you would seek to revisit it at this time since the Judge has already seen what's behind that and ruled on	7 8 9 10 11 12 13	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case? Q. Yes. MR. TEW: I'm gonna instruct him not to
8 9 10 11 12 13 14	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you would seek to revisit it at this time since the Judge has already seen what's behind that and ruled on this.	7 8 9 10 11 12 13 14	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case? Q. Yes. MR. TEW: I'm gonna instruct him not to answer as to legal conclusion. He's here as a fact
8 9 10 11 12 13 14 15	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you would seek to revisit it at this time since the Judge has already seen what's behind that and ruled on this. MR. GARBER: I understand.	7 8 9 10 11 12 13 14 15	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case? Q. Yes. MR. TEW: I'm gonna instruct him not to answer as to legal conclusion. He's here as a fact witness, not to make a legal conclusion.
8 9 10 11 12 13 14 15 16	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you would seek to revisit it at this time since the Judge has already seen what's behind that and ruled on this. MR. GARBER: I understand. Okay, we can take a break.	7 8 9 10 11 12 13 14 15 16	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case? Q. Yes. MR. TEW: I'm gonna instruct him not to answer as to legal conclusion. He's here as a fact witness, not to make a legal conclusion. Q. (BY MR. GARBER) Did GMAC breach any
8 9 10 11 12 13 14 15 16 17	Mr. Smith T has objected to that information being given. Would you also object to it here today, John? MR. SMITH T: Yes. I mean, the Judge has already ruled that it is not relevant, has nothing to do with this case, so I don't understand even why you would seek to revisit it at this time since the Judge has already seen what's behind that and ruled on this. MR. GARBER: I understand. Okay, we can take a break, VIDEOGRAPHER: We're going off video	7 8 9 10 11 12 13 14 15 16 17	damages. Part of those damages are the judgment that they illuded to in their Complaint of \$450,000 in the Mack case. Can you tell us if GMAC was guilty of any negligence in that case? A. In the Mack case? Q. Yes. MR. TEW: I'm gonna instruct him not to answer as to legal conclusion. He's here as a fact witness, not to make a legal conclusion. Q. (BY MR. GARBER) Did GMAC breach any duties in the Mack case?
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conclusions as to GMAC's conduct.

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MR. GARBER: And it is my understanding that the subpoena that was sent out for a corporate representative notifies the corporate representative of those things specifically that he should try to be prepared on, but it does not preclude that other questions can be asked.

MR. TEW: I know, but it doesn't turn him into an expert witness who can make a legal conclusion from facts. For one thing, you haven't asked him any hypotheticals. I wouldn't let him answer those anyway, but you're saying, did GMAC do something wrong? Those are all conclusions of fact and law, and he's not here as that type of witness. It's inappropriate to ask him.

MR. GARBER: Okay. That might be important to our case. Most things I can let go, but that might be important to the case.

MR. TEW: Well, that's for the Judge to decide, not for Forrest. He can't look at the facts and make conclusions.

Q. (BY MR. GARBER) With respect to paragraph number nine, David Stern was saying that GMAC's claim should be barred by the doctrine of unclean hands for failure to retain replacement counsel.

A. My review of the file did not indicate that there was any inappropriate endorsement or loan documentation in the file.

Page 68

Q. Was there any problem with GMAC having the note? We saw earlier on the Title Sheet that they did not have the note as of the 8th of August. Was there some problem in getting the note from GMAC?

 A. I don't believe that it indicated GMAC didn't have the note as of the 8th of August. It indicated our law firm did not have the note until the 8th of August.

Q. Right.

A. Right.

Q. But there was no problem in getting that note from GMAC?

A. No. Actually, that was a quick delivery of an original note based on my experience with foreclosure cases.

Q. This paragraph cites an order that was entered by the Board of Governors in the Federal Reserve System on April 13, 2011, which identified misconduct on behalf of GMAC. Do you have any knowledge of that order?

A. I've never read that order. I've heard of it, but that's the extent of my knowledge.

Page 67

I've already asked you about that with respect to the Mack case, and you said that's not an issue, correct?

A. That was not -- replacement counsel was not an issue in either GMAC nor the Law Office of -to my knowledge, the Law Offices of David Stern did not tell GMAC that replacement counsel was necessary because the file was closed in our system.

Q. It goes on to cite -- citing inaccurate affidavits. There were no inaccurate affidavits, were there, that was signed by GMAC on the Mack case?

A. I don't know about inaccurate. I didn't see any affidavits in the Mack case at all, so I don't think that would be pertinent.

Q. Not confirming whether loan and mortgage documents were properly endorsed. Was that true in the Mack case, that GMAC failed to see if loan and mortgage documents were properly endorsed?

A. Could you repeat the question? I don't really understand what you're asking.

Q. Okay. I'm asking, with respect to the Mack case, do you know whether or not any loan or 22 mortgage documents that GMAC provided to the office of David Stern were not properly endorsed or assigned 24 or in the possession of the appropriate party?

Page 69 1 Q. So would it be fair to say that you also 2 don't have any knowledge of any misconduct by GMAC 3 with respect to the Mack case?

A. Yes, I have no knowledge of that.

Q. And by saying you have no knowledge, you're not denying misconduct, but you have no knowledge one way or the other?

MR. SMITH T: I object to that. The witness can answer the question.

Q. (BY MR. GARBER) Is that a fair statement? MR. GARBER: Well, I just want to make sure it's not mischaracterized later on.

MR. TEW: Well, his answer is crystal clear, he doesn't know.

THE WITNESS: I don't know.

MR. GARBER: Okay, I have some other documents that I would like to go over with you, and these are the second half of the Stern file that was provided to us by Deutsche Bank.

Can we please have them marked as our next numbered exhibit.

(Thereupon, Deutsche 001176 - Deutsche 001355 were marked as Defendant's Exhibit G, for Identification.)

Q. (BY MR. GARBER) By the way, Mr. McSurdy,

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1	Page 70 I note that it's 20 minutes to 1:00. Are you okay	1	Page 72 its way. The process would have been mail room would
2	to just go through lunch?	2	have scanned it first into the system, the hard copy
3	A. Sure.	3	of the letter given to her paralegal on this
4	Q. Okay, thank you.	4	particular file, and then the paralegal would have
5	Do you have a copy of Exhibit G in front	5	given that with other documents received that day to
6	of you?	6	Ms. Shum for her review and instructions as to what
7	A. Yes.	7	to do,
8	Q. The first one is a letter from my office	8	Q. Now, in this particular case David Stern
9	to Ms. Shum dated February 2, 2011. Do you see this?	9	filed a foreclosure against the Macks in August of
10	A. I do.	10	2009, correct?
11	Q. Did David Stern receive this letter?	11	A. Yes.
12	MR. TEW: You mean the law firm?	12	
13	THE WITNESS: The law firm.	1000	Q. And there was a Counterclaim that was
14		13	filed on this in September of 2009, wasn't there?
	MR. GARBER: Right.	14	A. My review of the file indicates that there
15	THE WITNESS: If this was one of the	15	was a Counterclaim filed, yes.
16	documents that was produced by GMAC, yes. I	16	Q. Would it have been the responsibility of
17	personally pulled these documents from the system, so	17	David Stern to notify GMAC when they received the
18	if they if GMAC produces them, yes, it was	18	Counterclaim?
19	received by the law firm.	19	A. Yes. What should have happened was when
20	Q. (BY MR. GARBER) So in the second	20	it came into the mail room, it should have been
21	production by Deutsche Bank, based on a production	21	scanned the same process, it should have been
22	request from my office, all those documents that	22	scanned by the mail room, and then the hard copy
23	Deutsche Bank sent to us or GMAC sent to us were	23	given to the paralegal, the paralegal should have
24	ones you pulled from the system, correct?	24	given it to the attorney handling the file, Ms. Shum.
25	A. Yes, yes.	25	She then would have reviewed it. Because it was a
	Page 71		Page 73
1	Q. So I see there's a bar coding down here on	1	contested pleading, she would have given it to a
2	the bottom right hand corner of the February 2nd	2	managing attorney with the file, who would the
3	letter.	3	managing attorney would then have assigned it to a
4	A. Yes.	4	litigator in the litigation department and from that
5	Q. Was that put on there by David Stern's	5	point, the litigator would have sent a copy to the
6	office?	6	client, GMAC in this case, along with a proposed
7	A. Yes, that's when the mail room would have	7	budget how to defend that particular pleading.
8	processed the letter.	8	Q. That's what should have happened
9	Q. So whatever mail comes in, the mail room	9	A. That's what should have happened.
10	would get it and put on the bar code?	10	Q. (Continuing) when the Counterclaim came
11	A. Yes.	11	in?
12	Q. And then what would they do with it?	12	A. Yes, in September of
13	A. Well, what was supposed to happen was it	13	Q. 2009?
14	was supposed to be scanned into the system for the	14	A. (Continuing) 2009. I believe it
15	particular file. They would look up what the file	15	actually wasn't posted to Tracker until October of
16	pertained to and then the hard copy should have been	16	2009.
17	given to the paralegal handling the case and	17	Q. So the Counterclaim then was posted to
18	eventually an attorney would review the letter or the	18	Tracker in October of 2009?
19	pleading.	19	A. Yes. The mail room was receiving
20	Q. This letter was addressed to Ms. Shum.	20	approximately 10,000 pieces of mail a day and they
21	Was she a lawyer at the Office of David Stern on	21	were backlogged.
		22	
22	February 2, 2011? A. Yes.	23	Q. So was it assigned to a litigation
23		100000	attorney?
24	Q. It would not have ordinarily gone to her?	24	A. No, it never was.
25	A. Yes, it would have. It would have made	25	Q. Was there any understanding that David

	Page 74		Page 76
1	Stern had with GMAC that they would only handle the	1	A. The GMAC team had it could have been
2	foreclosure case and not handle a Counterclaim that	2	one of 12.
3	was filed?	3	Q. Do you know the names of the people that
4	A. No, there was no such understanding.	4	could have been doing it?
5	Q. So it was the duty of David Stern to	5	A. No, I'm sorry.
6	notify GMAC when they got the Counterclaim?	6	Q. Is there any record at David Stern of who
7	A. That was the normal practice, yes.	7	those people are?
8	Q. And that was their duty?	8	A. No longer, no. There's nothing, at least
9	A. Yes, that was what was expected of them by	9	at this point.
10	GMAC.	10	Q. Now, the Complaint itself was not signed
11	Q. Was it also the duty of David Stern to	11	by Ms. Shum. It was signed by Ms. Barnes, do you
12	have filed an appropriate Answer to the Counterclaim	12	remember that?
13	in the suit of foreclosure they brought in the Mack	13	A. Yes, I remember that.
14		14	Q. Would this letter have been given to
15	A. Not necessarily. It would have depended	15	Ms. Barnes because she was the one that actually
16	on the response gotten received from GMAC after	16	signed the Complaint?
17	the copy of the pleading had been sent to them with	17	A. Again, I don't know. I don't know what
18	the proposed budget.	18	happened to the letter. From what I could tell, it
19	Sometimes GMAC or another client would	19	didn't make it out of the mail room. The tracing of
20	say, "We would prefer another firm to handle the	20	it stopped with the mail being scanned into the
21	defense of the Counterclaim, please transfer the file	21	system.
22	to this firm."	22	Q. Was Ms. Shum the individual attorney tha
23	Q. Would it be fair to say then that when	23	was assigned the Mack case?
24	Counterclaims were filed on foreclosure suits, they	24	A. Yes.
25	were handled on a case-by-case basis, depending on	25	Q. Was it transferred over to Ms. Barnes
1	Page 75 the wishes of GMAC?	1	Page 73 because she signed the Complaint?
2	A. Yes.	2	MR. SMITH T: Let me object to the form.
3	Q. Did David Stern submit a budget to GMAC	3	I know we looked at the lis pendens which was signed
4	about handling the Counterclaim?	4	by Ms. Barnes. I'm not sure we saw who signed the
5	A. No.	5	Complaint, but go ahead.
6	Q. Do you know if this letter of February 2,	6	MR. GARBER: Actually, I don't know
7	2011 ever reached Ms. Shum?	7	either. That's a good question.
8	A. I do not know. I can say what the	R	Q. (BY MR. GARBER) Let's look at Exhibit E
9	practice would have been if I could tell if she had	9	and tell me, if you can, who signed it.
10	received it. What she should have done, our	10	A. I cannot tell who signed the Complaint.
11	attorneys are instructed to initial and date in the	11	Q. Can you tell me who signed that Complaint,
12	lower corner of the letter if they had ever reviewed	12	the second page?
13	the letter or the pleading.	13	A. It was not Misty Barnes, I can tell you
14	Q. And the fact that we don't see an initial	14	that.
15	and a date in the bottom right hand corner, does that	15	Q. Yeah, that's a good point.
16	indicate she did not?	16	What is that first thing, L/H?
17	A. Indicates to me that she did not see the	17	A. I can't make out anything. A name, I
18	The same of the sa		don't recognize a name, they didn't put their Bar
	letter.	18 19	number.
19	Q. Do you know who the paralegal was that should have handed it to her?	20	
20		200	Q. It has a name of Miriam Mendieta.
21	A. On this date, no. There was much	21	A. I know Miriam's signature and that's not
22	turnover.	22	Miriam's signature.

Q. Is there any way we can find out who

A. Not at this point. I'm sorry.

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24 signed this Complaint?

Q. How many paralegals did you have

approximately that might have been assigned the Mack

23 24

25 responses?

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Q. There are no records that David Stern has that would show that?

A. No, we don't have an HR department anymore. We don't have anything.

- Q. Okay. Going beyond and in Exhibit G, the first entry, Exhibit G was received by David Stern, but as far as you can tell David Stern's office made no action with respect to the February 2nd letter, correct?
 - A. Correct.

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- 11 Q. The next thing we have is a letter to the clerk, it's also dated February 2, 2011, and it has 12 enclosures. Motion to Compel Discovery. Did the 13 14 Office of David Stern receive a copy of this letter dated February 2, 2011 to the clerk? 15
- 16 A. I can -- I can tell you that any documents 17 dated after the last date of the entry on the Tracker 18 comment history, the same -- my testimony would be the same that if nothing is indicated after that 19 20 date, when the last date of the comment history, then 21 it indicates that nobody did anything with respect to 22 any documents that were received by the mail room.
- 23 Q. Right, but I just want to make sure that I 24 have an acknowledgment that David Stern did receive a 25 copy of this letter of February 2, 2011.

Page 80 MR. GARBER: Yeah, I just want to make sure they were all received by them.

MR. SMITH T: And I appreciate that. I'm not trying to prevent you from handling your deposition, but I do want just to maybe save some time and state that we have -- there has been submitted in this response to the subpoena the statement that says Defendant's documents labeled Deutsche 1176 through 1355, these records were electronically stored and contained documents that had -- well, the rest of that doesn't matter. But we can say for the record that these are the documents that Mr. McSurdy provided to me, which I then

MR. GARBER: Okay. And let me do this since I want his knowledge on here to try and save some time.

produced in response to your document request.

- Q. (BY MR. GARBER) Can you look at the rest of the packet and make sure these are the documents that David Stern had in their possession and provided to Deutsche -- to GMAC.
- A. Yes, these are all the documents that the law firm received on the Mack file.
- Q. And do you have any reason to believe that 25 any of these documents, and they're numerous

Page 79

- A. I don't see the stamp on here from the mail room, but I assume that it was also delivered as part of the package that I sent to Mr. Smith, so yes, if that's the case.
- Q. Okay. It bears the Deutsche Bates stamp of double 01177.
- A. Okay, then that would have been pulled from our system electronically.
- 9 Q. So as far as you know, that was received by David Stern? 10
 - A. Yes.
- 12 Q. Okay. And then there was a copy of the Motion To Compel Discovery. That was attached to it. 13 14 And that's also Deutsche Bates stamped. That would 15 have been received as well?
 - A. Yes.
- 17 Q. And the next thing would be a copy of the request for production of documents that's found at 18 19 Bates stamp 1180 and 1181 and 1182, correct?
 - A. Yes.
- 21 Q. And David Stern's office would have received that as well? 22
 - A. Yes.

24 MR. SMITH T: David, are you intending to 25 go through each one of these?

Page 81 1 documents, that have dates on them were not received 2 by the Office of David Stern at or near the date of 3 the document?

MR. SMITH T: Object to the form. Let me just say, I'm not preventing him from answering, but again, we have made it known that some of the documents have auto dating coding which change the day when they were printed. So the dates reflected on some of the documents themselves won't reflect the actual date or the contemporaneous receipt or generation of that document.

Q. (BY MR. GARBER) Okay. And the question was: Do you have any reason to believe that any of these documents that bear a date on them as to when they were made were not received by the Office of David Stern at or about the time the document was made?

MR. SMITH T: Same objection.

THE WITNESS: No, I have no reason to believe that they were not received within a reasonable time after the date shown, except in the exception that he stated for auto dating.

Q. (BY MR. GARBER) Okay. And just to take an example, the first page of Exhibit G, that's a letter dated February 2, 2011, to the best of your

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	Page 82	2.00	Page 84
1	knowledge that was received by the Office of David	1	A. Yes, it should have. What should have
2	Stern a few days, within a few days of February 2, 2011, correct?	3	happened is the Case Um report should have been
4	A. Sometime between February 2nd and February		updated to indicate that you had made an appearance in the case and the system would have automatically
5	11th, yes.	5	put you in there.
6	Q. And February 11th, okay. And how do you	6	Q. Okay. Later on we're going to see some
7	know February 11th?	7	New Trak notes and the New Trak notes indicate that
8	A. The mail stamp at the bottom there.	8	the Office of David Stern confirmed the file was
9	Q. I see. Okay. Would you please turn to	9	closed on September 3, 2009.
10	Deutsche 1205. This is an order setting the Deutsche	10	Do you know if the file, the Mack file was
11	Bank versus Mack case for a docket sounding and it	11	closed on September 3, 2009?
12	bears the David Stern bar coding in the top right	12	A. I have to look back at the comment
13	hand corner. Do you see that?	13	history
14	A. Yes.	14	Q. Okay.
15	Q. Looks like it has a date of February 17,	15	A. (Continuing) which is Exhibit F
16	2011.	16	attached to the response to the subpoena.
17	A. Well, this is a proposed order.	17	The file was instructed to be closed by
18	Q. Yes, but you're acknowledging that David	18	GMAC on September 2nd and it was physically closed on
19	Stern received this, correct?	19	October 5, 2009. There was an entry "File clicked
20	A. Yes.	20	closed."
21	 Q. And would this not have attracted some 	21	Q. Okay. Can you tell by looking at this
22	attention in the mail room that a trial was brewing	22	Exhibit F whether or not GMAC was notified that David
23	on this case?	23	Stern's office had closed the file?
24	A. Would it not have?	24	A. From looking at Exhibit F, no. They would
25	Q. Yeah.	25	have known they would have received back the
	Page 83	6	Page 85
1	A. Apparently it did not.	1	original note and mortgage. There was a note there
2	Q. Would it be fair to say it should have?	2	on November 17, 2009 which is standard practice after
3	A. It should have been delivered to the	3	a file is closed to send back the original documents
4	paralegal and paralegal should have given it to the	4	to the client. So that would have been their
5	attorney handling the file.	5	indication the file was closed.
6	Q. Would you please turn to Deutsche Bates	6	Q. So based on Exhibit F, you believe that
	stamp double 01239 and 1240. Would you tell us what 1239 is.	7	David Stern closed the file on October 5, 2009?
8		8	A. That's what is indicated, yes.
9	A. It is a copy of the Notice of Voluntary Dismissal filed by the Law Offices of David Stern in	9	MR. SMITH T: Object to form.
10 11	the Mack case, and it looks like it was filed on	11	Q. (BY MR. GARBER) Okay. Now, this particular Notice of Voluntary Dismissal that we see
12	December 8, 2009.	12	in Deutsche Bank 1239 was signed on December 2,
13	Q. And who was who signed this Notice of	13	2009, correct?
14	Voluntary Dismissal?	14	A. Correct.
15	A. It looks like Melissa Moros.	15	Q. Why would this have been generated if the
16	Q. Okay. Was it the practice of David Stern	16	file had been closed in October?
17	to give a service list of everybody they give a copy	17	A. It was not a correct procedure. The file
18	to?	18	should not have been closed until the dismissal was
19	A. Yes.	19	filed.
20	Q. Any reason to believe that David Stern	20	Q. How did it come to be the file that was
21	sent a copy of this Notice of Voluntary Dismissal to	21	closed and off the radar would suddenly be revived to
22	the Macks' attorney, who was me, David Garber?	22	have work done on it?
23	A No. It looks like it went to the Macks	23	A Are you asking me to speculate what

A. Are you asking me to speculate what

Q. I'm asking if you know.

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24 happened?

