

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough  
Charleston County Master in Equity

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APPELLATE CASE NO. 2014-002590

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**RECEIVED**

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**SC Court of Appeals**

BRENT E. BENTRIM, .....Appellant

v.

WELLS FARGO BANK, N.A., ..... Respondent

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**RECORD ON APPEAL – VOLUME 2 of 3**

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**Bentrim v. Wells Fargo**  
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**Certificate of Counsel**



a new duty, the *Kerr* Court simply confirmed the existing limited duty of care owed by banks to their customers when fiduciary relationships have arisen. Plaintiff makes no allegations that Wells Fargo undertook to advise him as part of any services it offered. Accordingly, no fiduciary or special relationship existed, and Wells Fargo owed Plaintiff no duty. As such, his Negligence and Negligent Misrepresentation claims fail as a matter of law.

**b. Statute of Limitations**

“It is settled law in South Carolina that when a person has notice of facts as are sufficient to put him on inquiry, and those facts, if pursued with due diligence, would lead to knowledge of other facts, he must be presumed to have knowledge of the undisclosed facts.” *Multimedia Pub. of S. Carolina, Inc. v. Mullins*, 314 S.C. 551, 554, 431 S.E.2d 569, 572 (1993) (internal citations omitted). In negligence cases, the statute of limitations begins to run when a plaintiff is on inquiry notice of the alleged negligence. *See, e.g. Republic Contracting Corp. v. S. Carolina Dep't of Highways & Pub. Transp.*, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998).

Prior to this action, Wells Fargo had filed three separate foreclosure actions against Plaintiff alleging that he was in default: Case No. 05-CP-10-4814; Case No. 07-CP-10-3933; and Case No. 09-CP-10-4700. Each time, he denied being past due on his payments. Nevertheless, on November 11, 2006, Plaintiff paid the bank just over \$13,000 to reinstate his loan and end the 2005 foreclosure action. (Ex. 1, Bentrim Depo. at 135:21 - 136:7). Then, on December 5, 2007, he reinstated the loan again in order to end the 2007 foreclosure action, this time paying approximately \$7,000. (Ex. 1, Bentrim Depo. at 137:13-16). Plaintiff testified that he believed he was making payments on time and properly and that he reinstated the loan even though he thought it was “wrong” to pay the amounts which the bank required. (Ex. 1, Bentrim Depo. at 137:17 - 138:1).

Plaintiff admits that he was “absolutely” concerned about problems with his payments in 2007. (Ex. 1, Bentrin Depo. at 140:7 - 141:8). While the first two foreclosure actions were pending, Plaintiff inquired with the bank’s counsel as to why he was being charged improper amounts. (Ex. 1, Bentrin Depo. at 138:2 – 140:14). According to Plaintiff, “all they did was send us a statement that says this is what you owe or we’re going to foreclose.” (Ex. 1, Bentrin Depo. at 140:7-14).

In advance of the 2009 foreclosure, Plaintiff received a Notice of Intention to Foreclose and, on December 8, 2008, sent to the bank what he now characterizes as a qualified written request (“QWR”) under the Real Estate Settlement Procedures Act (“RESPA”). (See Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment, pp. 24-25 and Ex. G thereto). In response, on December 19, 2008, the bank provided an explanatory letter along with a payment transaction history. (See Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment, pp. 24-25 and Ex. C thereto). Plaintiff argues that, until he received the payment transaction history in December 2008, he was unaware that his payments were allegedly not being properly applied to principal and interest. By that time, however, he had reinstated the loan on two separate occasions in order to stop two separate foreclosure actions and had “wrongly” made payments of over twenty thousand dollars. In addition, nothing prevented Plaintiff from issuing a QWR under RESPA in 2005 or 2007 requiring the bank to provide a payment transaction history, which would have contained the same information about the loan payments.

Even when the facts are viewed in the light most favorable to him, it is clear that Plaintiff was on inquiry notice of the alleged problems with the application of payments on his loan by 2007 at the very latest. By that time, he (1) had already faced two allegedly wrongful

foreclosure actions, (2) had reinstated the loan twice and paid in excess of twenty thousand dollars to which he did not think the bank was entitled, and (3) had inquired directly with the bank's lawyers regarding the application of payments. Plaintiff's concern during this timeframe is indicative of the fact that he was on notice of a problem. The fact that he did not see a payment summary until 2008 is immaterial. By 2007, he knew of possible problems with his loan payments, which, if pursued with due diligence, would have led to his knowledge of the allegedly improper application of payments of which he now complains. *Multimedia*, 314 S.C. at 554, 431 S.E.2d at 572. Because Plaintiff was on inquiry notice more than three years before filing this lawsuit in 2011, his causes of action for Negligence and Negligent Misrepresentation are barred by the three-year statute of limitations, and the Court should enter summary judgment for Wells Fargo on both claims.

## **II. BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT (FOURTH CAUSE OF ACTION)**

If Plaintiff cannot state a claim for Breach of Contract, he cannot establish the elements to prove his claim for Breach of Contract Accompanied by a Fraudulent Act. *See Smith v. Canal Ins. Co.*, 275 S.C. 256, 269 S.E.2d 348, 350 (1980) ("There is no cause of action distinct from breach of contract for breach of contract accompanied by a fraudulent act.").

Plaintiff argues that Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act are independent causes of action. Wells Fargo does not dispute this point. An action for Breach of Contract Accompanied by a Fraudulent Act allows for punitive damages, while a simple action for Breach of Contract does not. As such, these causes of actions are sometimes pled separately. This point, however, is immaterial. Summary judgment is appropriate because Plaintiff cannot state a claim for Breach of Contract Accompanied by a

Fraudulent Act without also stating a claim for Breach of Contract. Judge Dennis already dismissed Plaintiff's Breach of Contract claim. As a result, Plaintiff cannot prove an essential element of his claim for Breach Contract Accompanied by a Fraudulent Act, and that cause of action must also fail. *See Smith*, 269 S.E.2d at 350.

Further, assuming the purported breach of contract is the alleged failure to properly account for payment of the loan origination fee and to properly apply payments to principal and interest, Plaintiff has failed, both in his Amended Complaint and in his memorandum opposing summary judgment, to specify the fraudulent act he contends accompanied the alleged breach. For this reason, Wells Fargo is also entitled to summary judgment.

### III. RESPA (FIFTEENTH CAUSE OF ACTION)

Even if genuine issues of material fact exist as to whether Wells Fargo violated RESPA, Plaintiff's RESPA claim fails, as a matter of law, because he suffered no actual damages as a result of Wells Fargo's alleged failure to respond to his QWRs. 12 U.S.C. § 2605(f)(1) provides that failure to comply with RESPA's QWR provisions may result in an award of damages:

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

In the case of any action by an individual, an amount equal to the sum of—

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

In order to state a cognizable claim for damages, the borrower must explain how he was damaged by the lender's failure to properly respond to a QWR. *See, e.g., In re Nix*, 2012 WL

27667 (Bankr. D.S.C. Jan. 5, 2012) (dismissing RESPA claims for failure to state an adequate claim for damages); *In re Ginn*, 465 B.R. 84, 95 (Bankr. D.S.C. 2012) (dismissing RESPA claims and finding that "Plaintiffs' assertion of damages without any supporting facts as to how they were damaged is insufficient to establish a claim for violation of RESPA"); *Serfass v. CIT Grp./Consumer Fin., Inc.*, 2008 WL 4200356 (D.S.C. Sept. 10, 2008) (To state a claim under RESPA, borrower must "show economic harm as a result of not receiving a written explanation of the amount due on their loan.").

Plaintiff's Amended Complaint alleges that Wells Fargo failed to adequately respond to purported QWRs sent by Plaintiff to Wells Fargo on December 8, 2008, and July 21, 2010, and that, as a result, Wells Fargo is "liable for all damages allowed by law thereto, as well as attorneys' fees and costs." (Amended Complaint ¶ 131). The Court ordered Plaintiff to specify his damages. In response, Plaintiff produced a Statement of Damages in which the damages claimed for his RESPA claim were identical to those claimed for many of his other causes of action. The damages are set forth as:

- i. \$99,658.12- difference between BOA loan and current loan as of Aug. 2013
- ii. \$25,000.00- failure to release lien- pursuant to S.C. Code § 29-3-320
- iii. \$38,500.00- payments made to Wachovia Bank, N.A. Dec. 2006 to Nov. 2008

(Ex.2, Plaintiff's Statement of Damages).

None of these categories of damages relate in any way to whether or not Wells Fargo properly responded to Plaintiff's alleged QWRs. The damages described in Category (i) appear to be based on a theory that Plaintiff should be placed back in the same position in which he would have found himself had he never executed the Note and Mortgage in 2002. Clearly, the alleged failure to properly respond to QWRs in 2008 and 2010 could not possibly have induced

Plaintiff to enter into the Note and Mortgage contracts in 2002 or caused any damages related to refinancing the Bank of America loan. Category (ii) involves the statutory penalty for failing to record a mortgage satisfaction. Clearly, the response to a QWR could not affect the validity of the mortgage or cause damages related to the alleged failure to release the mortgage lien. Finally, as to Category (iii), the responses to QWRs issued to Wells Fargo in 2008 and 2010 could not possibly have caused damages allegedly accruing from 2006-08. Plaintiff fails to state an adequate claim for damages as required by 12 U.S.C. § 2605(f)(1) and, as such, his RESPA cause of action fails as a matter of law.



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CHARLESTON, SC  
June 19, 2014

CERTIFICATE OF SERVICE

I do hereby certify that on June 19<sup>th</sup> 2014, I served a copy of the within **DEFENDANT WELLS FARGO BANK N.A.'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Robert B. Varnado, Esquire  
Brown & Varnado, LLC  
Post Office Box 1127  
Mount Pleasant SC 29465-1127

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Carol Casey

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JULIE J. ARMSTRONG  
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) Case No. 2011-CP-10-2946  
  
BRENT E. BENTRIM )  
Plaintiff(s), )  
-vs- ) DEPOSITION OF:  
WELLS FARGO BANK, NA, ) BRENT E. BENTRIM  
Defendant(s), )

Given before John P. Crawford, Jr., Court Reporter  
and Notary Public, at Womble Carlyle Sandridge & Rice,  
LLP, 5 Exchange Street, Charleston, South Carolina, on  
Wednesday, May 8th, 2013, commencing at 10:10 o'clock,  
a.m.

**EXHIBIT**  
1



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A P P E A R A N C E S

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For the Plaintiff(s): Brown & Varnado, LLC  
By: Robert B. Varnado, Esquire  
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For the Defendant(s): Womble Carlyle Sundridge & Rice, LLP  
By: Jana B. Baker, Esquire  
5 Exchange Street  
Charleston, SC 29401



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- 1 A. Yes.
- 2 Q. And this is another foreclosure lawsuit?
- 3 A. Yeah.
- 4 Q. Okay. And were you represented by --
- 5 A. No. It's the same thing.
- 6 Q. So, the lawsuit was actually filed and you were  
7 served in '05?
- 8 A. Yeah.
- 9 Q. And in '07?
- 10 A. Yeah.
- 11 Q. Okay.
- 12 A. But, the reason why -- I apologize. I wasn't  
13 trying to be deceptive. It never went to court,  
14 so I never looked at it, it was me working with  
15 their attorney going, you know, this doesn't  
16 appear to be right, what do we need to do.
- 17 Q. Okay. How did you resolve the 2007 lawsuit?
- 18 A. Both times, I mean, I was at the point where,  
19 you've got to pay or they're going to take your  
20 house.
- 21 Q. Okay. And so, you paid in 2007. Do you recall  
22 the amount you paid in 2005 to resolve the case?  
23 And you're looking at, just so I know, the  
24 consumer loan payment history or are you looking  
25 at the transaction statement?



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- 1 A. I'm looking at the -- I can look at either one --  
2 consumer loan payment history.
- 3 Q. Okay. Which is Exhibit Twenty-three.
- 4 A. Yeah. Thirteen thousand two hundred and forty-  
5 two dollars and five cents.
- 6 Q. Okay. What date is that, so I'll know?
- 7 A. 9/11/2006.
- 8 Q. September 11th, 2006, okay, the thirteen thousand  
9 two forty-two o five?
- 10 A. Uh-huh.
- 11 Q. Okay. And did you sign a settlement agreement,  
12 do you remember?
- 13 A. No.
- 14 Q. Okay. Did you answer the complaint, do you know?
- 15 A. I don't think I did.
- 16 Q. Okay. And then, in 2007 -- let me go back to  
17 2005. So, you paid thirteen thousand two forty-  
18 two o five?
- 19 A. Yeah.
- 20 Q. Did you contact the attorney for Wells Fargo at  
21 the time? Did you know who the attorney was, for  
22 Wachovia?
- 23 A. I've got that. But, I did contact him.
- 24 Q. And did you request that this amount be, you  
25 know, applied to the balance of the loan?

1 A. Yes.

2 Q. Okay. In writing?

3 A. Yes.

4 Q. Okay.

5 A. And he, they confirmed it in a letter.

6 Q. That it was?

7 A. Yeah.

8 Q. When did you realize that it wasn't applied?

9 A. 2008, when I got this (indicating).

10 Q. Okay. And what about in 2007?

11 A. That's also when I realized that it wasn't

12 applied.

13 Q. How much did you pay in 2007 to resolve?

14 A. Seven thousand one hundred thirty-five fifty-one.

15 Q. Okay. And that was on 12/5/2007?

16 A. Yeah.

17 Q. Now, at this point, did you still contend that

18 you were making the payments on time and

19 properly?

20 A. Yes.

21 Q. And then, you went ahead and paid another seven

22 grand?

23 A. Yeah.

24 Q. Okay. And you just paid it, even though you

25 thought it was wrong to pay this amount?

1 A. Yeah.

2 Q. Okay. In 2007, did you say, look, we had the  
3 same issue in 2005?

4 A. I did.

5 Q. And did you say, did you look into whether the  
6 2005 payment was properly applied?

7 A. Yeah.

8 Q. You did in 2007?

9 A. Yes.

10 Q. Okay. In --

11 A. No. You're asking if I asked them that or did I  
12 do it?

13 Q. My question is did you, you're contending that in  
14 2005, you paid thirteen thousand dollars when you  
15 theoretically shouldn't have paid an extra  
16 thirteen thousand dollars, because your loan was  
17 current?

18 A. Yes.

19 Q. Okay. And then again, in 2007, you're --

20 A. Hold on. I think you're mischaracterizing this.  
21 What would happen -- and I think you're probably  
22 familiar with it -- is they'll say you're behind  
23 or the bank will say you're behind, quit  
24 accepting payments, and you've got a big lag  
25 until everything gets straightened out, gets to



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- 1 the attorney, et cetera. So, some of those were,  
2 yeah, payments that were not accepted during that  
3 time. You know, it's not like they'll say, let's  
4 keep taking your payments. It's like, you either  
5 pay us what is demanded or we're foreclosing.  
6 It's not like, oh, let me keep paying. So, I  
7 don't want that to be mischaracterized.
- 8 Q. Okay. Understandable.
- 9 A. Yeah.
- 10 Q. But in 2007, the same thing happened?
- 11 A. Yeah.
- 12 Q. Okay. Did you say, look, there was an issue in  
13 2005?
- 14 A. Yeah.
- 15 Q. What did you do to my thirteen thousand dollars  
16 then, like what happened with that? Did you ask?
- 17 A. I did.
- 18 Q. Okay. And what did the bank tell you or the  
19 bank's attorneys?
- 20 A. The bank's attorneys, you know, said this is what  
21 you have.
- 22 Q. Okay. Did you go ask about the previous thirteen  
23 thousand dollars?
- 24 A. Yeah.
- 25 Q. Okay. And then, you went ahead and paid them

1 seven thousand one thirty-five, whatever, fifty-  
2 one, I believe.

3 A. Yeah.

4 MR. VARNADO: Off the record real quick.

5 (The deposition went off the record for a  
6 brief period of time.)

7 Q. Okay. Back on the record. So, 2007, did you,  
8 you inquired about what happened to the thirteen  
9 thousand dollars; that's a yes?

10 A. Yes. And I affirmedly (sic) told the attorneys  
11 both times, you know, I'm not pass due, help me  
12 with this, and all they did was send us a  
13 statement that says this is what you owe or we're  
14 going to foreclose.

15 Q. Was it the same attorneys or different attorneys?

16 A. The first one was a different attorney.

17 Q. '05 was different from '07?

18 A. Yeah. And then '07 and '09 was Brock and Scott.

19 Q. And '05 was a different law firm?

20 A. Yeah. Different law firm.

21 Q. Which law firm, do you know? We can figure it  
22 out.

23 A. No.

24 Q. Okay.

25 MR. VARNADO: I can tell you right now.

- 1 Q. So, did that concern you in 2007?
- 2 A. Absolutely.
- 3 Q. Okay. Did you do anything besides -- what did  
4 you do?
- 5 A. I kept on them into 2008.
- 6 Q. Kept on them meaning?
- 7 A. Give me records, show me what's going on, calling  
8 in.
- 9 Q. Okay. And you got the records in 2008 with the  
10 Ms. Caudillo?
- 11 A. Well, no. It was late, but there was one time in  
12 June of 2008, I believe that's the date, where,  
13 you know, again this isn't right, there's, you  
14 know, stuff missing, what do I need to submit to  
15 you? Will you, you know, research it? And  
16 they'll go, well, you know, we'll give you two  
17 months and make this, while we research it.
- 18 Q. Okay. But you waited, okay, so you waited, you  
19 weren't concerned about this in '07? Like did  
20 you stay on them in 2007 because you made the  
21 payment, I forgot the date, the dates on here in  
22 2007?
- 23 A. It was the end of 2007, so we're in 2008 at that  
24 point.
- 25 Q. But you made the payment on, yeah, 12/5/2007.



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1 STATE OF SOUTH CAROLINA )  
 2 : C-E-R-T-I-F-I-C-A-T-E  
 3 COUNTY OF CHARLESTON )  
 4

5 I, John P. Crawford, Jr., Court Reporter and Notary  
 6 Public, certify that I did have Brent E. Bentrin to  
 7 appear before me at 10:10 o'clock, a.m. on Wednesday,  
 8 May 8<sup>th</sup>, 2013, at Womble Carlyle Sandridge & Rice, LLP, 5  
 9 Exchange Street, Charleston, South Carolina; that the  
 10 witness was sworn and cautioned to tell the truth, the  
 11 pages constitute a true and accurate transcript of the  
 12 testimony given at that time and place.

13 I further certify that I am not of counsel or kin to  
 14 any of the parties to this cause of action, nor am I  
 15 interested in any manner in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
 17 seal this the 14<sup>th</sup> day of May, 2013.

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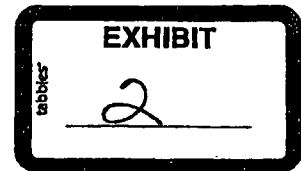
  
 \_\_\_\_\_  
 Notary Public for South Carolina  
 My Commission Expires: April 4<sup>th</sup>, 2022

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

**Bentrim v. Wells Fargo, N.A.**  
Civil Action No.:2011-CP-10-2946  
**Statement of Damages:**

- A.**           **Causes(s)**           **1, 2, 3, 4, 6, 7, 15**
- i.       \$99,658.12    difference between BOA loan and current loan as of Aug. 2013
- ii.       \$25,000.00    failure to release lien – pursuant to S.C. Code. § 29-3-320
- iii.       \$38,500.00    payments made to Wachovia Bank, N.A. Dec. 2006 to Nov. 2008
- Sub-Total:    \$163,158.12
- 
- B.**           **Causes(s)**           **5, 10**
- \$38,500.00    (see A.iii above)
- 
- C.**           **Causes(s)**           **8, 14**
- \$489,474.36    (see A.i through A.iii, trebled)
- 
- D.**           **Cause(s)**           **9**
- To be determined by trier of fact but no less than \$100,000.00
- 
- E.**           **Cause(s)**           **11**
- To be determined by trier of fact but no less than \$100,000.00
- 
- F.**           **Causes(s)**           **13**
- \$15,000.00    One Thousand (\$1,000.00) Dollars per incident x 15 incidents
- 
- G.**           **Cause(s)**           **14**
- \$99,658.12    (see A.iii above)

(cont'd)



<b>H.</b>	<b>Cause(s)</b>	<b>16</b>
	Mail Fraud 2007	\$300,000.00
	Mail Fraud 2009	\$250,000.00

Plaintiff would crave reference to all documents produced so far in discovery, including but not limited to Plaintiff's documents "A." through "PP" in Plaintiff's Answer to Interrogatory number 2 of Wells Fargo's First Set of Interrogatories, and Wells Fargo documents ## 150-153, 159-218, 2299-2304.

Plaintiff reserves the right to supplement these damages at a later time in accordance with the rules and scheduling order(s) applicable in this case.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
BRENT E. BENTRIM, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WELLS FARGO BANK, N.A., )  
 )  
Defendant. )

COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2011-CP-10-2946

**SUPPLEMENTAL MEMORANDUM OF  
LAW IN OPPOSITION TO WELLS  
FARGO'S MOTION FOR SUMMARY  
JUDGMENT**

FILED  
2014 JUN 23 PM 4:42  
JULIE J. ARMSTRONG  
CLERK OF COURT

**TO: THE HONORABLE MIKELL R. SCARBOROUGH, CHARLESTON COUNTY  
MASTER IN EQUITY:**

The Plaintiff, Brent E. Bentrim (hereafter "Plaintiff"), by and through his undersigned counsel, respectfully submits this Supplemental Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment and Defendant's Supplemental Memorandum of Law in Support of Wells Fargo's Motion for Summary Judgment submitted June 19, 2014.

**LEGAL ARGUMENT AND ANALYSIS**

**1. Duty of Care.**

Wells Fargo moved for summary judgment on the negligence causes of action under the incorrect theory that a bank *never* owes a duty of care to a customer because the debtor-creditor relationship is entirely contractual. However, the South Carolina Supreme Court, in *Kerr v. Branch Bank & Trust*, 2014 WL 1386873 (April 9, 2014) demolished Defendant's argument by unequivocally holding: "[i]t is well-established that banks owe a limited duty of care to their customers."

*Kerr* sets forth black-letter law. Its holding is not dicta. *Kerr* was published two months before Wells Fargo filed its memorandum in support of the instant motion for summary judgment and could have been easily found on Westlaw or Lexis/Nexis. Wells Fargo cannot seriously argue it was surprised by having to discuss *Kerr* at the June 9, 2014 hearing. The *Kerr* case should effectively end Defendant's motion for summary judgment on negligence.

In its Supplemental Memorandum, however, Defendant claims "[r]ather than create a new duty, the *Kerr* Court simply confirmed the existing limited duty of care owed by banks to their customers when fiduciary relationships have arisen." [6.10.14 Memo, p. 2]. This assertion makes no sense. It is well-established there is no general fiduciary relationship between a bank and a customer; Plaintiff, however, has never asserted the existence of a fiduciary relationship in the instant matter nor pleaded a breach of fiduciary cause of action.

Wells Fargo then proceeds with a bigger *non-sequiter*: because *Kerr* cites to *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986) and *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003), Wells Fargo argues that those two earlier opinions – both involving breach of fiduciary claims not at issue in this case – somehow turn *Kerr* into a breach of fiduciary duty case, too! This argument is irrelevant and confuses the issue at hand – whether or not there can be *any* duty of care owed by a bank in a *negligence* case. *Kerr* says the answer to that question is "yes."

Thus, Plaintiff is not required to allege or plead a fiduciary relationship in order to sue on the *limited [i.e., non-fiduciary]* duty of care established in *Kerr*. Neither *Burwell* nor *Shmauch* discuss the limited duty of care set forth in *Kerr*. Neither *Burwell* nor *Shmauch* have any applicability in an action – like this one – where there is no breach of fiduciary duty cause of action before the Court. Wells Fargo incorrectly applies all three cases. For this reason, the

Court should not grant Wells Fargo's motion for summary judgment on the negligence cause of action.

Bentrim would also remind the Court that Wells Fargo continues to argue that "at all times" the relationship between Bentrim and Wells Fargo and its predecessors was allegedly "debtor-creditor" – yet the Wakefield Affidavit filed by Wells Fargo on June 4, 2014 simultaneously proves that Wachovia Bank, N.A. sold the note on November 29, 2006. Based on the foregoing, Defendant was not in a debtor-creditor relationship with Bentrim for some period after November 29, 2006 and certainly not at the time Defendant's predecessor filed the 2007 and 2009 civil actions. These facts form the core of the negligence claim. Thus, the argument that this was always a "debtor-creditor" arrangement between Plaintiff and Defendant must also fail owing to the admission of the November 29, 2006 sale. At a minimum, this fact creates a scintilla of evidence to militate against summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

## **2. Statute of Limitations Revised.**

In its original motion, Wells Fargo argued that Plaintiff's negligence claims were based entirely on the improper origination fee. In reply, Bentrim provided deposition testimony that demonstrated he was not basing his claim on the origination fee issue and, in 2007, he was completely unaware that Wachovia was misapplying principal and interest. (EXHIBIT A to MIO to Motion for Summary Judgment: Bentrim Depo. Tran. 143: 6-13). Specifically, Bentrim provided testimony that he was unaware that Wachovia failed to apply a payment towards principal until he received a letter from Ms. Caudill, an employee of Wells Fargo, on December 19, 2008. (Id. Depo Tran. 144-145: 17-1). The lawsuit was filed on April 22, 2011. Therefore, the statute of limitations for a negligence claim had not run at the time of commencement of this

action; summary judgment on this ground should be denied as there is a genuine issue of material fact. *Hancock* at 803.

Now Defendant wants to argue that because of the three foreclosure suits was on “inquiry notice” of payment problems. In doing so, Wells Fargo wants to have it both ways – it argues that this is a case of simple default and absolutely denies that it error in crediting payments, while at the same time it claims it revealed enough to Bentrin to require him to have filed suit before 2007. This argument is beyond specious.

During the 2005 and 2007 lawsuits, Bentrin was led to believe that any issue between him and Wachovia was entirely related to the accounting for the origination fee. (See Exhibit A; Depo. pp.50, 59-60, 66-68). There is no evidence that he had any knowledge of a potential claim against Wachovia for negligence or any other cause of action. He was repeatedly assured the accounting for the origination would be fixed; and that he was provided with what he later learned were false financial documents. He was led to believe that Defendant had authority to make such assurances. At no time prior to December, 2008 can Defendant point to any knowledge imputed to Bentrin that he knew or should have known he had claims against Wachovia Bank, N.A., or that his payments and fees were be applied under different terms than the documents he signed. He also had no knowledge that Wachovia had no enforceable interest in his loan when it sued him in 2007 and 2009. All this had been concealed by Defendant.

Defendant makes a big deal out of the fact that Bentrin paid reinstatements demanded in previous actions. Paragraph 16 of the Mortgage expressly provides to have proceedings discontinued upon a cure of the demand; thus, any cure made under Paragraph 16 of the Mortgage represents a settlement of all issues. It is instructive to note that when Bentrin instituted the present action, it was not based the origination fee issue – rather, that the Defendant

refused to let him reinstate or correct the misapplication of payments and other fees (although he sent certified funds for this purpose). It is further instructive to note that Defendant never details how the origination fee issue is either applicable or connected with the claims Bentrim has made in the instant lawsuit. Until the December 19, 2008 Caudill letter, Bentrim could not have known that Wachovia was ignoring the terms of the Note.

“Under South Carolina law, the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and *where the testimony is conflicting upon the question, it becomes an issue for the [trier of fact] to decide.*” *Little v. Brown & Williamson Tobacco Corp.*, 243 F.Supp.2d 480 (2001)(emphasis added); S.C. Code Ann. § 15-3-20; *see, also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000) holding “the statute of limitations is triggered *not merely by knowledge of an injury* but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another”; *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004) holding “[u]nder the discovery rule, a cause of action accrues for purposes of the statute of limitations when a *plaintiff has notice that he might have a remedy* for a harm.

“Although the issue of whether a defendant is estopped from claiming the statute of limitations is ordinarily a question of fact to be determined by the judge, summary judgment is appropriate where there is *no evidence* of conduct on the defendant's part warranting estoppel.” *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007)(emphasis added). “Defendant may be estopped from claiming statute of limitations defense if defendant's conduct has induced delay that otherwise would give operation to statute; this conduct may be either express representation that claim will be settled without litigation, or actions suggesting lawsuit is unnecessary.” *Moates v. Bobb*, 322 S.C. 172, 470 S.E.2d 402 (Ct. App. 1996).

In *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009) the court tolled the limitations period based on the reliance of the plaintiff's employer that a claim would be filed. The same principal applies here – there is deposition testimony from Plaintiff that Wachovia would rectify errors in 2005 and 2007, and Plaintiff expressly testified he was not aware of wrongdoing by Wachovia until 2008. *Id.* at 108, 33 (“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.”). *See also Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012), *reh'g denied* (Apr. 20, 2012).

Plaintiff submits that there are enough genuine issues of material fact to warrant denial of summary judgment on the statute of limitations under the scintilla rule – at least until the full trial on the merits of the case. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000) (“[T]he determination of the date the statute [of limitations] began to run in a particular case [is a question] of fact ...”); *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239-40, 743 S.E.2d 860, 863 (Ct. App. 2013); *Hancock* at 803.

### **3. Breach of Contract Accompanied by a Fraudulent Act.**

It is black-letter law in South Carolina that “breach of contract” and “breach of contract accompanied by a fraudulent act” are separate causes of action which can be maintained separately from each other. *Hubbard and Felix*, THE SOUTH CAROLINA LAW OF TORTS, 3D ED. (2004)(citing *Perry v. Green*, 313 S.C. 250, 437 S.E.2d 150 (Ct. App. 1993)). “Breach of contract accompanied by a fraudulent act is not simply a combination of a claim for breach of

contract and a claim for fraud.” *Ball v. Canadian Am. Exp. Co., Inc.*, 314 S.C. 272, 276, 442 S.E.2d 620, 622 (Ct. App. 1994). As such, there is no requirement that a plaintiff plead both claims together in a single action. *Id.* Wells Fargo even concedes this point in its supplemental memorandum at p. 4. (“Wells Fargo does not dispute this point.”)

Accordingly, the citation to *Smith v. Canal Ins. Co.*, 275 S.C. 256, 269 S.E.2d 348, 350 (1980) makes no sense because it stands for the proposition that there is no distinction between the causes of action for breach of contract and breach accompanied by a fraudulent act. As such, *Smith* represents law that has been superseded by modern, contrary authority – as Wells Fargo admits in its own memorandum. Nothing in *Smith* is germane to the instant case, nor are its facts analogous; in fact, in *Smith*, the plaintiff could not even prove the existence of a breach of contract – whereas here, Bentrin can and does in the Amended Complaint. Based on the foregoing, *Smith* should not be considered controlling authority.

Thus, Wells Fargo remains in the same boat as before. It can point to no authority of any sort for the proposition that the dismissal of a Breach of Contract claim on grounds other than factual grounds somehow precludes a separate Breach of Contract Accompanied by a Fraudulent Act claim. The absence of authority is fatal to its argument.

Judge Dennis dismissed Plaintiff’s original, *pro se* Breach of Contract cause of action because of a pleading error – i.e., the failure to specify which contract Defendant allegedly breached, and failing to submit an affidavit to that effect; he denied Plaintiff’s request to amend the *pro se* complaint, or to enlarge time to file an affidavit; or let the Plaintiff be sworn under oath in the courtroom. Judge Dennis’ ruling was thus the functional equivalent of a Rule 12(b)(6) dismissal with prejudice. The pleading errors have been corrected by more specific allegations in the Amended Complaint, along with the Memorandum in Opposition to

Defendant's Motion for Summary Judgment, and made absolutely obvious throughout litigation. Judge Dennis made *no findings of fact* or conclusions of law that Wells Fargo did – or did not – specifically breach the terms of the Note and/or Mortgage and/or the Adjustable Rate Disclosure Statement.

What is most ironic is that Defendant's Counter-claim for Breach of Contract survived Plaintiff's Motion for Summary Judgment. However, now Defendant is proposing, through its Supplemental Memorandum, that this *same* contractual relationship doesn't exist? If Bentrim's instant cause of action is dismissed, but Defendant is allowed to proceed on a Breach of Contract Counter-claim arising out of the same contractual relationship, the result would be a manifest injustice.

#### 4. RESPA.

As a threshold matter, the Court should reject the "insufficient damages" argument advanced by Wells Fargo for the first time at the June 9, 2014 hearing. Both Defendant's May 19, 2014 motion (Section 12) and June 6, 2014 memorandum of law are **absolutely silent** on the "insufficient damages" issue. Thus, Plaintiff submits that the issue of insufficient damages is not fairly before the Court on the instant motion; procedurally, Plaintiff should only be required to defend a motion based on the particular grounds set forth in the motion. See Rule 7(b), SCRPC. To advance the insufficient damages argument, Defendant should have filed an amended motion within ten (10) days of the hearing, pursuant to Rule 6(d), SCRPC. If Defendant wishes to pursue this theory now, it should be included in a new motion for summary judgment.

Second, Plaintiff is entitled to seek recovery of damages determined by the Court. For the purposes of surviving a summary judgment motion, Bentrim would be entitled to an award by the Court of up to \$2,000.00 under 12 U.S.C.A. § 2605(1)(B) "in the case of a pattern or practice

of noncompliance with this section.” He would also be entitled to his attorneys’ fees under 12 U.S.C.A. § 2605(3). As Wells Fargo concedes, statutory damages and fees were referenced in Plaintiff’s damages calculations.