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attorney?

A. No. It looks like it went to the Macks.

Q. Should it have gone to the Macks'

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Page 86 A. From the file I can't tell what caused the dismissal to be filed. In the normal course of the practice of the firm, dismissals at that time were being filed within six to nine months after a file was closed.

Once the file was clicked closed, it would be delivered to the dismissal department, and then we had so many files that had to be dismissed at one time in 2009 that it took six months to nine months for that department to generate dismissals and get them filed.

However, if during that period when the file was closed but the physical file was in the dismissal department to be dismissed, if an attorney or a party needed a dismissal filed in order to sell a piece of property or whatever reason they needed to release the lis pendens, it would be pushed to the head of the pile of dismissals.

- Q. Now, David Stern maintained an actual paper file for a portion of the Mack case, correct?
 - A. Yes.
- Q. When it was closed, as indicated on 22 October 5, 2009, would that paper file go somewhere? 23
- 24 A. It would go -- in this case it would have 25 gone to the dismissal department to file the

1 person that made this entry?

- A. Yes.
- Q. Okay. She sent a voluntary dismissal to the court on 12-7-2009?

Page 88

- A. Right.
- Q. Why did she make that notation a year later or almost a year later?
- A. They were very backed up in what they had to do. That's what I was saying to you, six to nine months. That's almost -- that's 10 months later she updated the system as to what had been done.
- Q. What would prompt her to update the system after nine months after it had been closed?
- A. I have no idea. It drove us crazy. I don't know. We were constantly after them to do better, and obviously in this case they didn't do better.

VIDEOGRAPHER: Excuse me for interrupting, but we have a tape change in five minutes.

- Q. (BY MR. GARBER) Okay. The first entry 20 21 that's on this page 1364 is a Jennifer Bragonier. 22 That's an employee of David Stern?
 - A. She was, yes.
 - Q. And on 9-22 it says "Updated without file." What does that mean?

Page 87

dismissal.

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- Q. Okay. So they would keep it there semi active until they got the dismissal filed?
- A. Correct. If you look at the comment history -- oh, I take that back. It looks like the file was sent to storage before it went to the dismissal department, which is not -- that's not the normal case. It should not have been sent to storage until the dismissal was filed.
- 10 Q. Okay. So I see what you're looking at, on 9-22 "File to storage." 11
 - A. Yes.
 - Q. Is that what you're looking at?
- A. Yes. 14
- 15 Q. And I see the dates are out of order because they start at 9-15, they go up to 11-17 and 16 12-7 and then they go back to 9-22. Do you know why 17
- 18 that's out of chronological order?
- No, I don't know why the system recorded 19 it that way. Oh, oh, it's by year. Look at the 20
- 22 O. Oh, I see. Okay.
- 23 Well, let's look at the entry on Deutsche Bank 1364, that's the third one down from the top, 24

year. It's not out of chronological order.

and it says Heather Smith on 9-22-2010. That's the

- Page 89 1 A. It means the file, as you see there, was sent to storage it looks like the same day she 2 3 updated it but she didn't have the file. She went 4 into the computer system without the file in front of 5 her.
 - Q. And she updated the file?
 - A. Updated without file, but it doesn't look like she said anything. She just updated without file.
 - Q. How would she update it?
 - A. She also put comments lower there, "File to storage, order recorded and scanned 9/22."
 - O. What order would she have been waiting?
- A. The dismissal order. 14
 - Q. Where would there be a dismissal order?
 - A. The voluntary dismissal back from the
- Court. She called it an order. It really 17 technically wasn't an order. It might have been in a 18
- stack of papers that she had had there for six months 19 20 that she finally got to import in the system. That's 21
 - how far back they were.
- Q. It says under this first entry by Jennifer 22 Bragonier on page 1364, it says, "Historical comments 23 (Secondary)." What does secondary mean? 24
 - A. I don't know the distinction in the

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	Page 90	Г	Page 92
1	computer software system there.	1	received this Counterclaim on or about the date that
2	Q. If you'd be so kind as to turn to page	2	it was sent, which would have been 9 September, 2009,
3	1240 of Exhibit Number G. That's the secondary	3	correct?
4	production of materials from the Office of David	4	 A. I can't attest to that because when I
5	Stern.	5	pulled them from the system, it didn't say the date
6	A. Yes.	6	of receipt and there was no mail stamp on this one,
7	Q. This is a document dated December 2, 2009?	7	but it was at some point received by the law firm.
8	A. Yes.	8	Q. Okay. You have no reason to doubt that it
9	Q. And did it also go out with a Notice of	9	was received about that time?
10	Voluntary Dismissal?	10	A. Sometime after that date, yes.
11	A. It appears to have been filed at the same	11	Q. Okay.
12 13	time as the dismissal.	12 13	MR. GARBER: Are we at the tape change
14	Q. Do you recognize the name of the attorney?	14	portion? Do you want to do that now? We'll take a
15	A. No, but the signature looks the same as the almost the same as the person who signed the	15	short break and I'll review my documents here. VIDEOGRAPHER: Time is 1:06 p.m. End of
16	Notice of Dismissal.	16	tape number one.
17	Q. Okay. And the first one, can you read	17	(Thereupon, a brief recess was taken.)
18	that. Is that Melissa Moros?	18	VIDEOGRAPHER: Time is approximately 1:15.
19	A. It looks like Moros. I'm not familiar	19	This is tape two of the videotaped deposition of
20	with her last name.	20	Forrest G. McSurdy, Esquire.
21	Q. But you do know a Melissa who was an	21	MR. GARBER: Mr. McSurdy, I'm going to
22	attorney then?	22	hand you a document that has previously been used in
23	A. I'm not familiar with her, no. Again, we	23	discovery and we've been calling it Exhibit 2 because
24	had at that point 135 attorneys, or maybe even more	24	it was the second exhibit to Mr. Gary's deposition.
25	at that point.	25	He was an employee of GMAC. I'd like to retain the
1	Page 91 Q. Well, her Bar number is legible, so I	1	Page 93 Exhibit 2 on this so that we can correspond with the
2	guess we can look up who she is.	2	other deposition.
3	A. Right.	3	So if the court reporter would please mark
4	Q. She signed this "Prevailing Party." Does	4	this one as Exhibit 2.
5	she believe I mean, would that indicate that she	5	(Thereupon, New Trak notes history was
6	believes she was the prevailing party?	6	marked as Defendant's Exhibit No. 2, for
7	MR. SMITH T: Object to form.	7	Identification.)
8	THE WITNESS: It's a form. It's a	8	Q. (BY MR. GARBER) This is a history of the
9	mergible form.	9	New Trak notes that were given to us by Deutsche
10	Q. (BY MR. GARBER) So she wasn't required to	10	Bank, and it has been represented to be all of the
11	check and see if they were or were not the	11	notes having to do that were put on New Trak by
12	prevailing party?	12	either David Stern or by GMAC, and I would like, if
13	 A. Well, if I were signing it, I would not 	13	you would be so kind, as to compare this Exhibit 2
14	sign "Prevailing Party" if I were not the if the	14	with your Exhibit F here today.
15	plaintiff were not the prevailing party, but she just	15	Turning to page 1364 of Exhibit F, I see
16	signed it, it appears.	16	that there is three five entries on 9-22 at the
17	Q. And I know this is somewhat redundant, but	17	top, 9-22-2010. Do you see that?
18	the next pages that we have is 1241 through 1245. Do	18	A. Yes.
19	you see them?	19	Q. None of those entries are made on this
20	A. Yes.	20	Exhibit 2 to Mr. Gary's deposition, that is the New
21	Q. Those are the Answers and the Counterclaim	21	Trak notes provided by Deutsche Bank. Do you know if those entries on your Exhibit F were New Trak
22 23	that was filed in this case, right? A. That appears to be the case, yes.	22	entries?
24	Q. And by including them in this stack of	24	A. No, they were not.
25	documents, David Stern is acknowledging that they	25	Q. Okay. Was it the duty of David Stern to
	assembly said start is defined fried fire	23	The second secon

	Deci. Exhibit X	Г	g 20 01 33
	Page 94	-	Page 96
1	make annotations in the New Trak system every time	1	system. I don't know if you could edit as you can
2	they touched the file or did something with the Mack	2	with an e-mail, pull it back after you've done it. I
3	file?	3	don't know.
4	 A. Not once the file was closed. Again, this 	4	Q. GMAC could make entries on that system?
5	was just the administerial act of dismissing the	5	A. Yes, they could.
6	case, these five entries represented on the history.	6	 Q. Anybody else that could make entries on
7	Q. Okay. When was the Mack case closed?	7	that system?
8	MR. SMITH T: Object to form, asked and	8	 Well, many clients use that system, but
9	answered.	9	every client had different account.
10	THE WITNESS: On our system it was clicked	10	Q. Do you know who maintains the system?
11	closed on October 5, 2009.	11	A. No, I'm sorry, I don't know the
12	Q. (BY MR. GARBER) Okay, but as a matter of	12	particulars of that.
13	fact, you kept working on it after that date?	13	Q. Is it some sort of computer program that's
14	A. After that date it looked like the	14	maintained by a third party?
15	dismissal occurred and the return of the original	15	A. I believe so, yes.
16	documents to the client, yes, there was some work	16	Q. And by "third party," I mean not GMAC and
17	done on the file.	17	not David Stern.
18	Q. Would it have been David Stern's duty to	18	A. Yes, I believe both of them pay a user
19	put on the New Trak system that they closed the file	19	fee,
20 21	on October 5, 2009? A. I don't I don't understand the word	20	Q. Okay. Now, I note that on 9-15 on the New
22	"duty." In what sense?	22	Trak notes, Exhibit 2, there is an entry from David Stern's office, it's entry number three, that says
23		23	that they were awaiting docs from doc team as of the
24	Q. Well, the contract that we looked at today that was Exhibit A to the deposition says that any	24	15th of September, 2009. Do you see that?
25	time you doing something, you should put it in New	25	A. I do.
	Page 95		Page 97
1	Trak,	1	Q. And I see a corresponding entry by a John
2	MR. SMITH T: Object to the form.	2	Metz on 9-15-2009 that says, "Awaiting docs from doc
3	Document speaks for itself. Go ahead.	3	team." Do you see that?
4	Q. (BY MR. GARBER) So would it have been the	4	MR. SMITH T: Which entry is that?
5	duty of David Stern to make an entry every time they	5	MR. GARBER: That's the third from the
6	did something with the Mack case?	6	bottom on the 1364.
7	MR. SMITH T: Same objection.	7	MR. SMITH T: Oh, I beg your pardon.
8	THE WITNESS: I don't know if it would	8	You're back on that.
9	have been a duty. Apparently it was not the practice	9	THE WITNESS: That's why I'm not following
10	for that to occur once the file was closed.	10	either.
11	Q. (BY MR. GARBER) Okay. So is it fair to	11	Q. (BY MR. GARBER) I was looking at
12	say that David Stern did not follow the practice of	12	Exhibit
13	making an entry into New Trak every time they did	13	A. I follow what you're saying now.
14	something on the Mack case?	14	Q. (Continuing) F. And we have an entry
15	A. That appears to be the case, yes.	15	from 9-15 by John Metz, "Awaiting docs from doc team"
16	Q. Now, New Trak is a system that is	16	and an entry on Exhibit 2 saying, "Awaiting docs from

maintained by GMAC, correct? 17

18

A. I don't believe it's maintained by GMAC. 19 I believe they use it.

Q. David Stern could make entries on that 20 system? 21 22

A. Yes.

25

23 Q. If David Stern made an entry, could they then change that entry after they made it? 24

A. I'm not familiar with the mechanics of the

A. Yes, I see that, both entries, uh-huh. Q. Are they the same entry, just recorded in

20 two different places?

doc team."

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A. They're slightly different.

21 Q. Okay. Why would they be different? 22 23

A. Because they don't say the same thing. 24 Q. Right, but wouldn't this be what was

inputted in the system?

F	Page 98		Page 100
1	A. In which system?	1	that the file was reinstated?
2	Q. Well, when they put it in the New Trak	2	MR. SMITH T: Object to form.
3	system, wouldn't it automatically go over here?	3	THE WITNESS: I don't know how it could be
4	A. Oh, no, no. You physically had to go to a	4	reinterpreted (sic). She may have looked at the New
5	different part of the computer to enter New Trak and	5	Trak comment from 9-2-09 and simply written in the
6	to enter Tracker.	6	same the reason it was closed is reinstated.
7	Q. I see. So Exhibit F may or may not	7	That's what GMAC inputted.
8	correspond with New Trak entries?	8	Q. (BY MR. GARBER) On the New Trak notes, i
9	A. Correct. I can for example, I can	9	you would be so kind, that's the Exhibit 2 that
10	enter on comment history but I cannot enter New Trak.	10	we've just introduced, and turn to page 913, there
11	Q. Okay. Looking up to an entry that was	11	is an entry number 48 and it's entered by Nette
12	made about the sixth from the bottom on Exhibit F by	12	Diaz. Was she an employee of David Stern?
13 14	Christina Pareja is that how you pronounce her name?	13	A. Yes.
15		14 15	Q. And it says
16	A. Pareja, uh-huh, yes, I see it. Q. It says, "Returned docs via UPS tracking	16	MR. SMITH T: David, not to quarrel, but I think we decided that the number above the entry is
17	number." Would Ms. Pareja also put that into New	17	the corresponding number. Do you follow me?
18	Trak?	18	MR. GARBER: Yeah. Isn't that what I
19	A. Not necessarily,	19	said?
20	Q. Wouldn't it be important that when	20	MR. SMITH T: I thought you said 49. I'm
21	documents like originals of notes and so forth are	21	sorry. Go ahead.
22	returned that the UPS tracking number be given to	22	MR. GARBER: Yes, I think we decided it
23	GMAC?	23	was the one above.
24	A. Not necessarily. If they needed it if	24	Q. (BY MR. GARBER) Okay. 48 is a note by
25	for some reason the original note and mortgage did	25	Nette Diaz. That's an employee of David Stern?
	Page 99	į.	Page 101
1	not get back to GMAC, they would communicate with the	1	A. Yes.
2	law firm and ask for the tracking number.	2	Q. But it doesn't appear on this Exhibit F,
3	Q. Okay. Later on, maybe two entries up,	3	correct? A. What doesn't appear?
5	Christina Pareja also made another entry on the 17th of November on Exhibit F. It says, "File closed per	5	Q. The note of 7-28-2009 does not appear on
6	of November on exhibit F. It says, File closed ber		O. THE HOLE OF 7-20-2009 QUESTION ADDEAD OF
U		100	
7	client - 9/2/2009." Does that mean the file was	6	your Exhibit F.
7	client - 9/2/2009." Does that mean the file was closed on 9-2-2009?	6 7	your Exhibit F. A. Well, it says the file was received
8	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009	6 7 8	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09."
8	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment.	6 7 8 9	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing.
8 9 10	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were	6 7 8 9 10	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at?
8 9 10 11	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file.	6 7 8 9 10 11	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's
8 9 10 11 12	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated."	6 7 8 9 10 11 12	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09?
8 9 10 11 12 13	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means?	6 7 8 9 10 11 12 13	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry
8 9 10 11 12 13 14	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means.	6 7 8 9 10 11 12 13 14	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"?
8 9 10 11 12 13 14 15	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context?	6 7 8 9 10 11 12 13	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"? A. I don't know where you're looking.
8 9 10 11 12 13 14 15 16	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context? A. In this context?	6 7 8 9 10 11 12 13 14 15	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"?
8 9 10 11 12 13 14 15 16 17	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context? A. In this context? Q. Yes.	6 7 8 9 10 11 12 13 14 15 16	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"? A. I don't know where you're looking. Q. Well, looking at Exhibit F, there's the
8 9 10 11 12 13 14 15 16 17 18	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context? A. In this context? Q. Yes.	6 7 8 9 10 11 12 13 14 15 16 17	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"? A. I don't know where you're looking. Q. Well, looking at Exhibit F, there's the second column over and it has a date.
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8 9 10 11 12 13 14 15 16 17 18 19 20	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context? A. In this context? Q. Yes. A. In particular with respect to the Mack case?	6 7 8 9 10 11 12 13 14 15 16 17 18 19	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"? A. I don't know where you're looking. Q. Well, looking at Exhibit F, there's the second column over and it has a date. A. Oh, that's the date of the entry. Q. The date of the entry?
8 9 10 11 12 13 14 15 16 17 18 19 20 21	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context? A. In this context? Q. Yes. A. In particular with respect to the Mack case? Q. Yeah. A. It means that the loan was current.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"? A. I don't know where you're looking. Q. Well, looking at Exhibit F, there's the second column over and it has a date. A. Oh, that's the date of the entry. Q. The date of the entry? A. Yes.
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8 9 10 11 12	client - 9/2/2009." Does that mean the file was closed on 9-2-2009? A. I think she's referring to the 9-2-2009 New Trak comment. Q. Oh, okay. That you were A. Instructed to close the file. Q. And then she has the word "reinstated." Do you know what that means? A. Yes, I know what "reinstated" means. Q. What does it mean in this context? A. In this context? Q. Yes. A. In particular with respect to the Mack case? Q. Yeah. A. It means that the loan was current. Q. Okay. So the loan was reinstated?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	your Exhibit F. A. Well, it says the file was received 7/24/09. First entry, "File received 7/24/09." Q. Maybe I'm not looking at the right thing. That's on Exhibit F you're looking at? A. Yes, the first entry there, you see it's dated 7-29-09? Q. 7-24-09 file received. Oh, I see an entry "Created/Mod Date." What is that "Created/Mod Date"? A. I don't know where you're looking. Q. Well, looking at Exhibit F, there's the second column over and it has a date. A. Oh, that's the date of the entry. Q. The date of the entry? A. Yes. Q. So with looking at the last entry on page 1366, Glen Lewin made an entry on 7-29 telling the

	Page 102		Page 104
1	Q. Okay. There was no mention of the New	1	Q. (BY MR. GARBER) Oh, okay. Well, we were
2	Trak upload on 7-28.	2	talking about phone calls and you said you believed
3	MR. SMITH T: Object to form.	3	there were some phone calls.
4	THE WITNESS: Why would there be?	4	A. From for example, if you look at
5	Q. (BY MR. GARBER) Well, wouldn't this	5	Exhibit F
6	document, Exhibit F, be a listing of all the	6	Q. Right.
7	contacts that you had with David Stern regarding the	7	A. (Continuing) Deutsche 1365.
8	Mack case?	8	Q. Let me get to 1365. Okay.
9	MR. SMITH T: Object to form.	9	A. Entry dated 8/25/09 by C. Erhmann.
10	THE WITNESS: No.	10	Q. Yes.
11	Q. (BY MR. GARBER) Well, what is this?	11	A. He says "Account current."
12	A. This is a Tracker system. This is when	12	Q. Yes.
13	someone handles the file, they were supposed to put	13	 He didn't just pull that out of the air.
14	in comments as to why they had the file in order for	14	He's a law firm employee. He must have spoken with
15	us to locate the file if we ever needed the file.	15	someone, so I'm assuming that that reflects a
16	This is our internal tracking system.	16	communication with GMAC. Do you see what I'm saying?
17	Q. I see. So there may be other	17	Q. Yeah.
18	communications other than our Complaint contained in	18	 A. That's why I'm saying this reflects
19	Exhibit F that Stern had with GMAC about the Mack	19	possible communications,
20	case?	20	Q. Okay. So let me go over to the New Trak
21	MR. SMITH T: Object to form.	21	notes to see if there is an entry for corresponding
22	THE WITNESS: Other than reflected in the	22	day 25.
23	New Trak?	23	 I would be surprised if there were.
24	Q. (BY MR. GARBER) Other than as reflected	24	Q. Why?
25	in Exhibit F.	25	A. It didn't happen that quickly. I think
	Page 103		Page 105
1	MR. SMITH T: Object to form.	1	your next entry would have been the 9-2 where GMAC
2	THE WITNESS: If the person didn't update	2	said, "Reinstated Close File." And also that was
3	Tracker as to why they had the file, yes, there could	3	around Labor Day.
4	have been.	4	Q. Okay. So, you believe that on or about
5	Q. (BY MR. GARBER) Okay. So just to make	5	the 25th of August Mr what was his name again,
-	The Court Fold Of P. A. M. P. C. and J. And J. M. P. C. and J. M. P. C. and J. And J. And J. And J. And J. And J. And J. And J. And J. And J. And J. And J. An	6	
6	sure I'm clear, Exhibit F is not intended as a	6	Erhmann?
7	complete summary of all the communications that	7	A. Yes.
		2.0	A. Yes. Q. (Continuing) Erhmann called GMAC
7 8 9	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it?	7	A. Yes.Q. (Continuing) Erhmann called GMACA. Or he might have received a call from
7 8 9 10	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also	7 8 9 10	 A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he
7 8 9 10 11	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also there would have been a sheet where handwritten notes	7 8 9 10 11	 A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he entered was "Account current."
7 8 9 10 11 12	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also there would have been a sheet where handwritten notes would have been written in.	7 8 9 10 11 12	A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he entered was "Account current." Q. Okay. But it would have been on or about
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7 8 9 10 11 12 13 14	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also there would have been a sheet where handwritten notes would have been written in. Q. Right. A. That possibly would have reflected	7 8 9 10 11 12 13 14	A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he entered was "Account current." Q. Okay. But it would have been on or about August 25th? A. Right. So if you look on the 24th of
7 8 9 10 11 12 13 14 15	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also there would have been a sheet where handwritten notes would have been written in. Q. Right. A. That possibly would have reflected communications also.	7 8 9 10 11 12 13 14 15	A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he entered was "Account current." Q. Okay. But it would have been on or about August 25th? A. Right. So if you look on the 24th of August, there are several entries here by GMAC. For
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also there would have been a sheet where handwritten notes would have been written in. Q. Right. A. That possibly would have reflected communications also, Q. Which would have been in addition to all these entries? A. Yes. Q. Okay. But you didn't find any of those? A. I didn't see that, no. Q. But I believe when you were testifying about that, you said something led you to believe there were such notes at one time.	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he entered was "Account current." Q. Okay. But it would have been on or about August 25th? A. Right. So if you look on the 24th of August, there are several entries here by GMAC. For example, entry number 15, it says, "User has closed the file. Reason: Open in error." So maybe on the 24th someone called our office and said, "The account's current, close the file," but it wasn't reflected that the file was to be closed until 9-2. Q. Okay. And this is something that you don't have any knowledge about, but you're trying to
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	complete summary of all the communications that David Stern's office had with GMAC about the Mack case, is it? A. No. Remember I testified there's also there would have been a sheet where handwritten notes would have been written in. Q. Right. A. That possibly would have reflected communications also. Q. Which would have been in addition to all these entries? A. Yes. Q. Okay. But you didn't find any of those? A. I didn't see that, no. Q. But I believe when you were testifying about that, you said something led you to believe	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. Q. (Continuing) Erhmann called GMAC A. Or he might have received a call from them. I don't know. It's not reflected. All he entered was "Account current." Q. Okay. But it would have been on or about August 25th? A. Right. So if you look on the 24th of August, there are several entries here by GMAC. For example, entry number 15, it says, "User has closed the file. Reason: Open in error." So maybe on the 24th someone called our office and said, "The account's current, close the file," but it wasn't reflected that the file was to be closed until 9-2. Q. Okay. And this is something that you

c	Page 106		Page 108
1	do.	1	Identification.)
2	Q. So an entry that would have been made on	2	Q. (BY MR. GARBER) Please take a minute and
3	Exhibit F might not correspond in date with the one	3	look at them.
4	on New Trak?	4	A. Okay.
5	A. Correct.	5	Q. Have you ever seen those —
6	Q. Would New Trak have all the	6	A. Yes.
7	communications, telephone and otherwise, that were	7	Q. (Continuing) e-mails before?
8	made between David Stern and GMAC?	8	And by the way, what is the Deutsche Bates
9	MR. SMITH T: Object to form, asked and	9	stamp on them?
10	answered.	10	A. 1344 and 1345.
11	THE WITNESS: I don't know. It would	11	Q. Let's take the first one, which is 1344.
12	depend on whether every employee of GMAC imported New	12	Was that e-mail written by an employee of David
13	Trak and whether every employee by ours did.	13	Stern?
14	Not every employee in our firm had access	14	A. Yes.
15	to New Trak, so I doubt that that would be a complete	15	Q. And what's the name of that employee?
16	compilation of communications.	16	A. Ann Escobar.
17	Q. (BY MR. GARBER) Okay. And still they	17	Q. And she wrote it to other employees of
18	would be talking with GMAC if they did not have	18	David Stern?
19	access to New Trak?	19	A. I'm not familiar with the name from the
20	A. I believe so. If you compare the names	20	content of the e-mail. It looks like she wrote them
21	that are in our comment history, they're probably not	21	to GMAC.
22	all listed in New Trak.	22	Q. And I don't have my copy in front of me.
23	Q. Okay. Okay, just to make sure that was	23	Can I look at it?
24	with respect to the Mack case because that's what I'm here for.	24	A. Sure.
25	fiere for.	25	Q. You don't know who Linda Cronrath is?
	Page 107		Page 109
1	A. Yes, exactly.	1	A. No, I don't.
2	Q. Thank you."	2	 Q. Please provide judgment figures good
3	Mr. McSurdy, I have some other documents.	3	through 9/24 with a breakdown.
4	These are ones that I don't have copies of, but	4	A. Yes.
5	they're Deutsche Bates stamp 1344 and 1345.	5	 Q. Would that e-mail have shown up as an
6	MR. GARBER: Do you have copies of those,	6	entry on New Trak?
7	John?	7	 I don't know. If I look, I could tell.
8	MR. SMITH T: Can you show them to me.	8	 Q. Okay. Should it have shown up as an entry
9	MR. GARBER: Yeah.	9	on New Trak?
10	MR. SMITH T: I'll see what I may be able	10	MR. SMITH T: Object to form.
11	to dig out of my little pile of stuff. Yeah. Now,	11	THE WITNESS: Not necessarily.
12	those are in I think those are in the electronic	12	Q. (BY MR. GARBER) Okay. And you can look.
13	records, aren't they?	13	I don't remember that I saw it.
14	MR. GARBER: I believe they came from the	14	A. 25th of
15	electronic records.	15	Q. When is it?
16	MR. SMITH T: Yeah, so that's part of	16	 A. 25th of August it was sent at 3:36 a.m.
17	Exhibit G.	17	That doesn't make any sense. On the 25th of August
18	MR. GARBER: I am going to hand you two	18	there was someone who entered a comment, it's comment
19	e-mails that I have from 1344 and 1345 on the	19	number 13 on New Trak, "Await figures."
	Deutsche Bates stamp, and if we can have them marked	20	Q. Yes.
20	as a composite exhibit which will be the next letter	21	 A. So that might have been Ann saying that
20 21		22	she had requested figures.
20 21 22	to this deposition.		
20 21 22 23	(Thereupon, Two pages e-mails dated	23	Q. Okay. Now, what is the name of that
20 21 22			Q. Okay. Now, what is the name of that e-mail? A. It says it was sent at 3:36 a.m.

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		Page 110
1	Q.	Did people work at David Stern at 3:36
2	a.m.?	
3	A.	No, no, they didn't.
4	Q.	Would those times be incorrect?
5	A.	It might have been sent by the computer at
6		m. Sometimes our computer would send later

the system until that time. Q. Okay. I know I used to have a VCR and it always said it was 12 o'clock. Would these times sometimes be in error?

than what -- when the person -- it didn't go out of

- 12 A. Only to the extent that if they weren't 13 sent out of the system, our system at like the time that the person actually pushed the send button, it 14 15 may have been delayed a few hours.
- 16 Q. Okay. You have a second e-mail there. 17 May I see that? It's a second part of the composite exhibit. And this is one from Evan Kohn. Was he an 18 employee of David Stern? 19
 - A. Yes.

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- Q. And it was sent to Vegina?
- 22 A. Well, I take that back. He was not an employee of the law firm. He was an employee of --23 at that point the law firm and the -- the law firm 24 25 had split into law firm and processing. He was a

- there, a number?
 - 2 A. By a scan reference. I can't tell just by 3 looking at the scan reference. She must have -- he must have -- Evan must have scanned it and that was 5 the code number that was ---

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Page 113

- Q. Okay. Can I see, see if we can ---
- A. It's a PDF.
- Q. It says that it's orders 081610. Is that the date?
- A. Yes, that's the date, and then following that would be the PDF number from the scan document.
- Q. Okay. Now, Exhibit G contains all of the 13 documents that were not produced in the first production from David Stern, that is, they didn't come from Iron Mountain. They came from the 16 electronic scanning system of David Stern, correct?
 - A. Yes.
- 18 Q. Okay. Let's see if we can find those documents that are referred to in here. And I think 19 we're going to see that they are orders having to do 20 with the scheduling of the trial, so they'd be around 21 22 August of 2010.
- A. I see an order dated August 2, 2010, Order 24 of Referral To General Magistrate.
 - Q. Okay. And what's your Deutsche Bates

- member of the processing company, the public company, 1 in 2010. You see that was 2010? 2
- 3 Q. Okay. So he was not a member of the David Stern law firm? Was that a subsidiary of David 5 Stern?
 - A. No, it was a subsidiary of a public company.
 - Q. Any relationship from David Stern to that subsidiary or to that company?
- A. David Stern owned some stock in the public 10 11 company.
- 12 Q. Okay.
 - A. And for awhile he was the CEO.
- Q. Okay. So this is the law firm from Evan 14 Kohn to, it looks like Vegina Hawkins, with a copy to 15 16 Elizabeth Davila; is that correct?
- 17
 - Q. And who are Hawkins and Davila?
- 19 A. Hawkins was an associate foreclosure attorney with the law firm, and Elizabeth Davila was 20 a paralegal with the processing company. 21
- Q. Okay. And there was an attachment with 22 23 that e-mail?
- 24 A. It references orders, yes.
 - Q. Orders that are designated or coded on

1 stamp on it?

- A. 1346. So it does follow directly the 2 3 e-mail, 1345.
- 4 Q. And do you think that 1346 and 1347 is a 5 copy of the order that was sent in that e-mail?
 - I believe that is correct.
- 7 Q. Can you identify any other documents other 8 than Deutsche 1346 and 1347 that was sent in that e-mail? 9
- 10 A. It looks like a copy of the envelope to 11 Elsa Shum.
- 12 Q. Okay. So those three things?
 - A. Yes.
- Q. Why would it say "Orders," with a plural, 14 15 of 8-16-10? Does that mean there was more than one 16 order?

MR. SMITH T: Object to form, calls for speculation. Go ahead.

THE WITNESS: It's been my experience that 19 20 even though only one order would be attached, that 21 that was the system's way of letting you know -- IT

- 22 broke the categorization down into orders, pleadings, 23 whatever it was, and the person that scanned it fit
- 24 It into that category that most likely fit that
- 25 attachment.

1	Page 114 Q. (BY MR. GARBER) Okay. Now, Evan Kohn has	1	Page 116 MR. GARBER: Yeah, I mean the law firm.
2	a note here that says, "Please see attached." Is he	1 2	THE WITNESS: The order referring the case
3	asking for Ms. Hawkins to do something on this?	3	to
4	MR. SMITH T: Object to form, calls for	4	Q. (BY MR. GARBER) Case management, yes.
5	speculation. Go ahead.	5	A. Yes, I believe that it's appropriate for
6	THE WITNESS: He was an assistant,	6	when the firm gets that sort of an order that it
7	administrative assistant helping to disburse	7	should have sent it on to the client.
8	pleadings and correspondence to attorneys and	8	Q. (BY MR. GARBER) Would that have been in
9	paralegals.	9	New Trak where it would appear?
10	Q. (BY MR. GARBER) And this e-mail was sent	10	A. If it had been sent, yes, it would have
11	out on or about August 18, 2010, correct?	11	been sent to New Trak or our comment history, one or
12	A. Correct.	12	the other.
13	Q. So that would have been long after the	13	Q. Now, the New Trak documents that I have,
14	file had been closed by David Stern?	14	the Exhibit 2, they actually only go up to 9-22-2009;
15	 Yes. He was doing the correct thing. 	15	have you noticed that?
16	This was what should have been happening all along,	16	A. Yes.
17	except he didn't send it to the right person.	17	 Q. So these New Trak documents, if they were
18	Q. How did he know to send it to Ms. Hawkins?	18	only covering up to that period of time, they
19	 I looked at the file. I couldn't tell why 	19	wouldn't have covered the time of this e-mail, would
20	he sent it to her. He should have sent it to Elsa	20	they?
21	Shum.	21	A. Right.
22	 Q. Why would he send a copy to Elizabeth 	22	Q. Have you been able to review New Trak to
23	Davila?	23	see what's in there?
24	A. She was the attorney who was assigned to	24	MR. SMITH T: Object to form.
25	the file.	25	THE WITNESS: Other than the document you
ň	Page 115	71	Page 117
1	Q. Oh, she was an attorney, too?	. 4	gave me?
	Q. On, sile was an accorney, cos:	1	gave me:
2	A. Not an attorney. The paralegal, I'm	2	Q. (BY MR. GARBER) Yeah.
3		1.5	
	 A. Not an attorney. The paralegal, I'm sorry. Elsa was the attorney. Q. Okay. And Vegina Hawkins was or 	2	Q. (BY MR. GARBER) Yeah. A. No, we don't have access to New Trak any longer.
3	 A. Not an attorney. The paralegal, I'm sorry. Elsa was the attorney. Q. Okay. And Vegina Hawkins was or Vegina, whatever her name is 	2	Q. (BY MR. GARBER) Yeah. A. No, we don't have access to New Trak any longer. Q. Okay. We took the deposition of an
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	Page 118		Page 120
1	privileged litigation software he referred to?	1	A. Yes.
2	 No, not with respect to the law firm's. 	2	Q. Okay, yes, I see it.
3	Q. With respect to David Stern?	3	MR. GARBER: Mr. McSurdy, I don't have any
4	A. Right, we had no we had no dealings	4	further questions. Thank you very much for your
5	with any sort of privileged litigation software.	5	MR. TEW: Let me have one word with
6	Q. Okay. On any case?	6	Forrest before we I may have a question or have
7	Not to my knowledge, no.	7	him supplement an answer.
8	Q. Okay. So you don't know what the name of	8	VIDEOGRAPHER: Going off video record.
9	that litigation software is?	9	(Thereupon, a brief recess was taken.)
10	A. No. It sounds like it's internal for	10	VIDEOGRAPHER: We're back on video record.
11	GMAC.	11	CROSS EXAMINATION
12	MR. GARBER: Okay. Okay. Let me take a	12	BY MR. TEW:
13	few minutes. We'll take a short break, I'll go over	13	Q. Forrest, Plaintiff's counsel or actually
14	my notes, and hopefully we can wind up and maybe you	14	Defendants' counsel asked you about your knowledge of
15	can get a late lunch.	15	any indemnification discussions or the
16	VIDEOGRAPHER: Going off video record.	16	indemnification provision in the contract between
17	(Thereupon, a brief recess was taken.)	17	GMAC and the Law Firm of David J. Stern and I
18	VIDEOGRAPHER: We're back on video record.	18	instructed you not to answer, but so that we don't
19	Q. (BY MR. GARBER) Mr. McSurdy, I just want	19	spin our wheels here, I will let you talk about
20	to make sure, you don't did you review the note	20	anything you know, except what you may have discussed
21 22	that was actually sent to David Stern's office in support of this foreclosure?	21	with the law firm's counsel or what you may have heard at any mediation
23	A. Which note was that?	23	A. Okay.
24	Q. There was a note, a note for the mortgage,	24	Q. (Continuing) on that subject.
25	the mortgage note of the Macks.	25	A. Okay. My only involvement with the
25	the mortgage note of the Placks.	23	A. Glay. My only involvement with the
	Page 119	7	Page 121
1	 A. Oh, did I review I saw that it was in 	1	indemnification issue was receipt of a letter. It
2	the file when I was transmitting a copy per your	2	may have been it was from someone at Mr. Smith's
3	request to GMAC's counsel, but I did not actually	3	office following up the initial notification letter
4	look at the terms of the note, no, I did not.	4	that there was a problem in this file and that a
5	 Q. Was that note in the electronic file or in 	5	default judgment had been entered on the
6	the paper file?	6	Counterclaim.
7	A. It was definitely in the electronic file.	7	A second letter was sent to my attention,
8	Q. So if it was in the electronic file, it	8	which I turned over to Mr. Tew, demanding
9	would have been found in Exhibit G to this	9	indemnification with respect to the Mack matter, and
10	deposition, correct?	10	that's the extent of my involvement.
11	A. Yes, unless I'm unless I'm getting	11	REDIRECT EXAMINATION
12	confused in having looked at I'm pretty sure that	12	BY MR. GARBER:
13	it was a separate part in the electronic file that I	13	Q. So as far as you know, there's been no
14	sent, but maybe I'm mistaken. If you want me to look	14	settlement with GMAC over the Mack case?
15	through it again, I'd be glad to look through it.	15	A. To my knowledge, no, there's been no
16	Q. I'll take a brief look. You're probably	16	settlement. MR. GARBER: Okay, I don't have any
17	right.	17	
18	A. And the reason I say that, too, is the	18	further questions. COURT REPORTER: Does he want to read or
19	practice is normally when the note's received, it's	19 20	
20	scanned to Tracker.	21	waive? THE WITNESS: I don't want to read.
21	Q. So it would have been part of your electronic system, wouldn't it be?	22	VIDEOGRAPHER: Time is 1:55. This
23	A. It should have been, yes.	23	concludes the deposition.
24	I found it. 1269.	24	conduces the deposition
25	Q. 1269?	25	
23	4. 1203)	23	

```
Page 122
             (Whereupon, reading, signing and Notice
 2
            of Filing were waived, and the
 3
            deposition was concluded at 1:55 p.m.)
 4
 5
 6
 7
 8
 9
                CERTIFICATE OF OATH
10
    STATE OF FLORIDA )
    COUNTY OF DADE
11
                I, the undersigned authority,
12
    certify that FORREST G. McSURDY personally appeared
13
    before me and was duly sworn.
14
               WITNESS my hand and official seal
15
    this 20th day of April, 2012.
16
17
18
                         CINDY HART
                        Court Reporter
19
20
    My commission #EE 105726
21
     My commission expires:
    June 23rd, 2015
22
23
24
25
                                                     Page 123
                  CERTIFICATE
    STATE OF FLORIDA )
 2
    COUNTY OF DADE )
 3
           I, the undersigned authority, hereby
 4
   certify that the foregoing transcript, pages 1 to 123
    is a true and correct transcript of the Videotaped
    Deposition of FORREST G. McSURDY, taken before me at
8
    the time and place stated in the caption thereof.
           I further certify that said witness was
9
    duly sworn according to law.
10
           I further certify that I am not of counsel
11
    to either of the parties to said cause or otherwise
12
    interested in the event thereof.
13
           IN WITNESS WHEREOF I hereunto set my hand
14
    and affix my official seal of office this 20th day
15
    of April, 2012.
16
17
18
                   Cindy Hart, Court Reporter,
                   Notary Public in and for the
19
                   State of Florida at Large.
20
    My Commission #EE 105726
    My Commission expires:
    June 23rd, 2015.
23
24
25
```

EXHIBIT Y TO THE DECLARATION OF JOHN W. SMITH T

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA GENERAL JURISDICTION DIVISION

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 20070S3,

Plaintiff,

v.