Plaintiff has affirmatively established that Wells Fargo ignored or only partially answered QWRs from 2008 and 2010. Plaintiff still contends that Wells Fargo has not adequately identified how it is entitled to enforce. Even if the Court accepts Wells Fargo’s position, it took over three years of litigation before Defendant finally admitted on June 4, 2014 – five days before the hearing – that it had sold a 100% interest in the Note [although this admission completely contradicted its: prior pleadings; arguments of counsel at multiple hearings; its discovery responses; the Lost Note Affidavit (which affirmatively asserted the Note had never been sold) and the deposition of Wachovia Vice President Tracy Thomas]. Plaintiff submits these facts alone are sufficient to raise genuine issues of material fact regarding a pattern and practice of non-compliance, which in turn are sufficient to trigger an award under 12 U.S.C.A. § 2605(1)(B). *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Defendant next argues that Plaintiff’s specific calculations of damages cannot apply to a RESPA claim. This argument should fail also. First, Defendant relies on *In re Nix*, 2012 WL 27667 (Bankr. D.S.C. Jan, 5, 2012) and *In re Ginn*, 465 B.R. 84, 95 (Bankr. D.S.C. 2012) – which both deal with sufficiency of pleading – not summary judgment; it should be further noted that the federal courts use a different summary judgment standard than South Carolina. Second, there is a split in authorities as to whether Plaintiff must prove RESPA damages with particularity. In *In re Lacey*, 480 B.R. 13, 50 (Bankr. D.Mass. 2012), the Court held that damages from a failure to respond to the QWR can be inferred. *Id.* at 50. Since there is no controlling authority on this issue *in South Carolina*, summary judgment is inappropriate at this

stage as a matter of law. Finally, and importantly, Plaintiff has alleged actual pecuniary losses for the RESPA claim; Defendant now wants to argue whether the pecuniary losses are applicable – which is a sine qua non of a genuine issue of material fact. At a minimum Plaintiff has met his burden of establishing a scintilla of evidence of pecuniary loss (including but not limited to attorneys' fees, as discussed above).

**5. Analysis of *CFS, LLC v. Bank of America*.**

At the June 6, 2014 hearing, Defendant cited *CFS, LLC v. Bank of America*, 962 N.E.2d 151 (Ind. Ct. App. 2012) for the proposition that – when Wells Fargo Bank, N.A. merged with Wachovia Bank, N.A. – Wells Fargo automatically became the holder of the note pursuant to 12 USCA § 215(a)(e). This case was not cited in either Defendant's motion or memorandum of law. Applying the holding of *CFS, LLC*, Defendant then argued that 12 USCA § 215(a)(e) somehow outweighed Article 3 of the U.C.C. (S.C. Code Ann. § 36-3-101 et seq.)

*CFS, LLC*, however, does not supplant Article 3. In *CFS, LLC*, the Indiana Court of Appeals clearly was applying that state's version of Section 3-301 of the UCC. *Id.*, 962 N.E.2d at 153, n.2. It never ruled that Bank of America was automatically a holder by virtue of 12 USCA § 215(a)(e) – only that Bank of America had enforcement rights under Section 3-301.

What distinguishes the instant case from *CFS, LLC* is the undeniable fact that Wachovia (a) sold 100% of the Bentrim loan to The Money Store and (b) Defendant has failed to meet its burden under S.C. Code Ann. § 36-3-203 to show how it has enforcement rights.

Moreover, in the instant case, Wells Fargo has steadfastly pleaded and argued it is a holder to the exclusion of any other category under S.C. Code Ann. § 36-3-301(i). Its entire Counterclaim is based on the argument that it is a holder. Its discovery arguments are predicated on the concept that it is a holder. Yet, when one analyzes U.C.C., including but not limited to

Sections 3-203 and 3-301, Wells Fargo simply cannot be a holder.

Unlike in *CFS, LLC*, here there is no evidence whatsoever before the Court that Wachovia Bank, N.A. had any enforcement rights in Bentrims's loan after November 29, 2006. In fact, the evidence points in the opposite direction. Defendant is required to demonstrate transfer of enforceability but it has steadfastly refused to do so.

**6. Holder in Due Course Analysis.**

The Court ruled that Wells Fargo was a Holder in Due Course under S.C. Code Ann. § 36-3-302(a).

One legal text explains Holder in Due Course as follows:

A holder in due course must meet five requirements. The first is meeting the requirements for becoming a holder. UCC § 3-302(a). Second, the instrument must not be obviously forged, altered, or otherwise suspicious looking. UCC § 3-302(a)(1). Third, the holder must have taken the instrument for value. UCC § 3-302(a)(2)(i). Fourth, the holder must have taken the instrument in good faith. UCC § 3-302(a)(2)(ii). Finally, the prospective holder in due course must have taken the instrument without notice that the instrument has certain types of problems. UCC § 3-302(a)(2)(iii), (iv), (v), and (vi).

Michael D. Floyd, *Mastering Negotiable Instruments: UCC Articles 3 and 4 and Other Payment Systems*, Carolina Academic Press (2008). There is a sixth requirement under S.C. Code Ann. § 36-3-302(a) that a holder in due course also take the instrument without notice of any claim to the instrument described in Section 36-3-306.

Plaintiff submits that Wells Fargo cannot be a "holder in due course." First, in order to be a holder in due course, Wells Fargo would have to admit its foreclosure actions in 2007 and 2009 were invalid (a) because the November 29, 2006 'transfer' of 100% of the Bentrims Loan to The Money Store was made after a foreclosure suit (2005) and at a time Wachovia Bank claimed Bentrims was in arrears – which would be notice of a defect which bars holder in due course status. *Id.*

Thus, if Wachovia transferred the Bentrim loan with knowledge of a defect without saying such, then it was an illegal transfer. If TMS had knowledge of the defect, however, then it can never be holder in due course. § 3-302(a)(2)(iii), (iv), (v), and (vi).

Moreover, all this presupposes Defendant can even be a plain “holder,” in the first instance – which is a prerequisite for holder in due course status. Plaintiff has shown Defendant cannot a holder because there was no negotiation of the instrument – which is a prerequisite for one to be a holder. S.C. Code Ann. §§ 36-1-201(20); UCC § 3-302(a)(1); 3-204; and 3-205. In the absence of a negotiation, the recipient cannot be a holder. Thus, Defendant cannot be a holder in due course either. UCC § 3-302.

**7. Factual Issues Further Preventing Defendant from having PETE rights.**

Wells Fargo’s attorneys have claimed in open Court that Wachovia and/or Wells Fargo always had possession of the Note, except when it was in hands of agent. The following facts should be kept in mind:

If Wachovia and Wells Fargo always had physical possession of the Note despite selling a 100% interest in it – and they cannot or will not produce a Purchase Agreement, nor have any vault records before March, 2012 – then the inexplicable result is that (a) Wachovia released enforcement rights but (b) the TMS never obtained them.

Wells Fargo now tries to claim that – notwithstanding the foregoing – it also had enforcement rights as ‘servicer’. This argument fails too. Defendant has always denied that any Servicing Agreement exists. It has consistently claimed it owned/held the mortgage in demands to Bentrim (See Exhibit “B”), which contradicts the Wakefield’s affidavit. Further, if the Court is allowed to rule solely on the arguments of Defendant’s Counsel, Wells Fargo – through its counsel – has argued in Court that no other entity has received payments from Bentrim; an

assertion that would totally inconsistent with servicing rights or sale of a participation interest.

The evidence on the record from the Lost Note Affidavit is that Defendant lost an unstamped Note and that the Note had never been transferred, sold, etc. In its pleadings, Defendant is trying to enforce an unstamped Note, as a holder, via successor by merger to WB, NA -- with zero mention of TMS. The big problem is Defendant has produced no evidence nor any testimony to support the new assertion by Defendant's counsel that Note was ever transferred to TMS or that TMS owned the Note and Mortgage with enforcement rights from December, 2006 to May, 2010. The documents in Exhibit B to this Memorandum would in fact undercut this argument and reveal that the Defendant owned the Mortgage while another entity owned the Note. Additionally, the Note currently in Wells Fargo's attorneys' possession has never been entered into the record; their pleadings attempt to enforce a different Note.

How can Wachovia Bank, NA claim servicing rights when it has steadfastly claimed that no servicing agreement exists? During the same period in which Defendant now wants to claim servicing rights, it was writing to Plaintiff and telling him it owned his Mortgage -- without any mention of being a servicer. None of this adds up.

Moreover, if we were to assume TMS had the rights to enforce and transfer the Loan at the time it was acquired by Wells Fargo, the fact that Wachovia attorneys apparently made the transfer would undercut this argument. This was the testimony of Defendant's own Vice President, Tracy Thomas, who testified that the Note was in the possession of Wachovia attorneys during the time ownership was purportedly vested in TMS. (See Exhibit C, Tracy Thomas Deposition Excerpts, pp. 97-140). Wachovia's attorneys and agents cannot lawfully transfer a Note belonging to The Money Store to Wells Fargo, nor can a servicer. S.C. Code Ann. § 36-3-203. Such an outcome is incompatible with both the Lost Note Affidavit and the

Wakefield Affidavit.

There is simply no proof of a physical transfer of the Note. We have no proof of a Purchase Agreement. We have no proof of a voluntary transfer. Under the UCC Article 3, unless it is a bearer instrument, the Note is either transferred or negotiated. UCC 9 governs what rights are 'transferred.' There is a complete failure of evidence on the part of Defendant. *See Estate of Barr v. Carson*, 300 S.C. 171, 386 S.E.2d 791 (1989).

The only evidence before this Court is that there was a sale effective November 29-December 1, 2006. This transaction would only prove that Wachovia Bank, NA lost rights to enforce under UCC Section 9-318 – which is why until June 5, 2014 Wells Fargo denied any sale took place.

The Wakefield affidavit fails to state TMS ever obtained a security interest in Bentrim's loan. Without such an assertion and documentation to support it, it is ultimately irrelevant who purchased TMS because the Plaintiff's loan was not part of it.

**8. 2006 Order of the Court Should Not be Applicable.**

Plaintiff submits that the Order of the Court from 2006 is void because Defendant's predecessor obtained a judgment by default without submitting an affidavit, verified complaint or other sworn testimony. S.C. Code Ann. § 37-5-114 (2) provides that "[a] default judgment may not be entered in the action in favor of the creditor unless the complaint is verified by the creditor or sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded." Since Defendant's predecessor failed to meet this obligation, nothing from the 2005 foreclosure case or the 2006 order should be admissible or form the basis of this Court's ruling. A void judgment is one from its inception, is a complete nullity and without legal effect and must be distinguished from one that is merely 'voidable.'


A judgment is void if a court acts without personal jurisdiction. *Thomas & Howard Co. v. TW Graham & Co.*, 318 SC 286, 291, 457 SE2d 340, 343 (1995).

**CONCLUSION**

For the above reasons, Plaintiff respectfully requests that this Court deny Defendant's motion for summary judgment.

BROWN & VARNADO LLC

By: \_\_\_\_\_

  
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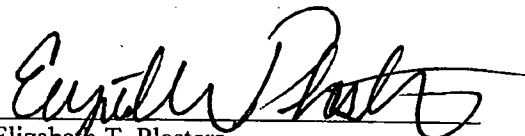
June 23, 2014  
Mt. Pleasant, South Carolina

2011-CP-10-2946

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served the attached *Supplemental Memorandum of Law in Opposition of Wells Fargo's Motion for Summary Judgment* in the above-captioned action via hand delivery to the attorney for the Defendant as follows:

S. Sterling Laney, III, Esquire  
Charles J. Baker III, Esquire  
John C. Hawk IV, Esquire  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
P.O. Box 999  
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*Attorney for Defendant*

  
Elizabeth T. Plasters  
*Paralegal to Robert B. Varnado, Esq.*

June 23, 2014  
Mount Pleasant, South Carolina

FILED  
2014 JUN 23 PM 4:43  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

# EXHIBIT A

Page 49

1 answer. Remember I, I sometimes can object to  
2 her question. Unless I instruct you not to  
3 answer, you should go ahead and answer.  
4 THE WITNESS: I didn't hear what he said.  
5 What did you just say?  
6 A. In November 2008, I maybe have the dates off a  
7 little bit here, but it was October, November  
8 2008, I got a notice and intent to foreclose  
9 letter from your client.  
10 Q. 2008, you did?  
11 A. Yes.  
12 Q. Okay.  
13 A. And they said, you know, you owe X, I said  
14 there's something not right here, call in. And  
15 when I called in, they said no, no, everything's  
16 fine. And then, the next day, I actually got a  
17 different letter that says, you know, pay this  
18 amount. And we went back and forth. And so, I  
19 said, something's not right here and asked for a  
20 payment history on the account. And that's when  
21 I noticed the twenty-seven hundred dollars was  
22 not credited, and I also got a letter from, I  
23 believe it was Sherrie Caudill or Caudill that  
24 said, hey, this is a ledger and this is how your  
25 principal and interest is calculated, and it

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1 didn't meet any of the stuff that was described  
2 in the note, et cetera and so forth.  
3 Q. And this is in 2008?  
4 A. '08.  
5 Q. Okay. Did you ever have any problems before 2008  
6 making payments?  
7 A. Yes.  
8 Q. Okay. And when was that?  
9 A. We fought about this for years because I was --  
10 Q. When you say we, who is --  
11 A. Wachovia and, it was Wachovia Bank at the time.  
12 Q. Okay.  
13 A. And me, because with the twenty-seven hundred, my  
14 assumption is I'm three payments ahead, and  
15 they're always putting me in arrears. It was,  
16 you know, just never could get an answer out of  
17 them. So, it was pay up or we're going to  
18 foreclose.  
19 Q. Okay. Were you working for Wachovia Securities,  
20 you said, around, were you having trouble making  
21 payments when you were working for Wachovia  
22 Securities?  
23 A. No. And I don't, I wouldn't say it was trouble  
24 making payments. I would say there was trouble  
25 with the payment history ledger as to an accurate

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1 accounting.  
2 Q. Okay.  
3 A. Is that fair? Yeah.  
4 Q. Right. But you contend you were making payments?  
5 A. Yes.  
6 Q. Okay. And going back, so, okay. Just you left,  
7 okay, when did you leave Wachovia Securities  
8 exactly?  
9 A. March 2002.  
10 Q. Okay.  
11 A. So, right after --  
12 Q. Right after the closing or the refinance? Yeah.  
13 And again, why did you leave Wachovia Securities?  
14 A. To start my own firm.  
15 Q. Okay. And did you have a problem with Wachovia?  
16 I mean, did you?  
17 A. I mean --  
18 Q. Why did you leave?  
19 A. Oh, okay. That's fair.  
20 Q. Yeah.  
21 A. To start my own firm. They had recruited me to  
22 come over from Merrill Lynch.  
23 Q. They is Wachovia?  
24 A. First Union, Wachovia.  
25 Q. Okay.

Page 52

1 A. Because the CEO of First Union wanted to be the  
2 next Merrill Lynch. But once I got there, I  
3 realized that they didn't, that wasn't really  
4 their desire. And so, it was not a good fit. It  
5 was seniority based instead of a merit based  
6 system there.  
7 Q. Okay.  
8 A. So, yeah.  
9 Q. So, you, it wasn't a good fit, so you wanted to  
10 leave?  
11 A. Yeah.  
12 Q. Okay. And who was your supervisor over there at  
13 the time?  
14 A. Todd Gauthier hired me, and I've got to tell you,  
15 Jana, there was so many mergers and stuff going  
16 on at that point, literally one of the reasons  
17 why is I think I went through about five  
18 supervisors at that time. Yeah.  
19 Q. Okay.  
20 A. I would love to remember them all.  
21 Q. Okay.  
22 A. Everybody was merging left and right at that  
23 point.  
24 Q. Okay. So, but your position is that you were  
25 making, I just want to be clear as I understand,



Page 57

1 to close, November 21st, 2003?  
2 A. Yes.  
3 Q. Okay. At this time, is this the time, November  
4 21st, 2003 when you realized again, there's an  
5 issue with the application of twenty-seven  
6 hundred dollars?  
7 A. Yes.  
8 Q. Okay. And how did you figure that out then?  
9 A. Because I thought I was ahead, and your client's  
10 sending me a statement saying you owe us thirty-  
11 nine, thirty-eight ninety-one or five.  
12 Q. Okay. And so -- Okay. And so, you, at that time  
13 you realized the twenty-seven hundred was booked  
14 incorrectly?  
15 A. Yes.  
16 Q. Okay. Did you do anything November 21st, 2003 to  
17 try to correct it?  
18 A. Yes.  
19 Q. Okay. And what did you do?  
20 A. I called your client.  
21 Q. Okay. Do you know who you, I mean -- okay.  
22 A. Yeah. No.  
23 Q. That's fine.  
24 A. Yeah. I know I made numerous calls.  
25 Q. Okay.

Page 58

1 A. Yeah.  
2 Q. Around this time frame in 2003?  
3 A. Yes.  
4 Q. Okay. Was anything ever done to correct?  
5 A. No. They basically just ignored me.  
6 Q. Okay. Did you, so you called and you contend  
7 that Wells Fargo, or Wachovia ignored you?  
8 A. Yes.  
9 Q. Okay. Did you ever try to file a law suit at  
10 this time?  
11 A. No.  
12 Q. Okay. Did you ever try to talk to your closing  
13 attorney around this time?  
14 A. No.  
15 Q. Okay. Now, I'm going to show you another  
16 document. This will be Exhibit Nine.  
17 (NOTICE OF FORECLOSURE MARKED AS  
18 DEFENDANT'S EXHIBIT NO. 9 FOR IDENTIFICATION.)  
19 MR. VARNADO: He's waiting for you.  
20 Q. Okay. Mr. Bentrin, have you seen what's  
21 Defendant's Exhibit Number Nine before?  
22 A. I have.  
23 Q. Okay. This is a notice of intention to  
24 foreclose?  
25 A. It is.

Page 59

1 Q. Okay. What's the date of this notice?  
2 A. November 12th, 2004.  
3 Q. Okay. So, about a year after, almost a year  
4 after the Exhibit Number Eight?  
5 A. It is.  
6 Q. Okay. At this point in the fall of 2004, do you,  
7 was Wachovia accepting your payments, do you  
8 recall?  
9 A. I believe they were.  
10 Q. Okay. Do you, did you miss any payments in 2004,  
11 any mortgage payments?  
12 A. None that I'm aware of.  
13 Q. Okay. So, none that you're aware of?  
14 A. Yeah.  
15 Q. Okay.  
16 A. No.  
17 Q. Is it possible you could have missed a payment or  
18 two?  
19 A. No. Not based on this what would be past due.  
20 Q. Okay. Tell me why, just so I'm, so I can  
21 understand.  
22 A. If you take twenty-seven hundred dollars off the  
23 past due amount and the ten dollars --  
24 Q. The past due amount, you're looking at the two  
25 thousand nine fifty-two sixty-three?

Page 60

1 A. Uh-huh.  
2 Q. Okay.  
3 A. If you take twenty-seven hundred dollars off of  
4 that.  
5 Q. Right.  
6 A. It doesn't add up to a missed payment.  
7 Q. Okay.  
8 A. And then when you take the ten dollars as well.  
9 Q. Okay. So, that's the twenty-seven hundred  
10 dollars that we've been looking at in the  
11 settlement statement?  
12 A. Right.  
13 Q. Okay. So, did you do anything at this point in  
14 2004?  
15 A. Same stuff. Called, tried to get somebody to  
16 talk to me.  
17 Q. Okay. Did you try to file a law suit?  
18 A. Nope.  
19 Q. Okay. Despite receiving the notice, were you  
20 still making your monthly payments that you were  
21 supposed to make?  
22 A. Yes.  
23 Q. Okay. Now, let's move forward to more recently.  
24 We'll mark this as Exhibit Ten, Bentrin's Number  
25 Ten. Thank you.



Page 65

1 A. Yeah.  
2 Q. Okay. And then do you a March 20th, 2007?  
3 A. I do.  
4 Q. Okay. And for the record, for Exhibit Eleven,  
5 would you agree with me these are demand letters  
6 from Wachovia to you?  
7 A. I would.  
8 Q. Okay. Have you received all these demand  
9 letters?  
10 A. Yes.  
11 Q. Okay.  
12 A. I believe.  
13 Q. Yeah. Just take a look at it. Let's go through  
14 the first one. Have you received the one, and  
15 you might need to look at it, dated July 13th,  
16 2005?  
17 A. Yes.  
18 Q. Okay. And have you received the one dated  
19 December 13th, 2006?  
20 A. Yes.  
21 Q. Okay. And then, have you received the one dated  
22 January 19th, 2007?  
23 A. I have.  
24 Q. Okay. And did you receive the one dated March  
25 20th, 2007?

Page 66

1 A. I have.  
2 Q. Okay. On January 13th, 2005, do you still  
3 contend that you were making the payments to  
4 Wachovia?  
5 A. Yes.  
6 Q. Okay. And with this one, are you contending that  
7 this demand letter is incorrect?  
8 A. Again, yes.  
9 Q. Because of the same reasons we discussed earlier,  
10 the twenty-seven hundred dollars?  
11 A. Yes.  
12 Q. Okay.  
13 A. Yes.  
14 Q. Okay.  
15 A. I was checking the date on it.  
16 Q. Okay. And look at December 13th, 2006 letter.  
17 A. Yes.  
18 Q. Okay. Was the past due payment incorrect there  
19 as well?  
20 A. It was.  
21 Q. Okay. And was it, what else was wrong with it  
22 besides the twenty-seven hundred dollar  
23 inaccuracy?  
24 A. Late charges of ten dollars have been put on the  
25 account, and there's no provision for it.

Page 67

1 Q. There's no provision, oh, because you're  
2 contending that you are not late on any of the  
3 payments?  
4 A. Well, even, what's even more bizarre than that,  
5 Jana, is it's not even a part of the note.  
6 Q. There's not a condition for late charges?  
7 A. It's not ten dollars.  
8 Q. Okay. What was the late charge, do you recall or  
9 we can look it up?  
10 A. It's five percent of the next payment.  
11 Q. So, it could be, I guess, let's take a look at  
12 it. Okay. So, you're looking for the five  
13 percent is, you're looking at the note on page  
14 three of four of the note is --  
15 A. I've got it over here.  
16 Q. Okay. And that's Exhibit --  
17 A. Two.  
18 Q. -- Two. Exactly. And if you look on page three  
19 of four of the provisions, page three of four of  
20 the note.  
21 A. Yes.  
22 Q. Okay. And that's the five percent of the  
23 payment?  
24 A. Yes.  
25 Q. And were any of your payments late?

Page 68

1 A. No.  
2 Q. None of your payments were late; is that a yes?  
3 I mean, did you have --  
4 A. None of my payments were late is correct.  
5 Q. Okay. Okay. So, next, the next demand, so you  
6 were looking at July 13th, 2005. We're looking  
7 at December 13th, 2006.  
8 A. Uh-huh.  
9 Q. Take a look at, and you received, do you remember  
10 receiving January 19th, 2007 demand letter,  
11 correct?  
12 A. Yes.  
13 Q. Okay. And then the March 20th, 2007 demand  
14 letter?  
15 A. Yes.  
16 Q. Okay. So, did you ever call anyone, I know you  
17 called them many times to discuss what you allege  
18 was improper booking of the twenty-seven hundred  
19 dollars. Did you ever address the late charge  
20 issue?  
21 A. Yes.  
22 Q. Okay. And did you address the late charge issue  
23 in 2003 or when you received a, I could be wrong,  
24 excuse me, the first demand letter that you  
25 received, I believe, it might have been 2004, but



# EXHIBIT B

# BROCK & SCOTT PLLC

## COLUMBIA OFFICE

WESTPARK CENTER  
3800 FERNANDINA ROAD  
SUITE 110  
COLUMBIA, SC 29210  
PHONE 888-728-9953  
FAX 888-207-9353

[www.brockandscott.com](http://www.brockandscott.com)

THOMAS E. BROCK \*  
GREGORY A. SCOTT \*  
JAMES P. BONNER \*  
MARK A. PEARSON \*\*  
BRIAN L. CAMPBELL \*\*  
SEAN M. CORCORAN \*  
MARTIN HARRISON \*

ASHEVILLE, NC  
CHARLOTTE, NC  
RALEIGH, NC  
WILMINGTON, NC  
WINSTON-SALEM, NC

COLUMBIA, SC

FRANKLIN, TN

\* Licensed in North Carolina

\*\* Licensed in North Carolina and South Carolina

July 10, 2009

Brent E. Bentrin  
10 Nicholson Street  
Charleston, SC 29407

VIA OVERNIGHT MAIL AND FACSIMILE TO 888-819-3724

RE: Loan Number: 000041200213089  
Property Address: 10 Nicholson Street, Charleston, SC  
B&S File No.: 09-07779

Dear Mr. Bentrin,

As you know, I represent Wachovia Bank, N.A. ("Wachovia") with regard to the above referenced mortgage loan account. This letter is meant to address to the concerns which you stated in your correspondence of April 28, 2009.

You expressed a belief that Wachovia "has been incorrectly amortizing this loan as a fixed rate payment as the payment amount of \$1,230.26 remained constant in a decreasing rate environment." I enclose herewith a copy of the Negotiable Promissory Note ("note") dated March 12, 2002 and bears your signature. I have highlighted the pertinent portion of the note on Page 1, which describes the variable rate feature of your loan. I have also highlighted a portion of Page 2, which explains that the payment amount remains constant for a period of 60 months and then may change in the 61<sup>st</sup> month (and every 61<sup>st</sup> month thereafter) while the interest rate varies.

With regard to the payment default, Wachovia advises that your account was two months delinquent on June 18, 2008. You were granted a 2 month extension, which essentially placed the two payments at the back of the loan which resulted in your account being due for the June 11, 2008 payment. I am informed that the ensuing payments were received and applied as follows:

July 10, 2009

Page 2

<u>Payment Due Date</u>	<u>Payment Received and Applied</u>
6/11/08	7/1/08
7/11/08	8/1/08
8/11/08	9/29/08
9/11/08	11/14/08

(The Notice of Intention to Foreclose was requested on November 14, 2009 several hours prior to application of the payment of 11/14/08. The letter was incorrect in that it included the September payment. I have included copies the loan payment history for your reference.)

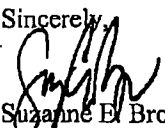
Please be advised that should you wish to reinstate your account, the amount needed to do so is \$13,035.62. This amount is good through 7/15/09.

Payments	(from: 10/11/08 to: 07/11/09 @ \$1,230.26 )	\$ 12,302.60
Late charges		\$ 83.02
Property valuation		\$ 75.00
Attorney fees		\$ 275.00
Foreclosure costs		\$ 300.00
<b>TOTAL</b>		<b>\$ 13,035.62</b>

Payment of the above amount must be remitted to **Wachovia Bank, National Association** in the form of a **cashier's check or money order** and mailed to this office to: Attn - Client Relations and received by the end of the business day on the "good through" date. **In addition**, you must provide proof that property taxes and senior mortgages are current in order to reinstate loan as well. You will need to request new reinstatement figures if you cannot meet the good through deadline.

I acknowledge that you have inquired as to the changes to the hazard insurance coverage on your property. Wachovia is investigating your claims and I will be in contact once the review has been completed.

Sincerely,



Suzanne E. Brown  
Attorney at Law  
Brock & Scott, PLLC

cc: Wachovia Bank N.A.

THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE.



Wachovia Bank, N.A.  
Retail Credit Collections  
FL0503  
P.O. Box 52117  
Jacksonville, FL 32201-2117

EXHIBIT A

11/17/2008  
41,430.55,045  
Brent E Bentrim  
49 Archdale St  
Charleston, SC 29401

VIA CERTIFIED AND REGULAR MAIL

**NOTICE OF INTENTION TO FORECLOSE**

RE: Account Number: 000041200213089  
Property Address: 10 Nicholson Street, Charleston, SC 29407

Dear Wachovia Customer(s):

As you are aware, Wachovia Bank, N.A. holds a recorded lien on the real property listed above, in the amount of \$182,700.00.

Your loan payments are past due, which puts you in default of your loan agreement. As of 11/17/2008 you owe the following:

Principal and Interest	\$4,847.07
Current Late Charges	\$73.02
<b>TOTAL DUE</b>	<b>\$4,920.09</b>

You may cure your default by paying the aforesaid amount by bank check, money order, or other certified funds so that it is received at the following address on or before 12/14/2008: **Wachovia Bank, N.A., Retail Credit Collections, FL0503, P.O. Box 52117, Jacksonville, FL 32201-2117.**

If your account is not brought current by 12/14/2008, then we may start foreclosure proceedings.

Among other things, the purpose of this letter is to make one final attempt to possibly avoid acceleration or foreclosure and reach an agreement with you to satisfy your delinquent loan account. There are alternatives to foreclosure and its severe consequences. Wachovia Bank, N.A. is willing to consider your individual circumstances and be flexible as possible in attempting to make alternatives available to you. However, you or your attorney must contact this office to discuss your situation if foreclosure is to be avoided. This letter is not to be considered a definite offer to accept an alternative to foreclosure. Likewise, this letter is not a waiver of the acceleration of your mortgage or a waiver of any of the bank's rights or remedies under the loan documents.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration, your total obligation will be immediately due and payable without further notice or demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable foreclosure fees and costs. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.

579534 (Rev 00)

Generic Breach Letter  
042007-17900-005087-656031

0000 000614 Rev 01



Wachovia Bank, N.A.  
Retail Credit Collections  
FL0503  
P.O. Box 52117  
Jacksonville, FL 32201-2117

EXHIBIT A

11/17/2008

VIA CERTIFIED AND REGULAR MAIL

Page 2

After acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the loan, depending on the terms of the loan documents. We encourage you to review the provisions of the loan documents. Please be aware that, after acceleration of the debt, there may be expenses and fees and costs incurred by us to enforce our lien in addition to the overdue amount. Any payment to reinstate the loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the loan will be returned, and will not stop any foreclosure proceedings that have begun. Prior to submitting payment, you may wish to call us to verify the exact amount due.

There may be possible availability of financial assistance for curing a default from programs operated by the State or Federal Government or non-profit organizations. You may wish to call the number below to ascertain whether you qualify for assistance.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Wachovia has not been notified of your bankruptcy case. If the foregoing applies to you, it is very IMPORTANT that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

**Please note:**

- If you are eligible for protection under the Servicemembers Civil Relief Act, or similar state statute, please contact us immediately.
- We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you disagree with the assertion that a default has occurred or with the correctness of the calculation of the amount required to cure the default, you may contact Retail Credit Collections at 1 (800) 829-2474.

Sincerely,

Retail Credit Collections  
1 (800) 829-2474

579534 (Rev 00)

Generic Breach Letter  
042007-17900-005087-656031

0000 000614 Rev 01



WACHOVIA

Wachovia Bank N.A.  
FL 0503  
Collection Shared Services  
PO Box 52117  
Jacksonville, FL 32201-2117  
Tel 866-509-7091

December 13, 2006

Brent E. Bentrim  
10 Nicholson Street  
Charleston, SC 29407

7006 0100 0007 0475 8872

US Postal Service  
CERTIFIED MAIL RECEIPT  
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PS Form 3800, June 2002 See reverse for instructions

**NOTICE OF INTENTION TO FORECLOSE**

RE: 000041200213089

Dear Wachovia Customer:

As you are aware, Wachovia Bank N.A. holds a recorded mortgage on 10 Nicholson Street Charleston, SC 29407, in the amount of \$182,700.00.

Your mortgage payments are past due which puts you in default of your loan agreement. As of 12/13/2006 you owe the following:

Past due payments:	\$4,021.05
Current Late Charges:	\$10.00
Accumulated late charges:	\$20.00
Other charges:	\$95.00
<b>Total due to reinstate and cure default:</b>	<b>\$4,146.05</b>

You may cure your default by paying the aforesaid amount by bank check, money order, or other certified funds so that it is received at the following address on or before 1/12/2007:

Wachovia Bank N.A.  
Consumer Credit Department  
P.O. Box 13327  
Roanoke, VA 24040

# EXHIBIT C

Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
 2 COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
 ) CASE NO. 2011-CP-10-2946

3

4 BRENT E. BENTRIM, )  
 5 Plaintiff, )  
 6 v. )  
 7 WELLS FARGO BANK, N.A., )  
 8 Defendant. )

9

10

11 VIDEOTAPED DEPOSITION OF  
 12 TRACY THOMAS  
 13 10:03 a.m.  
 14 August 6, 2013  
 15 1301 Riverplace Boulevard, Suite 1609  
 16 Jacksonville, Florida

17 Richetta R. Bright, Registered Professional Reporter

18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

1 INDEX OF EXAMINATION

2 WITNESS: Tracy Thomas Page

3 DIRECT EXAMINATION

4 By Mr. Varnado 5

5

6 INDEX TO EXHIBITS

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23

24 (Exhibits attached to the original transcript.)

25

Page 2

1 APPEARANCES OF COUNSEL

2

3 On behalf of the Plaintiff:  
 4 ROBERT B. VARNADO, ESQUIRE  
 5 Brown & Varnado, LLC  
 6 103 Church Street  
 7 Mount Pleasant, South Carolina 29464  
 8 (843) 737-7300

9

10 On behalf of the Defendant:  
 11 JANA B. BAKER, ESQUIRE  
 12 Womble, Carlyle, Sandridge & Rice, LLP  
 13 5 Exchange Street  
 14 Charleston, South Carolina 29401  
 15 (843) 722-3400

16

17 Also Present: Miriam Beckford, Videographer  
 18 Brent E. Bentrим

19

20

21

22

23

24

25

Page 4

1 THE VIDEOGRAPHER: This is tape number 1

2 to the videotaped deposition of Tracy Thomas, in

3 the matter of Brent Bentrим versus Wells Fargo

4 Bank, being heard before the Court of Common

5 Pleas, Ninth Judicial Circuit, Case No.

6 2011-CP10-2946.

7 This deposition is being held at Esquire

8 Deposition Solutions, located at 1301 Riverplace

9 Boulevard, Jacksonville, Florida. Today's date

10 is August the 6th, 2013. The time on the record

11 is 10:03 a.m. My name is Miriam Beckford. I'm

12 the videographer. The court reporter is

13 Richetta Brown [sic].

14 Counsel, will you please introduce

15 yourselves and affiliations, and the witness

16 will be sworn.

17 MR. VARNADO: My name is Rob Varnado, and

18 I am counsel for the plaintiff.

19 MS. BAKER: My name is Jana Baker, and I

20 am counsel for Wells Fargo, and I'm with the

21 firm Womble, Carlyle, Sandridge & Rice.

22 THE COURT REPORTER: Would you raise your

23 right hand? Do you swear or affirm that the

24 testimony in this cause will be the truth, the

25 whole truth, and nothing but the truth, so help



800.211.DEPO (3376)  
EsquireSolutions.com

Page 133

1 Q. You don't change that?  
2 A. The only thing would have been adding  
3 Mr. Bentrims name.  
4 Q. Okay. Did you -- were you part of --  
5 were you ever asked to help locate where the note was  
6 found when it was found?  
7 A. Can you rephrase that?  
8 Q. Yeah. I mean, we've already established  
9 that it was checked out in 2009. And it was  
10 rechecked into the vault 20 days after your lost note  
11 affidavit in 2012.  
12 A. Yes.  
13 Q. Okay. Did you know that it had been  
14 rechecked in?  
15 A. When?  
16 Q. In February 27 of 2012.  
17 A. No.  
18 Q. Why would you not know that information?  
19 A. I was -- I had no dealings with this  
20 account until I was made aware by counsel that you  
21 wanted to take my deposition.  
22 Q. Okay. So you wouldn't have followed up  
23 on it?  
24 A. No.  
25 Q. Okay. And who checked it back in?

Page 134

1 A. It was received from an attorney.  
2 Q. Okay. And then who checked it out next,  
3 based on ECaR?  
4 A. Sheila Sowers.  
5 Q. Okay. And when -- that was in 2013?  
6 A. I believe it was -- It was either late  
7 2012 or early 2013. It would have been around the  
8 time you had discussions with counsel about taking my  
9 deposition.  
10 Q. How do you know that? Just out of  
11 curiosity.  
12 A. Because --  
13 Q. Don't say anything they told you. Just  
14 how would you know it?  
15 A. Because I was -- I was brought back into  
16 it.  
17 Q. Okay. I don't want to know anything more  
18 that you talked about with Ms. Baker or Mr. Laney or  
19 anyone at their firm or anyone with your counsel  
20 group. Fair?  
21 A. Fair.  
22 MR. VARNADO: I want to take another  
23 break.  
24 THE VIDEOGRAPHER: Okay. We're off the  
25 record at 1:19 p.m.

Page 135

1 (Break taken)  
2 THE VIDEOGRAPHER: We're back on the  
3 record at 1:26 p.m.  
4 BY MR. VARNADO:  
5 Q. Did you bring a copy of SHAW with you  
6 today or a SHAW print screen?  
7 A. I brought copies of the two screens that  
8 I would have looked at.  
9 Q. Do you have them with you?  
10 A. Yes.  
11 Q. May I see them, please?  
12 MR. VARNADO: Let's go back off the  
13 record, then --  
14 THE VIDEOGRAPHER: Okay.  
15 MR. VARNADO: -- save video space.  
16 THE VIDEOGRAPHER: We're off the record  
17 at 1:26 p.m.  
18 (Break taken)  
19 THE VIDEOGRAPHER: We're back on the  
20 record at one 1:37 p.m.  
21 BY MR. VARNADO:  
22 Q. Ms. Thomas, we stepped out of the room to  
23 look at the documents that you brought with you today  
24 in response to the deposition notice, I assume. Can  
25 you describe for me, generally speaking, what the

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1 documents are and why you selected them to bring with  
2 you?  
3 A. Well, you didn't -- I mean, you filed a  
4 notice of duces tecum --  
5 Q. Uh-huh.  
6 A. -- but you didn't attach anything on what  
7 to bring.  
8 Q. Okay.  
9 A. So I brought a payment history, note and  
10 mortgage, some of the closing documents, updated  
11 payoff figures good through today, and screen  
12 shots -- two screen shots of SHAW that I would have  
13 used in my review and execution of the lost note  
14 affidavit.  
15 Q. You didn't bring the ECaR stuff, though?  
16 A. No.  
17 Q. Why not? You just didn't feel it was  
18 germane?  
19 A. Well, you -- I mean, you didn't really  
20 give us anything --  
21 Q. But you studied it pretty hard. You knew  
22 the dates and names of people, right?  
23 A. Yes.  
24 Q. So we could still get an ECaR printoff --  
25 A. Sure. If you --



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1 Q. -- through you, right?  
2 A. -- request it, we --  
3 Q. Right.  
4 A. -- we could --  
5 Q. Okay. I'm going to go ahead and request  
6 it. If you could get that to Ms. Baker, I'd sure  
7 appreciate it.  
8 A. Okay.  
9 Q. Okay. I am going to -- I think it breaks  
10 down into four sections, I guess. Or maybe not. Is  
11 there any particular order that it was in? We looked  
12 at it. I don't think we scrambled it. I'm going to  
13 mark as Exhibit No. 7 the screen shots. Are these  
14 that I'm handing to you in Exhibit 7?  
15 (Exhibit-7 marked for identification.)  
16 A. This is separate.  
17 Q. Okay. Thank you. Exhibit -- what -- can  
18 you describe Exhibit 7, what it is?  
19 A. This is the STLN, Page 1 and STLN, Page 3  
20 from SHAW.  
21 Q. Okay. What does STLN stand for, to your  
22 knowledge?  
23 A. I don't know.  
24 Q. What do you --  
25 A. It's just the page.

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1 Q. The pages that you would use for SHAW?  
2 You told me earlier you would use two pages. These  
3 are the pages you would have used?  
4 A. Yes.  
5 Q. Okay. Which is the first page?  
6 A. This.  
7 Q. Exhibit 7?  
8 A. Yes, the page --  
9 Q. Okay.  
10 A. Page 1 at the top.  
11 Q. Okay. And then, this is Page 2?  
12 A. This is Page 2 of them, but Page 3 of  
13 SHAW.  
14 Q. Okay. Just for our -- the sake of  
15 clarity, we're going to make the second page, which  
16 is Page 3 of SHAW -- we're going to make that Exhibit  
17 No. 8; is that fair?  
18 A. Yes.  
19 (Exhibit-8 marked for identification.)  
20 Q. All right. So you -- you would have  
21 looked at 7 and 8?  
22 A. Yes.  
23 Q. Does 7 and 8 contain a date on them now?  
24 A. Yes.  
25 Q. What date does it show?

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1 A. I pulled these August 1st of 2013.  
2 Q. Do you believe that anything substantive  
3 changed in SHAW between August 1st, 2013, and  
4 February 2012?  
5 A. No.  
6 Q. Okay. Where is the original loan amount?  
7 A. Original amount, 182,7-.  
8 Q. Okay. Where is the actual loan, the loan  
9 balance?  
10 A. Current loan balance, 176- -- or  
11 \$176,879.20.  
12 Q. What is this \$180,000 proceeds amount?  
13 A. It's the amount financed.  
14 Q. How can the amount financed be less than  
15 the original amount?  
16 A. The original amount is including the  
17 \$2700 loan origination fee.  
18 Q. Don't you think that the 2700 origination  
19 fee was actually part of the 180- and not separate  
20 from?  
21 A. It should not have been part of the 180-.  
22 Q. But it -- okay. Now, you also brought  
23 the HUD, which back in those days only had two pages,  
24 right?  
25 A. Yes.

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1 Q. We're going to mark the HUD as Exhibit 9.  
2 And we know this was documents that your attorneys  
3 have already handed over, because it's Wells Fargo 19  
4 and Wells Fargo 20.  
5 (Exhibit-9 marked for identification.)  
6 A. Yes.  
7 Q. I'm going to hand you the HUD. Do you  
8 know how to read HUD?  
9 A. Yes.  
10 Q. Did you take a closing or residential  
11 real estate course at Santa Fe --  
12 A. Residential --  
13 Q. -- as part of your paralegal training?  
14 A. Residential real estate, yes.  
15 Q. Did you do HUD as part of that?  
16 A. I don't remember.  
17 Q. Were you taught to do HUDs? When did you  
18 learn to do HUDs?  
19 A. It would have been through the bank, I  
20 believe.  
21 Q. When I say HUD, I mean U.S. Department of  
22 Housing and Urban Development settlement statements.  
23 They're a standard government form that's to be used  
24 in all transactions, correct?  
25 A. Yes.



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1 Q. Okay. So you've learned how to read  
2 them?  
3 A. Yes.  
4 Q. Where is the -- whose column is whose?  
5 A. So this would be the borrower's column,  
6 and this would be the seller's.  
7 Q. What's the loan amount?  
8 A. \$180,000.  
9 Q. And you're referring to Page 2, right?  
10 A. Yes.  
11 Q. Then it has -- where is the 2700?  
12 A. Paid from borrower's funds at settlement.  
13 Q. So that means it was part of the one  
14 hundred -- the 180-, correct?  
15 A. Yes.  
16 Q. Okay. So right here, SHAW is wrong on  
17 Exhibit 7?  
18 A. No.  
19 Q. Why is SHAW not wrong? Why doesn't the  
20 HUD trump SHAW?  
21 A. The HUD appears to be incorrect.  
22 Q. The HUD was signed and accepted by  
23 everybody. It's the closing document. SHAW is  
24 incorrect, don't you agree?  
25 MS. BAKER: Object to the form.

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1 MR. VARNADO: Thanks.  
2 BY MR. VARNADO:  
3 Q. You can answer.  
4 A. We believe a mistake was made by the  
5 closing attorney and including the \$2700 in -- for  
6 loan origination fee.  
7 Q. How do you know that?  
8 A. Because it shouldn't have been included.  
9 Q. I know. But how do -- how do you know  
10 that? The first time you picked up this file was  
11 when you were asked to do the loan -- the lost note  
12 affidavit. Then the next time you picked the file up  
13 was when you were notified that I was seeking to take  
14 your deposition. How do you know that the closing  
15 attorney messed up?  
16 A. We -- I discussed the account with our  
17 research group.  
18 Q. Okay. Who did you discuss it with at  
19 research?  
20 A. Darlene Lella.  
21 Q. Okay. And who was Ms. Lella? What did  
22 she do at the research group?  
23 A. I don't know what her exact title is, but  
24 she works in the servicing research group.  
25 Q. So even though the HUD shows that the

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1 2700 on Page 2 of the HUD was paid out of the  
2 borrower's share of the 180-, y'all just consider  
3 that incorrect, and, therefore, you're going with  
4 what you put in SHAW; is that fair?  
5 A. I go by what is in SHAW, correct.  
6 Q. Okay. Even when SHAW disagrees with the  
7 HUD-1, that doesn't matter?  
8 MS. BAKER: Same objection.  
9 Q. You can answer.  
10 A. I did not see the HUD when I executed the  
11 lost note affidavit.  
12 Q. I thought it was part of CLIPR?  
13 A. It is.  
14 Q. And you said you looked at the CLIPR  
15 stuff as part of that.  
16 A. Yes.  
17 Q. But you didn't look at the HUD --  
18 A. I --  
19 Q. -- you didn't study it?  
20 A. No, I did not study the HUD.  
21 Q. Okay. I'm going to mark Exhibit No. 10,  
22 the First Union adjustable rate loan information  
23 statement.  
24 (Exhibit-10 marked for identification.)  
25 A. Yes.

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1 Q. Is that part of CLIPR, too?  
2 A. Yes.  
3 Q. Would that have been a document you would  
4 have studied as you did the lost note affidavit in  
5 order to confirm whether the information was correct?  
6 A. I would not have studied it, no.  
7 Q. Because you had SHAW, right?  
8 A. Correct.  
9 MR. VARNADO: Madam Court Reporter, do  
10 you mind if I do the stickers? Thank you.  
11 Exhibit No. 11.  
12 (Exhibit-11 marked for identification.)  
13 BY MR. VARNADO:  
14 Q. These documents that you brought with you  
15 today are documents you downloaded -- let me start  
16 over again.  
17 You actually -- I'm going to show you  
18 what's been marked as Exhibit No. 11. And it is a  
19 copy of the negotiable promissory note, right?  
20 A. This is a copy of, yes.  
21 Q. That's not a document you downloaded from  
22 CLIPR; that's a document that you received from your  
23 attorney, right?  
24 A. Yes.  
25 Q. Because it's got the Wells Fargo Bates



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1 stamp on the bottom --  
2 A. Yes.  
3 Q. -- right?  
4 So you really didn't download that one  
5 from CLIPR, because that one doesn't have a Page 5,  
6 does it?  
7 A. It -- I did not personally pull this one,  
8 no.  
9 Q. So that's not -- that's not the real  
10 CLIPR version of the promissory note?  
11 A. I don't -- I don't know.  
12 Q. Okay. When you were getting ready for  
13 today and you looked at CLIPR, did you see Page 5 on  
14 the CLIPR version?  
15 A. I don't recall if I did or not?  
16 Q. Wouldn't that be important to you?  
17 Because you know that that's something that's  
18 supposed to be there?  
19 MS. BAKER: Asked -- objection. Asked  
20 and answered.  
21 MR. VARNADO: You know you're not  
22 supposed to coach the witness, so --  
23 MS. BAKER: I'm not coaching.  
24 MR. VARNADO: -- just object to the form  
25 of the question, please.

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1 BY MR. VARNADO:  
2 Q. Isn't that something that you would have  
3 looked at or looked for or wanted to know about?  
4 A. I would have looked at the note. I don't  
5 recall if there was a Page 5 or not. Sometimes the  
6 sticker is on the front page of the note. I don't  
7 know. I don't recall.  
8 Q. Okay. That's not the -- the real note  
9 that was found, either, is it?  
10 A. This is a copy. So, no, it's not the  
11 original note.  
12 (Exhibit-12 marked for identification.)  
13 Q. Okay. Exhibit 12 is the mortgage. Here  
14 we go. Before we get to this, is this the mortgage?  
15 A. This is an unrecorded copy of the  
16 mortgage. Or no, here's the recording.  
17 Q. It's the recordation on it.  
18 A. Yeah, here it is.  
19 Q. Again, this is something that you got  
20 from your lawyers, not from CLIPR?  
21 A. Correct.  
22 Q. Because the Wells Fargo Bates stamp is on  
23 the bottom?  
24 A. Yes.  
25 Q. Okay. This is part of your file. This

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1 is -- that you brought today. Again, it came from  
2 your attorneys, because it's got a Wells Fargo  
3 sticker on it -- I mean, a Wells Fargo Bates stamp.  
4 I'm naming it Exhibit No. 13. What is this?  
5 MS. BAKER: Just for the record, can you  
6 name the Bates number there, please?  
7 MR. VARNADO: WF 16.  
8 BY MR. VARNADO:  
9 Q. We've marked this as Exhibit 13 to your  
10 deposition. It's Bates-stamped WF 16. Does it go  
11 with any of the exhibits that we previously  
12 discussed?  
13 A. I believe it goes to the mortgage.  
14 Q. Okay. Is it --  
15 A. 8 --  
16 Q. Oh, because it's got --  
17 A. 1 of 8.  
18 Q. -- Page 1 of 8?  
19 Okay. I'm going to take the exhibit --  
20 MR. VARNADO: Counsel, with your  
21 permission, I'm going to not have this be  
22 Exhibit 13.  
23 MS. BAKER: That's fine, yeah.  
24 BY MR. VARNADO:  
25 Q. Okay. So we're going to append WF 16 to

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1 Exhibit No. 12, again WF 9.  
2 Okay. More screen shots. Or do these go  
3 together? Do they go with the previous exhibit?  
4 There's three documents I'm handing to you.  
5 A. This --  
6 Q. Now, these look like you --  
7 A. -- goes with those two right there.  
8 Q. These two on top?  
9 A. On the bottom.  
10 Q. What about this?  
11 A. That is --  
12 Q. Goes here?  
13 A. Goes here.  
14 Q. All right. We'll make this Exhibit 13  
15 that's in your hand.--Can you describe for me, ma'am,  
16 what is in Exhibit 13, what it is?  
17 (Exhibit-13 marked for identification.)  
18 A. These are updated payoff figures good  
19 through the day of today, as well as screen shots  
20 showing where these figures came from.  
21 Q. Let me see that, please. While I look  
22 these over, can you tell me where these go?  
23 A. This one is First Union itemization of  
24 amount financed. This is -- shows that the late  
25 charge maximum set to the account was \$10 per



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1 charge --  
2 Q. Okay.  
3 A. -- 120 per year.  
4 Q. All right. Which one should we make 14,  
5 the First Union document?  
6 A. Sure.  
7 (Exhibit-14 marked for identification.)  
8 Q. What's this?  
9 A. That's the itemization of amount  
10 financed.  
11 Q. Now, on Exhibit No. 14, I'm going to  
12 again point out to you that it says the amount  
13 financed is \$180,000. That's -- and that is a bank  
14 document prepared by First Union for 180,000. But  
15 that is inconsistent with SHAW. Would you agree  
16 with --  
17 A. No. It's a total of items 1 through 4,  
18 182,700.  
19 Q. But the amount financed at the bottom,  
20 the last, is \$180,000?  
21 A. Correct. SHAW says amount financed,  
22 180,000.  
23 Q. Okay. Where did 13 get off to?  
24 A. You took it off.  
25 Q. There it is.

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1 A. Sorry.  
2 (Exhibit-15 marked for identification.)  
3 Q. You described that as a \$10 late fee?  
4 A. Yes. This shows that the late charge --  
5 the maximum amount per charge for the late charge was  
6 \$10 per charge, \$120 per year.  
7 Q. Where is that in the note that allows you  
8 to do that?  
9 A. The note gives us the authority to charge  
10 a late charge up to 5 percent.  
11 Q. Show me where that is in the note.  
12 A. If you receive any payment 15 days or  
13 more after the due date, I agree to pay you a late  
14 charge of 5 percent of my payment.  
15 Q. Not less than 5 percent or up to 5  
16 percent, correct?  
17 A. It's a benefit to your customer or to  
18 your client that it was only \$10.  
19 Q. Do you know if other late fees were --  
20 were charged and assessed? Do you know if other late  
21 fees were charged and assessed?  
22 A. There were multiple late fees charged to  
23 this account throughout the life of the loan.  
24 Q. More than \$10?  
25 A. It was \$10 per charge.

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1 Q. What about -- do you think the 5 percent  
2 was charged, too?  
3 A. No.  
4 Q. You're sure?  
5 A. Not that I've seen, it was not.  
6 Q. Because it's not on SHAW?  
7 A. Correct.  
8 Q. Because SHAW controls, right?  
9 MS. BAKER: Asked and answered.  
10 A. SHAW is the system of record.  
11 Q. Right. So it's the one that you rely  
12 on --  
13 A. Yes.  
14 Q. -- to do the lost note affidavit in your  
15 testimony today, correct?  
16 A. Yes.  
17 Q. Okay. All right. Now, we have the SHAW  
18 transaction history. And it is a 14-page document.  
19 And we're going to make that Exhibit No. 16. All  
20 right.  
21 (Exhibit-16 marked for identification.)  
22 MS. BAKER: For the record, what was  
23 Exhibit 15, please?  
24 MR. VARNADO: Exhibit 15 is this  
25 document.

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1 MS. BAKER: Okay.  
2 MR. VARNADO: We're going to lay them out  
3 here because they're going to get all messed up  
4 otherwise.  
5 BY MR. VARNADO:  
6 Q. All right. Let me ask you this, I'm  
7 going to hand you this 14-page exhibit. I assume you  
8 reviewed this before this morning, correct?  
9 A. Yes.  
10 Q. Okay. This is from SHAW, right, this  
11 14-page document?  
12 A. It's from CRIS.  
13 Q. I'm sorry. It is from CRIS, but it shows  
14 SHAW transactions, correct?  
15 A. Yes.  
16 Q. Do you consider it to be authoritative in  
17 the same manner that SHAW information is  
18 authoritative?  
19 A. The information contained in this payment  
20 history is pulled from SHAW. So, yes.  
21 Q. And you would consider it to be  
22 correct --  
23 A. Yes.  
24 Q. -- right?  
25 Okay. I'm going to ask you to explain



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1 some things that I just don't understand. If you can  
2 help explain them for me as a bank officer, someone  
3 who has prepared for this and understands how this  
4 information is generated. This would have been very  
5 similar to the information you looked at when you did  
6 the lost note affidavit in 2012, correct?  
7 A. I didn't look at the payment history in  
8 2012 --  
9 Q. Okay.  
10 A. -- for the lost note affidavit.  
11 Q. Fair enough. So you didn't look at the  
12 CRIS information 2012. But you did look at it in  
13 preparation for today, right?  
14 A. Yes.  
15 Q. Does anything in here give you pause or  
16 say this can't be accurate or correct?  
17 A. No.  
18 Q. You know how to read it. You've already  
19 told me that you understood how these bank documents  
20 work and how they go together, correct?  
21 A. Yes.  
22 Q. And that was part of the lost note  
23 affidavit, right?  
24 Okay. What is the loan -- the actual  
25 loan amount? Not the original, but what's been

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1 loaned.  
2 A. The current balance is \$176,879.20.  
3 Q. Do you mind if I take this back real  
4 quick?  
5 A. Yes.  
6 Q. All right. And then what was the -- this  
7 column over here on the far right in the column  
8 section. It says Prim Balance. That means primary  
9 balance, correct?  
10 A. Principal balance.  
11 Q. Principal balance, rather. I'm sorry,  
12 Prin. What is that, principal balance?  
13 A. As of this date, October 6th, 2010, that  
14 was the amount of the principal balance.  
15 Q. Okay. And then this document is the  
16 first page, right, the statement summary? And then  
17 the next page of it, Page 2 of 14, goes back to  
18 3/12/2002, correct?  
19 A. Yes.  
20 Q. And what is its principal balance?  
21 A. That says 179,576.34.  
22 Q. So that was the principal balance?  
23 A. No.  
24 Q. Well, why is that wrong?  
25 A. It's not wrong. When First Union and

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1 Wachovia merged, I don't know why, but for whatever  
2 reason, the tallying of the principal balance didn't  
3 convert over to the -- whatever the converted systems  
4 were. If you add all payments up until the time of  
5 the merger and the first time of the principal  
6 balance -- again, if you add all the principal paid,  
7 you'll get this 179,576.34 from the 182,7-.  
8 Q. But this is a -- this is a -- this is a  
9 CRIS document, right? It's a Wells Fargo document.  
10 It says the principal balance at the time of the  
11 first payment was 179-, which is not the amount  
12 loaned, nor the amount of the -- that was on the  
13 note, however you describe it, correct?  
14 A. Yes.  
15 Q. And then it has zeros. What's this zero  
16 balance? How can it be a zero balance?  
17 A. I just explained that to you.  
18 Q. Okay. I didn't understand it. I'm  
19 asking you a new question, the zero balance. Can you  
20 explain it one more time, then?  
21 A. When Wachovia and First Union merged, for  
22 some reason, the tallying of the principal balance  
23 after these payments were made --  
24 Q. Uh-huh.  
25 A. -- did not come through.

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1 Q. Okay. Do you believe this to be an  
2 accurate document?  
3 A. Yes.  
4 Q. Subject to what you've just described --  
5 A. Yes.  
6 Q. -- do you believe this to be an accurate  
7 document? Do you believe this document is in any way  
8 tampered with?  
9 A. Not to my knowledge.  
10 Q. Okay. And who -- who would be able to  
11 even go into CRIS to make changes like that; do you  
12 even know?  
13 A. I believe our servicing department has  
14 that capability.  
15 Q. Okay. Well, let me ask you this -- we're  
16 going to go back to Exhibit No. 3, if you don't mind  
17 me giving it to you. This is sort of the same thing,  
18 isn't it? This is a CRIS document --  
19 A. Yes.  
20 Q. -- Exhibit No. 3, produced by your  
21 attorneys here. Okay? Does it sort of have the same  
22 information that's here on this SHAW transaction,  
23 Exhibit No. 16?  
24 A. Essentially, yes.  
25 Q. Essentially. Okay. But -- and doesn't



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1 it, down here at the bottom, say -- what's that first  
2 date? Can you read that for me? My eyesight is  
3 poor.  
4 A. May 26th, 2002.  
5 Q. Now, did that correspond to Exhibit 16,  
6 Page 2 of 14?  
7 A. May 26th, 2002, right here.  
8 Q. Okay. Now, this has principal balances  
9 on it.  
10 A. Yes.  
11 Q. How does that -- how did that happen?  
12 A. I don't know.  
13 Q. Did you change it?  
14 A. I did not pull that document, so I have  
15 no idea.  
16 Q. This is a document produced by your  
17 counsel. Have you ever seen this document before?  
18 This is a CRIS statement.  
19 A. I have seen it before. I did not pull  
20 this document. I did not alter this document.  
21 Q. How do you explain the discrepancy  
22 between this document and Exhibit 14?  
23 A. I don't know.  
24 Q. You're a bank officer, and you can't tell  
25 me, sitting here today, why Exhibit 3 is different

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1 than Exhibit 14, even though they describe the same  
2 loan?  
3 A. I don't want to speculate.  
4 Q. I'm asking you to tell me why they're  
5 different.  
6 MS. BAKER: I believe this question is  
7 asked twice and she answered.  
8 MR. VARNADO: That's all right. I can  
9 ask it again. And you cannot coach her.  
10 MS. BAKER: I'm not coaching. And I  
11 think I'm objecting to that comment on the  
12 video, as well.  
13 BY MR. VARNADO:  
14 Q. What was the interest rate on the loan,  
15 the original interest rate that would have been  
16 charged at the get-go?  
17 A. 4.99 percent.  
18 Q. I'm going to show you Exhibit No. 3.  
19 Does that have an interest rate at the beginning of  
20 the loan of 4.99 percent?  
21 A. No. It says 4.49 percent.  
22 Q. That's incorrect, isn't it?  
23 A. It appears to be.  
24 Q. Why is there a 4.49 percent there?  
25 A. Actually, the note was signed in March of

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1 2002. The interest rate can change every month, so  
2 the interest rate could very well have been 4.49  
3 percent at that time.  
4 Q. It's your contention that the interest  
5 rate is variable monthly on this note?  
6 A. Yes, it is.  
7 Q. And you think that it changed?  
8 A. It's possible.  
9 Q. Is that what happened, though? You're  
10 the one who has been studying this. You're the one  
11 who prepared the lost note affidavit. These are bank  
12 records. Is that what happened?  
13 A. I don't know. I didn't look at that.  
14 Q. Who prepared -- when you did your  
15 research, who created this document, Exhibit No. 3?  
16 A. I don't know.  
17 Q. Doesn't it usually have the name of the  
18 creator on it?  
19 A. No.  
20 Q. Do you know a woman named Helen Arnold?  
21 A. The name sounds familiar, yes.  
22 Q. Do you know -- if the name is familiar,  
23 how would -- where would you place it?  
24 A. Servicing in Roanoke.  
25 Q. So the -- so you think the interest rate

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1 might have changed, but it stayed static for -- until  
2 July 14th of 2003, and the principal balance is  
3 different than what you have here in the history of  
4 Exhibit 14?  
5 A. The interest rate changed August 1st of  
6 2003. Again, though, if you subtract the amount that  
7 went towards principal through each of these payments  
8 from 182,7-, you will get this 179,576.34.  
9 Q. That's not describing, though, the loan  
10 that Mr. Bentrin signed, is it?  
11 A. Yes, it is.  
12 Q. Y'all have changed the numbers different  
13 than the promissory note, correct?  
14 A. No.  
15 Q. Then how is there a difference between  
16 Exhibits 3 and 14, other than someone went in and  
17 manually changed CRIS?  
18 A. Again, I did not pull Exhibit 3. I  
19 pulled Exhibit 16.  
20 Q. I'm asking you, do you have any knowledge  
21 of why Exhibit 3 is different than Exhibit 14?  
22 A. No.  
23 Q. Can you explain how it could have  
24 happened?  
25 A. I don't know. I was not there. I don't



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1 want to speculate.  
2 Q. You have averred in your lost note  
3 affidavit and you've testified consistently that --  
4 today that you understand how all the documents of  
5 the bank work together. I'm asking you point blank,  
6 how is it possible for Exhibit 3 and Exhibit 14 to be  
7 at such discrepancy when they're purportedly showing  
8 the same loan?  
9 MS. BAKER: Again, asked and answered.  
10 Q. I've asked it a different way.  
11 A. You can ask it five times a different  
12 way, and each time my answer will be I don't know. I  
13 did not pull that document. I do not want to  
14 conclude something that may not be correct.  
15 Q. Did someone in another office change  
16 CRIS?  
17 A. I don't know.  
18 Q. Okay. Did anyone in your office change  
19 CRIS?  
20 A. I don't know.  
21 Q. Did you change CRIS?  
22 A. No.  
23 Q. Someone changed CRIS, though, correct?  
24 A. I don't know.  
25 THE VIDEOGRAPHER: Five minutes on the

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1 tape.  
2 MR. VARNADO: Let's take a break.  
3 THE VIDEOGRAPHER: We're off the record  
4 at 2:04 p.m.  
5 (Break taken)  
6 THE VIDEOGRAPHER: We're back on the  
7 record at 2:11 p.m.  
8 BY MR. VARNADO:  
9 Q. Back to Exhibit No. 3. This is a CRIS  
10 document, correct?  
11 A. Yes.  
12 Q. So it's supposed to be accurate, correct?  
13 A. Yes.  
14 Q. By the same token, it's not supposed to  
15 be inaccurate, right?  
16 A. Correct.  
17 Q. You're supposed to be able to rely on it,  
18 correct?  
19 A. Yes.  
20 Q. Okay. I'm going to draw your attention  
21 down to the bottom third of the page, Loan amount.  
22 Can you read what number that is?  
23 A. \$179,576.34.  
24 Q. So that is the correct loan amount,  
25 correct?

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1 A. No.  
2 Q. Why is that incorrect?  
3 A. I don't know.  
4 Q. Why are you sure that it's wrong?  
5 A. Because the note says that the original  
6 balance was \$182,700.  
7 Q. These transaction reports, 3 and 14, are  
8 not describing the note, are they?  
9 A. Yes, they are.  
10 Q. They are not accurate to the note, are  
11 they?  
12 A. Yes, they are.  
13 Q. When I asked you about the zero balances  
14 through September of 2003, your testimony is that  
15 that was a computing error?  
16 A. No.  
17 Q. What is -- what explains the zero  
18 balances again?  
19 A. When First Union and Wachovia merged, for  
20 some reason, the principal balance tallying in the  
21 system of record did not come through.  
22 Q. Okay. Then how did it come through in  
23 Exhibit No. 3?  
24 A. Again, I did not pull that document. I  
25 did not alter that document. I don't know how it got

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1 there, and I don't want to speculate as to how it  
2 could have been done.  
3 Q. Who pulled the document?  
4 A. I don't know.  
5 Q. Is it speculation to ask you what  
6 business practices would be legitimate business  
7 practices that would result in being interest  
8 calculations and -- and balance amounts being  
9 included which are different between 3 and 4 -- I  
10 mean, 3 and 14?  
11 A. Can you say that again?  
12 Q. Sure. Isn't there some legitimate  
13 explanation for why 3 and 14 are different?  
14 A. I'm sure there is.  
15 Q. Okay. Are you aware of any legitimate  
16 explanation for why 3 and 14 are different that is  
17 not speculation, but based on your experience as a  
18 bank officer and somebody who's familiar with these  
19 documents and aver that she was familiar with these  
20 documents in the lost note affidavit?  
21 MS. BAKER: I'm going to object to form.  
22 A. Again, I don't want to speculate.  
23 Q. I'm not asking you to speculate. I'm  
24 asking you what are the legitimate business reasons  
25 which would explain the discrepancy between 3 and 14.



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1 A. Probably to make it more customer  
2 friendly to edit this column instead of showing zero  
3 balances.  
4 Q. Then how would it be customer friendly to  
5 look at Page 2 of 14 of Exhibit 16 and the interest  
6 payments are different in these columns between 3 and  
7 14?  
8 A. I don't know.  
9 Q. Which one is right, 3 or 14?  
10 A. I don't know.  
11 Q. I'm asking you under oath which one  
12 accurately reflects the Bentrin loan more correctly,  
13 3 or 14?  
14 A. The original interest rate was 4.99  
15 percent. The interest rate can change on a monthly  
16 basis, based on the Wall Street Journal index.  
17 Q. What are those documents? Are those part  
18 of Exhibit --  
19 A. Those are a part of --  
20 Q. -- 16?  
21 A. -- 16, yes.  
22 Q. All right.  
23 A. It appears, based on the interest rate  
24 change history, the interest rate did not change  
25 until, I believe, August 1st, 2004.

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1 Q. Well, you have -- your attorneys have  
2 given me Exhibit 3 and you have brought me Exhibit  
3 16, and they are both supposed to show the same loan.  
4 Is that correct, yes or no?  
5 A. Yes.  
6 Q. And they differ not only on primary  
7 balance, but they diff-- back in 2002, but they  
8 also differ on the interest rate amount, correct?  
9 Because you can see the interest rate amount here is  
10 4.99, which is consistent with the note; yet Exhibit  
11 3 has 4.49, which is almost half a point --  
12 A. Yes.  
13 Q. -- which I assume for a bank is a big  
14 deal, correct?  
15 MS. BAKER: Object to form.  
16 Q. Isn't it a big deal to get -- be off .5?  
17 A. Yes.  
18 Q. Okay. So of these documents, which one  
19 is more accurate, 3, 16 or neither?  
20 A. I would say that they're -- they're both  
21 accurate. They're just a little different. I  
22 don't -- I don't know. All I can tell you is I  
23 pulled this document, this document pulled from the  
24 transaction records in SHAW.  
25 Q. You pulled SHAW, right?