BARRY F. MACK a/k/a BARRY FRITZ MACK a/k/a BERRY FRITZ MACK, et al.,

Defendant.



CASE: 09-7336-CA

EXCERPT OF TRANSCRIPT OF HEARING PROCEEDINGS TESTIMONY OF FORREST McSURDY

DATE TAKEN:

Wednesday, May 16, 2012

TIME TAKEN:

4:06 p.m. to 5:41 p.m.

PLACE TAKEN:

Collier County Courthouse 3301 East Tamiami Trail Naples, Florida 34112

BEFORE:

The Honorable Ramiro Manalich

Circuit Court Judge

REPORTED BY:

Sabrina C. Beauvais, CCR, FPR, CLR

Certified Court Reporter



Southwest Florida Reporting Services, Inc.

Deposition Suites in Naples, Fort Myers, Punta Gorda, Port Charlotte, Sarasota and Tampa Post Office Box 9161, Naples, Florida 34101 www.SouthwestFloridaReporting.com "Every word. Every time."

(239) 774-2224

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3,

Plaintiff,

CASE: 09-7336-CA

BARRY F. MACK a/k/a BARRY FRITZ MACK a/k/a BERRY FRITZ MACK, et al.,

Defendant.

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REPORTED BY:

Sabrina C. Beauvais, CCR, FPR, CLR Certified Court Reporter

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25			

		Page 2
1		
2	<u>A P 1</u>	PEARANCES
3		
4	For GMAC:	JOHN W. SMITH T, ESQUIRE Bradley, Arant, Boult and
5		Cummings, L.L.P. One Federal Place
6		1819 Fifth Avenue North Birmingham, Alabama 35203 (205) 521-8000
-	For Deutsche Bank:	STANLEY A. BUNNER, JR., ESQUIRE Salvatori, Wood & Buckel, P.L.
9		9132 Strada Place Fourth Floor
10		Naples, Florida 34108 (239) 552-4100
11		
12	For Mr. and Mrs. Mack:	DAVID F. GARBER, ESQUIRE Garber, Hooley & Holloway, L.L.P. 700 Eleventh Street South
14		Suite 202 Naples, Florida 34102 (239) 774-1400
15		
16	Reported by:	SABRINA C. BEAUVAIS, CCR, FPR, CLR Southwest Florida Reporting Services, Inc.
18		Post Office Box 9161 Naples, Florida 34101
19		(239) 774-2224
20	Also present:	COLETTE J. KELLERHOUSE Paralegal for David F. Garber
21		raiategal for David F. Galber
22		MARY MURPHY Paralegal for Stanley A. Bunner
23		turneyer for brainey
24		* * * *
25		

```
1
         EXCERPT
                         O F
                                PROCEEDINGS
 3
               (4:06 p.m.)
 4
               THE CLERK: Do you solemnly swear or affirm
 5
         that the testimony you are about to give shall be
 6
         the truth, the whole truth and nothing but the
 7
 8
         truth?
              MR. McSURDY: Yes, I do.
              THE CLERK: Thank you.
10
11 THEREUPON,
                      FORREST McSURDY.
12
13 called as a Witness, after having been first duly sworn,
14 was examined and testified upon his oath as follows:
                      DIRECT EXAMINATION
15
16 BY MR. BUNNER:
               Good afternoon, sir.
17
        Q.
              Would you please state your full name for the
19
20 record?
21
              Forrest McSurdy.
       Α.
              And what, sir, is your occupation?
22
        ο.
23
               I am an attorney.
       Α.
              And who is your employer?
24
       Q.
               Law offices of David J. Stern, P.A.
25
```

Decl. Exhibit Y Pg 4 of 36 on May 16, 2012

And how long have you worked at the Law 2 Offices of David J. Stern, P.A.? Since December of 1995. Okay. And just for speed's sake, if I refer 5 to the law offices of David J. Stern in the future simply 6 as "the firm," will we understand one another that I am 7 always referring to that firm? A. Yes. All right. And as an attorney at the firm, 9 ٥. 10 what is your particular role? I am the general counsel and managing 12 attorney for the firm. All right. Have you ever had any other duty 13 14 positions with the firm while you have worked there? Yes. 15 Α. And what were they? 16 ο.

I was the head of the litigation department A. 17

18 from about 1996 until November of 2010. Okay. Who at the moment, if anyone, is the

20 records custodian for the firm? I am.

All right. To your knowledge, was the firm 22 ο.

23 -- did the firm represent the Plaintiffs in the instant

24 action?

Α.

21

2

4

Yes. Did it represent the Plaintiffs? 25 Α.

1 especially the years after 2008.

All right. Can you quantify that? Back in 3 1995, approximately how many new cases might be opened in

Page 7

Page

4 any given month?

Generally, we were referred anywhere -- per A. 6 month, anywhere between 500 and 1,000 foreclosures per 7 month in 1995 and 1996.

All right. ο.

And in 2009 and 2010, we were getting upwards A.

10 of sometimes 10,000 a month.

11 So 10,000 referrals a month --

Referrals, yes, to initiate foreclosures. 12

THE COURT: And in what time frame was that 13

latter one, sir? 14

THE WITNESS: In 2010. 15

16 CONTINUED DIRECT EXAMINATION

17 BY MR. BUNNER:

Was there any increase or decrease in the

19 client base at the firm while you worked there?

20

Could you describe that, please? 21 ο.

There was a significant increase from 1995 to 22 Д

23 2010. We went from representing initially just

24 Citibank®, who sent the first 100 files, to representing

25 every major lender -- or the top 20 lenders and probably

Page

The Plaintiff. I'm sorry. 1

The Plaintiff, yes. Α.

The Plaintiff. 3 0.

The lender bank, yes. A.

All right. Thank you. Sir, have you

6 reviewed the records of the firm as it pertains to the

7 firm's representation of the Plaintiff in the instant

8 action?

A.

All right. From the time you began working 10

11 there in 1995, did you notice any relative growth at the

12 firm?

13 A. Yes.

All right. And can you describe the growth 14 Q.

15 at the firm while you were working there?

When I joined, I was about the third attorney

17 there, and we had about five or six paralegals in 1995.

18 Through the years, we grew to become a firm of about 150

19 to 160 attorneys in 2010, with a staff of 100 -- I'm

20 sorry -- with a staff of 1,400 people.

Okay. And during that time frame, did you 21

22 notice any increase or decrease in the case load?

23

All right. And what did you notice? 24 ο.

The case load increased dramatically, 25 Α.

1 90 out of the top 100 lenders in the country by 2010.

By, say, 2010, do you have any idea of how

3 many open cases the firm might have handled for any

4 individual clients?

A. Yes, I do.

Okay. What would be an example? ο.

The one in particular that I have knowledge

8 of is I was required to do an audit for Citibank®. And

9 at the time I did the audit in 2010, the summer of 2010,

10 we were handling just over 11,000 files for Citibank®.

So 11,000 active files? 11 ο.

Eleven thousand active files. 12 A.

All right. Did the firm have any process for

14 handling papers when it represented plaintiffs in

15 foreclosure actions?

16

Please describe that process. ο.

When mail or pleadings came in to the mail 18

19 room -- and, again, we are talking about the period of

20 2009 and 2010, we had set up a staff of mail personnel to

21 handle approximately 10,000 pieces of mail a day.

When that mail came in, one of a dozen people

23 would initially scan the letter on to our electronic case

24 management system under the file, where they determined

25 which file it should go into, and then they would

17

1 physically give the piece of mail or pleading to the 2 paralegal who was designated to handle that particular 3 file. All right. And how would the mail employees 5 know who was designated to handle a particular file? Our case management system computer was set 7 up so that they could -- once they determined what the 8 case was, they could see who was handling it based on who 9 had last touched the file. We were required to keep a 10 running history of tracking the file, who had it. 11 Okay. And what was the name of that system? We called it the tracker system, but it's 13 CMS, and that abbreviation was for Case Management 14 System. Okay. Sir, could you please turn to -- you 16 should have a big binder there in front of you. 17 Here? 18 It's right there. (Indicating.) Q. 19 A. Okav. 20 Could you please turn to Tab 22 in that large 21 binder? (Complies.) Okay. And I would ask you to review those documents 24 that are in Tab 22.

anything being on Page 3, at the bottom, and then going backwards? THE WITNESS: Going up. Right. THE COURT: Okay. Thank you. CONTINUED DIRECT EXAMINATION 6 BY MR. BUNNER: Q. So this appears to be in reverse 8 chronological order? Yes. Because when you open the system, it 10 would show you where you presently were. 11 Okav. 12 And then you would have to go to the back of 13 the system to see where everything was. I understand. And beginning with the last 15 page, do you recognize the name Glen Luen (phonetic 16 spelling)? 17 I do recognize Glen Luen. 18 Who is Glen Luen? 19 Α. He was in the department that opened files. 20 Okay. And that was a department at the firm? 21 A. All right. And -- well, I will ask you, 23 could you look at the three pages of documents and tell $\dot{2}4$ me -- do you recognize any names there who are not 25 employees of the firm?

Uh-huh.

	1 A. I don't know all of the names, but I do
	2 the ones that I do know, they were members of the firm.
	3 Q. Okay. And each of these individual entries,
	4 what do they represent?
	5 A. When the person who was doing something on
	6 the file made an entry with respect to the file.
	7 Q. Okay. And these entries that are made, are
	$\boldsymbol{8}$ they made at or near the time of the occurrence by a
ļ	9 person with personal knowledge or with information
	10 transmitted via a person with personal knowledge?
	11 A. They are supposed to be, yeah. Occasionally,
	12 there will be a sometimes there may be a few months'
	13 delay, but ultimately the person will say when it was
	14 that their action is referring to. For example, there
	15 may be an entry on January 1st referring back to October
	16 31st.
	17 Q. Okay. And are these entries kept in the
	18 regular course of the regularly conducted business
	19 activity of the firm?
	20 A. Yes.
	21 Q. And is it the regular practice of the firm to
	22 make these entries?
	23 A. Well, was it? Our firm no longer is in
	24 business. Yes, it was.
	Q. Okay. But you still work there now. Right?
-	

Page

Page 13	Page 15
1 You still	1 with GMAC regarding the handing of this foreclosure?
2 A. I still I am the only one left, yes.	2 A. Yes.
3 Q. Correct. So the firm is technically still in	3 Q. In what ways did the firm communicate with
4 business, is it not?	4 GMAC?
5 A. It's winding down, yes.	5 A. There were several ways. There were e-mails
6 Q. Yes.	6 There were telephone conversations. And there were
7 A. But we don't do this anymore.	7 there was an electronic communication system called New
8 Q. All right. Well, let's say from the period	8 Track.
9 of July 29th, 2009, to the period of 9/22/2010, was it	9 Q. Okay.
10 the regular practice of the firm to make these records?	10 THE COURT: So I'm sorry you said New
11 A. Absolutely.	11 Track, e-mails, and what other method of
12 Q. Okay.	12 communication?
13 MR. BUNNER: Your Honor, at this time, we	13 THE WITNESS: Telephone.
14 would proffer the item marked as Tab 22, which is	14 THE COURT: Oh.
15 Exhibit 22, into evidence.	15 THE WITNESS: The usual method.
16 THE COURT: Any defense comment?	16 CONTINUED DIRECT EXAMINATION
17 MR. GARBER: Your Honor, I have no objection.	17 BY MR. BUNNER:
18 THE COURT: All right. Counsel, the only	18 Q. And I believe, Mr. McSurdy, you stated that
19 question I have on this is, I am assuming you are	19 you reviewed the records of the firm in this matter, did
20 asking this be admitted as a business record. Is	20 you not?
21 that correct?	21 A. Extensively, yes.
22 MR. BUNNER: Yes.	22 Q. Okay. Could you please turn to Tab 25 of
23 THE COURT: And there was testimony about it,	23 your binder?
24 that in some events there were several months'	24 A. (Complies.)
25 delay. Do you have any comment as to how that	25 Q. It is a rather lengthy document. I would ask

Page 14	Page 16
1 would still be appropriate to be admitted as a	1 you to just look through it.
2 business record?	2 A. (Complies.) Uh-huh. Okay.
3 MR. BUNNER: Only that there has been no	3 Q. Do you recognize the documents that are in
4 objection to its admission, sir.	4 Tab 25?
5 THE COURT: Uh-huh. Admitted as what	5 A. Yes.
6 number is it? Number 22?	6 Q. What do you recognize those to be?
7 MR. BUNNER: Yes, sir.	7 A. These are documents that would have been in
8 THE COURT: All right.	8 the file, the foreclosure file, the main file.
9 (Whereupon, GMAC Exhibit Number 22 was	9 Q. And do you recognize these as documents you
10 admitted into evidence as of this date.)	10 reviewed as part of your preparation for testimony?
11 CONTINUED DIRECT EXAMINATION	11 A. Yes.
12 BY MR. BUNNER:	12 Q. And Exhibit 26, I would ask you to look at
13 Q. Mr. McSurdy, are you familiar with an entity	13 that.
14 commonly referred to as GMAC?	14 A. (Complies.) These appear to be the documents
15 A. Yes.	15 that I personally downloaded from the electronic system,
16 Q. What do you know GMAC to be?	16 the case management system.
17 A. GMAC, from my perspective, was a mortgage	17 Q. All right. And
18 servicing company.	18 A. Related to this file.
19 Q. All right. Do you know whether or not GMAC	19 Q is it accurate to say that you reviewed
20 was involved with this loan, the Mack loan?	20 those documents in preparation for your testimony?
21 A. Yes.	21 A. Yes.
22 Q. All right. And what was GMAC's involvement?	22 Q. All right. Mr. McSurdy, in the review of the
23 A. It was the company that referred the	23 records that you have looked through here, as well as
24 foreclosure to our office.	24 Exhibit 22, did you find any indication whatsoever that
25 Q. To your knowledge, did the firm communicate	25 the firm ever notified GMAC that there was a counterclaim

Page 1 filed in the Mack case? Α. All right. Other than your review of 4 documents, did you conduct any other investigation with 5 regard to the Mack case? 6 A. No. 7 0. Okay. Foreclosures at the firm were handled 8 by what particular department? 9 A. The foreclosure department. 10 Q. All right. Was it a policy of the 11 foreclosure department to make any written record when 12 there was a counterclaim pending in a case? 13 Not a specific written record. What the --14 the procedure that was set up was the following: If a --15 again, just to reiterate what I said before, any pleading 16 that came in would be received by the mail room. It 17 would be stamped, date stamped. 18 You can see several of the date stamps there 19 on the documents. For example, the first document in Tab 20 Number 26 has a date stamp there as to -- showing that 21 our mail room received it. And that also means that they 22 then scanned it into our electronic computer system from 23 each -- for the particular file. Then the piece of mail or the pleading, 25 whichever it is, is supposed to have been given to the

Page 19 1 been determined as to what would have been required to 2 defend the particular counterclaim. The counterclaim then would have been 4 e-mailed or sent via this New Track system, and I'm not 5 completely sure how that occurs, but they would attach it 6 to a communication in the New Track system. And then the client would be advised that 8 there was a counterclaim filed, and this would be the 9 amount of hours that it would take for us to -- were 10 anticipated to be necessary to be handling the defense of 11 the counterclaim. The client would then advise us 12 whether we were to proceed or if they were would bring in 13 other counsel. 14 And that ---15 THE COURT: Can you clarify, sir, then, on 16 your testimony what you answered is, does your view 17 indicate that the counterclaim reached one of your 18 attorneys or did not? I wasn't clear --19 THE WITNESS: It --20 THE COURT: -- on that. THE WITNESS: It did not, Judge. It -- from 21 22 what I could tell, it -- it stopped after being 23 scanned into the system and, from what I can 24 surmise, is the reason it wasn't given to a 25 paralegal or an attorney is because at that point

1 paralegal working on the file. The paralegal would then, 2 in turn, make sure that the attorney saw what needed to 3 be seen in terms of pleadings or letters. The attorney, 4 after they reviewed things, they were supposed to initial 5 the pleading and put it in the file, if no further action 6 was required. ο. With regard to the communications that you 8 described in that answer, in your review of the files did 9 you see any indication that there were any communications 10 pertaining to the counterclaim that was filed in the Mack 11 action? 12 The counterclaim itself came in and it was 13 scanned. I did see that it was scanned and it was saved 14 to the system in October of 2009, a few days after our 15 file was administratively closed due to the loan being 16 reinstated of record by GMAC telling us it was current. At that point, nothing was done with the 18 counterclaim. It was not -- as far as I can tell, it was 19 not delivered to the paralegal, it was not given to an 20 attorney to review. Had it been given to the paralegal or to the 22 attorney, the attorney would have reviewed it and would 23 have turned the file over to the managing foreclosure 24 attorney to have a litigator assigned to it. And the 25 litigator would have reviewed it and a budget would have

```
1
          the loan had been -- we were --
 2
               MR. GARBER: Your Honor, I'm going to object.
 3
          It's speculation. If he knows, but not if it's
          speculation.
 4
 5
               THE COURT: Is this based on your review or
 6
          are you assuming these things happened?
               THE WITNESS: It's based on my review of --
 7
         of the chronology of the -- of the filing and past
         history of similar circumstances, which we tried to
 9
10
         avoid happening.
11
               THE COURT: Okay. So to clarify your answer
12
         is that, based on your review, you -- you do not .
         believe that the -- there's any indication that the
13
14
         counterclaim reached the attorney or the paralegal?
15
               THE WITNESS: Correct.
               THE COURT: Thank you. Please, continue.
17
               MR. BUNNER: Thank you, Your Honor.
18
                 CONTINUED DIRECT EXAMINATION
19 BY MR. BUNNER:
               I believe you answered this as part of your
21 answer, but the -- did the litigation department have a
22 policy as to whether or not it would notify the client in
23 the event that a counterclaim was filed in a foreclosure
24 action?
25
               Yes, absolutely. It was -- it was required.
```

Page

1

2

3

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Я

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18

19

20 21

22

23

24

25

All right. And did you review the files to 2 see if they had provided any indication that the firm 3 provided any indication to GMAC that a counterclaim was 4 filed?

Δ Not in this case

6 0. Okay. Is there any indication in the records

7 that the firm provided any indication to Deutsche Bank,

8 the Plaintiff itself? And we use Deutsche Bank as a

9 shorthand. I know it's a RALI Trust, but we'll call it

10 Deutsche Bank.

11 А No. There was no communication at all

12 regarding the counterclaim to the -- to either Deutsche

13 Bank or GMAC.

14 ٥. Okay. Another thing I believe you touched on

15 in your answer was that --- well, did the firm have a

16 policy with regard to whether or not it charged clients

17 extra money to defend counterclaims in a foreclosure

18 action?

19 Yes. That was with respect to the estimated

20 budget that would be transmitted with a copy of the

21 counterclaim.

22 And does your review of the records indicate

23 that there is any -- there was any budget prepared to

24 defend any counterclaim in this action?

No. There was no budget prepared.

recognize?

MR. BUNNER: Well, the absence of a record technically could be arguably hearsay, but there is an exception under our evidence code in the event that -- that the testimony is there would be such a record, that it would be regularly made and preserved in the regular course of business and that is admissible. And so we're proffering the

23

Page

absence of the indication that there was a

10 counterclaim as substantive evidence.

11 THE COURT: Okay. That's Sub 7 --

12 MR. BUNNER: That's Sub 7, yes.

THE COURT: All right. Any objection?

MR. GARBER: Your Honor, I would. I'd wait until I've had a chance to cross-examine this person, that exception to the hearsay rule is 803,

Subsection 7, as the Court pointed out. 17

> And I saw that Mr. Bunner brought his copy of Ehrhardt, who is recognized by me and I think most people, as a leading authority on it, and he discusses this point exactly, and he said, as Mr. Bunner did, that this is an exception to the hearsay rule, but it should be construed much more

narrowly and much more vigilantly by a Court

because there's really no record.

Page

Was there any communications with GMAC, or

2 any other outside party outside the firm, regarding

3 payment to defend the counterclaim?

A.

Okay. And, again, both the -- both the

6 notification of the pending counterclaim, is that the

7 kind of -- of matter that would result in a record being

8 produced in the Stern file?

Yes. There would be some sort of record as

10 to the transmission to the client, either a -- an e-mail

11 saved to the system or a copy of a letter sent to the

12 client.

All right. And -- and would that record be

14 regularly made and preserved in the regular course of

15 business at the firm?

16

MR. BUNNER: All right. And I guess I've 17

never done this, Your Honor, but that -- I would 18

19 proffer the absence of that entry of the record

20 under 806, Subsection 3, the absence of a record as

an exception to the hearsay rule.

THE COURT: As to?

23 MR. BUNNER: The absence --

24 THE COURT: What's -- what's the request?

25 What are you asking the Court to admit or

Page It's an absence of a record. And so I'll

make that argument more when I've had a chance to

3 cross-examine him:

THE COURT: All right. I'll reserve.

CONTINUED DIRECT EXAMINATION

6 BY MR. BUNNER:

All right. And I'd ask the same question

8 with regard to the absence of any paperwork pertaining to

9 a budget on the counterclaim. Would that be something

10 that was regularly prepared?

Α.

Would it be regularly preserved in the

13 ordinary course of business?

Yes, it would have been saved ---

15 MR. BUNNER: I would make the same proffer,

16 Your Honor, substantively.

THE COURT: Okay.

CONTINUED DIRECT EXAMINATION 18

19 BY MR. BUNNER:

Mr. McSurdy, based on your review of the

21 documents in this case and as head of litigation and the

22 records custodian of this -- of the firm, have you been

23 able to determine why you believe the firm failed to

24 reply to any paper filed in this case after the firm

25 caused the notice of dismissal to be filed?

22

17

1 A. Yes. 2 Q. And what was your conclusion?	
2 Q. And what was your conclusion?	
3 A. My conclusion was based on the history of th	е
4 particular file. Please remind me, what number of the	
5 tab was the comment history from our firm?	
6 Q. : Tab 22.	
7 MR. SMITH T: Tab 22.	
8 THE WITNESS: Twenty-two. (Reviewing	
9 document.) The comment history from our firm on	
10 the on the most recent page, which would be the	
11 first page of the of the tab, shows on date	
12 9/22 there is actually, there are several	
entries: 9/15, 9/22. The person handling the	
14 file, the paralegal entered, "The file is closed	
per client," and it said, "The loan was reinstated	
16 on 9/2/09."	
Then on 10/5/2009, there's an entry by a	
18 Kerry Cohen (phonetic spelling) in the middle of	
19 the page that indicates the file was clicked	
20 closed.	
21 CONTINUED DIRECT EXAMINATION	
22 BY MR. BUNNER:	
Q. $$ What is the significance of the file clicked	
24 closed?	
25 A. What that means is on our computer system,	

	Page 27
	So the reason I'm telling you this is because
	2 when I looked on the system, I saw when the counterclaim
-	3 was saved to the system. The counterclaim was saved on
	4 the 7th of October, two days after the file was clicked
	5 closed.
	6 So anyone who looked at the the electronic
	7 file system when the counterclaim came in, they would
	8 have brought it up and it said, "Oh, this file's closed.
	9 There's nothing we need to do with any further
	10 pleadings," which was contrary to the system that I had
1	11 tried to set up with the foreclosure managers and the
	12 paralegals and the mailroom whenever some kind of
1	13 pleading came in after a file was reinstated.
	14 Q. Okay. Was it accurate to say that what
	15 happened with the papers in this case was not consistent
	16 with the way the system was supposed to work?
1	17 A. Yes. It was not consistent.
	18 Q. Once a file was closed, what physically was
-	19 done with the file?
	20 A. In this particular instance, the the file
	21 physically went to the dismissal department to sit in a
l	22 pile of literally hundreds of files waiting to be
	23 dismissed.
	Q. Okay. And were open files also kept with the
	25 dismissed files in the dismissal department?

1 the file -- part of the initial screen when you brought 2 up the -- the file to look at a particular file, on the 3 top left corner it would tell you whether the file was 4 open or closed. So when you brought up this particular file, 6 this file was administratively closed, so that when the 7 first person -- the first thing the person would see is 8 this file was closed, when they opened it, as of this 9 date, 10/5/2009. And the reason it was clicked closed was 11 because we were advised by GMAC that the loan had 12 reinstated or it was brought current for -- and that we 13 were to dismiss the case Unfortunately, because of our enormous amount 15 of foreclosures that had to be dismissed during the 16 period of time, we were six to nine months behind in 17 dismissing cases. This particular case did not get 18 dismissed right away. You'll see, if you go to the top 19 of the comment history, that the dismissal for this 20 particular file only occurred -- it went to the Court. There's an -- there's an entry, the third 22 entry from the top by Heather Smith. It went to the 23 Court in December of 2009, about three months after the 24 loan actually re -- we received notice of the loan 25 reinstatement.

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Well, technically they were still open until
 2 they were dismissed with the Court.
               Let me rephrase. Were -- were files that the
 4 firm understood to still be open and active cases, were
 5 they stored with files that the firm considered to be
 6 closed?
               I don't -- I don't understand your question.
               If one went to the firm and wanted to look at
 9 a file that the firm believed was an open file, would
10 they go to the same office to look at it as they would to
11 go to a file that the firm believed was a closed file?
               No, no. They -- they would -- it would be in
13 a -- in a storage cabinet with open -- other open files.
14 It would not be in the dismissal department.
15
               MR. BUNNER: Okav. I have no further
16
         questions.
               THE COURT: Cross-examination.
               (4:33 p.m.)
19
                        CROSS-EXAMINATION
20 BY MR. GARBER:
21
        ο.
              Mr. McSurdy, good afternoon, sir.
22
               Hello.
       Q.
               Let me try to track the same order of
24 examination that you received your questions on direct,
25 and there was a copy of a complaint found in Tab 25 of
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	Page 29	Page 31
1 yc	our of Plaintiff's notebook. Correct?	1 though, correct?
2	A. Yes.	2 A. According to the case history, yes, it looks
3	Q. Okay. And that was a complaint prepared by	3 like the note was received by the firm.
, 4 yc	our office, wasn't it, sir?	4 Q. Okay. So would you say that was a mistake?
5	A. Yes.	5 A. The attorney who was reviewing the complaint
6	Q. And this complaint says that a copy of a note	6 should have caught that and should have changed that,
7 an	d mortgage are attached as Exhibit A to the complaint.	7 yes.
8 Co	rrect?	8 Q. Okay. Now, this particular attorney who was
9	A. Yes.	9 assigned this case was Elsa Shum, correct, sir?
10	Q. Found in par in Paragraph 4?	10 A. Yes.
11	A. Uh-huh.	11 Q. And as a matter of fact, she didn't sign the
12	Q. And it says that there was a default for the	12 complaint, did she?
13 no	te and mortgage from August 1st, 2009 on. Correct?	13 A. No, she did not.
14	A. Correct.	14 Q. Okay. Were you able, in reviewing these
15	Q. Was that information you got from GMAC?	15 records and we have literally many hundreds of pages
16	A. Yes.	16 of records were you able to confirm that Elsa Shum
17	Q. You didn't attach a copy of the note to the	17 refer reviewed a single page of this file?
18 co	mplaint, did you, sir?	18 A. I never considered the issue. I'm sorry.
19	MR. BUNNER: Your Honor, objection,	19 Q. Okay. So you have no information on that
20	relevance.	20 point?
21	THE COURT: Mr. Garber.	21 A. No.
22	MR. GARBER: Your Honor, I I think it's	22 Q. Okay. And it's fair to say, you actually
23	relevant because we're trying to establish that	23 have no personal knowledge of this entire case, do you,
24	this law firm was guilty of gross negligence. And	24 sir?
25	if it was guilty of gross negligence, then it's not	25 A. Other than reviewing the the records. No.

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1 excusable neglect.
2 THE COURT: Any other argument?
3 MR. BUNNER: Yes, Your Honor. If the
4 excusable neglect is that of the client, not of the
5 lawyer, what he's asking about is whether or not
6 apparently there was a mistake made and the claim
7 that we established 60 minutes ago was voluntarily
8 dismissed. It does not have anything to do with
9 the counterclaim or the three prongs in this
10 motion.
11 THE COURT: The objection is overruled.
12 CONTINUED CROSS-EXAMINATION
13 BY MR. GARBER:
14 Q. Okay. So you did not have a copy of the note
15 with the complaint that you served?
16 A. Did is the question, did the firm have a
17 copy of the note or was
18 Q. No.
19 A it attached?
20 Q. You didn't attach a copy with the note, did
21 you, sir?
22 A. The note was not attached. It was
23 Q. Okay.
24 A. A mistake was made, yes.
25 Q. And you did have the note at that time,

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Right. Okay. So you reviewed the records
 2 that have been submitted into evidence here today,
 3 together with your -- what was called Exhibit F in your
  4 deposition, but I think it was called another one here
 5 for this --
               MR. GARBER: Do you know what the tab was?
               MR. BUNNER: I don't know what exhibit you're
         talking about.
               THE WITNESS: Twenty-two.
               THE CLERK: Tab 22.
               MR. GARBER: Okay. Thank you.
11
                  CONTINUED CROSS-EXAMINATION
13 BY MR. GARBER:
               Tab 22 was what you downloaded from your
15 system. Correct, sir?
               The comment history, yes.
               Okay. So you looked at Tab 22 and you looked
17
18 at the documents?
19
       Α.
20
               And that's the basis of your knowledge here
21 today?
22
23
               Okay. And also would it not be fair to say,
24 sir, before I get into some of these documents, actually,
25 that, in fact, you have sued GMAC yourself and are
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	Page 33
1	involved in a suit with them? Is that not true, sir?
2	A. No, I'm not.
3	Q. No. I mean, David Stern. The Office of
4	David Stern.
5	A. Yes. We we are in litigation with GMAC.
6	Q. Okay. You filed a complaint against them
7	because you want to get paid about \$6 million
8	MR. SMITH T: Objection
9	MR. GARBER: For
10	MR. SMITH T: Judge, I'm here on behalf of
11	GMAC, and I don't understand the relevancy of this.
12	MR. GARBER: Your Honor, it's relevant
13	because of bias of this witness.
14	MR. SMITH T:\ That, I think, goes in our
15	favor, but I sti I don't think that's sufficient
16	to admit that question.
17	THE COURT: Objection is sustained.
18	MR. GARBER: Well, the complaint itself was
19	signed
20	THE COURT: I will note, though, that
21	objection came after the answer previously that the
22	witness did admit there is litigation between GMAC
23	and David Stern.
24	MR. SMITH T: Yes, sir.
25	MR. GARBER: And, Your Honor, I want to say,

7			Page 35
	1	A.	Yes.
	2	Q.	And the date of that counterclaim was
	3	actually Se	ptember the 9th. Is I'm trying to look
	4	through you	r records here to see if I can find a copy of
	5	that counte	rclaim. (Reviewing documents.) Do you know
l	6	where it is	or would you know it when you get there
l	7	if I	
ļ	8	A.	It would have been in the second the one
	9	that I copi	ed from the electronic system. It was not in
	10	the physica	l file.
	11	Q.	Okay.
	12	A.	Tab 26 somewhere it should be.
	13	Q.	In Tab 26 somewhere?
	14	A.	(Nodding head.)
	15	Q.	Okay. You had two files, actually. You had
	16	an electron	ic file and a paper file. Is that correct?
	17	A.	Yes.
	18	Q.	And 26 is your electronic file?
	19	A.	Yes.
	20	Q.	Okay. Now, the complaint itself was filed
	21	has a stamp	of September 11th, 2009. Do you know when
	22	your office	received it?
	23	A.	If we can find the the pleading, it
	24	that may ans	swer it your question may be answered just
	25	by the mail:	ng stamp.

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1 also, so I can put the Court on notice, this case,	
2 the Mack case, is a subject of that litigation and	,
3 therefore	
4 THE COURT: Is that either objected to or	
5 admitted, Counsel?	
6 MR. SMITH T: Judge, that's that's a	
7 matter of public record, that that there are	
8 counterclaims going back against the Stern firm by	
9 GMAC; yes, sir.	
10 THE COURT: All right.	
11 CONTINUED CROSS-EXAMINATION	
12 BY MR. GARBER:	
13 Q. So can you say do you know who did sign	
14 this particular complaint from your office?	
15 A. I don't recognize the signature, no.	
16 Q. Okay. There's a name of Miriam Mendieta?	
17 A. That I know Miriam's signature. That's	
18 not Miriam's signature.	
19 Q. Okay. But some lawyer signed it and you	
20 don't know their their name?	
21 A. Yes.	
22 Q. Right, sir?	
23 A. Correct.	
Q. Okay. Now, there was a counterclaim that was	
25 filed in this matter, wasn't there, sir?	

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1	•
2	A. When it was received.
3	MR. SMITH T: Are you looking for the
4	counterclaim?
5	MR. GARBER: Yes.
6	THE WITNESS: Yes.
7	MR. SMITH T: Go to Deutsche 1241.
8	THE COURT: And what tab are you at, Counsel?
9	MR. SMITH T: Twenty-six.
10	MR. BUNNER: Tab 26, Your Honor.
11	THE COURT: And what's the number?
12	MR. BUNNER: It's 1241, your Honor. That's
13	the answer to the complaint and the counterclaim.
14	MR. GARBER: Okay. Yes, 1241.
15	THE WITNESS: (Complies.) Uh-huh.
16	THE COURT: And what was the question,
17	Mr. Garber?
18	CONTINUED CROSS-EXAMINATION
19	BY MR. GARBER:
20	Q. Okay. Do you know when you received a copy
21	of this counterclaim?
22	A. I do not know when the mail room received a
23	copy of it.
24	Q. Okay. The date of the counterclaim was
25	September 9th, 2009. Do you have any reason to believe

Page

1 that this counterclaim was not received by your office
2 within a few days after that date?

- 3 A. It -- no, I don't have any reason the mail
- 4 room wouldn't have received it.
- 5 Q. Okay. Now, the Office of David Stern filed
- 6 suit against the Macks and we've already looked at your
- 7 complaint. You're not here to suggest that service or
- $\boldsymbol{8}$ sending this counterclaim to you was not proper service,
- 9 are you?
- 10 A. No. Not at all.
- 11 Q. Okay. And you being the attorney, that is
- 12 David Stern being the attorney, you had a duty to respond
- 13 to this counterclaim in a timely fashion, right, sir?
- 14 A. Yes.
- 15 Q. Okay. As a matter of fact, you were notified
- 16 that there was a default that was requested in this
- 17 particular case; were you not, sir?
- 18 A. When I reviewed the electronic file, I saw
- 19 that there was a default that the mail room had scanned
- 20 to the file, but no one seems to have reviewed it.
- 21 Q. Okay. Okay. So to try and speed this up, I
- 22 want to go through the particular filings that your
- 23 office received. I think I have a summary of them that
- 24 we can go through very quickly.
- MR. SMITH T: We're not -- we're not

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- Q. Okay. So in the documents that you reviewed,
- 2 you also got a copy of the motion for default dated
- 3 October 16th, 2009. Correct?
- A. Again, I assume if it's in this package that
- 5 I sent you, yes.
- 6 Q. It is.
- 7 A. Okay
- Q. And I'm just going through it. And I want to
- 9 make sure the Court knows them all. You got a copy of
- 10 the default that was entered on October 1st, 2009.
- 11 Correct?
- 12 A. Yes
- 13 Q. Clerk's default. You got a copy of
- 14 Defendant's first request for production on November 2nd,
- 15 2009. Correct, sir?
- 16 A. Yes.
- 17 Q. You got a copy of the request for designation
- 18 of corporate representative. That was November 2nd,
- 19 2009: Correct?