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1 A. I pulled CRIS.  
2 Q. You pulled CRIS, right. I got it.  
3 All right. Back to 16 with the 0.00  
4 principal balances. Whatever problem there was was  
5 rectified when? What -- from looking at CRIS, can  
6 you tell me which -- what month? Was it September of  
7 '03?  
8 A. September 2nd, 2003, the principal  
9 balance is listed as 179,576.34.  
10 Q. Okay. So that -- whatever that error was  
11 is now no longer rectified; is that correct?  
12 A. There wasn't an error. It just -- it  
13 didn't -- for whatever reason, it didn't come over.  
14 Q. Okay. Whatever -- no editorial. It  
15 didn't come over, and now it's over; is that --  
16 A. Yes.  
17 Q. Okay. Now, that would have been back  
18 during the ACLS days, right?  
19 A. ACLS was a Wachovia loan system, yes.  
20 Q. So that would have been -- ACLS would  
21 have described the same thing, correct?  
22 A. Yes.  
23 Q. Okay. We have ACLS back here, don't we,  
24 which is Exhibit No. 4?  
25 A. Yes.

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1 Q. The first thing is loan established,  
2 179,576.34, correct?  
3 A. Yes.  
4 Q. So that's the loan amount, right,  
5 according to ACLS?  
6 A. That, again, is the loan amount at the  
7 conversion from First Union to Wachovia.  
8 Q. Okay. We were looking back at Exhibit  
9 No. 16, and I was curious about a charge on  
10 12/18/2006 -- December 18th, 2006. This is on Page 6  
11 of 14 of Exhibit 16, \$225. Do you know what that is  
12 in reference to? Can you -- sitting here today, can  
13 you tell me what that's about?  
14 A. No, I don't know what that is.  
15 Q. Does that look like a penalty, a late  
16 fee?  
17 A. I don't know what it is.  
18 Q. This loan was never sold, right?  
19 A. Correct.  
20 Q. Except it was sold?  
21 A. No, it wasn't.  
22 Q. Okay. I'm looking at the ALCS [sic]  
23 printout, Exhibit 4, provided by your counsel. The  
24 document begins WF 159. I'm looking at Page WF 167.  
25 I'm going to draw your attention to November of 2006.



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1 A. Okay.  
2 Q. 11/29/06, Trans Code 35995174504.20, Loan  
3 sold to pool:  
4 A. I don't know. I can tell you that it --  
5 it wasn't. I don't know why this line item is there,  
6 but it was never sold.  
7 Q. How do you know it wasn't sold, other  
8 than SHAW doesn't -- you told me earlier you know  
9 it's not sold because it's still in SHAW.  
10 A. Correct. So it wasn't in -- if it was  
11 sold, we wouldn't still have it in our -- in our  
12 records.  
13 Q. Is this ACLS wrong?  
14 A. I don't know why that line item is there.  
15 Q. Other than it actually got sold?  
16 A. It was not sold.  
17 Q. The only way you know it's not sold is  
18 that it's still in SHAW, correct?  
19 A. Correct.  
20 Q. All right.  
21 A. It's still in SHAW, and we still had the  
22 original loan documents in the vault at that time.  
23 Q. How do you know? Did you look back at  
24 the vault records in '06, the vault log on ECar?  
25 A. From my understanding, the loan documents

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1 were not checked out until Randy checked them out in  
2 February of 2009.  
3 Q. What if he sold the paper without  
4 transferring the note? How would you know? It's  
5 before -- it's right around the time you started.  
6 You were a -- you were a temp.  
7 A. The note follows the mortgage.  
8 Q. You say it like it's a fact, but how do  
9 you know that that's not what happened in this case?  
10 Because you have ACLS saying it sold for \$174,000.  
11 MS. BAKER: I'm going to object again to  
12 form.  
13 MR. VARNADO: Thank you.  
14 A. It was not sold.  
15 BY MR. VARNADO:  
16 Q. What if it was sold to a REMIC and then  
17 came back, is that possible? And that's why it's in  
18 SHAW and that's why you know about it?  
19 A. I've not seen that happen. That would be  
20 a first.  
21 Q. But -- so you're not aware that banks  
22 have bought back nonperforming or allegedly  
23 nonperforming instruments from -- sold to REMIC  
24 trustees? You don't know that?  
25 A. Why would we buy back a nonperforming

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1 loan if we've sold it already?  
2 Q. If you don't know the answer to that  
3 question, that means you don't -- you're not familiar  
4 with that -- that process, that that happens.  
5 MS. BAKER: Objection. Is there a  
6 question?  
7 MR. VARNADO: Yeah. And you're again  
8 trying to interfere with my questions.  
9 MS. BAKER: I'm not --  
10 MR. VARNADO: I'd please ask you not to  
11 do that.  
12 MS. BAKER: I'm objecting --  
13 MR. VARNADO: I did ask a question.  
14 MS. BAKER: -- just for the video.  
15 MR. VARNADO: Thank you. Your objection  
16 for the video is irrelevant since you're trying  
17 to interfere with my deposition.  
18 MS. BAKER: I think that should be --  
19 BY MR. VARNADO:  
20 Q. I'm going to ask you that question --  
21 MS. BAKER: -- that comment should be  
22 struck, because I'm not trying to interfere with  
23 your deposition.  
24 Q. I'm asking you again, do you know that  
25 banks have bought back allegedly nonperforming

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1 instruments from REMICs or trustees who are holding  
2 them in securitized bundles?  
3 A. No.  
4 Q. Again, you're relying on SHAW? SHAW  
5 controls your testimony, correct?  
6 A. Yes, I'm relying on our system of record.  
7 Q. Okay. And you have no explanation for  
8 the 11/29/06 sale for \$174,000?  
9 A. I have no information regarding that line  
10 item.  
11 Q. Which is part of your system of records?  
12 A. Yes. It was part of the ACLS system.  
13 Q. Okay. Which was -- after September 2003  
14 was accurate, correct?  
15 A. It's supposed to be, yes.  
16 MR. VARNADO: Okay. All right. We are  
17 going to do this. We'll go off the record.  
18 THE VIDEOGRAPHER: We're off the record  
19 at 2:25 p.m.  
20 (Break taken)  
21 THE VIDEOGRAPHER: We're back on the  
22 record at 2:29 p.m.  
23 MR. VARNADO: Ms. Thomas, thank you for  
24 your time and attention today. I appreciate it.  
25 I have no further questions at this time.



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1 MS. BAKER: I have no questions.  
 2 MR. VARNADO: And that concludes the  
 3 deposition, then.  
 4 THE VIDEOGRAPHER: This concludes the  
 5 deposition of Ms. Tracy Thomas on August the  
 6 6th, 2013, at 2:29 p.m.  
 7 (Deposition concluded at 2:29 p.m.)  
 8  
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1 REPORTER'S DEPOSITION CERTIFICATE  
 2  
 3 STATE OF FLORIDA)  
 4 COUNTY OF DUVAL )  
 5  
 6 I, Richetta R. Bright, Registered  
 7 Professional Reporter, certify that I was authorized  
 8 to and did stenographically report the deposition of  
 9 TRACY THOMAS; that a review of the transcript was  
 10 requested; and that the transcript is a true and  
 11 complete record of my stenographic notes.  
 12  
 13 I further certify that I am not a relative,  
 14 employee, attorney, or counsel of any of the parties,  
 15 nor am I a relative or employee of any of the  
 16 parties' attorney or counsel connected with the  
 17 action, nor am I financially interested in the  
 18 action.  
 19  
 20  
 21  
 22  
 23  
 24  
 25

DATED this 16th day of August 2013.

*Richetta R. Bright*  
 Richetta R. Bright, RPR

Page 174

1 CERTIFICATE OF OATH  
 2  
 3 STATE OF FLORIDA)  
 4 COUNTY OF DUVAL )  
 5  
 6 I, the undersigned authority, certify  
 7 that TRACY THOMAS personally appeared before me and  
 8 was duly sworn on August 6, 2013.  
 9  
 10 WITNESS my hand and official seal this 16th  
 11 day of August 2013.  
 12  
 13  
 14  
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*Richetta R. Bright*  
 Richetta R. Bright, RPR  
 Notary Public, State of Florida  
 My Commission No: EE 020293  
 My Commission Expires: September 9, 2014

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1 DEPOSITION ERRATA SHEET  
 2 Our Assignment No. 384624  
 3 Case Caption: Bentrin vs. Wells Fargo  
 4  
 5 DECLARATION UNDER PENALTY OF PERJURY  
 6 I declare under penalty of perjury  
 7 that I have read the entire transcript of  
 8 my Deposition taken in the captioned matter  
 9 or the same has been read to me, and  
 10 the same is true and accurate, save and  
 11 except for changes and/or corrections, if  
 12 any, as indicated by me on the DEPOSITION  
 13 ERRATA SHEET hereof, with the understanding  
 14 that I offer these changes as if still under  
 15 oath.  
 16 Signed on the \_\_\_\_\_ day of  
 17 \_\_\_\_\_, 20\_\_\_\_  
 18  
 19  
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 22  
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 25

\_\_\_\_\_  
 Tracy Thomas



1	DEPOSITION ERRATA SHEET	Page 177
2	Page No. _____ Line No. _____ Change to: _____	
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23	SIGNATURE: _____ DATE: _____ Tracy Thomas	
24		
25		



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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 BRENT E. BENTRIM, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 WELLS FARGO BANK, N.A., )  
 )  
 Defendant. )

COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO. 2011-CP-10-2946

**FILED**  
 2014 NOV 13 PM 4:35  
 JULIE J. STRONG  
 CLERK OF COURT

**NOTICE OF MOTION AND MOTION  
 TO RECONSIDER SECTION 4  
 OF THE ORDER OF OCTOBER 28,  
 2014**

**TO: CHARLES M. BAKER III, ESQUIRE, S. STERLING LANEY III, ESQUIRE and  
 JOHN C. HAWK IV, ESQUIRE, ATTORNEYS FOR DEFENDANT:**

PLEASE TAKE NOTICE that the above-named Plaintiff, Brent E. Bentrin ("Plaintiff" or "Bentrin"), by and through his undersigned attorneys and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such time, date and place as counsel may be heard, for an order to reconsider and/or alter or amend section 4 of the Court's Order of October 28, 2014 ("Order"), attached herewith as Exhibit "A," for which the undersigned received written notice of the entry of the same on November 5, 2014, on the following grounds:

**I. Breach of Implied Covenant of Good Faith and Fair Dealing Cause of Action.**

The Court should reconsider its granting of summary judgment on the cause of action for breach of the implied covenant of good faith and fair dealing. The South Carolina Uniform Commercial Code provides: "Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement." S.C. Code § 36-1-203. This statutory authority exists independent of case law. Insofar as *RoTec v. Encompass Services, Inc.* 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004) did not analyze the applicability of UCC § 1-203, Plaintiff submits that this

statutorily-authorized claim should be preserved and Wells Fargo's motion for summary judgment on this issue should be denied. Wells Fargo offers no citation to authority for the proposition that Judge Dennis' ruling of November 20, 2012 bars any claim that is related or touches on contract, nor did it offer citation to authority at the June 9, 2014 hearing. In the light most favorable to Plaintiff, a least a scintilla of evidence exists to demonstrate Defendant did not act with good faith and fair dealing in connection with the Bentrim loan – particularly the discrepancies in the Lost Note Affidavit and the Wakefield Affidavits. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on this cause of action.

## **II. Conversion Cause of Action.**

The Court should reconsider its granting of summary judgment on the cause of action for conversion. A plaintiff claiming conversion may prevail based upon a showing of unauthorized detention of property, after demand. The plaintiff must show either title or right to possession of the property at the time of conversion. Money may be the subject of conversion if it is capable of being identified, and there may be conversion of determinate sums even though specific coins and bills are not identified. *Mullis v. Trident Emerg. Phys.*, 351 S.C. 503, 570 S.E.2d 549, 551 (Ct. App. 2002). *Oxford Fin. Cos. v. Burgess*, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991). In *Regions Bank v. Schmauch*, 345 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003), the Court of Appeals held that conversion “may arise by some illegal use or misuse ... of another's personal property (emphasis added).”

In March 2011, Bentrin sent the Defendant a certified letter stating since it could not or would not produce the original Note, it must drop the lien on his property. Wells Fargo's refusal to do so initiated this suit.

Here, there is ample evidence that Wells Fargo converted payments received from Bentrin during the period it did not own the loan, which Wells Fargo avers (in the Wakefield Affidavit) after November 29, 2006. Wells Fargo has denied over and over again that it was in a third-party servicing relationship – thus, it cannot claim it was a servicer. Because Wells Fargo cannot be a “person entitled to enforce” [“PETE”] under S.C. Code Ann. § 36-3-301(i) or (ii) [since it is not a holder and has offered no proof of a contractual service arrangement with a PETE], then it had no right to the payments.

Bentrin, by contrast, had a right to possess all sums he paid to Wells Fargo's predecessors after November 29, 2006, because Bentrin was only obligated to pay a PETE. S.C. Code Ann. § 36-3-412.

Defendant would cite *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975) for the general proposition that there can be no conversion where there is a mere obligation to pay a date and “where there is merely the relationship of a debtor and creditor, an action based on conversion of the funds representing the debt is improper.” While this is an accurate statement of the general law, it is inapplicable here for three reasons:

First – there was no evidence of a debtor-creditor relationship between Defendant and Plaintiff after November 29, 2006; in fact, the Wakefield affidavit establishes unequivocally that the Bentrin loan was sold on that date. Second – there is evidence in the record that Defendant wrongfully and illegally misused Plaintiff's payments by applying different principal and interest payments, along with penalties, without any authority to do so; under *Owens*, such wrongful and

illegal misuse triggers an exception to the general rule. *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975). Third – it is indisputable that Wells Fargo sold 100% of the note on November 29, 2006 (Wakefield Affidavit; Boddiford Affidavit) but specifically told Bentrim in 2008 that it held his mortgage (WF 59). Accordingly, there is a genuine issue of material fact that Wells Fargo converted the Plaintiff's property interest in 10 Nicholson Street, precluding him from selling, refinancing, etc., when he had a right to possess the property in fee at the time.

This theory would need to be tested by additional discovery, which is a further ground to deny summary judgment on the conversion cause of action at this time. Rule 56(f). *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.”).

Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on this cause of action.

### **III. Fraud, Fraudulent Misrepresentation and Constructive Fraud Causes of Action.**

The Court should reconsider granting of summary judgment on the causes of action for fraud, fraudulent misrepresentation and constructive fraud. The grounds for summary judgment offered by Defendant for each of these legal theories were identical, i.e.: (i) that the Amended Complaint fails to make allegations which satisfy Rule 9(b), SCRCP (“In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.”) and (ii) that the statute of limitations applies.

As to the Rule 9(b) argument, the Amended Complaint goes on at length for approximately 60 paragraphs detailing with specificity the facts underlying the fraud-based claims. In addition,

each of the challenged cause of actions references these factual paragraphs. Moreover, the fact that this boilerplate argument is included, and in fact is placed so high on Defendant's list, is very telling and demonstrates that Defendant is grasping at straws. In any event, the claims for breach of contract accompanied by a fraudulent act, fraud/fraudulent misrepresentation, constructive fraud, and negligent misrepresentation should survive a Rule 9(f) analysis. Moreover, all pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRCPP; *see also Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 340 (1991) (holding to ensure substantial justice to the parties, the pleadings must be liberally construed). "[T]echnical, restrictive or outmoded requirements of Code Pleading are not necessarily required [under the SCRCPP]." *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App.2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93-94 (2nd ed. 1996)). Plaintiff alleges a continuing and ongoing fraud on the part of the Defendant – including the misleading and fraudulent Lost Note Affidavit; the attempt to pass off copies of the Note from the real estate closing file as the Note; producing fraudulent and misleading account statements in discovery; and repeated averments that the Bentrim Loan had not been sold – which was only admitted at the eleventh hour.

As Professor Flanagan has noted: "[a] survey of the pleading cases decided after the adoption of the rules in 1985 suggests that the courts do not demand hyper factual pleadings." Flanagan, *South Carolina Civil Procedure* 2d, p. 65, n. 17 (S.C. Bar 2012). With reference to Rule 9(f), Professor Flanagan has opined that some generality may be acceptable. *Id.* p. 75, n. 6.

Turning to the statute of limitations argument, South Carolina law provides that a civil action must be filed within three years from the date it accrues. *See* S.C. Code Ann. § 15-3- 530; *see also Kleckley v. Northwestern Nat'l Cas. Co.*, 338 S.C. 131, 526 S.E.2d 218 (2000); *Bennett*

*v. Metropolitan Life Ins. Co.*, 197 S.C. 498, 15 S.E.2d 743 (1941). Further, the discovery rule provides that the cause of action accrues when the claimant knew or reasonably should have known of the alleged wrong. *See Holy Lock Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787 (Ct.App. 1998), *rev'd on other grounds*, 340 S.C. 20, 531 S.E.2d 282 (2000). An action for fraudulent misrepresentation is a civil action under S.C. Code Ann. § 15-3-530. Therefore, the discovery rule applies.

In *Turner v. Milliman*, a genuine issue of material fact existed as to when insured was placed on notice that insurance agent's prior representations as to the increases in the cost of insurance premiums were inconsistent with the increases actually imposed, precluding summary judgment on limitations grounds in insured's action against agent and others for fraud and negligent misrepresentation. 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009), *rehearing denied, affirmed in part, reversed in part*. This same reasoning applies here: there is a genuine issue of material fact as established by Bentrim's testimony: in his deposition, he states that in 2007 he was unaware that Wells Fargo's predecessor, Wachovia, was misapplying principal and interest. (Refer to Bentrim Depo. Tran. 143: 6-13). Additionally, he testified that he was unaware that Wachovia failed to apply a payment towards principal until he received a letter from Ms. Caudill, an employee of Wells Fargo, on December 19, 2008. (Refer to Bentrim Depo Tran. 144-145: 17-1). The lawsuit was filed on April 22, 2011. Therefore, the statute of limitations for a negligence claim had not run at the time of commencement of this action so summary judgment on this ground should be denied as there is a genuine issue of material fact. *Hancock* at 803.

The applicable statutes of limitation do not preclude the claims here. Plaintiff did not know of Defendant's fraudulent conduct shortly after his loan closed in 2002; in fact, he pieced it together much later as evidenced in his deposition testimony. The allegations in the complaints

state what transpired, and the evidence verifies it, but at the time such activity was hidden and Plaintiff could not and did not have the requisite knowledge of such wrongdoing. Plaintiff believed that the errors associated with his loan were simply that and he initially sought to have all mistakes corrected. It was only later that Defendant's wrongful acts became apparent.

At this stage of the case and with so many contested issues of fact, it is simply too early to conclusively determine the application of any statutes of limitations. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 284-85, 543 S.E.2d 563, 566 (Ct. App. 2001) (citation omitted). As such, all of the evidence must be viewed in the light most favorable to the non-moving party. *Id.* (citation omitted). As discussed above, Plaintiff did not have the requisite knowledge of Defendant's wrongdoing until shortly before filing this action.

Furthermore, the evidence adduced in discovery reveals that Defendant has perpetuated a fraud upon the Court in this and previous actions, therefore any such prior judgments should be set aside. "There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court." Rule 60(b), SCRPC; *see Hagy v. Pruitt, supra* (court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations)." *Chewning v. Ford Motor Co.*, 579 S.E.2d 605, 609-10, 354 S.C. 72, 80 (S.C. 2003). The Court's inherent power should allow it move beyond the statute of limitations and other such barriers in order to expose Defendant's fraud. In addition, in light of Defendant's improper changes to the loan, "[i]t would be manifestly unjust to permit the vender to enforce a subsisting contract, and deny to the purchaser, from lapse of time, a defense involving the validity of it at its inception." *Evans' Executors v. Yongue*, 42 S.C.L. (8 Rich.) 113, 115 (1854).

In its original motion, Wells Fargo argued that Plaintiff's claims were based entirely on the improper origination fee. In its supplemental motion, Defendant added a new argument that

because of the three foreclosure suits was on “inquiry notice” of payment problems. In doing so, Wells Fargo wants to have it both ways – it argues that this is a case of simple default and absolutely denies that it error in crediting payments, while at the same time it claims it revealed enough fraudulent conduct to Bentrin to require him to have filed suit before 2007. This new argument be rejected procedurally under Rule 7(b), SCRPC, because it was not presented in Defendant’s May 19, 2014 motion, the June 6, 2014 memorandum of law or at the June 9, 2014 hearing. Thus, Plaintiff submits this new argument is not fairly before the Court.

Moreover, this new “inquiry notice” statute of limitations argument also fails on the merits. During the 2005 and 2007 lawsuits, Bentrin was led to believe that any issue between him and Wachovia was entirely related to the accounting for the origination fee. (Refer to Bentrin Depo. Tran pp.50, 59-60, 66-68). There is no evidence that he had any knowledge of a potential claim against Wachovia for negligence, negligent misrepresentation, fraud or any other cause of action. He was repeatedly assured the accounting for the origination would be fixed; and that he was provided with what he later learned were false financial documents. He was led to believe that Defendant had authority to make such assurances. *Id.*

At no time prior to December, 2008 can Defendant point to any knowledge imputed to Bentrin that he knew or should have known he had claims against Wachovia Bank, N.A., or that his payments and fees were be applied under different terms than the documents he signed. He also had no knowledge that Wachovia had no enforceable interest in his loan when it sued him in 2007 and 2009. He had no knowledge his loan was sold in 2006. All this had been concealed by Defendant.

Defendant makes a big deal out of the fact that Bentrin paid reinstatements demanded in previous actions. Paragraph 16 of the Mortgage expressly provides to have proceedings

discontinued upon a cure of the demand; thus, any cure made under Paragraph 16 of the Mortgage represents a settlement of all issues. It is instructive to note that when Bentrim instituted the present action, it was not based the origination fee issue – rather, that the Defendant refused to let him reinstate or correct the misapplication of payments and other fees (although he sent certified funds for this purpose) nor would drop the lien on his property. When made aware of its misapplication of principal, interest and fees, the Defendant simply quit communicating with Bentrim and initiated a foreclosure action. It is further instructive to note that Defendant never details how the origination fee issue is either applicable or connected with the claims Bentrim has made in the instant lawsuit. Until the December 19, 2008 Caudill letter, Bentrim could not have known that Wachovia was ignoring the terms of the Note.

“Under South Carolina law, the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and *where the testimony is conflicting upon the question, it becomes an issue for the [trier of fact] to decide.*” *Little v. Brown & Williamson Tobacco Corp.*, 243 F.Supp.2d 480 (2001)(emphasis added); S.C. Code Ann. § 15-3-20; *see, also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000) holding “the statute of limitations is triggered *not merely by knowledge of an injury* but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another”; *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004) holding “[u]nder the discovery rule, a cause of action accrues for purposes of the statute of limitations when a *plaintiff has notice that he might have a remedy* for a harm.

“Although the issue of whether a defendant is estopped from claiming the statute of limitations is ordinarily a question of fact to be determined by the judge, summary judgment is appropriate where there is *no evidence* of conduct on the defendant's part warranting estoppel.”

*RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007)(emphasis added). “Defendant may be estopped from claiming statute of limitations defense if defendant's conduct has induced delay that otherwise would give operation to statute; this conduct may be either express representation that claim will be settled without litigation, or actions suggesting lawsuit is unnecessary.” *Moates v. Bobb*, 322 S.C. 172, 470 S.E.2d 402 (Ct. App. 1996).

In *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009) the court tolled the limitations period based on the reliance of the plaintiff's employer that a claim would be filed. The same principal applies here – there is deposition testimony from Plaintiff that Wachovia would rectify errors in 2005 and 2007, and Plaintiff expressly testified he was not aware of wrongdoing by Wachovia until 2008. *Id.* at 108, 33 (“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.”). *See also Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012), *reh'g denied* (Apr. 20, 2012).

Thus, Plaintiff submits that there are enough genuine issues of material fact under the scintilla rule to warrant denial of summary judgment of the fraud, fraudulent misrepresentation and constructive fraud causes of action on the statute of limitations– at least until the full trial on the merits of the case. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000) (“[T]he determination of the date the statute [of limitations] began to run in a particular case [is a question] of fact ...”); *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239-40, 743 S.E.2d 860, 863 (Ct. App. 2013); *Hancock* at 803.

Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on these causes of action.

#### **IV. South Carolina Unfair Trade Practices Act Cause of Action.**

The Court should reconsider granting of summary judgment on the cause of action for violation of the South Carolina Unfair Trade Practices Act. In its motion for summary judgment, Wells Fargo basically argued that a "general activity test" still applies to banks – i.e., because nationally chartered banks are regulated by the federal government, and thus the UTPA cannot apply to them. Wells Fargo advanced this argument despite the fact that in 1991, the South Carolina Supreme Court abolished the old "general activity" exception to the UTPA, in *Ward v. Dick Dyer & Associates, Inc.*, 304 S.C. 152, 403 S.E.2d 310 (1991), and *specifically* overruled an earlier Court of Appeals decision in *Anderson v. Citizen's Bank*, 294 S.C. 387, 365 S.E.2d 326 (Ct. App. 1987) which had extended the general activity test to banks. *See Ward*, 304 S.C. at 157, 403 S.E.2d at 312 (holding *Anderson* is "overruled to the extent that the result was based upon the 'general activity' test").

The purpose behind *Dick Dyer* was crystal clear: "[i]n finding the buyers could bring an action against the car dealership, despite its regulation by a South Carolina regulatory agency, the [*Dick Dyer* Court] held 'the exemption is intended to exclude those actions or transactions which are *allowed or authorized* by regulatory agencies or other statutes.'" *Hennes v. Shaw*, 397 S.C. 391, 400, 725 S.E.2d 501, 506 (Ct. App. 2012). Specifically, the Supreme Court further elaborated in *Dick Dyer* that:

The purpose of the exemption is to insure that a business is not subjected to a lawsuit under the [UTPA] when it does something required by law, or does something that would otherwise be a violation of the [UTPA], but which is allowed under other statutes or regulations. It is intended to avoid conflict between laws, not to exclude from the [UTPA]'s coverage every activity that is authorized or regulated by another statute or agency. 397 S.C. at 156, 403 S.E.2d at 312.

No reported, appellate-level South Carolina opinion supports Wells Fargo's contention that a "general activity" test is still in place in South Carolina for federally-insured banks. In fact, in *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002), *cert. dismissed* 357 S.C. 191, 592 S.E.2d 625 (2004), the Court of Appeals analyzed a UTPA case against a bank without any reference to an exclusion under S.C. Code Ann. § 29-5-20.

Moreover, insofar as Wells Fargo claims that it was its own servicer on the Bentrin loan, the Fourth Circuit Court of Appeals held in *Beattie v. Nations Credit Fin. Serv. Corp.*, 69 F.App'x 585 (4th Cir. 2003), that a mortgagee was not exempt from liability under SCUTPA based on its pursuit of collection and foreclosure activities because SCUTPA did not protect mortgagees from lawsuits for "general activity." *Id.* at 895. This is consistent with the holdings of the South Carolina Supreme Court for the last decade extending the scope of the UTPA into regulated industries. *See, e.g., RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.* 399 S.C. 322, 338 732 S.E.2d 166, 174 (2012)(extending reach of UTPA to attorneys).

Wells Fargo made specific reference to Section 39-5-20(b) of the UTPA for the proposition that the general activity test still applies to banks:

"[i]t is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

S.C. Code Ann. § 29-5-20(b)(emphasis added). Wells Fargo then turns around and cites to FTC Act § 5(a)(2) for the proposition that the FTC does not regulate banks, before drawing an *ergo hoc, propter hoc* conclusion that this carves out a bank exception to the ban on the general activity test. (Wells Fargo Memo, § 8). This argument should fail for four reasons:

First, it must be noted that S.C. Code Ann. § 39-5-20(b) is *specifically limited* to

“interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended (emphasis added).” The legislative direction under § 39-5-20(b) that our Courts be guided by the FTC and Federal Courts *does not extend to § 5(a)(2) of the FTC Act* – the very section on which Wells Fargo relies.

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Id.* In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Id.* at 499, 640 S.E.2d at 459. Further, “the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Here, the language of § 39-5-20(b) clearly does not extend to 15 U.S.C. 45(a)(2). The General Assembly specifically said “§ 5(a)(1)” – not “§5(a)” or even “§5” of the FTC.

Therefore, this Court should not consider itself bound in any way by § 5(a)(2) of the FTC Act because that section is directed to the FTC's specific powers, and not to what constitutes business or commerce. Unlike Congress – which conferred bank oversight to another agency [the Office of the Comptroller of the Currency] – South Carolina included nothing in the UTPA that exempts banks from the purview of the UTPA, nor did the General Assembly preclude the Administrator of the South Carolina Department of Consumer Affairs from prosecuting UTPA claims. In fact, unlike his federal counterpart, the SCDCA Administrator is specifically given bank

oversight. S.C. Code Ann. § 37-6-105(3) (“The Administrator and any official or agency of this State having supervisory authority over a supervised financial organization ... may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action”). If the General Assembly wanted the UTPA to apply to § 5(a)(2) it would have said so.

Second, because the text of § 5(a)(1) of the FTC Act is virtually identical to § 39-5-20(a), we can logically deduce that by enacting § 39-5-20(b), the General Assembly wanted the South Carolina courts to track what would, or would not, constitute *trade or commerce* at the federal level. This stands to reason – it would be bad for business to allow a major deviation between State and Federal authorities over the definition of what constitutes trade and commerce. In the decades that have passed since the enactment of the UTPA, the South Carolina Supreme Court has made it very clear what it believes constitutes trade or commerce -- which it defines to involve: “[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.” *RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.* 399 S.C. 322, 338 732 S.E.2d 166, 174 (2012); *see also Bretton v. State Lottery Comm'n*, 41 Mass.App.Ct. 736, 673 N.E.2d 76, 78–79 (1996) (recognizing that UTPA applies to acts or practices which are perpetrated in a “business context”). Wells Fargo has not cited one South Carolina or Federal Court opinion, in its motion or memorandum of law, or at the hearing, standing for the proposition that a bank is not engaged in business for the purpose of profit – which further militates against granting it summary judgment.

Three, in the *United States of America v. Bank of America, et al.*, brought in the United States District Court for the District of Columbia, Case No. 1:12-cv-00361-RMC, Wells Fargo – a party-Defendant – entered into a Consent Judgment on April 4, 2012 with the Attorney

General of South Carolina and the South Carolina Department of Consumer Affairs that it had violated the South Carolina UTPA in relation to its mortgage servicing and foreclosure practices. Not only is this an admission by a party opponent that raises genuine issues of material fact on adverse public impact (see below), it begs the question why Wells Fargo would admit it violated the UTPA in South Carolina if it truly did not apply to Wells Fargo. The answer is obvious: the UTPA absolutely does apply to banks like Wells Fargo --- as Defendant has admitted.

Perhaps the most important reason of all, however is the fourth fact: that the bank's federal regulator – the Office of the Comptroller of the Currency (OCC) – takes the position that *Section 5 of the FTC does apply* to Banks, and that Banks can have State liability for unfair and deceptive acts! In Advisory Letter 2002-3, the OCC states:

Unfair or deceptive acts or practices are unlawful under federal and State law. Section 5 of the Federal Trade Commission Act (FTC Act), 15 USC 45(a)(1), prohibits “unfair or deceptive acts or practices in or affecting commerce.” Under section 8 of the Federal Deposit Insurance Act, 12 USC 1818, the OCC may take appropriate enforcement actions against national banks and their subsidiaries for violations of *any* law or regulation, which necessarily includes section 5 of the FTC Act. Certain unfair or deceptive acts or practices by banks and their subsidiaries have been specifically prohibited by regulation. Other acts or practices may be determined to be unfair or deceptive on a case-by-case basis, under the standards set forth in the FTC Act. *Section 5 of the Federal Trade Commission Act*

(*emphasis added*; see: <http://www.occ.gov/static/news-issuances/memos-advisory-letters/2002/advisory-letter-2002-3.pdf>).

Applying this authority, it would appear that Wells Fargo is arguing a legal position that directly contradicts its regulator's position on the same issue.

Notwithstanding the foregoing, in its memorandum of law, Wells Fargo cites some trial court orders which advance the same faulty § 29-5-20(b) analysis. Basically, these circuit judges found that while *Dick Dyer* overruled the general activity test for banks established in *Anderson*, the *Dick Dyer* Court did not overturn the footnote in *Anderson* – which serves as a “separate basis”

for excluding banks from the UTPA and is still "valid law." See *Anderson*, 294 S.C. at 400, 365 S.E.2d at 34, n.1. Three counter-arguments apply here:

One – the footnote is clearly *dicta* because it is not essential to the decision. The best evidence for this conclusion is that the analysis is contained in a footnote. Moreover, *dicta* has no precedential value. *Herndon v. Wright*, 257 S.C. 98, 184 S.E.3d 444, 445 (1971); *Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007) (“[d]icta or, as it is also known, dictum ‘is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision’”).

Two – even if the *Anderson* footnote is not *dicta* – the *Dick Dyer* opinion still overrules it. The use of the “*Cf.*” (i.e., Compare) citation “directs the reader's attention to another authority or section of the work in which contrasting, analogous, or explanatory statements may be found.” BLACK’S LAW DICTIONARY, 9<sup>th</sup> Ed. (2009). Since the footnote is appended to Judge Bell’s general activity analysis, it is intended to support his citation to *State ex rel. McLeod v. Rhoades*, 275 S.C. 104, 267 S.E.2d 539 (1980) and *NCNB Nat’l Bank of North Carolina v. Tiller*, 814 F.2d 931 (4<sup>th</sup> Cir.1987) the same analysis overturned by *Dick Dyer*. Nowhere in his opinion does Judge Bell – a famously careful jurist -- state that the footnote advances an alternate ground; he clearly means for the note to be *dicta* in support of the general activity test overruled four years later by the Supreme Court. Even if other trial judges have incorrectly given it weight, it should not be *stare decisis*. *Brown v. Anderson Co. Hosp. Ass’n*, 268 S.C. 479, 486, 234 S.E.2d 873, 876 (1977)(the doctrine of *stare decisis* is not intended “to effect a ‘petrifying rigidity,’ but to assure the justice that flows from certainty and stability ... [f]undamentally, [it is] not a rule of law; it is a matter of judicial policy. It does not render immutable judicial formulations of common law rules”).

Three – the interpretation of the *Anderson* footnote in the circuit court orders cited by Wells Fargo is just plain bad law. Judge Burch and Judge Russo’s decisions were never confirmed by an appellate court. They ignore principals of statutory construction. They over-extend the scope of § 29-5-20(b). They fail to consider the OCC’s position that banks are subject to federal and state causes of action under the FCC Act by virtue of 12 USC § 1818 and state UTPA actions. Their opinions allow banks to advance a position contrary to that of their regulator. By contrast, Plaintiff would point to the decision of U.S. District Judge Weston Houck, who recently held that a plaintiff in a Charleston County foreclosure case who claimed he was “assessed and collected default-related fees that they were not legally authorized to assess and collect pursuant to the mortgage contract” did in fact have actionable under the FTC Act. *See Roane v. Everbank*, 2013 WL 4505415, p. 5 (D.S.C. 2013).

The argument advanced by Wells Fargo in sub-paragraph (b) of its UTPA analysis is flawed. This case is not simply about Wells Fargo overcharging \$2,700.00. Rather it goes right to the heart of the mortgage loan sales, servicing and foreclosure practices of Wells Fargo and its predecessors. It would also include the Defendant’s failure to maintain and produce accurate records; its furnishing of fraudulent and contradictory account statements which had been edited after the fact; the mutually contradictory statements made in the Lost Note Affidavit and the Wakefield Affidavit; attempting to use copies of the Note from the real estate attorneys’ file as the original; and wrongfully procuring insurance. According to the complaint filed by the United States in *United States of America v. Bank of America, et al.*, all of the aforementioned acts, already proven by the Plaintiff and admitted by the Defendant violate the Consumer Protection Codes of South Carolina and therefore qualify as Unfair and Deceptive Trade Practices.

In order to assert a cause of action under the UTPA, the Plaintiff must allege and prove

that the defendant's actions have adversely affected the public interest. *Daisy Outdoor Advertising v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). An "impact upon the public interest" may be shown if the acts or practices have the *potential for repetition*. *Singleton v. Stokes Motor Co.*, 358 S.C. 269, 379, 595 S.E.2d 461, 622 (2004). "The potential for repetition may be demonstrated in either of two ways: 1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or 2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998); *Wright v. Craft*, 372 S.C. 14, 29, 640 S.E. 2d 486, 502 (Ct. App. 2006). It should be noted that in *Daisy*, the Supreme Court: "declined to hold, however, that those are the only means for showing potential for repetition / public impact. Rather each case must be evaluated on its own merits. We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition / public impact prong of the UTPA test." *Daisy* 322 S.C. at 497; 496 S.E.2d at 51.

All of the negligent misrepresentations set forth above in § 2 would apply here. As noted above, Wells Fargo has admitted to its regulator [OCC], the South Carolina Attorney General and the South Carolina Department of Consumer Affairs that it violated the UTPA in South Carolina with respect to mortgage servicing and foreclosures – which meets the “showing the same kind of actions occurred in the past” is satisfied. Otherwise, Plaintiff is entitled to more discovery on whether other South Carolina homeowners were subjected to the same sort of unfair and deceptive practices. In any event, Plaintiff submits that conduct which throws into question the fairness and truthfulness of foreclosure proceedings must, by its very nature, impact the public interest and make this much more than a mere breach of contract claim.

## V. Slander of Title Cause of Action.

The Court should reconsider granting of summary judgment on the cause of action for slander of title. In its court filings, Defendant mischaracterizes Plaintiff's slander of title cause of action – which goes beyond the mere filing of a *lis pendens*, and includes allegations regarding diminished value in the eyes of third parties, including the inability to refinance and inability to sell the property. In *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012), the Court of Appeals allowed a slander of title claim to proceed against a lender:

“Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title.” *Huff*, 319 S.C. at 149, 459 S.E.2d at 891. “[M]alice merely means a lack of legal justification and is to be presumed if the disparagement is false, if it caused damage, and if it is not privileged.” *Home Invs. Fund v. Robertson*, 10 Ill.App.3d 840, 295 N.E.2d 85, 87 (1973) (citing *Gates v. Utsey*, 177 So.2d 486, 488 (Fla. Dist. Ct. App. 1965)). In *Huff*, 319 S.C. at 149–50, 459 S.E.2d at 891, the court found a jury reasonably could conclude the defendant published a false statement when she filed a lien she knew or should have known was invalid. “A publication is derogatory to the plaintiff's title if the publication disparages or diminishes the quality, condition, or value of the property.” *Id.* at 150, 459 S.E.2d at 891. The court further found the defendant's lien clearly diminished the value of the property in the eyes of a third party, given that the plaintiff was required to discharge the lien before he could complete the refinancing of the property. *Id.*

The Solley majority also specifically ruled that: “[r]ecording a mortgage that is a nullity should be considered a false statement derogatory to Solley's title.” The pleadings and discovery in this case, as well as legal argument over whether Wells Fargo is a PETE on the current counterclaim, or had the right file the 2007 and 2009 actions, raise genuine issues of material fact that preclude summary judgment at this time.

When the Defendant refused to present his original note after several years and requests, Bentrin demanded they drop all interest in his property, ie release the lien. They refused and he initiated

his compliant in part in order to obtain use of the equitable value of his property.

It is indisputable that Wells Fargo sold 100% of the note on November 29, 2006 (Wakefield Affidavit; Boddiford Affidavit) but specifically told Bentrim in 2008 that it held the mortgage (WF 59). The new party, if appropriate, was on notice to record. Accordingly, there is a genuine issue of material fact that Wells Fargo converted the Plaintiff's property interest in 10 Nicholson Street, precluding him from selling, refinancing, etc., when he had a right to possess the property in fee at the time.

This theory would need to be tested by additional discovery, which is a further ground to deny summary judgment on the conversion cause of action at this time. Rule 56(f). *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."). Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on these causes of action.

Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on this cause of action.

#### **VI. Civil Conspiracy Cause of Action.**

"[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); accord *Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453; *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). The Wakefield affidavit establishes TMS Service Corp – an independent, separate corporation – is the another party; obviously, since Wells Fargo only revealed this fact in the last four days before the hearing, more discovery is needed and

summary judgment would be inappropriate at this time on the issue of willfulness. Likewise, the recent disclosure of additional ACLS documents by Defendants in November, 2014 potentially establishes the Trustee of Trust Pool 794 as another co-conspirator; additional discovery is needed thereto. Debt collector law firms like Brock & Scott and Womble Carlyle Sandridge & Rice are also civil conspirators. Attorneys' fees incurred in defending the instant counter-claim would be cognizable special damages, as established in discovery responses, as well as damage to credit as identified in the pleadings and discovery responses. Rule 56(f). *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)("summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."). Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on these causes of action. Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff's motion for summary judgment on this cause of action.

#### **VII. Fair Debt Collection Practices Act Cause of Action**

In the Wakefield Affidavit, Wells Fargo concedes that it sold a 100% beneficial interest in the Bentrin loan on November 29, 2006. It is undisputed that during this time period (11.29.06-5.1.10), Wells Fargo's predecessor Wachovia Bank, N.A. hired collection counsel and instituted two (2) foreclosure actions, along with sending collection demands through the interstate mails and making reports to credit bureaus --- all while the Bentrin loan was owned [according to Wells Fargo] by TMS Service Corp.,. As such, there are genuine issues of material fact that as to whether Wells Fargo's predecessor used "instrumentalit[ies] of interstate commerce or the mails ... who regularly collects or attempts to collect, directly or indirectly, debts owed, or due or due another." 15 U.S.C.A. § 1692a.

In discovery responses, Wells Fargo has consistently denied being a servicer or operating under a service contract. In *Bank of America v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. App. 2013), the Court of Appeals cited with approval authority for the proposition that the maker or holder of a loan could be its own servicer; however, Wells Fargo admits via the Wakefield affidavit that it sold the Bentrin loan on November 29, 2006. Due to the lack of endorsement on the note, and the fact it was issued to First Union National Bank or order, Wells Fargo therefore cannot be the holder as a matter of law pursuant to S.C. Code Ann. § 36-1-201(20). This means it could not be a self-servicer after November 29, 2006 since it was not a holder, per *Draper*. 746 S.E.2d at 481.

To the extent Wells Fargo now claims it was a third-party servicer to TMS Service Corp., then this must fail too. First, it has steadfastly denied the existence of a servicing contract. Next, a servicer first has to prove its rights to enforce under Article 3 under Section 3-301. *See In Re Neals*, 459 B.R. 612, 618 (Bankr. D.S.C. 2011). (This also raises issues of judicial and equitable estoppels if Wells Fargo argues the contrary). In order to have standing, a servicer must also prove an agency relationship with a PETE. *In Re Veal*, 450 B.R. at 920. Finally, it is generally accepted that servicer status requires the existence of a contractual relationship with the holder. *In Re Woodberry*, 383 B.R. 373, 379 (Bankr. D.S.C. 2012). Wells Fargo has presented no competent evidence that it was a third-party servicer, under contractual obligation, with enforcements rights of its own or servicing for a PETE. Thus, its arguments to the contrary should be disregarded.

Wells Fargo is also wrong when it says the “[o]nly evidence before this Court is that Wells Fargo was at all times collecting a debt in its own name and servicing its own debt.” TMS Service Corp., is a separate corporation. Wells Fargo cannot pierce its own corporate formality and claim it is an alter ego; it cannot disregard the corporate structure it set up. A basic tenet of American

corporate law is that the corporation and its shareholders are distinct entities. *See, e.g., First Nat. City Bank v. Banco Para El Comercio Ext. de Cuba*, 462 U.S. 611, 625, 103 S.Ct. 2591 (1983) (“Separate legal personality has been described as ‘an almost indispensable aspect of the public corporation’”). A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary; and, it follows with even greater force, the parent does not own or have legal title to the subsidiaries of the subsidiary. “The properties of two corporations are distinct, though the same shareholders own or control both. A holding corporation does not own the subsidiary’s property.” *Dole Food Co. v. Patrickson*, 538 U.S. 468, 476, 123 S.Ct. 1655, 1660 (2002)(internal citations omitted). One who has created a corporate arrangement, chosen as a means of carrying out his business purposes, does not have the choice of disregarding the corporate entity in order to avoid the obligations which the statute lays upon it for the protection of the public. *Schneley Distillers Corp. v. U.S.*, 326 U.S. 432, 436, 66 S.Ct. 247, 249 (1946).

“The corporate form may be disregarded only where equity requires the action to assist a third party.” *Hunting v. Elders*, 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004)(internal citations omitted). Because Bentrim is not seeking to pierce the corporate veil, Wells Fargo cannot disregard its corporate structure.

However, Wells Fargo’s latest version of events that the TMS/Money Store owned the loan after November 2006 clearly refutes any exemption a servicer has under FDCPA. Because both Wachovia Bank, NA and now Wells Fargo Bank, NA obtained ‘servicing rights’ after the purported 2006 default, any collection activity is covered un FDCPA.

Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter and amend its ruling granting Plaintiff’s motion for summary judgment on this cause of action.

### **VIII. South Carolina Consumer Protection Cause of Action.**

There are genuine issues of material fact whether the Bentrim loan meets the test of a “consumer loan” under S.C. Code Ann. § 37-3-105(1)(“unless the loan is made subject to this title by agreement ... ‘consumer loan’ does not include a loan secured by a first lien or equivalent security interest in real estate”).

Bentrim does not deny a loan took place in March, 2002 – but he steadfastly denies that the loan he received is the one described in the March 12, 2002 Note, or secured by the March 12, 2002 Mortgage which references that Note. Recall that the loan was not funded until March 21, 2002 – three days after the closing expired. Bentrim signed a new HUD-1 on April 4, 2002. Also, Bentrim has demonstrated that the terms of the March 12, 2002 Note have never been met by Wells Fargo or its principals; the transaction described in the Note, and secured by the Mortgage, did not take place.

Since there are genuine issues of material fact – and the requirement for more discovery – the Court should deny summary judgment on this cause of action for the foregoing reasons. If the allegations set forth in the UTPA are taken in the light most favorable to Bentrim, then there also genuine issues of material fact as to the unconscionability provisions under § 37-5-108 – primarily by virtue of bringing the 2007 and 2009 actions in their own name. Bentrim would also incorporate herein by reference all the consent findings entered by Wells Fargo in the April 13, 2011 Consent Order with the Office of the Comptroller of the Currency, AA-EC-11-19 and the April 4, 2012 Consent order in United States v. Bank of America, et. al, entered into by Wells Fargo with the United States of America and the South Carolina Attorney Genera. Which conclusively establish adverse public impact and potential for repetition.

Based on the foregoing, Defendant respectfully requests that the Court reconsider, alter

and amend its ruling granting Plaintiff's motion for summary judgment on this cause of action.

**IX. Mail Fraud Cause of Action.** Wells Fargo's predecessor Wachovia Bank, N.A. hired collection counsel and instituted two (2) foreclosure actions, along with sending collection demands through the interstate mails and making reports to credit bureaus --- all while the Bentrim loan was owned [according to Wells Fargo] by TMS Service Corp.,. As such, there are genuine issues of material fact that as to whether Wells Fargo's predecessor used "instrumentalit[ies] of interstate commerce or the mails ... who regularly collects or attempts to collect, directly or indirectly, debts owed, or due or due another." 15 U.S.C.A. § 1692a.

Wells Fargo has engaged the law firm of Womble Carlyle in an attempt to collect and now file a counterclaim for foreclosure while having no enforceable interest in the loan along with sending collection demands through the interstate mails and making reports to credit bureaus --- all while the Bentrim loan was owned [according to Wells Fargo] by TMS Service Corp. As such, there are genuine issues of material fact that as to whether Wells Fargo used and continues to use "instrumentalit[ies] of interstate commerce or the mails ... who regularly collects or attempts to collect, directly or indirectly, debts owed, or due or due another." 15 U.S.C.A. § 1692a.

**X. Declaratory Judgment Cause of Action.**

The Court should reconsider, alter or amend the granting of summary judgment on the declaratory judgment cause of action. First, the following facts which cannot be contested by Wells Fargo, when construed in the light most favorable to Plaintiff, militate against summary judgment:

- The Note is unindorsed;
- Wells Fargo has never produced an indorsed note or an allonge;
- The Note is issued to First Union National Bank (“FUNB”) or Order;
- FUNB assumed the name Wachovia Bank, N.A.; Wells Fargo is a successor to Wachovia Bank, N.A.;
- Wells Fargo is not a “holder” under the definition codified at S.C. Code Ann. § 36-1-201(20);
- Wachovia Bank, NA records show it sold the Note prior to the Wells Fargo Bank, NA merger in 2010;
- Wells Fargo, has shown no proof nor pleaded that it actually transferred the Note to TMS Service Corp.; moreover, it’s counsel has represented to the Court that it did not;
- Wells Fargo has shown no actual proof – by affidavit or documentary evidence – nor has it pleaded that it is a “person entitled to enforce” (“PETE”) under S.C. Code Ann. § 36-3-301 as a non-holder in possession with rights to enforce, and moreover, a non-holder bears the burden of proof under S.C. Code Ann. § 36-3-203;
- The Wakefield Affidavit merely says TMS Service Corp. merged with Wells Fargo on May 1, 2010 and is silent on whether TMS Service Corp owned or possessed the Note at that time; Wells Fargo has not pleaded or proved this point;
- Wells Fargo has shown no proof of regarding whether TMS Service Corp. maintained ownership and/or possession of the Note prior to its merger with Wells Fargo – in fact, it has produced no evidence as to ownership or enforcement rights at all.
- Wells Fargo has shown no proof nor has it pleaded that it was in a contractual servicing arrangement with TMS Service Corp, or that it was an agent for a PETE; to the contrary,

and has repeatedly and vociferously denied there was any third-part servicing arrangement;

- The Wakefield affidavit neither references nor attaches specific records in violation of the Business Records Rule.
- Wells Fargo has shown no proof – nor has it pleaded -- that it had physical possession of the Note at the inception of the suit;

All these material facts militate against summary judgment that Wells Fargo has a valid mortgage interest in the property.

Under § 1-201(20), a ‘Holder’ is specifically defined as “a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.” S.C. Code Ann. § 36-1-201(20). The Ninth Circuit Court of Appeals explains the concept in more simple terms:

“[a] person is a holder if the person possesses the note and either (i) the note has been made payable to the person who has it in his possession or (ii) the note is payable to the bearer of the note. This determination requires physical examination not only of the face of the note but also of any indorsements.”

*In re Veal*, 450 B.R. 897, 911 (9th Cir. 2011). Legal scholar William Lawrence elaborates further:

“The definition includes dual requirements: To be a holder, a person must be in possession of an instrument and the instrument essentially must run to that person. The determination of whether an instrument runs to a particular person depends on whether the instrument is characterized as order paper or bearer paper. This characterization depends on the form of the instrument as it was originally prepared or according to the effect following any appropriate indorsements.

Lawrence, UNDERSTANDING NEGOTIABLE INSTRUMENTS & PAYMENT SYSTEMS, pp. 52-53 (LexisNexis 2002).

Wells Fargo may well have physical possession of the Note – but this is just *one* factor in the analysis. Three other salient facts, however, combine to preclude Wells Fargo from being the holder of the Note:

- There are no endorsements on the Note;

- The Note was issued to First Union National Bank or order;
- Wells Fargo admits that it is the successor in interest to Wachovia Bank N.A., successor in interest to First Union National Bank.

Physical examination of the Note shows there are no endorsements on it or attached to it. Thus, the Note is an unindorsed instrument. The lack of indorsement has two important legal results:

First, the Note cannot be bearer paper. Because the original named payee was First Union National Bank (FUNB), the Note could become bearer paper only if FUNB endorsed it in blank - i.e., an indorsement consisting of a signature, as opposed to one that specifies to whom the instrument is made payable, which is known as a special endorsement. See S.C. Code Ann. § 36-3-109(c) § 36-3-205(b) (“When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed”). Second, an unendorsed Note cannot be payable to Wells Fargo. As Professor Lawrence explains:

“An instrument that is drawn to the order of a named payee is order paper and (assuming no indorsements) runs only to the person named. The only possible person who could qualify as a holder on such an instrument is the named payee.”

Lawrence, *supra*, p. 53. Similarly, in *Negotiable Instruments Under the Uniform Commercial Code*, Professors Hart Willier explain:

“The first requirement of being a holder is possession of the instrument. However, possession is not necessarily sufficient to make one a holder. . . . The payee is always a holder if the payee has possession. **Whether other persons qualify as a holder depends upon whether the instrument initially is payable to order or payable to bearer, and whether the instrument has been indorsed.**” (footnotes omitted)). Accordingly, a third party must prove both physical possession *and* the right to enforcement through either a proper indorsement or a transfer by negotiation.”

Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code*, § 12.02(1) at 12-13 to 12-15 (2012)(emphasis added). Because the Note is not in bearer

form nor specifically made payable to Wells Fargo by virtue of an indorsement, Wells Fargo simply cannot be holder as a matter of law. Wells Fargo attempts to avoid this outcome by arguing it is successor-by-merger to FUNB — the original named payee — via Wachovia Bank N.A. Under this theory, argues Defendant, the merger transferred both physical possession along with the coveted holder status from FUNB to Wells Fargo automatically.

Plaintiff does not dispute that Wells Fargo is a successor by merger to Wachovia Bank N.A. But this fact is irrelevant to whether Wells Fargo is a “holder” under the Code *because there is no endorsement on the instrument*. Under the Code, negotiation is the exclusive means by which a transferee can become a holder of an instrument made payable to another identified payee. See S.C. Code Ann. § 36-3-201(a). Negotiation requires endorsement. *Id.* at (b)(“ ... if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder”). Negotiation is separate and distinct from the concept of transfer. A transferee cannot be a holder, but it may receive enforcement rights may via transfer (but not necessarily ownership rights, which are governed by UCC article 9). S.C. Code Ann. § 36-3-201. The necessary determination that Wells Fargo is not a holder is critical for several reasons. One, under UCC 3-301 only a “Person entitled to enforce” – known as a ‘PETE’ – is entitled to enforce a negotiable instrument. S.C. Code § 36-3-301. There are only three classes of PETEs: “(i) the holder of the instrument, (ii) a nonholder in possession with rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 36-3-309 or § 36-3-418(d).” *Id.*; see also *Bank of America v. Draper*, 746 S.E.2d 478, Because Wells Fargo is not a holder [3-301(i)], it cannot be a PETE unless it pleads and proves its rights thereto under either 3-301(ii) or 3-301(iii) (In fact, only a PETE can make the demand which triggers the right to bring a suit – something Wells Fargo cannot prove,

either).

Two, pursuant to UCC 3-412, a Maker – like Plaintiff – has a payment obligation only to a PETE. S.C. Code § 36-3-412 (“[t]he obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument ...”). The *In Re Veal* Court succinctly explains the risk of a Maker paying a non-PETE: “[i]f a maker pays someone other than a ‘person entitled to enforce’ – even if that person physically possesses the note the maker signed – the payment generally has no effect on the obligations under the note. The maker still owes money to the ‘person entitled to enforce’ ... and, at best, has only an action in restitution to recover the mistaken payment.” 450 B.R. at 910 (internal citations omitted); *see also* UCC § 3-418(b). Only payment to a PETE satisfies the Maker’s obligation. S.C. Code Ann. § 36-3-602(a), (c); this is in large part the basis of the conversion claim, insofar as Wells Fargo – a non-PETE – knowingly took monies from Plaintiff to which it was not lawfully entitled, to the detriment of Plaintiff.

Three, as a non-holder, Wells Fargo is not entitled to a rebuttable presumption of enforceability which a holder enjoys. S.C. Code Ann. § 36-3-308(b); *see also RMS Residential Properties, LLC v. Miller*, 32 A.2d 307, 321-322 (Conn. 2011). A non-holder, by contrast, who has received an instrument by transfer must prove his right to enforce. The Official Comments to S.C. Code Ann. § 36-3-203(b) provides crystal clear guidance:

*“Subsection (b) states that transfer vests in the transferee any right of the transferor to enforce the instrument ‘including any right as a holder in due course.’ If the transferee is not a holder because the transferor did not indorse, the transferee is nevertheless a person entitled to enforce the instrument under Section 3-301 if the transferor was a holder at the time of transfer. Although the transferee is not a holder, under subsection (b) the transferee obtained the rights of the transferor as holder. Because the transferee’s rights are derivative of the transferor’s rights, those rights must be proved. Because the transferee is not a holder, there is no presumption under Section 3-308 that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it. Proof of a transfer to the transferee by a holder is proof that the transferee has acquired the rights of a holder. At that point the transferee is entitled to the presumption*

*under Section 3-308.”*

Official comments, 3-203(b)(emphasis added).

The Maryland Court of Appeals reached the same conclusion when considering the position of a transferee who received an unendorsed Note in *Anderson v Burson*, 424 Md. 232, 35, A.3d 450 (2011): “[a] nonholder in possession [and] cannot rely on possession of the instrument alone as the basis to enforce it.” *Id.* At 248-49, 35 A.3 at 462. Rather, because ‘[t]he transferee’s rights to enforce the instrument derives from the transferor (because by the terms of the instrument, it is not payable to the transferee),’ those rights must be proved. *Id.* ‘The transferee does not enjoy the statutorily provided assumption of the right to enforce the instrument that accompanies a negotiated instrument, and so the transferee ‘must account for possession of the unendorsed instrument by proving the transaction through which the transferee acquired it’” *Id.* at 249.

Similarly, the New Mexico Supreme Court, in *Bank of New York v. Romero* 320 P.3d 1, 2014 WL 576151 (N.M. 2014) ruled that: “**Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it.**” Because Wells Fargo is faced with the fact it cannot be a holder as a matter of law, it is anticipated that Wells Fargo will try and claim PETE status under 3-301(ii) [non holder in possession with rights to enforce] or 3-301(iii) [lost note affidavit] as a means to avoid summary judgment.

Both of these arguments must fail, however, because it is uncontroverted that Wells’ Fargo’s predecessor sold the Bentrin loan on November 29, 2006. Thus, Wachovia Bank, NA, **was not the holder at the time of the merger** on March 20, 2010 (See WF 2299, 2300, 2301, 2302, 2303 and Clifton Bodiford Affidavit). The affidavit of Wells Fargo bank officer Matthew Wakefield substantiates this conclusion – he avers that a 100% beneficial interest in the Note was

sold to TMS Service Corp. on November 29, 2006 (which, it should be noted, directly conflicts with the discovery responses of Wells Fargo; the LNA of bank officer Tracy Thomas; and the *unequivocal and emphatic* representations of Wells Fargo's counsel at both the February 10, 2014 and April 28, 2014 hearings that *no sale* took place – which raises questions of judicial estoppel).

In fact, Mr. Wakefield's testimony proves what Plaintiff has been saying all along – Wells Fargo cannot be the holder via successor-by-merger from FUNB via Wachovia Bank, N.A. because: (I) Wells Fargo's merger with Wachovia was closed March 20, 2010; (II) Wells Fargo did not own or hold the Bentrim Loan after November 28, 2006.

In its memorandum, Wells Fargo argues the applicability of 12 USCA § 215 -- which basically says that when banks merge, property rights shall be transferred to the successor bank. The Plaintiff agrees. Both 12 USCA § 215 and Section 36-3-203 transfer rights – therefore there would be no need for Wells Fargo Bank, NA to have repurchased Bentrim's loan on May 13, 2010 some 12 days after the purported 12 USCA § 215 transfer! Once again the Defendant's records do not match its testimony.

This statute has no bearing on a UCC analysis for three reasons: One – this note is a negotiable instrument, and is **thus governed by Article Three**. *Swindler v. Swindler*, 355 S.C. 245, 584 S.E.2d 438, 440-441 (2003), (finding that Article Three governs negotiable promissory notes); *see also Midfirst Bank, SSB, v. C.W. Haynes & Co., Inc.*, 893 F.Supp. 1304, 1312 n. 3 (D.S.C.1994) ("Article Three of the UCC controls transfers of negotiable instruments, and the mortgage notes are clearly negotiable."). In other words, Article 3 trumps 12 USCA § 215 – a concept confirmed by the *Swindler* case.

Two - as discussed above in section E, the UCC specifically contemplates transfers – such as allowed under 12 USCA § 215 – result in the transferee becoming a “non holder in possession”

who must prove the transaction in order to enjoy enforcement rights. S.C. Code Ann. § 36-301(ii); Section 3-203 Official Comment. Stated another way, there is nothing in 12 USCA § 215 that conflicts in the slightest with Article 3.

Three – if the Bank wants to call itself a servicer, then it is playing word games. Regardless, a servicer first has to prove its rights to enforce under Article 3 as a non-holder in possession under Section 3-301(ii). See *In Re Neals*, 459 B.R. 612, 618 (Bankr. D.S.C. 2011). In order to have standing, a servicer must also prove an agency relationship with a PETE. *In Re Veal*, 450 B.R. at 920. Defendant has offered no evidence that it has enforcement rights as a non-holder in possession or that it has, or had, an agency relationship with a PETE. On the contrary, in the Counterclaim it claims it a holder by virtue of a successor-by-merger scenario of FUNB to Wachovia to Wells Fargo that its own affiant, Mr. Wakefield, torpedoes out of the water. Trying to call itself as a servicer does not get Wells Fargo out of the requirement to prove its purported right to enforce under Article 3.

Moreover, there is the Lost Note Affidavit and deposition testimony of Tracy Thomas which unequivocally shows that Wells Fargo did not have possession of the Note at the time it filed its Counterclaim in December, 2011. Based on these fact, Wells Fargo lacks standing to bring the Counterclaim as a matter of law and also fails to meet the requirement of the U.S. Supreme Court in the seminal case of *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) – which holds that the plaintiff must own the Note and Mortgage at the time the Complaint is filed in order to foreclose on property.

On December 13, 2011, the Defendant, Wells Fargo Bank, NA moved to file an Amended Answer and Counterclaim seeking to enforce the March 12, 2002 Note and to foreclose on his home. The Defendant asserted in its pleadings that the Note had been issued and delivered to it

and that it had the right to foreclose because demand had been made allowing Bentrim the right to cure his default, but Bentrim failed to comply. Significantly, the Defendant neither plead possession of the Note nor attached a copy to its pleading at that time. Bentrim timely answered the complaint denying the Note was payable to Wells Fargo or that any such demand was ever made.

On April 3, 2012, the Defendant produced a Lost Note Affidavit (WF 219-222) signed by Bank Officer Tracy M. Thomas as well as a "copy" (WF 223-226) of the Note certified as a *"true, correct and substantial copy of the lost or destroyed Note"* (See LNA, WF 220 paragraph 8). No other documents or records were attached to the Affidavit. Affiant Thomas further "states that Wells Fargo Bank, NA as successor by merger to Wachovia Bank, NA, successor by merger to First Union National Bank has not pledged, assigned, transferred, hypothecated or otherwise disposed of the Note." (WF 220 paragraph 5). Thomas further testified that she had personal knowledge that Bentrim was the present holder and owner of the Note (see WF 220 paragraph 6.C).

The original promissory Note was purported found and returned to Wells Fargo's vault on February 27, 2012, (see Thomas Deposition 119:14) some 6 weeks prior to providing Bentrim WF 219-227, and such discovery was not provided until February 2013!

However, prior to filing its first Amended Answer and Counterclaim, Wells Fargo produced an ACLS History Card Report (WF 159-218) on November 8, 2011. On November 29, 2006 an entry is clearly marked "Loan Sold to Pool." Ms. Thomas attaches no further records to explain the "sale" and admits (See Thomas Deposition page 72: 6-23) never even looking at Wachovia Bank NA's servicing records contained in ACLS. Thomas is a robo-signer and can only verify the bold typeface in Section 3 of her affidavit.

On December 10, 2013, the Defendant amended its Amended Answer and Counterclaim to assert "Wells Fargo Bank, successor by merger to Wachovia Bank, NA as successor by merger to First Union National Bank, *is now* the owner and holder of the Note and Mortgage and therefore is the real party in interest entitled to bring this action against Plaintiff." (See ¶ 172, emphasis added))

Assuming its assertion in its December 10, 2013 pleading that it '*is now the owner and holder of the Note and Mortgage*' is true, this constitutes an admission by Wells Fargo that it was not the owner and holder of the Note and Mortgage at the commencement of its action is fatal and cannot be cured.

There are additional factual problems. The Note attached to the LNA (WF 223-226) is certified as a "*true, correct and substantial copy of the lost or destroyed Note*" materially differs from the Note which Wells Fargo relies on now - as it does not have the two barcodes on it. Ms. Thomas claims in her testimony (104: 9-16) that when the Note first arrived in the vault in 2002, a barcode was placed upon it and then was imaged into a system call CLPR. Prior to January 2013, no barcoded note was ever presented in any previous litigation.

Further, the copy of the Note produced by Brock and Scott attorney Suzanne Brown (who Wells Fargo claims was supposed to have possession of the Note) bears no barcode. Most critically, the Defendant has produced no vault records showing any movement of the Note prior to *after* it was sent to Womble Carlyle. Even if Wells Fargo was entitle as a manner of law to enforce the Note through possession alone, **it has presented no evidence it had possession at the time of filing.**

"A threshold inquiry for any court is the determination of justiciability, i.e., whether the litigation presents an active case in controversy. 'No justiciable controversy is presented unless

the [defendant] has standing to maintain the action.” *Lennon v. South Carolina Coastal Council*, 330 S.C., 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998) (citations omitted). “Standing refers to ‘a party’s right to make a legal claim or seek judicial enforcement of a duty or right.’ ‘Standing is...that concept of justiciability that is concerned as to whether a particular person may raise legal arguments or claims.” *Powell ex rel. Kelly v Bank of Am*, 379 S.C. 437, 444, 665, S. E.2d 237,241 (Ct. App. 2008) (citations omitted). Rule 17 of the South Carolina Rules of Procedure requires cases be brought by the real party in interest.

“[S]tanding is to be determined as of the commencement of suit.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-71 n.5 (1992); accord *Young v. People’s Bank*, 163 S.C. 57, 161 S.E. 324, 329 (1931)(“Plaintiff’s right to any recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit was started is a fatal defect, which cannot be cured by the accrual of a cause of action pending suit.”). Pursuant to 55 Am. Jur. 2d. *Mortgages* § 584 (2009), “a plaintiff has no foundation in law or fact to foreclose upon a mortgage in which the Plaintiff has no legal or equitable interest.”

In *Young v. People’s Bank*, the South Carolina Supreme Court adopted the holding of *Carpenter v. Longan*, supra, which “clearly supports the notion that the Plaintiff must own the Note and the Mortgage to foreclose on the property.” The Court determined that “Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed.” Judge Nicholson, in *Deutsche Bank Nat’l Trust Co. v. Heinrich*, 2011-CP-10-1060 (July 31, 2013) applied the same principle.

Here, Wells Fargo has presented no evidence that it owned the Mortgage at the time of the commencement of the Counterclaim – and has produced evidence and admissions that it did not own the Note - its Counterclaim should be dismissed for lack of standing and failure to comply

with *Carpenter*.

Mr. Wakefield's affidavit is too little, too late. It contains serious flaws. First – the information contained in the affidavit should have been pleaded and attached, along with supporting documents, to the initial Counterclaim in order to prove Wells Fargo's enforcement rights. The failure to do so is fatal to the Counterclaim. See *In Re Veal*. Second -- Mr. Wakefield's affidavit also further undercuts Wells Fargo's "servicer" claim (Section E) because he claims the Note was repurchased in May, 2010 – nearly 18 months before Wells Fargo interposed the Counterclaim.