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- 20 A. Yes.
- 21 MR. SMITH T: Judge, again, --
- 22 THE WITNESS: Again --
 - MR. SMITH T: -- look, I -- I know Mr. Garber
- 24 wants to make this appear overwhelming, how much
 - paper was flowing into the Stern firm. We're not

Page 3

- objecting that they were received, that they're in
- 2 here, Judge. I don't know if that helps.
- 3 MR. GARBER: Right. They're in here, but
- 4 they're all in different order; whereas I have them
- 5 in chronological date. And I'm just looking at my
- 6 complaint -- or my memorandum of law.
 7 CONTINUED CROSS-EXAMINATION
- 8 BY MR. GARBER:
- 9 Q. So you're admitting that you received the
- 10 answer and the complaint a few days of September 9th,
- 11 2009, right, sir?
- 12 A. That's when it was served, yes.
- Q. Okay. And you received a copy of the motion
- 14 for default within a few days of October 16th, 2009,
- 15 correct, sir?
- 16 A. I have no knowledge when it was received. I
- 17 can only tell, again, from when I look at the Tracker,
- 18 when it was posted to the file by the mail room and there
- 19 was -- in the case of the counterclaim, it was over a mo
- 20 -- it was about a month later that it was posted to the
- 21 file.
- Q. Okay. But you have no reason to doubt that
- 23 these things were all timely sent on the days that they
- 24 say they were. Right?
- 25 A. No. I have no reason to doubt that.

contesting if it's in here that it was received --THE COURT: When you say "in here," you're

3 referring to -4 MR. SMITH T: The documents that have been

what it is --

produced. And he's asking Mr. McSurdy just blindly to say did you get this, did you get this, did you get this? Now, he can go through and find it and then confirm, yes, I got this; yes, we're on the certificate of service; yes, the service dates say

11 THE COURT: Well, is there any way to
12 streamline, --

MR. GARBER: That's what I'm ---

THE COURT: -- Mr. Garber, by stipulation as to the litany of documents that would have been received in relation to this case by the David Stern firm? I -- I believe that Plaintiff's counsel is saying they are willing to stipulate that -- I guess I'm trying to find --

MR. SMITH T: Sure. The documents that are in Exhibits 25 and 26 were received by the Stern

MR. GARBER: Okay. And, Your Honor, I thought I was streamlining it. I can go through Exhibit 26 and I can look at each document and do

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		Page 41
	1	it, but I thought just going through a list would
	2	be much faster.
	3	MR. SMITH T: Well, this is even faster.
	4	THE COURT: Well, the
	5	MR. SMITH T: I'm just saying
	6	THE COURT: What the stipulation is, is that
	7	the documents are in Plaintiff's Tabs 25 and 26?
-	8	MR. GARBER: Yes, Your Honor.
	9	THE COURT: Does that cover all of the
	10	documents you believe are at issue, Mr. Garber?
ĺ	11	MR. GARBER: I believe that they do. I
ŀ	12	really haven't confirmed that 26 is all of the
	13	documents
	14	THE COURT: And is
	15	MR. GARBER: that we sent
	16	THE COURT: Plaintiff is stipulating that
	17	all of those documents that Mr. Garber can refer to
	18	in Plaintiff's Tabs 25 and 26, that it would be the
	19	witness' testimony that they were received
	20	around shortly after or around the time when
	21	they were sent?
	22	MR. SMITH T: Yes, sir. Of course, there
	23	are some documents in here that aren't service
	24	papers, internal things, and those documents
	25	speak for themselves. But as to anything sent

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$\operatorname{Page}$ 43 try -- what I'm trying to suggest is if -- if it's in here, we received it, and we received it on or about the time --
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THE COURT: Do you know, Mr. Garber, if there are things not within those two tabs that you're either seeking a stipulation or testimony about?

MR. GARBER: Your Honor, I'm not sure. I —
I hope they put everything in there, but I have not compared that against my list. I have compared it against lists that they gave me. I'm going through documents that they gave me. All of these are marked with a Deutsche Bates stamp.

MR. SMITH T: And that's a fair point. I'm not trying to sugg -- this -- these tabs should be exactly what was produced. And they're not, it's a clerical mistake, but I have great confidence that they are.

And we can re -- we can do it off the Bates number. That might be the easiest thing, just to say we stipulate that documents labeled Deutsche 979 through 1068 and Deutsche 1176 through 1355 make up the Stern files and anything in that tho -- that range, those ranges, were -- if they were pleadings from Mr. Garber, we do not dispute that we received them. We don't dispute that they were

1 by Mr. Garber's office to Mr. Stern or the Stern firm, if it's in here, we don't dispute that we 2 3 received it and we don't dispute that it came in within a reasonable time after it was mailed. THE COURT: All right. And, Mr. Garber, can you just basically summarize the nature of those documents, just read them off to see if there's any issue as to whether Plaintiff's stipulation 8 includes them or any -- do you have a list of 9 10 those? 11 MR. GARBER: Yes, Your Honor; I do have a 12 list of them. 13 THE COURT: All right. And if you can just read that off and I can just clarify from Plaintiff 15 whether they dispute that -- whether there's any 16 questioning needed of the witness as to those being 17 received by David Stern around the time they were sent. 18 19 MR. SMITH T: Well, the problem is I don't --20 I don't have committed to memory every single 21 pleading that he's probably going to read off if 22 it's in here. I don't doubt that it is. 23 But he's asking, you know, second motion to 24 compel document requests, I presume it's in here, 25 but I haven't got that committed to memory. I'm

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sent on or about the time of the certificate of service.
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THE COURT: And those Bates Numbers that you list are basically what constitute Plaintiff's Tabs 25 and 26?

MR. SMITH T: It's exactly what it is. And it should line up with what Mr. Garber's got during discovery.

MR. GARBER: And it probably does, and I -- I do want to streamline this, but these documents actually fall into two parts. One of them may have been bar-coded by David Stern.

Somebody took and put a bar code on and then followed up with the computer --- you know, whatever the computer process that you do with bar codings. And some of them were not bar-coded. And the bar codings have dates and they have certain numbers on them.

MR. SMITH T: I'm not -- I'm not saying that you can't ask those questions. I just thought we were trying to get through were all these documents actually received. That's all.

MR. GARBER: Okay.

THE COURT: That would seem helpful and maybe shorten things, but, you know, Mr. Garber, if you

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need to ask additional questions regarding bar coding or things, then obviously that's -- that's 2 3 still available to you. MR. GARBER: Okay. Well, I'll try and do it as rapidly as I can, Your Honor. THE COURT: Thank you. 6 CONTINUED CROSS-EXAMINATION 8 BY MR. GARBER: Turning to the first page of Tab 26, that's 10 1176, letter to Elsa Shum. That was bar-coded by your 11 office. Correct? 12 Correct. Okay. The next thing that was bar-coded --13 0. 14 and by the way, what does that mean when it is 15 bar-coded? It means that someone in the mail room 16 17 received it and scanned it to our system. Okay. There is an e-mail that was sent by 19 the Court to Deutsche Bank. It's found at 1189. That 20 was bar-coded by you, too? I'm sorry. Maybe that was an 21 e-mail sent by my office. We were trying to set up a 22 five-minute hearing. You bar-coded that? Do you see in 23 the middle of the page? Yeah. Yes. That was bar-coded by us. Okay. And then the next one after that, 25

Page And I think Mr. Bunner already pointed out, it's the excusable neglect of the client that is at 2 issue, not the excusable neglect or the neglect or lack of neglect on -- from the attorney. I think that was the argument. MR. GARBER: And, Your Honor, that is not the 6 law and I have given several cases to the Court; that it is the client and the attorney's neglect 8 that is at issue, both of them. THE COURT: Mr. Smith T and Mr. Bunner, it 10 would seem as if -- if there's allegations specific 11 to the Mack case in this litigation between 12 Plaintiff and David J. Stern, it would seem that --13 that might be relevant to the issue of excusable 14 neglect as to how this counterclaim was handled. 15 16 Why would it not be? MR. SMITH T: Well, Judge, maybe I can 17 short-circuit this. I think I said earlier, there 18 is no disagreement that -- that there are 19 counterclaims and that part of the bases for those 20 counterclaims is that the Stern firm did not 21 adequately defend GMAC in connection with this 22 matter. That is part of the case. 23 We're not making any secret that we're 24 disappointed that we weren't notified about the 25

Page 1 January 31st, 2011, you bar-coded that. Correct? Yes. Uh-huh. 2 And, again, trying to speed up. Anything 4 that has a bar code that looked like those bar codes that 5 I've just gone over, they indicated that they were 6 bar-coded by your system, not some other system. 7 Correct? Α. Correct. And scanned into your system? 9 ο. 10 Α. And processed according to the way that your 11 12 bar coding is designated? 13 A. Yes. Okay. Now, the --MR. GARBER: And, Your Honor, I'm not sure of 15 the Court's ruling. I know the Court has discussed 16 this, but there is a lawsuit going on between David 17 Stern and GMAC. And part of that lawsuit is that 18 GMAC says that you messed up the Mack case, and I 19 want to ask him about that. Is -- is that within 20 your ruling? 21 22 THE COURT: Counselor. MR. SMITH T: Well, yeah, we did object to 23 the nature and the particulars of that case because 24 it has no relevancy on the motion to set aside. 25

counterclaims. That's the basis for our excusable 1 neglect. 2 And I think Mr. McSurdy has already testified 3 they didn't give notice and that that's something that they normally would have done. So I don't see what point is served by further examination into those areas. THE COURT: Mr. Garber. 8 MR. GARBER: Your Honor, we have to establish 9 a record. This may or may not be appealed. And 10 although I -- the comments of Mr. Smith T are very 11 fair, they are not the record. 12 The record is the witness' testimony, and, 13 therefore, I think it is imperative to get it on 14 the record that they were involved in litigation, 15 each with the other, that that would show not only 16 prejudice, but bias, and I will bring that out as 17 exactly how that will show both of them. 18 MR. SMITH T: I do believe the Court's 19 already ruled on bias. It's not -- it's -- it's -he -- he -- Your Honor sustained my objection on 21 that. And on relevancy, I think Mr. McSurdy's 22 already testified. As I said, I'm not trying to 23 testify, but I think Mr. McSurdy has, so I think 24 it's clear. So I think we're going beyond the 25

scope of what we're here about today. MR. GARBER: And, Your Honor, maybe I will make it more clear what I am trying to do. The Stern law firm had a --THE COURT: Go ahead and ask your question and then I'll --MR. GARBER: Okav. THE COURT: -- hear the objection. MR. GARBER: Okav. CONTINUED CROSS-EXAMINATION 11 BY MR. GARBER: $^{\prime}$ Isn't it true, sir, that after you filed 13 suit, your company -- that is, the Stern office -- filed 14 suit against GMAC, that they responded to that and they 15 cited this particular case? Isn't that true, sir? MR. BUNNER: Objection, Your Honor. And I would object on a number of bases, the first being this witness is not competent to testify as to what GMAC did. He's not a GMAC witness. Second of all, it violates the best evidence

motion to vacate, they are ruling in favor of David Stern.

They will be rewarding David Stern for his incompetence because they will not have to indemnify GMAC \$450,000.00 as they're now litigating.

THE COURT: What probative value do any of these so far unproven allegations in this other litigation have, Mr. Garber, as to whether there was excusable neglect or failure of due diligence?

MR. GARBER: Well, I think it -- it goes to excusable neglect on what did -- did the Stern law office, did they do anything -- were they excused in their neglect? The excusable neglect cases that we have are ones that say a secretary miscalendered something and the attorney didn't go there.

But we have a situation in which this was a shower of pleadings that occurred. And if this Court rules in favor of GMAC, then Stern's law office is going to be off the hook. So they want to come in here and testify in such a way that they will win this motion to vacate, which I think clearly shows bias on their part.

MR. BUNNER: Your Honor, a couple of different bases. First of all, counsel will not be

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Page 50

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being here in evidence.
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 $$\operatorname{MR}$.$ GARBER: Your Honor, I have those pleadings and I am prepared to introduce them into evidence.

rule. I guess what Mr. Garber's asking about is

copies of them. And so the witness may not testify

as to the substance of those pleadings without them

what is in pleadings in another case. Those

pleadings are not in evidence. We don't have

THE COURT: Well, can you --

MR. BUNNER: If counsel can --

THE COURT: -- proffer to me, Mr. Garber --

MR. BUNNER: -- authenticate them --

THE COURT: -- or explain to me, Mr. Garber, where are you going with this line of questioning? What is it that you seek to establish as a proffer on this?

MR. GARBER: What I am going to be -- what I proffer, Your Honor, is that these pleadings will show that GMAC had a contract with David Stern to represent them. And as part of that contract, they had an indemnity agreement; that if, in fact, there was any third-party damage that would come out of this, that David Stern would be the one that would

And these pleadings show that GMAC is claiming damages of over \$450,000.00 for this case, this is the Mack case, that they want David Stern

to pay. And my argument that I am going to make is that if, in fact, this Court rules in favor of the

able to find any case where such a tangential

able to find any case where such a tangential theory was ever deemed to be relevant to a motion to vacate.

Second of all, the pleadings themselves -let's assume even that these pleadings were between
these innocent parties. Pleadings are not
evidence. You can't take them as evidence.
They're allegations.

So, certainly, third-party pleadings in a case that's not before the Court can't be substantive evidence of anything. They -- they're of absolutely no probative value. They -- they're -- they're not even of probative value within a case.

Evidence is a probative value, not pleadings. Pleadings define what the material facts in evidence — what the material facts are so that evidence can be provided. So they're of no probative value. They're simply argumentative value.

THE COURT: Mr. Garber, any other argument on that point $\boldsymbol{-}$

MR. GARBER: No, Your Honor.

24 THE COURT: Well, I think if we were talking 25 about admissions of some type, that it might be

pay for that.

	Page 53
1	different, but these are allegations in a pending
2	case.
3	At this point, I I don't believe it is
4	relevant and it does have probative value. At this
5	point, the objection is sustained. And, I believe,
6	Mr. Garber, you've been allowed to make a proffer
7	for any appellate record, if necessary, of the
8	parameters of what you wanted to ask about. But I
9	am sustaining the objection on that line of
10	questioning.
11	MR. GARBER: Yes, Your Honor. And there is a
12	related question. I don't believe it's directly
13	under your ruling, but in this suit, GMAC has
14	included a copy of their contract with David Stern
15	and it has the indemniva [sic] indemnification
16	agreement. They have also provided me with a copy
17	of that contract, and I can introduce that entire
18	contract into evidence.
19	But I thought if I could just get to the
20	indemnification agreement, we could probably save a
21	great deal of time and and paper.
22	THE COURT: All right. Is there an objection
23	to Mr. Garber inquiring about an indemnification
24	agreement between Plaintiff and the firm?
25	MR. SMITH T: Judge, we did produce the

```
1
          we'll just do it that way and it can be brought up
 2
          in argument.
 3
                THE COURT: Well, Mr. Garber, I was not
          intending to necessarily limit your ability to
          question this witness if you did want to question
          about some indemnification -- subject to some
  6
 7
          objection, but just to save time as a -- kind of a
 8
          precursor to that, I wanted to know if the
 9
          Plaintiff had any objection to this contract being
10
          admitted into evidence. Apparently they've been
11
         shared and produced between the parties.
12
                MR. GARBER: Yes, Your Honor, in discovery.
13
                MR. BUNNER: Is it on your exhibit list?
14
                MR. GARBER: All of the Deutsche Bank things
15
         were not on the exhibit list.
               MR. BUNNER: Again, on behalf of Deutsche
16
17
         Bank, I would argue yet again that this is another
18
         example where the exhibit list said all documents
19
         of -- of GMAC or something or Deutsche Bank.
20
         Again, this is surprise. We had no notice that
         this was intended to be offered into evidence.
22
               MR. SMITH T: Judge, it's not on their
23
         exhibit list.
24
               MR. GARBER: Can I see our exhibit list?
25
         (Speaking to Colleen.)
```

Page contracts between the Stern firm and GMAC because 1 they asked. It's discovery. 3 We -- we will acknowledge the paper says what it says. Mr. McSurdy's not here to interpret those documents. But we will certainly -- if -- if -- if -- if they are our contract, Judge, I'll look at them and we will acknowledge that they are our contract. 8 q THE COURT: Okay. Are you agreeing to the 10 admission of the contract in evidence in this case? 11 MR. SMITH T: Judge, if I could have a minute 12 just to look at what he wants me to admit. 13 MR. GARBER: Well, it's going to be this. (Indicating.) Let me show it to you. 14 15 THE COURT: While he's looking at that, Madam 16 Clerk, is your staff able to continue --17 THE CLERK: Yes. 18 THE COURT: -- past five? THE CLERK: 19 20 THE COURT: Until they finish with this 21 witness? 22 THE CLERK: Yes. 23 THE COURT: All right. 24 MR. GARBER: John, if you have no objection to me admitting the contract with David Stern, 25

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Page
                                                          56
 1
                MR. SMITH T: So I object on that basis.
                MR. GARBER: I have all documents produced in
 3
          discovery by Plaintiff, Deutsche Bank.
 4
               MR. SMITH T: Judge, that's not --
 5
               MR. GARBER: All documents produced in
         discovery by GMAC Mortgage.
 6
 7
               MR. SMITH T: -- no. Judge, we wrote
 8
         Mr. Garber after we received this and said that was
 9
         unfair. Please give us a more specific detailed
10
         listing and we did not get an identification of
11
         this document on the exhibit list, so I -- I don't
12
         think that's within the letter or the spirit of
13
         what you ---
14
               THE COURT: And again, Mr. Garber, how does
15
         this indemnification contract or any questions
16
         about that have probative value regarding the
17
         motion to vacate?
18
               MR. GARBER: Because it established bias on
19
         this part of this witness. It is impeachment of
20
         this witness.
21
               THE COURT: Wouldn't it establish bias,
22
         frankly, in -- in the reverse direction here,
23
         that --
24
               MR. GARBER: It could be argued both ways.
         Yes, Your Honor. It could be. I hope that my
```

```
argument would prevail, but it may not.
1
               MR. BUNNER: And -- and, Your Honor, it's not
2
         technically actually impeachment because he didn't
3
         offer any testimony to the contrary, and it seems
         to me that under Mr. Garber's logic, with or
5
         without this contract or with or without this
6
         indemnification clause, the bias would be the same.
7
               The -- a lawyer would always want to have the
         judgment vacated, regardless of whether that
9
         paragraph existed or not, so it -- I -- I just ---
10
         when you put all of these things together, the lack
11
         of notice that it would be an exhibit, the
12
         extremely, if any, tangential relevance of it, we
13
         would, again, renew that objection.
14
               THE COURT: Any other comment, Mr. Garber?
15
               MR. GARBER: Your Honor, I intended to use it
16
         as a cross-examination tool. I did not intend to
17
         produce this entire document as a thing of
18
         evidence, so I saved it for cross-examination if
19
         this issue came up, and it did come up, and,
20
         therefore, I -- I think I've given them fair
21
         notice. They certainly have fair notice of their
22
23
         own documents.
               THE COURT: Objection is sustained.
24
               MR. GARBER: Okay. So where is our McSurdy
25
```

```
59
                                                  Page
 1 document you're referring to?
        Λ
               Tt's --
               And that individual, it's Vegina. I keep
4 telling you, it's VA-heena. Vegina. She's Hispanic.
               Oh, okay. Vegina Hawkins.
        Ο
               He has a hard time with her name.
 6
        А
               THE COURT: What's the last name?
               THE WITNESS: It's Hawkins.
               THE COURT: Then say Ms. Hawkins. We'll
 9
         prefer to use that ---
10
               MR. GARBER: Okav.
11
               THE COURT: -- reference.
12
               MR. GARBER: And, Your Honor, in my defense,
13
         it's V-E-G-I-N-A
14
               MR. SMITH T: We -- we don't -- we don't need
15
16
         an explanation.
               THE COURT: Well, the -- the record captures
17
         your spelling, it does not capture your
18
         pronunciations, so we'll just refer to her as
19
         Ms. Hawkins.
20
21
                  CONTINUED CROSS-EXAMINATION
22 BY MR. GARBER:
23
        Q.
               Okay. So you had a -- did Ms. Hawkins work
24 for you?
               She was an attorney with the firm, yes.
25
```

```
Page
1
         file?
               MS. KELLERHOUSE: He has it.
2
               MR. GARBER: Oh, you have my file.
3
               MR. BUNNER: I do. That's it, I believe.
         (Handing document to Mr. Garber.) Sorry.
                  CONTINUED CROSS-EXAMINATION .
7 BY MR. GARBER:
               Mr. McSurdy, you actually had some e-mails
9 that went between your office concerning certain aspects
10 of this lawsuit, did you not?
               MR. BUNNER: Objection, Your Honor, vague.
11
               MR. GARBER: Okay.
12
               THE COURT: Sustained as to form.
13
                  CONTINUED CROSS-EXAMINATION
15 BY MR. GARBER:
               Okay. You have an individual named Evan
17 Cohen (phonetic spelling) that works in your office?
               He -- he did work in the law firm's office,
18
19 ves.
               Okay. And Evan Cohen sent a letter to Vagina
21 [sic] -- Vegina Hawkins on or about August 18th, 2010,
22 concerning this lawsuit, didn't he?
               Remind me of the Bates stamp number again?
23
               Of the what?
24
        ٥.
               What's the Bates stamp number? Which
25
        A.
```

```
THE COURT: I do think that it does remind me
1
         of a scene in Austin Powers, if you ever saw that
 2
3
         movie.
               (Laughter.)
 4
               MR. BUNNER: Oh, my.
               THE COURT: All right. It's late in the day,
 6
         but we'll refer to her as Ms. Hawkins.
 7
               MR. GARBER: I have a copy of that e-mail in
 8
         front of me. Do we have copies we can give to
 q
10
         evervone?
11
               THE CLERK: Yes, sir.
12
               MR. SMITH T: That's in Tab 26, Judge.
               MR BUNNER: It's 1345.
13
                  CONTINUED CROSS-EXAMINATION
15 BY MR. GARBER:
               And this is an e-mail from one of your
        0
17 employees to another employee?
18
        Α.
               Correct? Ms. Hawkins being the attorney?
19
        ٥.
               And it had a copy of an order attached to it?
21
22
        Α.
               As far as you know, was that the order for
23
24 the case management conference regarding this case in
25 August of 2010?
```

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1	A. Yes. This is an example showing you what
2	should have happened from the beginning of when the
3	complaint the the counterclaim was received.
4	THE COURT: Let me just ask: Do we have the
5	clerk switch at this time
6	THE CLERK: Yes.
7	THE COURT: since it's after five. If you
8	want to go ahead and do that.
9	THE CLERK: Thank you.
10	THE COURT REPORTER: Your Honor, could you
11	please get an idea of how late you think we're
12	going to go?
13	THE COURT: Counsel, how long how long
14	would you estimate for this witness?
15	MR. GARBER: I think this witness will go
16	another five or ten minutes and I'm going to
17	suggest, Your Honor, that we not do arguments
18	today, that we do them in writing or come back or
19	something like that.
20	THE COURT: Well, I'll certainly try to
21	accommodate you in terms of finishing this case on
22	another date, in whatever format you can agree to,
23	whether it's some present, some on the phone or
24	everybody present on another date. We can try to
25	work on that.
1	

-	Page 63
1	MR. GARBER: Okay.
2	THE COURT: Are you seeking to admit any of
3	these in evidence, Mr. Garber, or just show them to
4	the witness?
5	MR. GARBER: Yeah. I would like to introduce
6	the other one in the one I just did into
7	evidence. That is the e-mail concerning the case
8	management order, and that is it would be
9	Exhibit 6 for identification?
10	MR. BUNNER: No. It's in evidence already.
11	It's part of it's part of Exhibit 26, which
12	MR. GARBER: Okay. If it's in already,
13	then
14	MR. BUNNER: Yeah. It's in evidence.
15	THE COURT: Is there a page number on
16	MR. BUNNER: Yes, Your Honor.
17	THE COURT: 26
18	MR. BUNNER: 1 1345.
19	THE COURT: Page 1345?
20	MR. BUNNER: Deutsche Bank 1345
21	THE COURT: All right. So,
22	MR. BUNNER: of 26.
23	THE COURT: Madam Clerk, you don't have to
24	concern yourself because it's already in evidence.
25	We're just identifying it for the record.

		Page 62
	1	I do have I'm not supposed to go very late
	2	because of budgetary constraints. I'm going to
	3	I do want to finish with this witness, obviously.
	4	And after we finish with the witness, we can talk
	5	about the further scheduling. So I would think we
	6	would be out of here tonight by no later than 6:00
	7	p.m.
	8	MR. GARBER: Oh, yes, certainly, Your Honor.
-	9	THE COURT: All right.
	10	MR. GARBER: No objection from this side,
	11	Your Honor.
	12	MR. BUNNER: No objection.
	13	THE COURT: All right. Please continue.
	14	CONTINUED CROSS-EXAMINATION
	15	BY MR. GARBER:
	16	Q. Okay. So this e-mail was referring to the
	17	case management order that was that's attached to the
	18	e-mail, correct, sir?
	19	A. Yes.
	20	Q. Okay. If you would be so kind as to look at
	21	another document that I have.
	22	MR. GARBER: This is a document produced in
	23	discovery?
	24	MS. KELLERHOUSE: I believe it was produced
	25	in deposition.

```
MR. GARBER: Okay. And can we get that to
         the witness? Actually, give me that one and you'll
         get this. (Indicating.)
               (Whereupon, Exhibit Number 6 was marked for
         identification as of this date.)
                  CONTINUED CROSS-EXAMINATION
 7 BY MR. GARBER:
               Okay. Have you ever seen a copy of what I
 9 have just handed to you, and I think I have marked it as
               MR. GARBER: Is that right? We've marked
         that?
13
               THE CLERK: Yes.
14
               MR. GARBER: And it's Exhibit Number 6, for
15
         identification.
               THE COURT: Mr. Garber, excuse me for
16
17
         interrupting. Before you continue on that,
18
         Mr. McSurdy, back to that previous case management
         conference e-mail. If you could just clarify for
20
         me if you know, that involved Ms. Hawkins and Evan
21
         Cohen. And --
22
              THE WITNESS: Yes.
23
              THE COURT: -- Hawkins is with your firm?
24
              THE WITNESS: Yes, she's -- she's an attorney
        not on this case, but an attorney with the firm.
```

```
Α.
          And Mr. Evan Cohen was an administrative assistant
                                                                                    This ---
 2
                                                                             ο.
          in the mail room, who was responsible for
                                                                                    -- one document, but --
         dispersing pleadings to paralegals and attorneys.
                                                                                    From -- between the electronic file and the
         And you see the cc there was to Elizabeth Davia
                                                                      4 physical file, there sh -- you should have close to a
 5
          (phonetic spelling). She was the paralegal on this
                                                                      5 hundred percent of the file.
 6
                                                                                    Okav.
 7
               THE COURT: Thank you for clarifying that.
                                                                             Α.
                                                                                    But, of course, you know, we're human.
 В
         All right. Please continue, Mr. Garber.
                                                                      8 Something might be missing.
 q
                  CONTINUED CROSS-EXAMINATION
                                                                      q
                                                                                    The judgment --
10 BY MR. GARBER:
                                                                     10
                                                                                    THE COURT: Mr. Garber, for housekeeping
11
               I have just handed you a document for
                                                                     11
                                                                              purposes, are you seeking to admit this document?
12 identification, it is Defendant's Exhibit Number 6, and
                                                                     12
                                                                                    MR. GARBER: Not if he cannot identify it,
13 ask if you can identify that?
                                                                     13
                                                                              Your Honor.
14
               I can't tell what it is. No.
                                                                     14
                                                                                    THE COURT: All right.
15
               Okay. Was this a document that was sent to
                                                                     15
                                                                                    THE CLERK: Is Number 5 admitted?
16 you by GMAC, along with the foreclosure of the Macks?
                                                                     16
                                                                                    THE COURT: The previous -- the one previous
17
               MR. BUNNER: Objection, Your Honor. I
                                                                    17
                                                                              to this one?
         believe the testimony was, "I don't know what it
                                                                     18
                                                                                    THE CLERK: Yes
18
19
         is "
                                                                    19
                                                                                    THE COURT: We did not need to ident -- have
20
               THE COURT: Objection is overruled. You may
                                                                              anything entered by the clerk. It's already
21
         inquire ---
                                                                              contained in a prior admitted exhibit.
22
               THE WITNESS: I -- I --
                                                                    22
                                                                                       CONTINUED CROSS-EXAMINATION
23
               THE COURT: -- further.
                                                                    23 BY MR. GARBER:
               THE WITNESS: I -- I don't recognize it. I
24
                                                                    24
                                                                                    Mr. McSurdy, this particular judgment that
25
                                                                    25 we're here --
         am sorry. I don't remember seeing this in our
```

```
Page
                                                          66
 1
          file.
                                                                                    THE COURT: Excuse me, Mr. Garber. I'm sorry
                   CONTINUED CROSS-EXAMINATION
                                                                              to interrupt again. Just for housekeeping
 3 BY MR. GARBER:
                                                                      3
                                                                              purposes.
                Okay. You see it's your name on the top
                                                                      4
                                                                                    And I would like to ask the Plaintiff also,
                                                                      5
                                                                              and that is, it may be helpful if in the I'm sure
 5 right-hand corner, David Stern?
                Well, I see somebody wrote David J. Stern at
                                                                              extremely unlikely event there would to be an
 7 the top there, but this is the first time I've seen this
                                                                              appeal of this matter by either side, do you wish
 8 document.
                                                                     Я
                                                                              for this to be a court exhibit since the witness
               Okay.
                                                                              was asked about it? It would not be admitted. It
               I'm sorry. It looks like a transmittal of
                                                                     10
                                                                              would just simply be for purposes of any appellate
11 the original note and mortgage is what it looks like to
                                                                    11
                                                                              record and --
12 me.
                                                                    12
                                                                                   MR. SMITH T: No, not from our standpoint,
                                                                    13
13
        ο.
               Okay. But you don't have a copy of that in
                                                                             Judge.
                                                                    14
14 your file?
                                                                                    THE COURT: Mr. Garber, do you want me -- it
               No. I only have the note in our comment
                                                                    15
                                                                             to be kept as a separate court exhibit for the
16 history that says the original note and mortgage were
                                                                    16
                                                                             record for any reason?
                                                                    17
                                                                                   MR. GARBER: I -- I think, yes, that would be
17 received.
               Okay. Would it surprise you if some
                                                                    18
                                                                             a good idea to keep it as --
19 documents were missing from your file?
                                                                    19
                                                                                   THE COURT: All right. It's not admitted in
                                                                    20
20
               This -- this is not even dated. I don't
                                                                             evidence, but it has been referred to. And then if
21 know -- I don't know what this is. I don't know where it
                                                                    21
                                                                             it ever became an issue, the appellate court
22 came from, to whom it was --
                                                                    22
                                                                             wouldn't know what we were referring to.
               Okay. And my question was: Would it be
                                                                    23
                                                                                   MR. BUNNER: No objection, Your Honor.
24 surprising if some documents were missing? Not directed
                                                                                   THE COURT: This would be, I guess, Number 1,
                                                                             Court's Exhibit Number 1, but it is not admitted
```

Page

67

```
1
          into evidence.
 2
                THE CLERK: It's a court's exhibit.
 3
                THE COURT: All right.
                THE CLERK: Uh-hub.
                THE COURT: But it's not ad -- admitted in
         evidence.
                THE CLERK: Right.
 8
                   CONTINUED CROSS-EXAMINATION
 9 BY MR. GARBER:
10
        ο.
               Mr. McSurdy, David Stern was -- had not
11 withdrawn from the Mack case at the time that the
12 judgment was entered against Deutsche Bank on May 5th,
13 2011, had it?
               The loss -- the Law Firm of David Stern had
15 not withdrawn because the -- it had dismissed the
16 foreclosure case. It saw no need to withdraw. It
17 thought the case was closed.
18
19
        Α.
               Yes, we had not withdrawn.
20
               You made no effort to withdraw from the case?
21
               No. We just dismissed it.
22
               Has the Office of David Stern done anything
23 to indemnify GMAC with respect to this judgment?
24
               MR. BUNNER: Objection, Your Honor,
25
         relevance.
```

```
Page
 1
          there is an agreement. And if there is no
 2
          agreement, if there have been discussions about an
 3
          agreement. And --
 4
               THE COURT: My understanding, Mr. Garber,
 5
          from the previous discussion was that there's
         litigation ongoing, which would leave me at first
         blush to assume that there is no indemnification
         and no agreement at this time, but I'll overrule
 g
         the objection. You can begin with the basic
10
         question about whether there has been
11
         indemnification.
12
                  CONTINUED CROSS-EXAMINATION
13 BY MR. GARBER:
14
               Okay. Has there been any indemnification of
15 GMAC by David Stern's office regarding the Mack case?
17
               Okay. And no agreement to do that. Correct?
18
        А
19
        ο.
               David Stern largely made the entries on the
20 New Track exhibit, that is Exhibit Number 7 to this
21 deposition? You've looked at Exhibit 7?
22
               Not yet, no.
        A.
23
               Okay.
24
               THE COURT: We're referring to Plaintiff's
25
         Tab Number 7, Mr. Garber?
```

	Page 70
1	THE COURT: Mr. Garber, haven't we touched
2	upon this previously?
3	MR. GARBER: No. That was the agreement to
4	indemnify. Now is the actual indemnification. If
5	there is some agreement to settle this case between
6	them, I want to know about that because I think
7	that does show bias on behalf of the witness, and
8	and I think many appellate courts have ruled
9	that agreements between parties are admissible.
10	MR. BUNNER: I think that's true, that there
11	are appellate cases that say agreements between
12	parties are admissible. I don't think in this
13	context, and I haven't seen any case proffered by
14	counsel to support that idea.
15	(Whereupon, there was a brief discussion
16	between Mr. Bunner and Mr. Smith T out of hearing
17	of the court reporter.)
18	MR. GARBER: Okay. And I would give the
19	Court an example of a Mary Carter agreement or two
20	defendants enter into an agreement and one
21	defendant is
22	THE COURT: Are you asking to inquire about
23	the contents of any such agreement or just whether
24	or not there is an agreement?
25	THE WITNESS: I'm going to ask about whether

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Page
 1
               MR. GARBER: Yes, Your Honor.
               MR. SMITH T: This is the one -- this is the
          one that is reserved.
               THE WITNESS:
                             Okay. I'm sorry. Your
          question is have I seen this before?
                   CONTINUED CROSS-EXAMINATION
 7 BY MR. GARBER:
 8
        ο.
 9
               I have seen this before at my deposition,
        Α.
10 yes.
               Okay. And this exhibit is largely the
12 entries that are made by the Office of David Stern.
13 Correct?
               I didn't count --
15
               MR. BUNNER: Objection, Your Honor.
16
               THE COURT: Grounds?
17
               MR. BUNNER: Largely ambiguous.
18
               MR. GARBER: Your Honor, we can go through
         this. There are perhaps 35 notes, five of them are
20
         GMAC and -- and 30 of them are Stern, and I'm just
21
         trying to shorten this up. I could go over each
22
23
               MR. BUNNER: Perhaps we could shorten it up.
24
         I believe that the law of Florida is an agent of a
         principal's acts taken on behalf of the principal
```

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are, as a matter of law, the acts of the principal,
1
         and I think what counsel is trying to do here is
 2
         create some idea that this is not the principal's
3
         record because the agent made some entries, and I
         think, as a matter of law, the argument fails. But
         if we want to go down this road, then -- you know,
 6
         that's my objection.
 7
               THE COURT: Objection is overruled. If you
8
         would repeat the question, Mr. Garber.
                  CONTINUED CROSS-EXAMINATION
10
11 BY MR. GARBER:
               Okay. This Tab 7 is largely notes that are
12
13 made by the Office of David Stern, correct, sir?
               Again, I would have to go through -- I -- I
15 don't know. I -- I'd have to look and see --
16
        ο.
               Okay.
               -- who wrote what.
17
               Let's try and do it briefly. Deutsche 905.
19 That's the first page of Tab 7.
20
        A.
               Okay.
               And the first one is 9/22/09, upload David
21
22 Stern. That's David Stern's entry. Right?
        Q.
               Next one, that's the -- I guess Note 2.
25 That's David Stern. Correct?
```

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75
                                                  Page
               MR. SMITH T: That's my recollection, David,
1
         but, you know, it's been a while since we've talked
2
 3
         about that.
               MR. GARBER: Okay. Well, as long as we're
         clear on it. That's all that I care about.
                  CONTINUED CROSS-EXAMINATION
7 BY MR. GARBER:
               Go to the next page. This is Note 18, 19,
9 20, 21, 22 and 23. They're all David Stern. Correct?
               MR. BUNNER: Your Honor, if I -- if I may
11
         interject? Perhaps we could just stipulate that if
12
         it -- if the written by line says David J. Stern,
13
         Law Offices of, then that was entered by David J.
14
         Stern and we could avoid going number by number by
15
16
         number.
               THE COURT: Mr. Garber, does that meet your
17
18
         purposes?
              MR. GARBER: Yes, Your Honor, that would meet
19
20
         my purposes.
               THE COURT: All right.
21
                  CONTINUED CROSS-EXAMINATION
22
23 BY MR. GARBER:
               Now, David Stern, then, made a substantial
24
25 contribution to this Exhibit 7. Correct, sir?
```

```
. Page
               It's designated as Note 5, yes.
               Okay. And as a matter of fact, looking at
 3 all of Page 905, those are all David Stern's notes.
 4 Correct?
 5
               Yes. That's correct.
               Okay. Let's turn the page. And notes -- it
 7 looks like Notes 6, 7, 8 and 8 were all David Stern. Is
 8 that correct?
               Six, 7 and 8, yes, were all David Stern.
        Α.
               Okay. And on 907, 12, 13, 14, 15, 16 and 17,
10
11 they were all David Stern. Correct?
12
               MR. GARBER: And by the way, just as an
13
         aside, Mr. Smith T and I have -- I think we've
14
         reached an agreement that the numbers applied to
15
         the note below it, but it looks to me, looking at
16
         this, probably the numbers applied to the one above
17
         it. What do you think, John?
18
               MR. SMITH T: I thought -- no. I thought
19
         they go down.
20
               MR. GARBER: They go down?
21
               MR. SMITH T: Yeah. That -- if you go to the
         very first page, there's an entry above number 2.
23
         That can't be --
24
               MR. GARBER: Okay
25
```

```
Page
       Α.
               And could David Stern make alterations after
        ο.
 3 they made an entry?
               I don't believe so, but I don't -- I never
        A.
 5 personally entered anything on the system, so I can't
 6 tell you that I -- that it could or could not be done.
               Okay. And do you know, sir, whether or not
 8 David Stern could remove items from New Track?
               I -- again, same -- same answer. I don't
10 know.
               Okay. So you don't know whether or not David
12 Stern could do it for their own entry. Could David Stern
.13 do it for the entries by GMAC?
               If -- I would -- I don't know. I -- I would
15 guess not.
16
        ο.
               I -- if I had to guess.
17
        Α.
               Now, New Track was supposed to be updated
19 every time there was an event that occurred on the Mack
20 case, wasn't it?
               Theoretically, yes.
               Okay. Now, in this particular case, the
23 Office of David Stern, not you, but the Office of David
24 Stern did not make appropriate entries to New Track, did
25 they, sir?
```

·						
		Page 77				Page
1	A.	No, they did not.		1	A.	This is communications. The New
2	Q.	Okay. You had several systems that you used		2	Q.	Right.
3	to commun:	icate with GMAC concerning the Mack case.		3	A.	Track, the VendorScape. Two different
4	Correct?			4 ca	tegories	3.
5	A.	That's correct.		5	Q.	Right.
6	Q.	And I believe on direct testimony you said		6	A.	Apples and oranges, yes.
7 :	you used t	the telephone?		7	Q.	Okay. And I believe that you said that y
8	A.	Yes.		8 we:	re ho	ow many cases were you handling for GMAC in
9	Q.	You used faxes?		9 20	09?	
10	A.	No. I don't think faxes.	1	0	A.	I didn't say.
11	Q.	Did you use faxes?	1	1	Q.	You didn't say?
12	A.	I I maybe. I don't think so. At this	1	2	A.	I don't believe so.
13 p	ooint, it	was mostly e-mails.	1:	3	Q.	Well, how many do you think you were?
14	Q.	Okay. E-mails, telephone.	1.	4	A.	I've (holding up hands). I only know
15	A.	And New Track.	1!	5 Cit	ibank®	because that's the one where I actually did
16	Q.	Was there another system other than New Track	1	6 auc	dit for	them.
17 t	hat you w	ould electronically communicate with GMAC?	1	7	Q.	Okay. Would it be fair to say that you w
18	A.	No. Just New Track.	18	8 har	nding a	large number of cases for GMAC?
19	Q.	Okay. And, sir, I'm going to refer you now	19	9	A.	Yes. Several thousand. Yes.
20 t	o your de	position. You recall I took your deposition in	20)	Q.	Many thousands?
21 t	his case,	do you not, about three weeks ago, I guess?	21	1	A.	Many thousands.
22	A.	Yes.	22	2	Q.	Do you know if GMAC ever sought to recove
23	Q.	Okay. And do you recall that was in your	23	3 the	Mack f	ile from you?
24 c	ffice ove	r in Miami?	24	1	A.	I do know.
25	A.	(Nodding head.)	25	5	Q.	And what is your answer, sir? Did they?