Summary judgment on the Declaratory Judgment cause of action should be further reconsidered because Wells Fargo did not send a timely right to cure letter prior to filing the instant Counterclaim. In its counterclaim dated December 13, 2011, Defendant asserts that on November 20, 2011 it sent Bentrin a thirty (30) day right to cure letter. (Amended Counterclaim ¶ 183). Wells Fargo then avers Bentrin ignored the opportunity to cure, giving them the right institute foreclosure. *Id.* at ¶ 184. Wells Fargo has never produced a right to cure letter. In *Southern Atlantic Financial Services, Inc. v. Middleton*, the Court of Appeals held that a notice of default and right to cure are standard contractual rights and a reasonable expectation exists that they will be entitled to notice of default and right to cure. 349 S.C. 47, 562 S.E.2d 482 (2002). When there is an option in the loan documents for the same – as here – then it is error to allow a bank to file a counterclaim without giving a right to cure notice prior to instituting the action. As a threshold matter, for all reasons set forth above, Wells Fargo had no right to send acceleration letter or right to cure letter in its own name.

The reality is that on September 27, 2011 Wells Fargo's counsel claimed the Note in default and demanded Bentrin pay an indeterminate amount by October 28, 2011. Wells Fargo's

counsel claimed that Wells Fargo Bank, NA entitled to enforce the Note because it had through mergers acquired the original payee on the Note, First Union National Bank. Article 3 of the UCC forbids the foreclosure on the mortgage unless the creditor possesses a properly transferred promissory note. The reasoning is clear and once again codified in Article 3 that under the basic rule of negotiable instruments that once a promissory note is given for an underlying obligation like a mortgage, the underlying obligation is merged into the note and suspended while the Note is outstanding.

Because of this merger rule, the underlying cause of action is not available as a separate cause of action until the Note is dishonored. SC §36-3-310(b) codifies: "(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply: .... (2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment."

Thus until the note is dishonored, there can be no default on the mortgage. Under SC §36-3-502(a)(3) 'a promissory note is dishonored when the maker does not pay it when it first becomes payable.' However, as previously discussed, the obligations on the promissory note itself is owed only to a 'person entitled to enforce,' and only that person can show that the debt was not paid when due creating 'dishonor.' Both the Official Comments to §§36-3-502 and 36-3-310 make it clear that a dishonor can only occur if the person who wishes to sue is someone in possession of the instrument. Official Comment 3 to §3-310 explains: "If the check or note is dishonored, the [other party] may sue on either the dishonored instrument or [the underlying contract] if [that

person is in] *possession* of the dishonored instrument and is the *person entitled to enforce it*" (emphasis added).

Based on the Lost Note Affidavit filed on April 4, 2012, there is no dispute that Wells Fargo was not in possession of the Note. The Note had not been dishonored and therefore no material dispute existed at the time it filed its Counterclaim to enforce the Note and foreclose on the Mortgage. Despite ample opportunity to establish its enforcement rights, the Defendant instead to proceed in contravention of the UCC.

Another ground to reconsider summary judgment on this cause of action arises because Wells Fargo failed to follow a prerequisite court order. There is no genuine issue of material fact that the Counterclaim was filed in contravention of the Court's order of July 9, 2010 in case number 09-CP-10-4700 which specifically required Wells Fargo to provide a calculated payoff prior to refiling a claim under the Note. In *Georganne Apparel, Inc. v. Todd*, the Court of Appeals upheld an order dismissing a case under Rule 41(a)(2) and Rule 41(b) after the plaintiff had dismissed and restored the case under former SCRC40(c)(3) and later voluntarily dismissed it under SCRC41(a)(2) subject to conditions, and then refiled the action violating those conditions. 303 S.C. 87, 399 S.E.2d 16 (Ct. App. 1990).

Finally, Plaintiff would submit that to the extent Defendant had a right to file a counterclaim in this action, it was mandatory counterclaim. Defendant's first answer in the instant case, however, failed to include a counterclaim. This violates Rule 13, SCRC, which provides:

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought the suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any

counterclaim under this Rule 13. Rule 13, SCRPC.

By definition, a counterclaim is “compulsory” only if it arises out of the same transaction or occurrence as the opposing party's claim; the test for determining if a counterclaim is compulsory is whether there is a logical relationship between the claim and the counterclaim. *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002). In *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989), our Supreme Court adopted the “logical relationship” test. In essence, the “logical relationship” determination is made by asking whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage. *Advance Intern., Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266; 269–70, 449 S.E.2d 580, 582 (Ct.App.1994), *aff'd in part, vacated in part*, 320 S.C. 532, 466 S.E.2d 367 (1996).

Thus, Defendant's failure to include the compulsory counterclaim with its original answer in the instant case is another ground militating against granting summary judgment on the D.J. cause of action. To the extent Defendant argues that the motion to amend granting leave to file the Counterclaim cured any defect, the Court of Appeals in *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 233, 599 S.E.2d 462, 465-66 (Ct. App. 2004) held that substantive arguments are not to be considered at amendment, and arguments going to the legal merits of a counterclaim are better taken up in the context of a Rule 12(b) motion to dismiss or Rule 56 motion for summary judgment, thus obviating that argument.

#### **XI. Factual Issues Further Preventing Defendant from having PETE rights.**

Wells Fargo's attorneys have claimed in open Court that Wachovia and/or Wells Fargo always had possession of the Note, except when it was in hands of agent. The following facts should be kept in mind:

If Wachovia and Wells Fargo always had physical possession of the Note despite selling

a 100% interest in it – and they cannot or will not produce a Purchase Agreement, nor have any vault records before March, 2012 – then the inexplicable result is that (a) Wachovia released enforcement rights but (b) the TMS never obtained them.

Wells Fargo now tries to claim that – notwithstanding the foregoing – it also had enforcement rights as ‘servicer’. This argument fails too. Defendant has always denied that any Servicing Agreement exists. It has consistently claimed it owned/held the mortgage in demands to Bentrin (See Exhibit “B”), which contradicts the Wakefield’s affidavit. Further, if the Court is allowed to rule solely on the arguments of Defendant’s Counsel, Wells Fargo – through its counsel – has argued in Court that no other entity has received payments from Bentrin; an assertion that would totally inconsistent with servicing rights or sale of a participation interest.

The evidence on the record from the Lost Note Affidavit is that Defendant lost an unstamped Note and that the Note had never been transferred, sold, etc. In its pleadings, Defendant is trying to enforce an unstamped Note, as a holder, via successor by merger to WB, NA -- with zero mention of TMS. The big problem is Defendant has produced no evidence nor any testimony to support the new assertion by Defendant’s counsel that Note was ever transferred to TMS or that TMS owned the Note and Mortgage with enforcement rights from December, 2006 to May, 2010. The documents in Exhibit B to this Motion would in fact undercut this argument and reveal that the Defendant owned the Mortgage while another entity owned the Note. Additionally, the Note currently in Wells Fargo’s attorneys’ possession has never been entered into the record; their pleadings attempt to enforce a different Note.

How can Wachovia Bank, NA claim servicing rights when it has steadfastly claimed that no servicing agreement exists? During the same period in which Defendant now wants to claim servicing rights, it was writing to Plaintiff and telling him it owned his Mortgage -- without any

mention of being a servicer. None of this adds up.

Moreover, if we were to assume TMS had the rights to enforce and transfer the Loan at the time it was acquired by Wells Fargo, the fact that Wachovia attorneys apparently made the transfer would undercut this argument. This was the testimony of Defendant's own Vice President, Tracy Thomas, who testified that the Note was in the possession of Wachovia attorneys during the time ownership was purportedly vested in TMS. (See Exhibit C, Tracy Thomas Deposition Excerpts, pp. 97-140). Wachovia's attorneys and agents cannot lawfully transfer a Note belonging to TMS Service Corp to Wells Fargo, nor can a servicer. S.C. Code Ann. § 36-3-203. Such an outcome is incompatible with both the Lost Note Affidavit and the Wakefield Affidavit.

There is simply no proof of a physical transfer of the Note. We have no proof of a Purchase Agreement. We have no proof of a voluntary transfer. Under the UCC Article 3, unless it is a bearer instrument, the Note is either transferred or negotiated. UCC 9 governs what rights are 'transferred.' There is a complete failure of evidence on the part of Defendant. *See Estate of Barr v. Carson*, 300 S.C. 171, 386 S.E.2d 791 (1989).

The only evidence before this Court is that there was a sale effective November 29-December 1, 2006. This transaction would only prove that Wachovia Bank, NA lost rights to enforce under UCC Section 9-318 – which is why until June 5, 2014 Wells Fargo denied any sale took place.

The Wakefield affidavit fails to state TMS ever obtained a security interest in Bentrim's loan. Without such an assertion and documentation to support it, it is ultimately irrelevant who purchased TMS because the Plaintiff's loan was not part of it.

## **XII. 2006 Order of the Court Should Not Be Applicable.**

Plaintiff submits that to the extent the Court granted summary judgment based on a 2006

order, it should reconsider the same because that its 2006 order is void: Defendant's predecessor obtained a judgment by default without submitting an affidavit, verified complaint or other sworn testimony. S.C. Code Ann. § 37-5-114 (2) provides that "[a] default judgment may not be entered in the action in favor of the creditor unless the complaint is verified by the creditor or sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded." Since Defendant's predecessor failed to meet this obligation, nothing from the 2005 foreclosure case or the 2006 order should be admissible or form the basis of this Court's ruling. A void judgment is one from its inception, is a complete nullity and without legal effect and must be distinguished from one that is merely 'voidable.' A judgment is void if a court acts without personal jurisdiction. *Thomas & Howard Co. v. TW Graham & Co.*, 318 SC 286, 291, 457 SE2d 340, 343 (1995).

Further, Wells Fargo seeks to use the 2006 judgment that Wachovia Bank, NA was a holder in an attempt to not have to produce any servicing records, including proof of consideration prior to that date. Since the order made no finding that Wachovia Bank, NA was a holder in due course, the judgment is irrelevant for such purposes.

Even if the Court had found Wachovia Bank, NA to be a holder in due course on the Note in 2006, 'the holder in due course status is irrelevant in determining rights between the Obligor (maker) and the Obligee (payee) with respect to the instrument' See 36-3-302, Comment 4.

### **XIII. Insufficient Discovery.**

Many of Wells Fargo's grounds for summary judgment are predicated on the idea that there is no proof of certain final conclusions of law for the various causes of action – despite the fact that no meaningful discovery depositions have been taken. Only in the last several weeks has Wells Fargo identified the two fact witnesses they were ordered to produce in the March 5

Discovery Order. Only last Thursday did Wells Fargo concede that it had sold a 100% interest in the loan. Plaintiff contends that Wells Fargo has not completed its document production obligations flowing from the March 5 Discovery Order. Many of the grounds for summary judgment based on lack of evidence – rather than arguments of law – are thus premature until the close of discovery and it would be unfair to grant the extraordinary relief of summary judgment at this time for lack of proof while document discovery is incomplete and no Wells Fargo witnesses have been deposed. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)(“summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery”).

**CONCLUSION**

For the above reasons, Plaintiff respectfully requests that this Court reconsider and/or alter or amend Section 4 of the Order.

**BROWN & VARNADO LLC**

By: \_\_\_\_\_



Robert B. Varnado  
103 Church Street (29464)  
P.O. Box 1127  
Mt. Pleasant, SC 29465  
(843) 737-7300  
(843) 654-5109 facsimile  
rvarnado@brown-varnado.com  
*Attorney for Plaintiff*

November 13, 2014  
Mt. Pleasant, South Carolina


**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served the attached *Notice of Motion and Motion to Reconsider Section 4 of the Order of October 28, 2014* in the above-captioned action via hand delivery to the attorney for the Defendant as follows:

Charles M. Baker III, Esquire  
S. Sterling Laney III, Esquire  
John C. Hawk IV, Esquire  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
P.O. Box 999  
Charleston, SC 29402  
*Attorney for Defendant*

BY \_\_\_\_\_  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2014 NOV 13 PM 4:36

FILED

  
\_\_\_\_\_  
Elizabeth T. Plasters  
*Paralegal to Robert B. Varnado, Esq.*

November 13, 2014  
Mount Pleasant, South Carolina

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 BRENT E. BENTRIM, )  
 )  
 PLAINTIFF, )  
 )  
 V. )  
 )  
 WELLS FARGO BANK, N.A., )  
 )  
 DEFENDANT. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2011-CP-10-2946

ORDER

FILED  
 2014 OCT 28 AM 9:40  
 JULIE R. BRISTONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

This matter came before the Court on June 9, 2014, for a hearing on several discovery and dispositive motions. At the hearing, the Plaintiff, Brent E. Bentrin ("Plaintiff" or "Bentrin"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrin was also present at the hearing. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III and John C. Hawk IV of Womble Carlyle Sandridge & Rice, L.L.P. After carefully reviewing the motions and memoranda submitted by the parties, hearing arguments from counsel for both parties, considering the applicable law and facts related to the motions, the Court rules as follows:

**1. PLAINTIFF'S MOTION TO RECONSIDER, FILED MAY 28, 2014**

Plaintiff moved the Court to alter or amend its Discovery Order of May 14, 2014. Specifically, Plaintiff requested the Court to reconsider its conclusion that Wells Fargo is the "holder" of the subject promissory note (the "Note"). The Court rejects Plaintiff's argument and again concludes that Wells Fargo is the holder of the Note as a matter of law and a holder in due course of the Note as a matter of law. Further, even if Wells Fargo was not the holder, it would still qualify as a "person entitled to enforce" as defined in S.C. Code Ann. §36-3-301. The Court



concludes there is no good cause to reverse its prior rulings and therefore *denies* Plaintiff's Motion to Reconsider.

**2. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 10, 2013, AND SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT, FILED MAY 30, 2014**

At the hearing, Plaintiff informed the Court that he would not pursue the first six of his initial seven grounds found in his Motion for Summary Judgment filed October 10, 2013. He proceeded on the seventh ground, contending that Wells Fargo's foreclosure counterclaim was filed in contravention of the Court's order of July 9, 2010, in Case Number 09-CP-10-4700. He also proceeded on his Supplemental Motion for Summary Judgment filed May 30, 2014. Plaintiff's summary judgment motions are *denied* in their entirety.

**3. PLAINTIFF'S MOTION TO COMPEL, FILED MAY 30, 2014**

Plaintiff's Motion to Compel requests the Court to order Wells Fargo to produce five categories of documents. The first two categories relate to Wells Fargo's ACLS system. Plaintiff is hereby ordered to provide Wells Fargo with a list of tables and/or reports he believes are maintained in ACLS and contain information he is seeking regarding the servicing of his loan. Upon receipt of the list from Plaintiff, Wells Fargo shall conduct a timely review of the list and determine whether the requested documents relate to the servicing of Plaintiff's loan. If Wells Fargo believes that any of the documents sought are not related to the servicing of Plaintiff's loan or will be unduly burdensome to produce, then Wells Fargo is ordered to submit to the Court within fifteen (15) days of receipt of Plaintiff's list a detailed explanation of why the documents sought are either not related to the servicing of Plaintiff's loan or will be unduly burdensome for Wells Fargo to produce. Otherwise, Wells Fargo shall produce such documents

to Plaintiff. As to the remaining categories of documents requested by Plaintiff, the Court *denies* Plaintiff's motion.

**4. WELLS FARGO'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 19, 2014:**

Wells Fargo moved for summary judgment as to sixteen of Plaintiff's seventeen causes of action, the only exception being the twelfth cause of action for an Accounting. Viewing the facts in the light most favorable to Plaintiff, the Court hereby grants Wells Fargo's motion for Summary Judgment as to the following causes of action:

- Breach of Implied Covenant of Good Faith and Fair Dealing (Third Cause of Action)
- Conversion (Fifth and Tenth Causes of Action)
- Fraud/Fraudulent Misrepresentation (Sixth Cause of Action)
- Constructive Fraud (Seventh Cause of Action)
- South Carolina Unfair Trade Practices Act (Eighth Cause of Action)
- Slander of Title (Ninth Cause of Action)
- Civil Conspiracy (Eleventh Cause of Action)
- Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (Thirteenth Cause of Action)
- South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108 (Fourteenth Cause of Action)
- Mail Fraud (Sixteenth Cause of Action)
- Declaratory Judgment (Seventeenth Cause of Action)

The Court requests further briefing as to the remaining causes of action on which Wells Fargo seeks summary judgment and takes those matters under advisement. After reviewing the

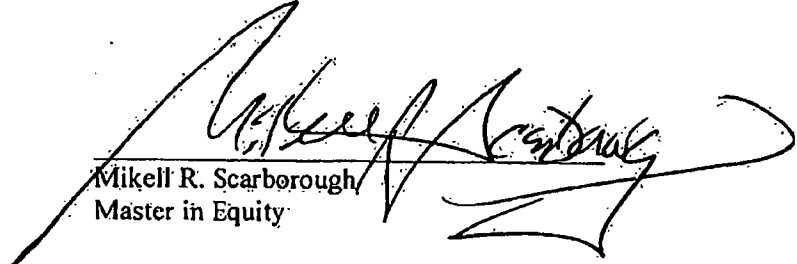


additional briefing, the Court will issue an order either granting or denying Wells Fargo's Motion for Summary Judgment as to these causes of action.

**5. SCHEDULING**

The Court has set a status conference for January 12, 2015, at 11:00 a.m. to discuss further scheduling issues.

**AND IT IS SO ORDERED.**

  
Mikell R. Scarborough  
Master in Equity

CHARLESTON, SC  
October 16, 2014

# EXHIBIT B

# BROCK & SCOTT PLLC

## COLUMBIA OFFICE

WESTPARK CENTER  
3800 FERNANDINA ROAD  
SUITE 110  
COLUMBIA, SC 29210  
PHONE 888-728-9953  
FAX 888-207-9353

[www.brockandscott.com](http://www.brockandscott.com)

THOMAS E. BROCK \*  
GREGORY A. SCOTT \*  
JAMES P. BONNER \*  
MARK A. PEARSON \*\*  
BRIAN L. CAMPBELL \*\*  
SEAN M. CORCORAN \*  
MARTIN HARRISON \*

ASHEVILLE, NC  
CHARLOTTE, NC  
RALEIGH, NC  
WILMINGTON, NC  
WINSTON-SALEM, NC

COLUMBIA, SC

FRANKLIN, TN

\* Licensed in North Carolina

\*\* Licensed in North Carolina and South Carolina

July 10, 2009

Brent E. Bentrin  
10 Nicholson Street  
Charleston, SC 29407

VIA OVERNIGHT MAIL AND FACSIMILE TO 888-819-3724

RE: Loan Number: 000041200213089  
Property Address: 10 Nicholson Street, Charleston, SC  
B&S File No.: 09-07779

Dear Mr. Bentrin,

As you know, I represent Wachovia Bank, N.A. ("Wachovia") with regard to the above referenced mortgage loan account. This letter is meant to address to the concerns which you stated in your correspondence of April 28, 2009.

You expressed a belief that Wachovia "has been incorrectly amortizing this loan as a fixed rate payment as the payment amount of \$1,230.26 remained constant in a decreasing rate environment." I enclose herewith a copy of the Negotiable Promissory Note ("note") dated March 12, 2002 and bears your signature. I have highlighted the pertinent portion of the note on Page 1, which describes the variable rate feature of your loan. I have also highlighted a portion of Page 2, which explains that the payment amount remains constant for a period of 60 months and then may change in the 61<sup>st</sup> month (and every 61<sup>st</sup> month thereafter) while the interest rate varies.

With regard to the payment default, Wachovia advises that your account was two months delinquent on June 18, 2008. You were granted a 2 month extension, which essentially placed the two payments at the back of the loan which resulted in your account being due for the June 11, 2008 payment. I am informed that the ensuing payments were received and applied as follows:

July 10, 2009  
Page 2

<u>Payment Due Date</u>	<u>Payment Received and Applied</u>
6/11/08	7/1/08
7/11/08	8/1/08
8/11/08	9/29/08
9/11/08	11/14/08

(The Notice of Intention to Foreclose was requested on November 14, 2009 several hours prior to application of the payment of 11/14/08. The letter was incorrect in that it included the September payment. I have included copies the loan payment history for your reference.)


Please be advised that should you wish to reinstate your account, the amount needed to do so is \$13,035.62. This amount is good through 7/15/09.

Payments	(from: 10/11/08 to: 07/11/09 @ \$1,230.26 )	\$ 12,302.60
Late charges		\$ 83.02
Property valuation		\$ 75.00
Attorney fees		\$ 275.00
Foreclosure costs		\$ 300.00
<b>TOTAL</b>		<b>\$ 13,035.62</b>

Payment of the above amount must be remitted to Wachovia Bank, National Association in the form of a cashier's check or money order and mailed to this office to: Attn - Client Relations and received by the end of the business day on the "good through" date. In addition, you must provide proof that property taxes and senior mortgages are current in order to reinstate loan as well. You will need to request new reinstatement figures if you cannot meet the good through deadline.

I acknowledge that you have inquired as to the changes to the hazard insurance coverage on your property. Wachovia is investigating your claims and I will be in contact once the review has been completed.

Sincerely,

  
Suzanne E. Brown  
Attorney at Law  
Brock & Scott, PLLC

cc: Wachovia Bank N.A.

THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE.



Wachovia Bank, N.A.  
Retail Credit Collections  
FL0503  
P.O. Box 52117  
Jacksonville, FL 32201-2117

EXHIBIT A

11/17/2008  
41,430,65,046  
Brent E Bentrim  
49 Archdale St  
Charleston, SC 29401

VIA CERTIFIED AND REGULAR MAIL

**NOTICE OF INTENTION TO FORECLOSE**

RE: Account Number: 000041200213089  
Property Address: 10 Nicholson Street, Charleston, SC 29407

Dear Wachovia Customer(s):

As you are aware, Wachovia Bank, N.A. holds a recorded lien on the real property listed above, in the amount of \$182,700.00.

Your loan payments are past due, which puts you in default of your loan agreement. As of 11/17/2008 you owe the following:

Principal and Interest	\$4,847.07
Current Late Charges	\$73.02
<b>TOTAL DUE</b>	<b>\$4,920.09</b>

You may cure your default by paying the aforesaid amount by bank check, money order, or other certified funds so that it is received at the following address on or before 12/14/2008: Wachovia Bank, N.A., Retail Credit Collections, FL0503, P.O. Box 52117, Jacksonville, FL 32201-2117.

If your account is not brought current by 12/14/2008, then we may start foreclosure proceedings.

Among other things, the purpose of this letter is to make one final attempt to possibly avoid acceleration or foreclosure and reach an agreement with you to satisfy your delinquent loan account. There are alternatives to foreclosure and its severe consequences. Wachovia Bank, N.A. is willing to consider your individual circumstances and be flexible as possible in attempting to make alternatives available to you. However, you or your attorney must contact this office to discuss your situation if foreclosure is to be avoided. This letter is not to be considered a definite offer to accept an alternative to foreclosure. Likewise, this letter is not a waiver of the acceleration of your mortgage or a waiver of any of the bank's rights or remedies under the loan documents.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration, your total obligation will be immediately due and payable without further notice or demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable foreclosure fees and costs. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.

679534 (Rev 00)

Generic Breach Letter  
042007-17800-005087-856031

0000 000614 Rev 01



Wachovia Bank, N.A.  
Retail Credit Collections  
FL0803  
P.O. Box 52117  
Jacksonville, FL 32201-2117

EXHIBIT A

11/17/2008

VIA CERTIFIED AND REGULAR MAIL

Page 2

After acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the loan, depending on the terms of the loan documents. We encourage you to review the provisions of the loan documents. Please be aware that, after acceleration of the debt, there may be expenses and fees and costs incurred by us to enforce our lien in addition to the overdue amount. Any payment to reinstate the loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the loan will be returned, and will not stop any foreclosure proceedings that have begun. Prior to submitting payment, you may wish to call us to verify the exact amount due.

There may be possible availability of financial assistance for curing a default from programs operated by the State or Federal Government or non-profit organizations. You may wish to call the number below to ascertain whether you qualify for assistance.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Wachovia has not been notified of your bankruptcy case. If the foregoing applies to you, it is very IMPORTANT that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

**Please note:**

- If you are eligible for protection under the Servicemembers Civil Relief Act, or similar state statute, please contact us immediately.
- We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you disagree with the assertion that a default has occurred or with the correctness of the calculation of the amount required to cure the default, you may contact Retail Credit Collections at 1 (800) 829-2474.

Sincerely,

Retail Credit Collections  
1 (800) 829-2474

579534 (Rev 00)

Generic Breach Letter  
042007-17800-005087-656031

0000 000614 Rev 01



**WACHOVIA**

Wachovia Bank N.A.  
FL 0503  
Collection Shared Services  
PO Box 52117  
Jacksonville, FL 32201-2117  
Tel 866-509-7097

December 13, 2006

Brent R. Benifim  
10 Nicholson Street  
Charleston, SC 29407

7006 0300 0007 0475 8872

Postage	\$
Registered Mail Fee	\$
Registered Mail Delivery Fee	\$
Registered Mail Insurance Fee	\$
Total Postage & Fees	\$

U.S. Postal Service  
**CERTIFIED MAIL - RECEIPT**  
(Domestic Mail Only - No Insurance Coverage Provided)  
For delivery information visit our website at [usps.com](http://usps.com)  
**OFFICIAL USE**

PS Form 3800, March 2002

**NOTICE OF INTENTION TO FORECLOSE**

KB: 00041200213089

Dear Wachovia Customer:

As you are aware, Wachovia Bank N.A. holds a recorded mortgage on 10 Nicholson Street, Charleston, SC 29407, in the amount of \$182,700.00.

Your mortgage payments are past due which puts you in default of your loan agreement. As of 12/13/2006 you owe the following:

Past due payments:	\$4,021.05
Current Late Charges:	\$10.00
Accumulated late charges:	\$20.00
Other charges:	\$95.00
<b>Total due to reinstate and cure default:</b>	<b>\$4,146.05</b>

You may cure your default by paying the aforesaid amount by bank check, money order, or other certified funds so that it is received at the following address on or before 1/12/2007:

Wachovia Bank N.A.  
Consumer Credit Department  
P.O. Box 13327  
Roanoke, VA 24040

---

# EXHIBIT C

Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
3 ) CASE NO. 2011-CP-10-2946

4 BRENT E. BENTRIM, )  
5 Plaintiff, )  
6 v. )  
7 WELLS FARGO BANK, N.A., )  
8 Defendant. )

11 VIDEOTAPED DEPOSITION OF  
12 TRACY THOMAS  
13 10:03 a.m.  
14 August 6, 2013  
15 1301 Riverplace Boulevard, Suite 1809  
16 Jacksonville, Florida  
17 Richetta R. Bright, Registered Professional Reporter

Page 3

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1 APPEARANCES OF COUNSEL  
2  
3 On behalf of the Plaintiff:  
4 ROBERT B. VARNADO, ESQUIRE  
5 Brown & Varnado, LLC  
6 103 Church Street  
7 Mount Pleasant, South Carolina 29464  
8 (843) 737-7300  
9  
10 On behalf of the Defendant:  
11 JANA B. BAKER, ESQUIRE  
12 Womble, Carlyle, Sandridge & Rice, LLP  
13 5 Exchange Street  
14 Charleston, South Carolina 29401  
15 (843) 722-3400  
16  
17 Also Present: Miriam Beckford, Videographer  
18 Brent E. Bentrin  
19  
20  
21  
22  
23  
24  
25

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1 THE VIDEOGRAPHER: This is tape number 1  
2 to the videotaped deposition of Tracy Thomas, in  
3 the matter of Brent Bentrin versus Wells Fargo  
4 Bank, being heard before the Court of Common  
5 Pleas, Ninth Judicial Circuit, Case No.  
6 2011-CP10-2946.  
7 This deposition is being held at Esquire  
8 Deposition Solutions, located at 1301 Riverplace  
9 Boulevard, Jacksonville, Florida. Today's date  
10 is August the 6th, 2013. The time on the record  
11 is 10:03 a.m. My name is Miriam Beckford. I'm  
12 the videographer. The court reporter is  
13 Richetta Brown [sic].  
14 Counsel, will you please introduce  
15 yourselves and affiliations, and the witness  
16 will be sworn.  
17 MR. VARNADO: My name is Rob Varnado, and  
18 I am counsel for the plaintiff.  
19 MS. BAKER: My name is Jana Baker, and I  
20 am counsel for Wells Fargo, and I'm with the  
21 firm Womble, Carlyle, Sandridge & Rice.  
22 THE COURT REPORTER: Would you raise your  
23 right hand? Do you swear or affirm that the  
24 testimony in this cause will be the truth, the  
25 whole truth, and nothing but the truth, so help



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1 Q. You don't change that?  
2 A. The only thing would have been adding  
3 Mr. Bentrims name.  
4 Q. Okay. Did you -- were you part of --  
5 were you ever asked to help locate where the note was  
6 found when it was found?  
7 A. Can you rephrase that?  
8 Q. Yeah. I mean, we've already established  
9 that it was checked out in 2009. And it was  
10 rechecked into the vault 20 days after your lost note  
11 affidavit in 2012.  
12 A. Yes.  
13 Q. Okay. Did you know that it had been  
14 rechecked in?  
15 A. When?  
16 Q. In February 27 of 2012.  
17 A. No.  
18 Q. Why would you not know that information?  
19 A. I was -- I had no dealings with this  
20 account until I was made aware by counsel that you  
21 wanted to take my deposition.  
22 Q. Okay. So you wouldn't have followed up  
23 on it?  
24 A. No.  
25 Q. Okay. And who checked it back in?

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1 A. It was received from an attorney.  
2 Q. Okay. And then who checked it out next,  
3 based on ECar?  
4 A. Shella Sowers.  
5 Q. Okay. And when -- that was in 2013?  
6 A. I believe it was -- it was either late  
7 2012 or early 2013. It would have been around the  
8 time you had discussions with counsel about taking my  
9 deposition.  
10 Q. How do you know that? Just out of  
11 curiosity.  
12 A. Because --  
13 Q. Don't say anything they told you. Just  
14 how would you know it?  
15 A. Because I was -- I was brought back into  
16 it.  
17 Q. Okay. I don't want to know anything more  
18 that you talked about with Ms. Baker or Mr. Laney or  
19 anyone at their firm or anyone with your counsel  
20 group. Fair?  
21 A. Fair.  
22 MR. VARNADO: I want to take another  
23 break.  
24 THE VIDEOGRAPHER: Okay. We're off the  
25 record at 1:19 p.m.

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1 (Break taken)  
2 THE VIDEOGRAPHER: We're back on the  
3 record at 1:26 p.m.  
4 BY MR. VARNADO:  
5 Q. Did you bring a copy of SHAW with you  
6 today or a SHAW print screen?  
7 A. I brought copies of the two screens that  
8 I would have looked at.  
9 Q. Do you have them with you?  
10 A. Yes.  
11 Q. May I see them, please?  
12 MR. VARNADO: Let's go back off the  
13 record, then --  
14 THE VIDEOGRAPHER: Okay.  
15 MR. VARNADO: -- save video space.  
16 THE VIDEOGRAPHER: We're off the record  
17 at 1:26 p.m.  
18 (Break taken)  
19 THE VIDEOGRAPHER: We're back on the  
20 record at one 1:37 p.m.  
21 BY MR. VARNADO:  
22 Q. Ms. Thomas, we stepped out of the room to  
23 look at the documents that you brought with you today  
24 in response to the deposition notice, I assume. Can  
25 you describe for me, generally speaking, what the

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1 documents are and why you selected them to bring with  
2 you?  
3 A. Well, you didn't -- I mean, you filed a  
4 notice of duces tecum --  
5 Q. Uh-huh.  
6 A. -- but you didn't attach anything on what  
7 to bring.  
8 Q. Okay.  
9 A. So I brought a payment history, note and  
10 mortgage; some of the closing documents, updated  
11 payoff figures good through today, and screen  
12 shots -- two screen shots of SHAW that I would have  
13 used in my review and execution of the lost note  
14 affidavit.  
15 Q. You didn't bring the ECar stuff, though?  
16 A. No.  
17 Q. Why not? You just didn't feel it was  
18 germane?  
19 A. Well, you -- I mean, you didn't really  
20 give us anything --  
21 Q. But you studied it pretty hard. You knew  
22 the dates and names of people, right?  
23 A. Yes.  
24 Q. So we could still get an ECar printoff --  
25 A. Sure. If you --



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1 Q. -- through you, right? .  
2 A. -- request it, we --  
3 Q. Right.  
4 A. -- we could --  
5 Q. Okay. I'm going to go ahead and request  
6 it. If you could get that to Ms. Baker, I'd sure  
7 appreciate it.  
8 A. Okay.  
9 Q. Okay. I am going to -- I think it breaks  
10 down into four sections, I guess. Or maybe not. Is  
11 there any particular order that it was in? We looked  
12 at it. I don't think we scrambled it. I'm going to  
13 mark as Exhibit No. 7 the screen shots. Are these  
14 that I'm handing to you in Exhibit 7?  
15 (Exhibit-7 marked for identification.)  
16 A. This is separate.  
17 Q. Okay. Thank you. Exhibit -- what -- can  
18 you describe Exhibit 7, what it is?  
19 A. This is the STLN, Page 1 and STLN, Page 3  
20 from SHAW.  
21 Q. Okay. What does STLN stand for, to your  
22 knowledge?  
23 A. I don't know.  
24 Q. What do you --  
25 A. It's just the page.