			Page 79
	1	A.	This is communications. The New
	2	Q.	Right.
l	3	A.	Track, the VendorScape. Two different
l	4	categories.	
	5	Q.	Right.
l	6	A.	Apples and oranges, yes.
	7	Q.	Okay. And I believe that you said that you
ĺ	8	were how	many cases were you handling for GMAC in
	9	2009?	
	10	A.	I didn't say.
	11	Q.	You didn't say?
	12	A.	I don't believe so.
	13	Q.	Well, how many do you think you were?
	14	A.	I've (holding up hands). I only know
	15	Citibank® be	ecause that's the one where I actually did an
	16	audit for th	nem.
	17	Q.	Okay. Would it be fair to say that you were
	18	handing a la	arge number of cases for GMAC?
	19	A.	Yes. Several thousand. Yes.
	20	Q.	Many thousands?
	21	A.	Many thousands.
	22	Q.	Do you know if GMAC ever sought to recover
	23	the Mack fil	e from you?
	24	Α.	I do know.

		Page 78
	1	Q. And I asked you the question on Page 23. And
	2	at Line 5 this was the question: "What system would be
	3	used to send it electronically?"
į	4	And your answer, sir:
	5	"Again, there were several systems that
	6	different clients required us to use. One was called New
-	7	Invoice. One was called, I think, I want to say iClear,
	8	but I just got an iPhone and it might not be the right $.$
	9	term, so I'm not sure which one GMAC required, but
	10	whatever the electronic system was, we would have used
	11	it."
	12	QUESTION: "Would that be different than the
	13	New Track system that was referred to earlier in the
	14	contract?"
	15	"Yes. That's separate."
	16	"Would it also be different than the MS
	17	system that was referred to early in the contract?"
	18	ANSWER: "I'm not familiar with the MS
	19	system."
	20	A. Yes.
	21	Q. That testimony is correct, sir?
	22	A. Yes. Again, that testimony relates to
	23	billing systems, the I the the I system, the New
	24	Invoice, that's billing.
	25	Q. Right.

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Page
               They -- they did ask us for a copy of the
  2 file and it was in storage, and I believe they obtained
  3 it directly from our storage company.
                Okay. And do you recall, sir, I asked you
  5 that question in your deposition?
               Okay. That was at Page 35 and Line 21. My
 8 question to you was this: "Do you know if GMAC sought to
 9 recover the Mack file from David Stern?"
               And your answer: "I did not -- in my review
11 of the file, did not indicate that GMAC ever asked to
12 review the Mack file."
               I've got it here. I'll show it to you if
14 you'd like.
               Well, when I reviewed the electronic file,
16 it -- that was different than them asking for the file
17 through this litigation. Is that what -- is that what
18 you mean?
               No. My question was: Did GMAC ever try to
20 recover the Mack file from David Stern's office?
               MR. BUNNER: Objection, Your Honor. That
         question is -- is vague, and I -- I believe counsel
         should quantify the time period he's talking
24
         about and ---
```

THE COURT: The objection is sustained as to

1 form. 2 MR. GARBER: Okay. 3 THE COURT: If you could be more precise, 4 Mr. Garber? MR. GARBER: Okay. CONTINUED CROSS-EXAMINATION 6 7 BY MR. GARBER: After January 1st -- well, let's make it 9 after September 2nd, 2009, did GMAC ask to review the 10 Mack file from your office? 11 Δ Yes Okay. And do you recall the question was 13 asked of you: "Do you know if GMAC sought to recover the 14 Mack file from David Stern?" And your answer was: "I did not -- in my 16 review of the file, did not indicate that GMAC ever asked 17 to review the Mack file." 18 A. 19 Q. Would you like to explain your discrepancy? 20 Yes. It was -- I -- I misunderstood your 21 question in the deposition. I thought you were asking me 22 during the pendency of the foreclosure did they ask us to 23 give them a copy of the file. They did not. They only 24 asked us for a copy of the file after the litigation with 25 the Macks, when they moved to vacate the -- the

```
Page
                Okay. But in 2010, GMAC did not ask for
  2 those --
                No.
        ο.
                -- records?
        А
               No, not to my review of the file. I can't
 6 remember what I watched on TV last night. I'm sorry. I
 7 can't remember back that far:
               Okay. Now, with respect to 2011, do you have
 9 any knowledge whether GMAC asked for a return of their
10 file in 2011?
11
               I believe that's when they did ask, yes.
12
               Okay. And do you recall I asked you that
13 question in the deposition?
14
        A.
               I wouldn't be surprised if you did.
               Okay. Page 37, Line 6. Question: "But do
16 you have any knowledge whether GMAC asked for a return of
17 their file in 2011?"
18
               ANSWER: "For the actual return, no. As
19 Mr. Smith has said, they requested certain documents
20 during 2011, but the actual file was requested sometime,
21 but I don't know if it was in 2011 or 2012. I don't know
22 the time frame."
               Okay. I believe it was 2011, but --
       A.
        Q.
               Okay.
25
               -- that answer is still true.
```

<u> </u>		
		Page 82
1	counterclair	,
2	Q.	Okay. And
3	A.	I apologize that I was not clear in my
4	deposition.	
5	Q.	No. I understand. Did they send a subpoena
6	over to you	for recovery of the Mack file?
7	Α.	Not to my recollection. I believe it was
8	through our	counsel.
9	Q.	Okay. And you were the records custodian?
10	A.	I was, but I didn't have physical control of
11	the file at	that point. It was in a warehouse.
12	Q.	Right. But you would have known if they sent
13	a subpoena t	o you.
14	A.	Do you know how many subpoenas I've gotten
15	since the do	wnfall of the law firm? I I really don't
16	remember spe	cifically, so I don't want to go on the
17	record and s	ay I did or didn't. I don't remember.
18	Q.	Okay. In 2010, did GMAC ask for a return of
19	its records	with respect to the Mack case?
20	A.	Yes, I believe so.
21	Q.	Okay. I'm going to refer you now to Page 36,
22	Line 17. Qu	estion
23	Α.	Oh, I'm sorry. I'm getting 2010. It was
24	2011. It wa	s July 2011 I received a letter from them
25	notifying us	of the of the problem.

		Page 84
1	Q.	Did David Stern keep track of telephone calls
2	that were m	ade to GMAC?
3	A.	In this particular file?
4	Q.	Yeah.
5	A.	I did not see evidence of any phone calls
6	being logge	d or in the file.
7	Q.	Okay. And and my question was: Did they
8	keep track	of telephone calls? Not if you saw them.
9	A.	The practice
10		MR. BUNNER: Objection, Your Honor. That's
11	ambig	uous. If he's asking for was it was it the
12	polic	y to do it or is it in the file, and I think
13	that's	s the problem we're having here with a lot of
14	the q	uestions.
15		CONTINUED CROSS-EXAMINATION
16	BY MR. GARBI	ER:
17	Q.	Okay. And and that my question is, did
18	they make a	record of telephone calls? Did they make a
19	record	
20		THE COURT: Objection overruled.
21		CONTINUED CROSS-EXAMINATION
22	BY MR. GARBE	R:
23	Q.	Did they make a record of telephone calls to
24	GMAC?	
25	A.	Was that the policy of the firm?

Okay. Did you -- can you tell if any

25 documents were uploaded into New Track and then

•	
	Page 87
	1 A. There was no such understanding.
	2 Q. Okay. And it would be true, would it not,
	3 that, in fact, you did handle counterclaims from time to
	4 time for GMAC?
	5 A. Pursuant to the procedure I explained before,
	6 yes.
	7 Q. Your office sent out a voluntary dismissal on
	8 this case on December 7th, 2009. Correct?
	9 A. Yes.
	10 Q. And in your notation that I want to make
	11 sure I have the right one. It was Exhibit F in your
	12 deposition, and I can't recall what tab it was in.
1	13 THE CLERK: Twenty-two.
	14 MR. BUNNER: Twenty-two.
	15 MR. GARBER: Twenty-two. It's today. Okay,
	16 22. Yeah.
	17 CONTINUED CROSS-EXAMINATION
	18 BY MR. GARBER:
	19 Q. Do you have in Tab 22 an entry as to the
	20 dismissal that was prepared by your office and filed in
	21 this case dismissing the claim in chief; that is, the
	22 foreclosure claim?
	23 A. Yes. There were yes, there was a
	24 Q. And where on this Tab 22 is the entry that
- 1	1

		Page 86
1 0	downloaded	by David Stern on the 24th of July, 2009?
2	A.	I believe you asked me that in my deposition
3 a	and I don't	:
4	Q.	Yes.
5	A.	remember being able to tell from New Trac
6 1	hether the	ere were any documents downloaded.
7	Q.	Okay. So can I refer you to Page 50, Line 1
8 w	here I ask	red that question?
9	A.	Okay.
10	Q.	"So you can't tell if any documents were
.11 u	ploaded in	New Track and then downloaded by David Stern
12 o	n the 24th	?"
13		"No, I can't tell from this printout."
14		QUESTION: "Would there ordinarily be an
15 e	lectronic	way of keeping a record of what documents were
16 d	ownloaded?	11
17		ANSWER: "I did not have access to New Track,
18 s	o I don't	know if once you downloaded something you
19 c	ould go ba	ck in and see what was downloaded. I don't
20 k	now."	
21	A.	Correct.
22	Q.	Was there any understanding that the Office
23 o	E David St	ern had with GMAC that they would not handle a
24 cc	ounterclai	n should one have been filed in a case such as
25 th	ne Macks?	

```
It's Page 1364, the third from the top on
 2 that page, Heather Smith on the 22nd of September, 2010
 3 entered voluntary dismissal to Court on 12/7/2009.
               Okay. So that -- that entry was made nine or
 5 ten months after the fact that it was done. Right?
               Why, if you closed your file on October 5th,
 8 as -- as your notes indicate, of 2009, why would you
 9 suddenly file a voluntary dismissal on the 9th of
10 December of 2009?
11
               Suddenly?
12
               Yeah.
               I would expect it to be done sooner and we
14 tried to accomplish that, but because of the thousands of
15 files that were being dismissed, it took six to nine
16 months from the dismissal department to dismiss a case.
17 In this case, it only took three months because somebody,
18 I suspect you, probably called and said, "This case has
19 not been dismissed yet," so it was pushed to the head of
20 the pack.
               Okay. So you think somebody called up to
22 trigger this event?
               Yes. It was out of the norm of -- of -- of
```

Okay. And you can't say whether it was my

24 the dismissals for that period of time.

25 you did that?

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1 office or GMAC or anybody else?

- 2 A. No, I -- I couldn't. Somebody -- somebody --
- ${\tt 3}$ the squeaky wheel gets attention. I'm sure that's what
- 4 happened.
- Q. Okay. Okay. And I believe when you
- 6 falled -- filed the voluntary dismissal, the attorney
- 7 that signed that said that she was the prevailing party.
- 8 Do you recall that, sir?
- 9 A. That's part of the form, yes.
- 10 Q. Okay. You --- and you are not trying to say
- 11 that GMAC was the prevailing party in that lawsuit, were
- 12 you?
- 13 A. Technically that should have been deleted
- 14 from the file.
- 15 O. Okav. Okav. Was the New Track -- is that a
- 16 system that was maintained by GMAC?
- 17 A. I do not believe so.
- 18 Q. Okay. Do you know who does maintain it?
- 19 A. Not for certain.
- 20 Q. Okay. Okay. Is -- is it maintained by a
- 21 third party, not GMAC and not David Stern?
- 22 A. Yes, I believe so.
- 23 MR. GARBER: Mr. McSurdy, I don't think I
- 24 have any further questions at this time.
- 25 Thank you very much and I'm sorry if I have

Page 91

- 1 received after the file was clicked closed on October 5th 2 of 20092
- 3 A. A lot of them were saved to the electronic
- 4 system for the file and except for one, which, again,
- 5 goes back to Tab 26, the Vegina Hawkins e-mail.
- 6 Q. Right, 1345.
- 7 A. 1345. That shows what should have happened
- 8 in the case. The mail room properly routed -- now, this
- 9 was in 2010, so this was almost a year after the loan was
- 10 clicked closed.
- 11 It was routed to the -- what they thought was
- 12 the attorney of record, but they made a mistake there,
- 13 and also the paralegal, for them to review in case any
- 14 action was needed to send on to the client.
- 15 Q. So based on your review, were there any other
- 16 papers that came in after the file was clicked closed
- 17 that were routed properly, ironically?
- 18 A. No. The majority were not routed properly.
- 19 Q. So -- so even if -- so as far as you know,
- $20\ \mbox{even}$ if there was something that could be categorized as
- 21 a cascade of papers received by the Stern firm, in fact,
- 22 only one of them was ever treated in a manner that the
- 23 system was designed to process the form. Is that
- 24 accurate?
- 25 A. That's correct. Based on the -- the people

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- been pointed about anything.
- 2 THE WITNESS: I understand.
- 3 THE COURT: Redirect?
- 4 MR. BUNNER: Very briefly, Your Honor.
- 5 (5:36 p.m.)
- REDIRECT EXAMINATION
- 7 BY MR. BUNNER:
- 8 Q. Mr. McSurdy, I'd ask you to please turn again
- 9 to Exhibit 22.
- 10 A. (Complies.)
- 11 Q. And I'll ask you to direct your attention to
- 12 the entry on October 5, 2009, that you testified about
- 13 earlier regarding the file clicked closed.
- 14 A. Okay
- 15 Q. And based on your understanding of the system
- 16 there at the firm and the processing -- receipt of papers
- 17 in an action and how they were processed, what would have
- 18 happened to any paper that would come in on a file after
- 19 it was clicked closed?
- 20 A. Well, what should have happened is it should
- 21 have been given to the paralegal for the attorney to
- 22 review. In this particular case, that did not happen.
- 23 The system did not work.
- Q. Okay. And then, based on your review, what
- 25 do you believe happened to the documents that were

- 1 looking at the screen that showed the file was closed,
- 2 they ignored the fact that the paper still had to be
- 3 looked at.
- O. So your -- your -- based on your
- 5 understanding, your review, I believe, is it accurate you
- 6 just said that your belief is that the -- the employees
- 7 of the firm simply ignored any other papers that came in
- 8 after the file was clicked closed because they saw that
- 9 the file was clicked closed?
- 10 A. Correct.
- 11 Q. All right. Now, so Ms. Hawkins -- was
- 12 Ms. Hawkins ever the attorney at the firm who was
- 13 responsible for this action?
- 14 A. No, she was not.
- 15 Q. Okay. And yet --
- 16 A. That does not excuse what -- excuse that she
- 17 didn't do anything, but she apparently did not take any
- 18 action.
- 19 Q. Right. Right. But I'm just trying to
- 20 establish, was she the attorney responsible for this --
- 21 A. No, she was not.
- 22 Q. -- particular file?
- 23 A. No.
- 24 Q. All right.
- 25 MR. BUNNER: I have nothing further, Your

```
Honor.
1
               THE COURT: Anything else, Mr. Garber?
2
               MR. GARBER: Yes, just brief -- briefly.
3
               THE COURT: Okav.
               (5:39 p.m.)
                      RECROSS-EXAMINATION
 6
7 BY MR. GARBER:
               Mr. McSurdy, would it be fair to say that you
9 trusted your mail room clerks to make decisions about who
               No. A system was set up specifically.
        A.
12 You'll -- you'll see in the Bates -- in the stamps from
13 the mail room, categories were set up and we taught them
14 when mail would come in, it would be under certain
15 categories, and they would -- they would scan it to those
16 categories and it would be posted to the file and then
17 the hard copy would be given to the paralegal.
               So in this particular case, the Mack case, we
19 have numerous letters directly to Ms. Shum. She was a --
20 an attorney at your firm back then. Correct?
21
               Correct.
               Wasn't it the duty of your mail room people
22
        ο.
23 to give Ms. Shum letters that were sent to her?
```

The process was to go to her paralegal and

25 then her paralegal should have given it to her, yes.

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95
                                                    Page
               MR. SMITH T: Thank you, Mr. McSurdy.
 2
               THE WITNESS: Thank you. Bye.
                (Whereupon, Forrest McSurdy was excused at
 3
         5:41 p.m. and this excerpt concludes.)
 6
 7
 8
11
12
13
14
15
16
17
19
20
21
22
23
24
25
```

```
Page
 1 Somewhere along the line that didn't happen.
               Okay. And that happened numerous times; 40
 3 or 50 times in the Mack case. Correct?
               I --- I ---
               MR. BUNNER: Objection, Your Honor --
 5
               THE WITNESS: -- couldn't --
 6
               MR. BUNNER: -- as to the number.
                 CONTINUED RECROSS-EXAMINATION
 8
 9 BY MR. GARBER:
               Okay. Whatever the number is, that's
10
        Ο.
11 complain -- contained in the --
                Whatever is in -- in the exhibits --
12
               -- Exhibit 26 --
13
        Q.
               -- except for that one order that did get
14
15 routed, yes.
               MR. GARBER: Okay. Thank you.
16
               THE WITNESS: Uh-huh.
17
               THE COURT: All right. Are we done with this
18
19
         witness?
               MR. BUNNER: Yes.
20
               THE COURT: Is he excused to leave?
21
22
               MR. BUNNER: Yes.
               THE COURT: All right. Thank you, sir. Have
23
24
         a good day.
               THE WITNESS: Thank you.
25
```

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Page
 2 STATE OF FLORIDA
 3 COUNTY OF COLLIER )
             COURT REPORTER'S HEARING CERTIFICATION
                I, Sabrina C. Beauvais, CCR, FPR, CLR,
 8 Certified Court Reporter and Notary Public, in and for
 9 the State of Florida, do hereby certify that I was
10 authorized to and did stenographically report the
11 foregoing proceedings and that this transcript is a true
12 and complete record of my stenographic notes of the
13 proceedings held.
                I further certify that I am not a relative,
15 employee, attorney or counsel of any of the parties, nor
16 am I a relative or employee of any of the parties'
17 attorneys or counsel connected with this action, nor am I
18 financially interested in the action.
                Dated this 22nd day of March, 2015.
19
20
22
                            Sabrina C. Beauvais, CCR, FPR, CLR
Certified Court Reporter
Notary Public
State of Florida at Large
23
24
25
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Exhibit 3

Proof of Claim No. 5275

Copies of the Proof of Claim will be Provided to Chambers and to Claimant