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1 Q. The pages that you would use for SHAW?  
2 You told me earlier you would use two pages. These  
3 are the pages you would have used?  
4 A. Yes.  
5 Q. Okay. Which is the first page?  
6 A. This.  
7 Q. Exhibit 7?  
8 A. Yes, the page --  
9 Q. Okay.  
10 A. Page 1 at the top.  
11 Q. Okay. And then, this is Page 2?  
12 A. This is Page 2 of them, but Page 3 of  
13 SHAW.  
14 Q. Okay. Just for our -- the sake of  
15 clarity, we're going to make the second page, which  
16 is Page 3 of SHAW -- we're going to make that Exhibit  
17 No. 8; is that fair?  
18 A. Yes.  
19 (Exhibit-8 marked for identification.)  
20 Q. All right. So you -- you would have  
21 looked at 7 and 8?  
22 A. Yes.  
23 Q. Does 7 and 8 contain a date on them now?  
24 A. Yes.  
25 Q. What date does it show?

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1 A. I pulled these August 1st of 2013.  
2 Q. Do you believe that anything substantive  
3 changed in SHAW between August 1st, 2013, and  
4 February 2012?  
5 A. No.  
6 Q. Okay. Where is the original loan amount?  
7 A. Original amount, 182,7-.  
8 Q. Okay. Where is the actual loan, the loan  
9 balance?  
10 A. Current loan balance, 176- -- or  
11 \$176,879.20.  
12 Q. What is this \$180,000 proceeds amount?  
13 A. It's the amount financed.  
14 Q. How can the amount financed be less than  
15 the original amount?  
16 A. The original amount is including the  
17 \$2700 loan origination fee.  
18 Q. Don't you think that the 2700 origination  
19 fee was actually part of the 180- and not separate  
20 from?  
21 A. It should not have been part of the 180-.  
22 Q. But it -- okay. Now, you also brought  
23 the HUD, which back in those days only had two pages,  
24 right?  
25 A. Yes.

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1 Q. We're going to mark the HUD as Exhibit 9.  
2 And we know this was documents that your attorneys  
3 have already handed over, because it's Wells Fargo 19  
4 and Wells Fargo 20.  
5 (Exhibit-9 marked for identification.)  
6 A. Yes.  
7 Q. I'm going to hand you the HUD. Do you  
8 know how to read HUD?  
9 A. Yes.  
10 Q. Did you take a closing or residential  
11 real estate course at Santa Fe --  
12 A. Residential --  
13 Q. -- as part of your paralegal training?  
14 A. Residential real estate, yes.  
15 Q. Did you do HUD as part of that?  
16 A. I don't remember.  
17 Q. Were you taught to do HUDs? When did you  
18 learn to do HUDs?  
19 A. It would have been through the bank, I  
20 believe.  
21 Q. When I say HUD, I mean U.S. Department of  
22 Housing and Urban Development settlement statements.  
23 They're a standard government form that's to be used  
24 in all transactions, correct?  
25 A. Yes.

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1 Q. Okay. So you've learned how to read  
2 them?  
3 A. Yes.  
4 Q. Where is the -- whose column is whose?  
5 A. So this would be the borrower's column,  
6 and this would be the seller's.  
7 Q. What's the loan amount?  
8 A. \$180,000.  
9 Q. And you're referring to Page 2, right?  
10 A. Yes.  
11 Q. Then it has -- where is the 2700?  
12 A. Paid from borrower's funds at settlement.  
13 Q. So that means it was part of the one  
14 hundred -- the 180-, correct?  
15 A. Yes.  
16 Q. Okay. So right here, SHAW is wrong on  
17 Exhibit 7?  
18 A. No.  
19 Q. Why is SHAW not wrong? Why doesn't the  
20 HUD trump SHAW?  
21 A. The HUD appears to be incorrect.  
22 Q. The HUD was signed and accepted by  
23 everybody. It's the closing document. SHAW is  
24 incorrect, don't you agree?  
25 MS. BAKER: Object to the form.

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1 MR. VARNADO: Thanks.  
2 BY MR. VARNADO:  
3 Q. You can answer.  
4 A. We believe a mistake was made by the  
5 closing attorney and including the \$2700 in -- for  
6 loan origination fee.  
7 Q. How do you know that?  
8 A. Because it shouldn't have been included.  
9 Q. I know. But how do -- how do you know  
10 that? The first time you picked up this file was  
11 when you were asked to do the loan -- the lost note  
12 affidavit. Then the next time you picked the file up  
13 was when you were notified that I was seeking to take  
14 your deposition. How do you know that the closing  
15 attorney messed up?  
16 A. We -- I discussed the account with our  
17 research group.  
18 Q. Okay. Who did you discuss it with at  
19 research?  
20 A. Darlene Lella.  
21 Q. Okay. And who was Ms. Lella? What did  
22 she do at the research group?  
23 A. I don't know what her exact title is, but  
24 she works in the servicing research group.  
25 Q. So even though the HUD shows that the

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1 2700 on Page 2 of the HUD was paid out of the  
2 borrower's share of the 180-, y'all just consider  
3 that incorrect, and, therefore, you're going with  
4 what you put in SHAW; is that fair?  
5 A. I go by what is in SHAW, correct.  
6 Q. Okay. Even when SHAW disagrees with the  
7 HUD-1, that doesn't matter?  
8 MS. BAKER: Same objection.  
9 Q. You can answer.  
10 A. I did not see the HUD when I executed the  
11 lost note affidavit.  
12 Q. I thought it was part of CLIPR?  
13 A. It is.  
14 Q. And you said you looked at the CLIPR  
15 stuff as part of that.  
16 A. Yes.  
17 Q. But you didn't look at the HUD --  
18 A. I --  
19 Q. -- you didn't study it?  
20 A. No, I did not study the HUD.  
21 Q. Okay. I'm going to mark Exhibit No. 10,  
22 the First Union adjustable rate loan information  
23 statement.  
24 (Exhibit-10 marked for identification.)  
25 A. Yes.

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1 Q. Is that part of CLIPR, too?  
2 A. Yes.  
3 Q. Would that have been a document you would  
4 have studied as you did the lost note affidavit in  
5 order to confirm whether the information was correct?  
6 A. I would not have studied it, no.  
7 Q. Because you had SHAW, right?  
8 A. Correct.  
9 MR. VARNADO: Madam Court Reporter, do  
10 you mind if I do the stickers? Thank you.  
11 Exhibit No. 11.  
12 (Exhibit-11 marked for identification.)  
13 BY MR. VARNADO:  
14 Q. These documents that you brought with you  
15 today are documents you downloaded -- let me start  
16 over again.  
17 You actually -- I'm going to show you  
18 what's been marked as Exhibit No. 11. And it is a  
19 copy of the negotiable promissory note, right?  
20 A. This is a copy of, yes.  
21 Q. That's not a document you downloaded from  
22 CLIPR; that's a document that you received from your  
23 attorney, right?  
24 A. Yes.  
25 Q. Because it's got the Wells Fargo Bates



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1 stamp on the bottom --  
2 A. Yes.  
3 Q. -- right?  
4 So you really didn't download that one  
5 from CLIPR, because that one doesn't have a Page 5,  
6 does it?  
7 A. It -- I did not personally pull this one,  
8 no.  
9 Q. So that's not -- that's not the real  
10 CLIPR version of the promissory note?  
11 A. I don't -- I don't know.  
12 Q. Okay. When you were getting ready for  
13 today and you looked at CLIPR, did you see Page 5 on  
14 the CLIPR version?  
15 A. I don't recall if I did or not?  
16 Q. Wouldn't that be important to you?  
17 Because you know that that's something that's  
18 supposed to be there?  
19 MS. BAKER: Asked -- objection. Asked  
20 and answered.  
21 MR. VARNADO: You know you're not  
22 supposed to coach the witness, so --  
23 MS. BAKER: I'm not coaching.  
24 MR. VARNADO: -- just object to the form  
25 of the question, please.

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1 BY MR. VARNADO:  
2 Q. Isn't that something that you would have  
3 looked at or looked for or wanted to know about?  
4 A. I would have looked at the note. I don't  
5 recall if there was a Page 5 or not. Sometimes the  
6 sticker is on the front page of the note. I don't  
7 know. I don't recall.  
8 Q. Okay. That's not the -- the real note  
9 that was found, either, is it?  
10 A. This is a copy. So, no, it's not the  
11 original note.  
12 (Exhibit-12 marked for identification.)  
13 Q. Okay. Exhibit 12 is the mortgage. Here  
14 we go. Before we get to this, is this the mortgage?  
15 A. This is an unrecorded copy of the  
16 mortgage. Or no, here's the recording.  
17 Q. It's the recordation on it.  
18 A. Yeah, here it is.  
19 Q. Again, this is something that you got  
20 from your lawyers, not from CLIPR?  
21 A. Correct.  
22 Q. Because the Wells Fargo Bates stamp is on  
23 the bottom?  
24 A. Yes.  
25 Q. Okay. This is part of your file. This

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1 is -- that you brought today. Again, it came from  
2 your attorneys, because it's got a Wells Fargo  
3 sticker on it -- I mean, a Wells Fargo Bates stamp.  
4 I'm naming it Exhibit No. 13. What is this?  
5 MS. BAKER: Just for the record, can you  
6 name the Bates number there, please?  
7 MR. VARNADO: WF 16.  
8 BY MR. VARNADO:  
9 Q. We've marked this as Exhibit 13 to your  
10 deposition. It's Bates-stamped WF 16. Does it go  
11 with any of the exhibits that we previously  
12 discussed?  
13 A. I believe it goes to the mortgage.  
14 Q. Okay. Is it --  
15 A. 8 --  
16 Q. Oh, because it's got --  
17 A. 1 of 8.  
18 Q. -- Page 1 of 8?  
19 Okay. I'm going to take the exhibit --  
20 MR. VARNADO: Counsel, with your  
21 permission, I'm going to not have this be  
22 Exhibit 13.  
23 MS. BAKER: That's fine, yeah.  
24 BY MR. VARNADO:  
25 Q. Okay. So we're going to append WF 16 to

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1 Exhibit No. 12, again WF 9.  
2 Okay. More screen shots. Or do these go  
3 together? Do they go with the previous exhibit?  
4 There's three documents I'm handing to you.  
5 A. This --  
6 Q. Now, these look like you --  
7 A. -- goes with those two right there.  
8 Q. These two on top?  
9 A. On the bottom.  
10 Q. What about this?  
11 A. That is --  
12 Q. Goes here?  
13 A. Goes here.  
14 Q. All right. We'll make this Exhibit 13  
15 that's in your hand. Can you describe for me, ma'am,  
16 what is in Exhibit 13, what is it?  
17 (Exhibit-13 marked for identification.)  
18 A. These are updated payoff figures good  
19 through the day of today, as well as screen shots  
20 showing where these figures came from.  
21 Q. Let me see that, please. While I look  
22 these over, can you tell me where these go?  
23 A. This one is First Union Itemization of  
24 amount financed. This is -- shows that the late  
25 charge maximum set to the account was \$10 per



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1 charge --  
2 Q. Okay.  
3 A. -- 120 per year.  
4 Q. All right. Which one should we make 14,  
5 the First Union document?  
6 A. Sure.  
7 (Exhibit-14 marked for identification.)  
8 Q. What's this?  
9 A. That's the itemization of amount  
10 financed.  
11 Q. Now, on Exhibit No. 14, I'm going to  
12 again point out to you that it says the amount  
13 financed is \$180,000. That's -- and that is a bank  
14 document prepared by First Union for 180,000. But  
15 that is inconsistent with SHAW. Would you agree  
16 with --  
17 A. No. It's a total of items 1 through 4,  
18 182,700.  
19 Q. But the amount financed at the bottom,  
20 the last, is \$180,000?  
21 A. Correct. SHAW says amount financed,  
22 180,000.  
23 Q. Okay. Where did 13 get off to?  
24 A. You took it off.  
25 Q. There it is.

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1 A. Sorry.  
2 (Exhibit-15 marked for identification.)  
3 Q. You described that as a \$10 late fee?  
4 A. Yes. This shows that the late charge --  
5 the maximum amount per charge for the late charge was  
6 \$10 per charge, \$120 per year.  
7 Q. Where is that in the note that allows you  
8 to do that?  
9 A. The note gives us the authority to charge  
10 a late charge up to 5 percent.  
11 Q. Show me where that is in the note.  
12 A. If you receive any payment 15 days or  
13 more after the due date, I agree to pay you a late  
14 charge of 5 percent of my payment.  
15 Q. Not less than 5 percent or up to 5  
16 percent, correct?  
17 A. It's a benefit to your customer or to  
18 your client that it was only \$10.  
19 Q. Do you know if other late fees were --  
20 were charged and assessed? Do you know if other late  
21 fees were charged and assessed?  
22 A. There were multiple late fees charged to  
23 this account throughout the life of the loan.  
24 Q. More than \$10?  
25 A. It was \$10 per charge.

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1 Q. What about -- do you think the 5 percent  
2 was charged, too?  
3 A. No.  
4 Q. You're sure?  
5 A. Not that I've seen, it was not.  
6 Q. Because it's not on SHAW?  
7 A. Correct.  
8 Q. Because SHAW controls, right?  
9 MS. BAKER: Asked and answered.  
10 A. SHAW is the system of record.  
11 Q. Right. So it's the one that you rely  
12 on --  
13 A. Yes.  
14 Q. -- to do the lost note affidavit in your  
15 testimony today, correct?  
16 A. Yes.  
17 Q. Okay. All right. Now, we have the SHAW  
18 transaction history. And it is a 14-page document.  
19 And we're going to make that Exhibit No. 16. All  
20 right.  
21 (Exhibit-16 marked for identification.)  
22 MS. BAKER: For the record, what was  
23 Exhibit 15, please?  
24 MR. VARNADO: Exhibit 15 is this  
25 document.

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1 MS. BAKER: Okay.  
2 MR. VARNADO: We're going to lay them out  
3 here because they're going to get all messed up  
4 otherwise.  
5 BY MR. VARNADO:  
6 Q. All right. Let me ask you this, I'm  
7 going to hand you this 14-page exhibit. I assume you  
8 reviewed this before this morning, correct?  
9 A. Yes.  
10 Q. Okay. This is from SHAW, right, this  
11 14-page document?  
12 A. It's from CRIS.  
13 Q. I'm sorry. It is from CRIS, but it shows  
14 SHAW transactions, correct?  
15 A. Yes.  
16 Q. Do you consider it to be authoritative in  
17 the same manner that SHAW information is  
18 authoritative?  
19 A. The information contained in this payment  
20 history is pulled from SHAW. So, yes.  
21 Q. And you would consider it to be  
22 correct --  
23 A. Yes.  
24 Q. -- right?  
25 Okay. I'm going to ask you to explain



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1 some things that I just don't understand. If you can  
2 help explain them for me as a bank officer, someone  
3 who has prepared for this and understands how this  
4 information is generated. This would have been very  
5 similar to the information you looked at when you did  
6 the lost note affidavit in 2012, correct?  
7 A. I didn't look at the payment history in  
8 2012 --  
9 Q. Okay.  
10 A. -- for the lost note affidavit.  
11 Q. Fair enough. So you didn't look at the  
12 CRIS information 2012. But you did look at it in  
13 preparation for today, right?  
14 A. Yes.  
15 Q. Does anything in here give you pause or  
16 say this can't be accurate or correct?  
17 A. No.  
18 Q. You know how to read it. You've already  
19 told me that you understood how these bank documents  
20 work and how they go together, correct?  
21 A. Yes.  
22 Q. And that was part of the lost note  
23 affidavit, right?  
24 Okay. What is the loan -- the actual  
25 loan amount? Not the original, but what's been

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1 loaned.  
2 A. The current balance is \$176,879.20.  
3 Q. Do you mind if I take this back real  
4 quick?  
5 A. Yes.  
6 Q. All right. And then what was the -- this  
7 column over here on the far right in the column  
8 section. It says Prim Balance. That means primary  
9 balance, correct?  
10 A. Principal balance.  
11 Q. Principal balance, rather. I'm sorry,  
12 Prin. What is that, principal balance?  
13 A. As of this date, October 6th, 2010, that  
14 was the amount of the principal balance.  
15 Q. Okay. And then this document is the  
16 first page, right, the statement summary? And then  
17 the next page of it, Page 2 of 14, goes back to  
18 3/12/2002, correct?  
19 A. Yes.  
20 Q. And what is its principal balance?  
21 A. That says 179,576.34.  
22 Q. So that was the principal balance?  
23 A. No.  
24 Q. Well, why is that wrong?  
25 A. It's not wrong. When First Union and

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1 Wachovia merged, I don't know why, but for whatever  
2 reason, the tallying of the principal balance didn't  
3 convert over to the -- whatever the converted systems  
4 were. If you add all payments up until the time of  
5 the merger and the first time of the principal  
6 balance -- again, if you add all the principal paid,  
7 you'll get this 179,576.34 from the 182,7-.  
8 Q. But this is a -- this is a -- this is a  
9 CRIS document, right? It's a Wells Fargo document.  
10 It says the principal balance at the time of the  
11 first payment was 179-, which is not the amount  
12 loaned, nor the amount of the -- that was on the  
13 note, however you describe it, correct?  
14 A. Yes.  
15 Q. And then it has zeros. What's this zero  
16 balance? How can it be a zero balance?  
17 A. I just explained that to you.  
18 Q. Okay. I didn't understand it. I'm  
19 asking you a new question, the zero balance. Can you  
20 explain it one more time, then?  
21 A. When Wachovia and First Union merged, for  
22 some reason, the tallying of the principal balance  
23 after these payments were made --  
24 Q. Uh-huh.  
25 A. -- did not come through.

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1 Q. Okay. Do you believe this to be an  
2 accurate document?  
3 A. Yes.  
4 Q. Subject to what you've just described --  
5 A. Yes.  
6 Q. -- do you believe this to be an accurate  
7 document? Do you believe this document is in any way  
8 tampered with?  
9 A. Not to my knowledge.  
10 Q. Okay. And who -- who would be able to  
11 even go into CRIS to make changes like that; do you  
12 even know?  
13 A. I believe our servicing department has  
14 that capability.  
15 Q. Okay. Well, let me ask you this -- we're  
16 going to go back to Exhibit No. 3, if you don't mind  
17 me giving it to you. This is sort of the same thing,  
18 isn't it? This is a CRIS document --  
19 A. Yes.  
20 Q. -- Exhibit No. 3, produced by your  
21 attorneys here. Okay? Does it sort of have the same  
22 information that's here on this SHAW transaction,  
23 Exhibit No. 167?  
24 A. Essentially, yes.  
25 Q. Essentially. Okay. But -- and doesn't

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1 it, down here at the bottom, say -- what's that first  
2 date? Can you read that for me? My eyesight is  
3 poor.  
4 A. May 26th, 2002.  
5 Q. Now, did that correspond to Exhibit 16,  
6 Page 2 of 14?  
7 A. May 26th, 2002, right here.  
8 Q. Okay. Now, this has principal balances  
9 on it.  
10 A. Yes.  
11 Q. How does that -- how did that happen?  
12 A. I don't know.  
13 Q. Did you change it?  
14 A. I did not pull that document, so I have  
15 no idea.  
16 Q. This is a document produced by your  
17 counsel. Have you ever seen this document before?  
18 This is a CRIS statement.  
19 A. I have seen it before. I did not pull  
20 this document. I did not alter this document.  
21 Q. How do you explain the discrepancy  
22 between this document and Exhibit 14?  
23 A. I don't know.  
24 Q. You're a bank officer, and you can't tell  
25 me, sitting here today, why Exhibit 3 is different

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1 than Exhibit 14, even though they describe the same  
2 loan?  
3 A. I don't want to speculate.  
4 Q. I'm asking you to tell me why they're  
5 different.  
6 MS. BAKER: I believe this question is  
7 asked twice and she answered.  
8 MR. VARNADO: That's all right. I can  
9 ask it again. And you cannot coach her.  
10 MS. BAKER: I'm not coaching. And I  
11 think I'm objecting to that comment on the  
12 video, as well.  
13 BY MR. VARNADO:  
14 Q. What was the interest rate on the loan,  
15 the original interest rate that would have been  
16 charged at the get-go?  
17 A. 4.99 percent.  
18 Q. I'm going to show you Exhibit No. 3.  
19 Does that have an interest rate at the beginning of  
20 the loan of 4.99 percent?  
21 A. No. It says 4.49 percent.  
22 Q. That's incorrect, isn't it?  
23 A. It appears to be.  
24 Q. Why is there a 4.49 percent there?  
25 A. Actually, the note was signed in March of

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1 2002. The interest rate can change every month, so  
2 the interest rate could very well have been 4.49  
3 percent at that time.  
4 Q. It's your contention that the interest  
5 rate is variable monthly on this note?  
6 A. Yes, it is.  
7 Q. And you think that it changed?  
8 A. It's possible.  
9 Q. Is that what happened, though? You're  
10 the one who has been studying this. You're the one  
11 who prepared the lost note affidavit. These are bank  
12 records. Is that what happened?  
13 A. I don't know. I didn't look at that.  
14 Q. Who prepared -- when you did your  
15 research, who created this document, Exhibit No. 3?  
16 A. I don't know.  
17 Q. Doesn't it usually have the name of the  
18 creator on it?  
19 A. No.  
20 Q. Do you know a woman named Helen Arnold?  
21 A. The name sounds familiar, yes.  
22 Q. Do you know -- if the name is familiar,  
23 how would -- where would you place it?  
24 A. Servicing in Roanoke.  
25 Q. So the -- so you think the interest rate

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1 might have changed, but it stayed static for -- until  
2 July 14th of 2003, and the principal balance is  
3 different than what you have here in the history of  
4 Exhibit 14?  
5 A. The interest rate changed August 1st of  
6 2003. Again, though, if you subtract the amount that  
7 went towards principal through each of these payments  
8 from 182,7-, you will get this 179,576.34.  
9 Q. That's not describing, though, the loan  
10 that Mr. Bentrin signed, is it?  
11 A. Yes, it is.  
12 Q. Y'all have changed the numbers different  
13 than the promissory note, correct?  
14 A. No.  
15 Q. Then how is there a difference between  
16 Exhibits 3 and 14, other than someone went in and  
17 manually changed CRIS?  
18 A. Again, I did not pull Exhibit 3. I  
19 pulled Exhibit 16.  
20 Q. I'm asking you, do you have any knowledge  
21 of why Exhibit 3 is different than Exhibit 14?  
22 A. No.  
23 Q. Can you explain how it could have  
24 happened?  
25 A. I don't know. I was not there. I don't



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1 want to speculate.  
2 Q. You have averred in your lost note  
3 affidavit and you've testified consistently that --  
4 today that you understand how all the documents of  
5 the bank work together. I'm asking you point blank,  
6 how is it possible for Exhibit 3 and Exhibit 14 to be  
7 at such discrepancy when they're purportedly showing  
8 the same loan?  
9 MS. BAKER: Again, asked and answered.  
10 Q. I've asked it a different way.  
11 A. You can ask it five times a different  
12 way, and each time my answer will be I don't know. I  
13 did not pull that document. I do not want to  
14 conclude something that may not be correct.  
15 Q. Did someone in another office change  
16 CRIS?  
17 A. I don't know.  
18 Q. Okay. Did anyone in your office change  
19 CRIS?  
20 A. I don't know.  
21 Q. Did you change CRIS?  
22 A. No.  
23 Q. Someone changed CRIS, though, correct?  
24 A. I don't know.  
25 THE VIDEOGRAPHER: Five minutes on the

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1 tape.  
2 MR. VARNADO: Let's take a break.  
3 THE VIDEOGRAPHER: We're off the record  
4 at 2:04 p.m.  
5 (Break taken)  
6 THE VIDEOGRAPHER: We're back on the  
7 record at 2:11 p.m.  
8 BY MR. VARNADO:  
9 Q. Back to Exhibit No. 3. This is a CRIS  
10 document, correct?  
11 A. Yes.  
12 Q. So it's supposed to be accurate, correct?  
13 A. Yes.  
14 Q. By the same token, it's not supposed to  
15 be inaccurate, right?  
16 A. Correct.  
17 Q. You're supposed to be able to rely on it,  
18 correct?  
19 A. Yes.  
20 Q. Okay. I'm going to draw your attention  
21 down to the bottom third of the page, Loan amount.  
22 Can you read what number that is?  
23 A. \$179,576.34.  
24 Q. So that is the correct loan amount,  
25 correct?

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1 A. No.  
2 Q. Why is that incorrect?  
3 A. I don't know.  
4 Q. Why are you sure that it's wrong?  
5 A. Because the note says that the original  
6 balance was \$182,700.  
7 Q. These transaction reports, 3 and 14, are  
8 not describing the note, are they?  
9 A. Yes, they are.  
10 Q. They are not accurate to the note, are  
11 they?  
12 A. Yes, they are.  
13 Q. When I asked you about the zero balances  
14 through September of 2003, your testimony is that  
15 that was a computing error?  
16 A. No.  
17 Q. What is -- what explains the zero  
18 balances again?  
19 A. When First Union and Wachovia merged, for  
20 some reason, the principal balance tallying in the  
21 system of record did not come through.  
22 Q. Okay. Then how did it come through in  
23 Exhibit No. 3?  
24 A. Again, I did not pull that document. I  
25 did not alter that document. I don't know how it got

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1 there, and I don't want to speculate as to how it  
2 could have been done.  
3 Q. Who pulled the document?  
4 A. I don't know.  
5 Q. Is it speculation to ask you what  
6 business practices would be legitimate business  
7 practices that would result in being interest  
8 calculations and -- and balance amounts being  
9 included which are different between 3 and 4 -- I  
10 mean, 3 and 14?  
11 A. Can you say that again?  
12 Q. Sure. Isn't there some legitimate  
13 explanation for why 3 and 14 are different?  
14 A. I'm sure there is.  
15 Q. Okay. Are you aware of any legitimate  
16 explanation for why 3 and 14 are different that is  
17 not speculation, but based on your experience as a  
18 bank officer and somebody who's familiar with these  
19 documents and aver that she was familiar with these  
20 documents in the lost note affidavit?  
21 MS. BAKER: I'm going to object to form.  
22 A. Again, I don't want to speculate.  
23 Q. I'm not asking you to speculate. I'm  
24 asking you what are the legitimate business reasons  
25 which would explain the discrepancy between 3 and 14.



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1 A. Probably to make it more customer  
2 friendly to edit this column instead of showing zero  
3 balances.  
4 Q. Then how would it be customer friendly to  
5 look at Page 2 of 14 of Exhibit 16 and the interest  
6 payments are different in these columns between 3 and  
7 14?  
8 A. I don't know.  
9 Q. Which one is right, 3 or 14?  
10 A. I don't know.  
11 Q. I'm asking you under oath which one  
12 accurately reflects the Bentrilm loan more correctly,  
13 3 or 14?  
14 A. The original interest rate was 4.99  
15 percent. The interest rate can change on a monthly  
16 basis, based on the Wall Street Journal index.  
17 Q. What are those documents? Are those part  
18 of Exhibit --  
19 A. Those are a part of --  
20 Q. -- 16?  
21 A. -- 16, yes.  
22 Q. All right.  
23 A. It appears, based on the interest rate  
24 change history, the interest rate did not change  
25 until, I believe, August 1st, 2004.

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1 Q. Well, you have -- your attorneys have  
2 given me Exhibit 3 and you have brought me Exhibit  
3 16, and they are both supposed to show the same loan.  
4 Is that correct, yes or no?  
5 A. Yes.  
6 Q. And they differ not only on primary  
7 balance, but they differ -- back in 2002, but they  
8 also differ on the interest rate amount, correct?  
9 Because you can see the interest rate amount here is  
10 4.99, which is consistent with the note; yet Exhibit  
11 3 has 4.49, which is almost half a point --  
12 A. Yes.  
13 Q. -- which I assume for a bank is a big  
14 deal, correct?  
15 MS. BAKER: Object to form.  
16 Q. Isn't it a big deal to get -- be off .5?  
17 A. Yes.  
18 Q. Okay. So of these documents, which one  
19 is more accurate, 3, 16 or neither?  
20 A. I would say that they're -- they're both  
21 accurate. They're just a little different. I  
22 don't -- I don't know. All I can tell you is I  
23 pulled this document, this document pulled from the  
24 transaction records in SHAW.  
25 Q. You pulled SHAW, right?

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1 A. I pulled CRIS.  
2 Q. You pulled CRIS, right. I got it.  
3 All right. Back to 16 with the 0.00  
4 principal balances. Whatever problem there was was  
5 rectified when? What -- from looking at CRIS, can  
6 you tell me which -- what month? Was it September of  
7 '03?  
8 A. September 2nd, 2003, the principal  
9 balance is listed as 179,576.34.  
10 Q. Okay. So that -- whatever that error was  
11 is now no longer rectified; is that correct?  
12 A. There wasn't an error. It just -- it  
13 didn't -- for whatever reason, it didn't come over.  
14 Q. Okay. Whatever -- no editorial. It  
15 didn't come over, and now it's over; is that --  
16 A. Yes.  
17 Q. Okay. Now, that would have been back  
18 during the ACLS days, right?  
19 A. ACLS was a Wachovia loan system, yes.  
20 Q. So that would have been -- ACLS would  
21 have described the same thing, correct?  
22 A. Yes.  
23 Q. Okay. We have ACLS back here, don't we,  
24 which is Exhibit No. 4?  
25 A. Yes.

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1 Q. The first thing is loan established,  
2 179,576.34, correct?  
3 A. Yes.  
4 Q. So that's the loan amount, right,  
5 according to ACLS?  
6 A. That, again, is the loan amount at the  
7 conversion from First Union to Wachovia.  
8 Q. Okay. We were looking back at Exhibit  
9 No. 16, and I was curious about a charge on  
10 12/18/2006 -- December 18th, 2006. This is on Page 6  
11 of 14 of Exhibit 16, \$225. Do you know what that is  
12 in reference to? Can you -- sitting here today, can  
13 you tell me what that's about?  
14 A. No, I don't know what that is.  
15 Q. Does that look like a penalty, a late  
16 fee?  
17 A. I don't know what it is.  
18 Q. This loan was never sold, right?  
19 A. Correct.  
20 Q. Except it was sold?  
21 A. No, it wasn't.  
22 Q. Okay. I'm looking at the ALCS [sic]  
23 printout, Exhibit 4, provided by your counsel. The  
24 document begins WF 159. I'm looking at Page WF 167.  
25 I'm going to draw your attention to November of 2006.

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1 A. Okay.  
2 Q. 11/29/06, Trans Code 35995174504.20, Loan  
3 sold to pool.  
4 A. I don't know. I can tell you that it --  
5 It wasn't. I don't know why this line item is there,  
6 but it was never sold.  
7 Q. How do you know it wasn't sold, other  
8 than SHAW doesn't -- you told me earlier you know  
9 it's not sold because it's still in SHAW.  
10 A. Correct. So it wasn't in -- if it was  
11 sold, we wouldn't still have it in our -- in our  
12 records.  
13 Q. Is this ACLS wrong?  
14 A. I don't know why that line item is there.  
15 Q. Other than it actually got sold?  
16 A. It was not sold.  
17 Q. The only way you know it's not sold is  
18 that it's still in SHAW, correct?  
19 A. Correct.  
20 Q. All right.  
21 A. It's still in SHAW, and we still had the  
22 original loan documents in the vault at that time.  
23 Q. How do you know? Did you look back at  
24 the vault records in '06, the vault log on ECar?  
25 A. From my understanding, the loan documents

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1 were not checked out until Randy checked them out in  
2 February of 2009.  
3 Q. What if he sold the paper without  
4 transferring the note? How would you know? It's  
5 before -- it's right around the time you started.  
6 You were a -- you were a temp.  
7 A. The note follows the mortgage.  
8 Q. You say it like it's a fact, but how do  
9 you know that that's not what happened in this case?  
10 Because you have ACLS saying it sold for \$174,000.  
11 MS. BAKER: I'm going to object again to  
12 form.  
13 MR. VARNADO: Thank you.  
14 A. It was not sold.  
15 BY MR. VARNADO:  
16 Q. What if it was sold to a REMIC and then  
17 came back, is that possible? And that's why it's in  
18 SHAW and that's why you know about it?  
19 A. I've not seen that happen. That would be  
20 a first.  
21 Q. But -- so you're not aware that banks  
22 have bought back nonperforming or allegedly  
23 nonperforming instruments from -- sold to REMIC  
24 trustees? You don't know that?  
25 A. Why would we buy back a nonperforming

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1 loan if we've sold it already?  
2 Q. If you don't know the answer to that  
3 question, that means you don't -- you're not familiar  
4 with that -- that process, that that happens.  
5 MS. BAKER: Objection. Is there a  
6 question?  
7 MR. VARNADO: Yeah. And you're again  
8 trying to interfere with my questions.  
9 MS. BAKER: I'm not --  
10 MR. VARNADO: I'd please ask you not to  
11 do that.  
12 MS. BAKER: I'm objecting --  
13 MR. VARNADO: I did ask a question.  
14 MS. BAKER: -- just for the video.  
15 MR. VARNADO: Thank you. Your objection  
16 for the video is irrelevant since you're trying  
17 to interfere with my deposition.  
18 MS. BAKER: I think that should be --  
19 BY MR. VARNADO:  
20 Q. I'm going to ask you that question --  
21 MS. BAKER: -- that comment should be  
22 struck, because I'm not trying to interfere with  
23 your deposition.  
24 Q. I'm asking you again, do you know that  
25 banks have bought back allegedly nonperforming

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1 instruments from REMICs or trustees who are holding  
2 them in securitized bundles?  
3 A. No.  
4 Q. Again, you're relying on SHAW? SHAW  
5 controls your testimony, correct?  
6 A. Yes, I'm relying on our system of record.  
7 Q. Okay. And you have no explanation for  
8 the 11/29/06 sale for \$174,000?  
9 A. I have no information regarding that line  
10 item.  
11 Q. Which is part of your system of records?  
12 A. Yes. It was part of the ACLS system.  
13 Q. Okay. Which was -- after September 2003  
14 was accurate, correct?  
15 A. It's supposed to be, yes.  
16 MR. VARNADO: Okay. All right. We are  
17 going to do this. We'll go off the record.  
18 THE VIDEOGRAPHER: We're off the record  
19 at 2:25 p.m.  
20 (Break taken)  
21 THE VIDEOGRAPHER: We're back on the  
22 record at 2:29 p.m.  
23 MR. VARNADO: Ms. Thomas, thank you for  
24 your time and attention today. I appreciate it.  
25 I have no further questions at this time.



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1 MS. BAKER: I have no questions.  
 2 MR. VARNADO: And that concludes the  
 3 deposition, then.  
 4 THE VIDEOGRAPHER: This concludes the  
 5 deposition of Ms. Tracy Thomas on August the  
 6 6th, 2013, at 2:29 p.m.  
 7 (Deposition concluded at 2:29 p.m.)  
 8  
 9  
 10  
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1 REPORTER'S DEPOSITION CERTIFICATE  
 2  
 3 STATE OF FLORIDA)  
 4 COUNTY OF DUVAL )  
 5  
 6 I, Richetta R. Bright, Registered  
 7 Professional Reporter, certify that I was authorized  
 8 to and did stenographically report the deposition of  
 9 TRACY THOMAS; that a review of the transcript was  
 10 requested; and that the transcript is a true and  
 11 complete record of my stenographic notes.  
 12  
 13 I further certify that I am not a relative,  
 14 employee, attorney, or counsel of any of the parties,  
 15 nor am I a relative or employee of any of the  
 16 parties' attorney or counsel connected with the  
 17 action, nor am I financially interested in the  
 18 action.  
 19  
 20 DATED this 16th day of August 2013.  
 21  
 22 *Richetta R. Bright*  
 23 Richetta R. Bright, RPR  
 24  
 25

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1 CERTIFICATE OF OATH  
 2  
 3 STATE OF FLORIDA)  
 4 COUNTY OF DUVAL )  
 5  
 6 I, the undersigned authority, certify  
 7 that TRACY THOMAS personally appeared before me and  
 8 was duly sworn on August 6, 2013.  
 9  
 10 WITNESS my hand and official seal this 16th  
 11 day of August 2013.  
 12  
 13  
 14  
 15 *Richetta R. Bright*  
 16 Richetta R. Bright, RPR  
 17 Notary Public, State of Florida  
 18 My Commission No: EE 020293  
 19 My Commission Expires: September 9, 2014  
 20  
 21  
 22  
 23  
 24  
 25

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1 DEPOSITION ERRATA SHEET  
 2 Our Assignment No. 384624  
 3 Case Caption: Bentrin vs. Wells Fargo  
 4 DECLARATION UNDER PENALTY OF PERJURY  
 5 I declare under penalty of perjury  
 6 that I have read the entire transcript of  
 7 my Deposition taken in the captioned matter  
 8 or the same has been read to me, and  
 9 the same is true and accurate, save and  
 10 except for changes and/or corrections, if  
 11 any, as indicated by me on the DEPOSITION  
 12 ERRATA SHEET hereof, with the understanding  
 13 that I offer these changes as if still under  
 14 oath.  
 15 Signed on the \_\_\_\_\_ day of  
 16 \_\_\_\_\_, 20\_\_\_\_.  
 17 \_\_\_\_\_  
 18 Tracy Thomas  
 19  
 20  
 21  
 22  
 23  
 24  
 25



1	DEPOSITION ERRATA SHEET	Page 177
2	Page No. _____ Line No. _____ Change to: _____	
3	Reason for change: _____ Page No. _____ Line No. _____ Change to: _____	
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20	Reason for change: _____ Page No. _____ Line No. _____ Change to: _____	
21	Reason for change: _____	
22		
23	SIGNATURE: _____ DATE: _____ Tracy Thomas	
24		
25		



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STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

BRENT E. BENTRIM, )

Plaintiff, )

v. )

WELLS FARGO BANK, N.A., )

Defendant. )

COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2011-CP-10-2946

**NOTICE OF MOTION AND MOTION  
TO RECONSIDER SECTION 1  
OF THE ORDER OF OCTOBER 28, 2014**

FILED  
2014 NOV 14 PM 2:34  
CLERK OF COURT  
BY

**TO: CHARLES M. BAKER III, ESQUIRE, S. STERLING LANEY III, ESQUIRE and JOHN C. HAWK IV, ESQUIRE, ATTORNEYS FOR DEFENDANT:**

PLEASE TAKE NOTICE that the above-named Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), by and through his undersigned attorneys and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such time, date and place as counsel may be heard, for an order to reconsider and/or alter or amend Section 1 of the Court's Order of October 28, 2014 ("Order"), attached herewith as Exhibit "A," for which the undersigned received written notice of the entry of the same on November 5, 2014, on the following grounds:

Bentrim asks the Court to reconsider its finding *'that Wells Fargo is the holder of the Note as a matter of law and a holder in due course of the Note as a matter of law.'* Further, even if Wells Fargo was not the holder, it would still qualify as a "person entitled to enforce" as defined in S.C. Code Ann. §36-3-301.'

This finding arose out of Bentrim's previous motion to alter or amend the Discovery Order of May 14, 2014 in which the Court had held (in Section 5 thereof): *"Wells Fargo holds the original Note, and the Note is made payable to its predecessor in interest, First Union Nation*

*Bank.*” Plaintiff submits that Court’s disposition of the prior motion to alter or amend has resulted in a substantial alteration of the May 14, 2014 Discovery Order, and thus the instant Rule 59(e) is not duplicative or successive, nor does it argue the same issues. *Elam v. South Carolina Dep’t of Trans.*, 361 S.C. 9, 602 S.E.2d 772 (2005).

This second motion to reconsider is primarily based on the fact that the Court has used the motion to reconsider the May 14, 2014 Discovery Order, to make a *de facto* summary judgment and/or declaratory judgment which impacts all causes of actions Bentrin brings forth in his complaint, and, taken to its logical extreme, determines that Bentrin has no defenses in regards to the Note resulting in an order for foreclosure.

Further, the order fails to address the issues before the Court in the Plaintiff’s first-party claims – was Wachovia Bank, NA or Wells Fargo Bank, NA entitled to enforce the Note before bringing actions in 2007 and 2009 and if not, what is its liability for the fraud, etc. The Order instead presents a bias that anyone can bring a foreclosure action – even with the aid fraudulent actions and intent– and have no liability if at some point it can produce an original note.

The Plaintiff has already proven, and the Defendant has admitted, through its records and sworn statements, neither it nor its predecessor, Wachovia Bank, NA, had an enforceable interest in Bentrin’s Note prior to filing its 2007, 2009 and current counterclaim.

The Court seems stuck with the presence of the original promissory note (which to date has not been entered into evidence as the Note the Defendant seeks to enforce) with admitted signature by Bentrin and Bentrin’s admission he did in fact receive a loan on March 21, 2002. Through this Motion, the Plaintiff will, through the use of the South Carolina Code of Laws, and the evidence on the record in this matter, to show the salient issues of the case have been proven requiring the Court to revisit all former discovery orders and dismiss the counterclaim with

prejudice.

### **What Law Governs?**

In order to determine if the Master could as a matter of law, find the Defendant is the holder and a holder in due course, or alternatively has any enforceable interest, the Court must first address what law governs the Note?

In cases where the Promissory Note is a negotiable instrument, Article 3 of the South Carolina Uniform Commercial Code "UCC" provides rules governing the obligations of the parties on the note and the enforcement of those obligations. This has been affirmed by Appellate Court in *Swindler v Swindler*. There is no dispute that the Note in question is a Negotiable Promissory Note.

UCC Article 3 codifies the obligations of the parties in regards to the instrument and most critically addresses who can enforce the instrument and how such enforcement is transferred. Article 3 does not specifically address the assignment of ownership of an instrument and instead focuses on how enforcement rights are obtained and transferred.<sup>1</sup>

The next central conflict presented is making a determination of the 'person entitled to enforce' the Note that Bentrin, the maker, signed. The Plaintiff must make this determination because Article 3 codifies:

- i. the maker's obligation on the note is to pay the amount of the note to the person entitled to enforce the note,
- ii. the maker's payment to the person entitled to enforce the note results in discharge of the maker's obligation, and

---

<sup>1</sup> Article 9 of the UCC

- iii. the maker's failure to pay, when due, the amount of the note to the person entitled to enforce the note constitutes dishonor of the note.<sup>2</sup>

Section 3-308(a) provides a cause of action to enforce liability on a Note can generally only be successful against someone who has signed the instrument. Bentrim admits he is the issuer and maker of the Note, therefore we must move to Subsection (b):

*"If the validity of signatures is admitted or proved and there is compliance with Subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 36-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim."*

Article 3 of the UCC forbids the foreclosure on the mortgage unless the creditor possesses a properly transferred promissory note. The reasoning is clear and once again codified in Article 3 that under the basic rule of negotiable instruments that once a promissory note is given for an underlying obligation like a mortgage, the underlying obligation is merged into the note and suspended while the Note is outstanding.

Because of this merger rule, the underlying cause of action is not available as a separate cause of action until the Note is dishonored. SC §36-3-310(b) codifies:

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to

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<sup>2</sup> Important here to recognize that WB, NA was unable to prove Bentrim failed to pay when due before claiming the Note in default, regardless of if it had rights.

the amount of the instrument were taken, and the following rules apply:

\* \* \*

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

Based on the Lost Note Affidavit filed on April 3, 2012, there is no dispute that Wells Fargo was not in possession of the Note at the time it claims the Plaintiff failed to cure. Although the reality is no right to cure was provided, and instead an incomplete and patently false acceleration demand was made on September 27, 2011. Lacking possession of the Note results in no enforcement rights.

The Defendant argues, citing *MidFirst Bank*, that the Court should ignore the "Lost" in its Lost Note Affidavit, because its predecessor, Wachovia Bank, NA had constructive possession of the Note through its former counsel, Brock and Scott at the time of demand.

On April 3, 2012, the Defendant produced a Lost Note Affidavit (WF 219-222) signed by Bank Officer Tracy M. Thomas as well as a "copy" (WF 223-226) of the Note certified as a "true, correct and substantial copy of the lost or destroyed Note" (See LNA, WF 220 paragraph 8). No other documents or records were attached to the Affidavit. Affiant Thomas further "states that Wells Fargo Bank, NA as successor by merger to Wachovia Bank, NA, successor by merger to First Union National Bank has not pledged, assigned, transferred, hypothecated or otherwise disposed of the Note." (WF 220 paragraph 5). Thomas further testified that she had personal knowledge that Bentrim was the present holder and owner of the Note (see WF 220

paragraph 6.C).

The original promissory Note was purported found and returned to Wells Fargo's vault on February 27, 2012, (see Thomas Deposition 119:14) some 6 weeks prior to providing Bentrim WF 219-227, and such discovery was not provided until February 2013!

However, prior to filing its first Amended Answer and Counterclaim, Wells Fargo produced an ACLS History Card Report (WF 159-218) on November 8, 2011. On November 29, 2006 an entry is clearly marked "Loan Sold to Pool." Ms. Thomas attaches no further records to explain the "sale" and admits (See Thomas Deposition page 72: 6-23) never even looking at Wachovia Bank NA's servicing records contained in ACLS.

It is clear that based on 'Foreclosure Attorney Procedure Manual' that Attorney Jana Baker created and forwarded the affidavit for Ms. Thomas to sign. (Foreclosure Manual, Page 15). Thomas is a robo signer and can only verify the bold typeface in Section 3 of her affidavit.

There are additional factual problems. The Note attached to the LNA (WF 223-226) is certified as a "true, correct and substantial copy of the lost or destroyed Note" materially differs from the Note which Wells Fargo relies on now - as it does not have the two barcodes on it. Ms. Thomas claims in her testimony (104: 9-16) that when the Note first arrived in the vault in 2002, a barcode was placed upon it and then was imaged into a system call CLPR. Prior to January 2013, no barcoded note was ever presented in any previous litigation.

Further, the copy of the Note produced by Brock & Scott attorney Suzanne Brown (who Wells Fargo claims was supposed to have possession of the Note) bears no barcode. Most critically, the Defendant has produced no vault records showing any movement of the Note prior to when it was sent to Womble Carlyle.

Until the note is dishonored, there can be no default on the mortgage. Under SC §36-3-

502(a)(3) 'a promissory note is dishonored when the maker does not pay it when it first becomes payable.' However, as previously discussed, the obligations on the promissory note itself is owed only to a 'person entitled to enforce,' and only that person can show that the debt was not paid when due creating 'dishonor.' Both the Official Comments to §§36-3-502 and 36-3-310 make it clear that a dishonor can only occur if the person who wishes to sue is someone in possession of the instrument. It is important to point out Bentrim has denied the existence of default in both the 2009 complaint and the current counterclaim.

Official Comment 3 to §3-310 explains: "If the check or note is dishonored, the [other party] may sue on either the dishonored instrument or [the underlying contract] if [that person is in] possession of the dishonored instrument and is the person entitled to enforce it" (emphasis added). Under Article 3, the person demanding payment must establish signatures of a Note in its possession and then prove its rights of enforcement.

Even if the Court believes 'holder' is defined merely as a person in possession of the original note with signatures admitted, then the Court must dismiss the Counterclaim and strike all affirmative defenses. The Defendant under such a theory had no enforcement rights until February 2013!

"A threshold inquiry for any court is the determination of justiciability, i.e., whether the litigation presents an active case in controversy. 'No justiciable controversy is presented unless the [defendant] has standing to maintain the action.'" *Lennon v. South Carolina Coastal Council*, 330 S.C., 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998) (citations omitted). "Standing refers to 'a party's right to make a legal claim or seek judicial enforcement of a duty or right.' 'Standing is...that concept of justiciability that is concerned as to whether a particular person may raise legal arguments or claims.'" *Powell ex rel. Kelly v Bank of Am*, 379 S.C. 437, 444, 665, S. E.2d

237,241 (Ct. App. 2008) (citations omitted). Rule 17 of the South Carolina Rules of Procedure requires cases be brought by the real party in interest.

The Defendant attempts to establish itself as a real party in interest as a Servicer, citing “there is a general view, which has been accepted in this jurisdiction and others, that a loan servicer is a ‘party in interest’ and has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage.” *Bank of America v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. App. 2013).

In order for a “servicer” to bring or maintain a cause of action as a real party in interest, it must be “person who possesses the right to enforce the claim and who has a significant interest in the litigation.” See *In Re Neals*, 459 B.R. 612, 618 (Bankr. D.S.C. 2011). All case cites in *Bank of America v. Draper* support the notion, the servicer must have a contractual obligation (*In re Woodberry*, 383 B.R) to service a loan, something the Defendant denies exists.

The Defendant next attempts to claim that because the Plaintiff is suing them, he must recognize its authority as a ‘servicer.’ This argument fails also. Bentrin is suing the Defendant for Mortgage Servicing *Fraud* – for failing to maintain accurate records and falsifying court documents among other items. Unfortunately for the Defendant, lacking possession is fatal to any rights of enforcement, rendering it incapable of being a real party in interest.

“[S]tanding is to be determined as of the commencement of suit.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-71 n.5 (1992); accord *Young v. People’s Bank*, 163 S.C. 57, 161 S.E. 324, 329 (1931)(“Plaintiff’s right to any recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit was started is a fatal defect, which cannot be cured by the accrual of a cause of action pending suit.”). Pursuant to 55 Am. Jur. 2d. Mortgages § 584 (2009), “a plaintiff has no foundation in law or fact to foreclose upon a

mortgage in which the Plaintiff has no legal or equitable interest.” Article of the UCC governs the sale of promissory notes and codifies in § 9-318(a) “A debtor that has sold promissory note does not retain a legal or equitable interest in the collateral sold.”

The Plaintiff request the Court reconsider its first Motion to Alter and Amend the discovery order to change ‘holds’ to ‘in possession as of February 2013.’ Alternatively if the Motion to Alter and Amend has now become a Declaratory Judgment finding, or a ruling on Summary Judgment, then Plaintiff requests that the Court that dismiss the Counterclaim to Enforce the Note and Mortgage based on its belief ‘possession’ equates to ‘holder’ and the Defendant was not in possession of the Note on Sept 27, 2011.

At this junction, the Plaintiff has proven, using applicable South Carolina law, that a determination of the Defendant’s current enforceable interest in the Note and Mortgage, if any is moot as it is established that enforcement rights must be determined at the time of demand on a Negotiable Instrument for it to be dishonored. However, since the Plaintiff is alleging and has largely proven, that the Defendant committed mortgage servicing fraud by claiming an enforcement right in his Note and Mortgage as a holder through the use of falsified documents and court filings, causing considerable emotional stress and financial liability, we must define holder and establish why Wells Fargo Bank, NA is not and cannot ever be a ‘holder.’ The Plaintiff will further establish that after November 29, 2006, Wachovia Bank, NA was not the ‘holder.’

The ‘person entitled to enforce the note’ (PETE) is not synonymous with its ‘owner.’ In fact the Official Comments stress that “[t]he right to enforce an instrument and ownership of the instrument are two different concepts.” Article 3 does not specifically address the assignment of ownership of an instrument and instead focuses on how enforcement rights are obtained and

transferred.<sup>3</sup> Assignments are contracts and, as a general matter, are regulated by the common law of contracts, wholly unrelated to Article 3.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.' SC 36-3-301

Under Section 36-3-301, we also learn that 'holder' is not an umbrella term under which all owners and or persons entitled to enforce a negotiable instrument fall. It is a specific type of PETE with specific rights. Further – holder is in no way to be defined as in possession of an original note.

A 'holder' is defined as "person in possession of an instrument issued, endorsed to him or to his order or to bearer or in blank." S.C. Code Ann. § 36-1-201(20) The Plaintiff has proven through the evidence on the record, that Wells Fargo could not be the holder on September 27, 2011 because it lacked possession and will now prove lacking any endorsement, it can never achieve such status.

All copies the Note produced thus far is proof positive that Wells Fargo cannot be the 'holder.' The Note is issued to 'First Union National Bank or order,' and lacks any endorsement by First Union.

The only manner in which a third party can obtain 'holder' status is through negotiation. Negotiation is defined as "a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder." S.C.

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<sup>3</sup> Article 9 of the UCC

Code Ann. 36-3-201 (a)

Because the Note is payable to an identifiable person (as opposed to a bearer instrument) an endorsement by First Union was required under S.C. Code Ann. 36-3-201(b) to endorse it order for Negotiation to occur.

In its memorandum, Wells Fargo argues the applicability of 12 USCA § 215 -- which basically says that when banks merge, property rights shall be transferred to the successor bank. The Plaintiff agrees. Both 12 USCA § 215 and Section 36-3-203 transfer rights through succession. This statute has no bearing on a 'holder' analysis for two reasons: One – The note is a negotiable instrument, and is thus governed by Article Three. *Swindler v. Swindler*, 355 S.C. 245, 584 S.E.2d 438, 440-441 (2003), (finding that Article Three governs a negotiable instrument); see also *Midfirst Bank, SSB, v. C.W. Haynes & Co., Inc.*, 893 F.Supp. 1304, 1312 n. 3 (D.S.C.1994) ("Article Three of the UCC controls transfers of negotiable instruments, and the mortgage notes are clearly negotiable."). In other words, Article 3 trumps 12 USCA § 215 in determining holder status

Two - as discussed above, the UCC specifically contemplates transfers – such as allowed under 12 USCA§ 215 – result in the transferee becoming a “non holder in possession” who must prove the transaction in order to enjoy enforcement rights. S.C. Code Ann. § 36-301(ii); Section 3-203 Official Comment. Stated another way, there is nothing in 12 USCA § 215 that conflicts in the slightest with Article 3.

The Defendant was sued by the Attorney General of South Carolina for, among other things, the unfair and deceptive nature under the South Carolina Consumer Protection Code asserting 'holder' in debt collection and foreclosure complaints when it was not. The Defendant settled with the state for nearly \$30 million by entering into a Consent Order to avoid criminal

prosecution. (See April 4, 2012 Consent order in United States v. Bank of America, et. al.)

Under Section 3-308 (b), a holder makes a prima facie case and is entitled to recover in the absence of further evidence. This procedural advantage associated with the production of an instrument is only available to a holder. An uneducated homeowner or Court may take the term holder at face value, and after consenting or in this case, finding such, render a decision based on a false pleading or a party lacking standing. Such judgments as a matter of law are void.

Wells Fargo agreed it would not make assertions in foreclosure proceedings that it had not already established a documented trail of proof. It further agreed to monitor its attorneys for compliance. To a large degree this consent falls in line with Article 3 requiring the party to have an enforceable interest at the time of demand; however, its claim of holder shows blatant non compliance with the order. Essentially, Wells Fargo cannot say its pleading and false allegations were innocent mistakes.

Therefore, the Court is required as a matter of law to reverse its finding that Wells Fargo is currently a 'holder,' and based on the evidence presented and already outlined above, find that 'Wachovia Bank, NA was not a holder after November 29, 2006.'

We must now turn to the final issue at hand, regarding the single last manner a person in a person producing an instrument might be entitled to enforce it and question whether Wells Fargo has met the burden of proof to establish itself as a non-holder in possession of the instrument who has the rights of a holder. S.C. Code Ann. § 36-3-301 (ii).

For all intents and purposes, this issue is moot in regards to the current counterclaim – the fact that, even if the Court was to conclude the TMS Service Corp. meets the burden of proof under Article 3, Wells Fargo still plead another set of facts, withheld key evidence and falsified

documents in an attempt to establish possession as a holder via a merger with Wachovia Bank, NA. Moreover, the Note currently in Wells Fargo's attorneys' possession has never been entered into the record; their pleadings attempt to enforce a different Note, which has never been produced.

In regards to Bentrim's complaint, the only manner in which to defend itself against his claim of conversion is to establish an ongoing enforcement right was granted by the true owner and holder of his note after November 29, 2006 and that party was properly paid. The reality is the Defendant has not come remotely close to meeting its burden under Article 3 in establishing all transfers of the Note after November 29, 2006 resulting in its possession.

A person who produces an instrument but does not qualify as a holder must prove he or she has the rights of a holder before that person is entitled to enforce the instrument. 3-308(b), 3-301(ii). "That person must prove a transfer giving that person such rights under Section 3-203(b) or that such rights were obtained by subrogation or succession" 3-308, Comment 2.

Section 36-3-203 (a) provides that "[A]n instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving the person receiving delivery the rights to enforce the instrument." The intent is clear it is concerned with "giving to the person receiving delivery of the instrument the right to enforce the instrument." Section 36-3-203(b) states the legal consequence of the transfer providing "[t]ransfer of an instrument...vest the transferee any rights of the transferor to enforce the instrument...."

The evidence on the record from the Lost Note Affidavit is that Defendant lost an unstamped Note and that the Note had never been transferred, sold, etc. In its pleadings, Defendant is trying to enforce an unstamped Note, as a holder, via successor by merger to WB, NA. This argument fails because it is uncontroverted that Wells' Fargo's predecessor sold the

Bentrim Note on November 29-December 1, 2006. Thus, Wachovia Bank, NA, was not the owner or holder at the time of the merger on March 20, 2010 (See WF 2299, 2300, 2301, 2302, 2303 and Clifton Bodiford Affidavit). The affidavit of Wells Fargo bank officer Matthew Wakefield substantiates this conclusion – he avers that a 100% beneficial interest in the Note was sold to TMS /Service Corp on November 29, 2006 (which, it should be noted, directly conflicts with the discovery responses of Wells Fargo; the LNA of bank officer Tracy Thomas; and the unequivocal and emphatic representations of Wells Fargo’s counsel at both the February 10, 2014 and April 28, 2014 hearings that no sale took place).

Wells Fargo next attempts to persuade the Court it obtained the Note as a part of a transfer through an acquisition of TMS/Service Corp. The big problem is Defendant has produced no evidence nor any testimony to support the new assertion by Defendant’s counsel that Note was ever transferred to TMS or that TMS owned the Note and Mortgage with enforcement rights after November 29, 2006. The documents in Exhibit A to this Memorandum would in fact undercut this argument and prove a trust owned by investors via securitization was the owner of the Note as of December 1, 2006. (Kita Affidavit) To a certain degree this outcome could be anticipated as Wakefield is a Vice President who performs accounting on securitized trusts, presumably for Wachovia Bank, NA as the trustee of the trust. No records of TMS Service Corp have been provided or admitted.

There is no evidence that TMS/Service Corp was acquired by Wells Fargo Bank, NA, but such a claim is meritless as TMS/Service Corp. did not own or hold the Note after December 1, 2006. Further there is no evidence on the record in regards to any transfer in which Wells Fargo Bank, NA has enforcement rights. As discussed above, the UCC specifically contemplates transfers – such as allowed under 12 USCA§ 215 – result in the transferee becoming a “non

holder in possession" who must prove the transaction in order to enjoy enforcement rights. S.C. Code Ann. § 36-301(ii); Section 3-203 Official Comment. "Prove" with respect to a fact means the burden of establishing the fact. 36-3-103 (13) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence. 36-1-201(8).

Under Section 36-1-201(31), the Plaintiff has established that the Court can make no assumption of fact in regards to Wells Fargo's obtaining a transfer of the Note through any predecessor by presenting evidence that would support its non-existence. Based on the pleadings, Defendant is trying to enforce an unstamped Note, as a holder, via successor by merger to WB, NA.

The Court must reverse its finding that would still qualify as a "person entitled to enforce" as defined in S.C. Code Ann. §36-3-301. Further because Wells Fargo is unable to prove enforcement rights in September 27 2011, the Court should dismiss the counterclaim and strike all affirmative defenses.

Additionally, because Wells Fargo cannot be a holder nor can qualify as a PETE under Section 36-3-301, it cannot qualify as a holder in due course. Since Wells Fargo cannot ever qualify as a holder in due course, the Court is required to dismiss its counterclaim with prejudice. A payee such as First Union National Bank, like any other holder, can qualify as a holder in due course by simply satisfying the elements codified in 36-3-302(a). However, because Bentrim, the maker, is the sole obligor on the instrument, "the holder in due course status is irrelevant in determining rights between the Obligor (maker) and the Obligee (payee) with respect to the instrument" See Section 36-3-302, Comment 4.

Unless others were parties to the loan closing, First Union National Bank is subject to all

defenses an obligor has on an instrument. A holder in due course, other than in relation with the Obligor and Obligee, takes an instrument free from claims on it as well as personal defenses of the Obligor.

This finding by the Court goes against concepts of commercial reasonableness and fair dealing. It in essence is a finding that Bentrin cannot sustain his complaint against Wells Fargo for any actions of its predecessor, Wachovia Bank, NA. Thus, the Court has ruled, lacking any legal basis and in contravention of the summary judgment standard, that the foreclosure should go through (as Bentrin has no defenses) *and* that Bentrin's first-party claims must fail even though the Defendant cannot show holder status at the inception of the 2007 and 2009 suits that form the basis of his claims.

Section 36-3-302 (a) states the elements necessary to qualify as a holder in due course.

Those elements can be summarized as follows:

1. One must first qualify as a *holder* of a negotiable instrument.
2. The authenticity of the instrument cannot be called into question. Section 36-3-302(a)(1)
3. The holder must take the instrument
  - a. For value
  - b. In good faith
  - c. Without notice the instrument is overdue, been dishonored, that there is another claim to ownership or that any party has a defense or claim in recoupment, and
4. The instrument cannot be taken under any special circumstances that would preclude the holder from asserting the rights of a holder in due course.

A holder in due course is essentially a bona fide purchaser for value. Under the

circumstances presented, there can be no reasonable or legal analysis which could lead the Court to rule Wells Fargo is a holder in due course.

First, while it appears that the Court defines a holder as a person in possession of a Note and assumes the possession was obtained via a transfer from a successor in interest, Section 36-3-302 (c) precludes anyone taking an instrument as a successor in interest from obtaining holder in due course status. Therefore even if Wells Fargo Bank, NA acquired the Note via succession from a party other than Wachovia Bank, NA, it cannot be a holder in due course.

More salient is that fact that Wells Fargo Bank, NA is the successor in interest to the original payee, First Union National Bank, it cannot 'wash away' its liabilities through the reacquisition of the note. It is prohibited from ever being a holder in due course. See 36-3-203, Comment 2.

Without being a holder, Wells Fargo Bank, NA cannot be a holder in due course. More particular since Wells Fargo Bank, NA acquired the original payee, First Union National Bank, it cannot even as a holder sustain a holder in due course status.

The Court must reverse its finding that Wells Fargo Bank, NA is a holder in due course. Because Wells Fargo cannot be a holder in due course, under 36-3-305 (c), Bentrim is not obligated to pay anyone who cannot establish themselves as a holder in due course.

Instead of presenting facts and evidence, the Defendant in this case has relied upon misrepresentations and falsified documents to include Tracy Thomas' Lost Note Affidavit. The Defendant should not be allowed to proceed without admitting that Ms. Thomas affidavit was fraudulent, therefore further admitting to having no enforceable interest in the Plaintiff's loan after November 2006. Wells Fargo must essentially stipulate to all causes of actions brought

forth by the Plaintiff to ever have an enforceable interest in his note.

Because it has not, Bentrin invokes the ultimate defense and under 36-3-305 (c) tis not require to pay on a Note proven lost if the party attempting to enforce is not a holder in due course.

Thomas' deposition claims the note was lost while in possession of Wachovia Bank, NA without a transfer, sale or assignment. Counsel for Defendant, however, claims that TMS Service Corp, a third party, is how the Note was transferred. Under evidence on the record, the Note was not 'found,' it was obtained from a party other than the one who lost it.

In the event that the Obligor can prove one party lost the note and another is claiming it rights of enforcement, the party seeking to enforce the Note must be a holder in due course.

Plaintiff submits that to the extent the Court made this de facto ruling for summary judgment based on a 2006 Order, it should reconsider the same because that 2006 order is void: Defendant's predecessor obtained a judgment by default without submitting an affidavit, verified complaint or other sworn testimony. S.C. Code Ann. § 37-5-114 (2) provides that "[a] default judgment may not be entered in the action in favor of the creditor unless the complaint is verified by the creditor or sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded." Since Defendant's predecessor failed to meet this obligation, nothing from the 2005 foreclosure case or the 2006 order should be admissible or form the basis of this Court's ruling. A void judgment is one from its inception, is a complete nullity and without legal effect and must be distinguished from one that is merely 'voidable.' A judgment is void if a court acts without personal jurisdiction. *Thomas & Howard Co. v. TW Graham & Co.*, 318 SC 286, 291, 457 SE2d 340, 343 (1995).

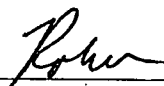
Many of Wells Fargo's grounds for summary judgment are predicated on the idea that

there is no proof of certain final conclusions of law for the various causes of action – despite the fact that the no meaningful discovery depositions have been taken. Only in the last several weeks has Wells Fargo identified the two fact witnesses they were ordered to produce in the March 5 Discovery Order. Only days before this order did Wells Fargo concede that it had sold a 100% interest in the loan. Plaintiff contends that Wells Fargo has not completed its document production obligations flowing from the March 5 Discovery Order. Many of the grounds for summary judgment based on lack of evidence – rather than arguments of law – are thus premature until the close of discovery and it would be unfair to grant the extraordinary relief of summary judgment at this time for lack of proof while document discovery is incomplete and no Wells Fargo witnesses have been deposed. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery”).

#### CONCLUSION

For the above reasons, Plaintiff respectfully requests that this Court reconsider and/or alter or amend Section 4 of the Order.

BROWN & VARNADO LLC


By:   
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*Attorney for Plaintiff*

11-14, 2014  
Mt. Pleasant, South Carolina

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served the attached *Notice of Motion and Motion to Reconsider Section 1 of the Order of October 28, 2014* in the above-captioned action via hand delivery to the attorney for the Defendant as follows:

Charles M. Baker III, Esquire  
S. Sterling Laney III, Esquire  
John C. Hawk IV, Esquire  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
P.O. Box 999  
Charleston, SC 29402  
*Attorney for Defendant*

  
Robert B. Varnado

11-14, 2014  
Mount Pleasant, South Carolina

**EXHIBIT A**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 BRENT E. BENTRIM, )  
 )  
 PLAINTIFF, )  
 )  
 V. )  
 )  
 WELLS FARGO BANK, N.A., )  
 )  
 DEFENDANT. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2011-CP-10-2946

ORDER

BY \_\_\_\_\_  
 JULIE J. HARRINGTON  
 CLERK OF COURT  
 2014 OCT 28 AM 9:40  
 FILED

This matter came before the Court on June 9, 2014, for a hearing on several discovery and dispositive motions. At the hearing, the Plaintiff, Brent E. Bentrin ("Plaintiff" or "Bentrin"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrin was also present at the hearing. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III and John C. Hawk IV of Womble Carlyle Sandridge & Rice, L.L.P. After carefully reviewing the motions and memoranda submitted by the parties, hearing arguments from counsel for both parties, considering the applicable law and facts related to the motions, the Court rules as follows:

**I. PLAINTIFF'S MOTION TO RECONSIDER, FILED MAY 28, 2014**

Plaintiff moved the Court to alter or amend its Discovery Order of May 14, 2014. Specifically, Plaintiff requested the Court to reconsider its conclusion that Wells Fargo is the "holder" of the subject promissory note (the "Note"). The Court rejects Plaintiff's argument and again concludes that Wells Fargo is the holder of the Note as a matter of law and a holder in due course of the Note as a matter of law. Further, even if Wells Fargo was not the holder, it would still qualify as a "person entitled to enforce" as defined in S.C. Code Ann. §36-3-301. The Court

concludes there is no good cause to reverse its prior rulings and therefore *denies* Plaintiff's Motion to Reconsider.

**2. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 10, 2013, AND SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT, FILED MAY 30, 2014**

At the hearing, Plaintiff informed the Court that he would not pursue the first six of his initial seven grounds found in his Motion for Summary Judgment filed October 10, 2013. He proceeded on the seventh ground, contending that Wells Fargo's foreclosure counterclaim was filed in contravention of the Court's order of July 9, 2010, in Case Number 09-CP-10-4700. He also proceeded on his Supplemental Motion for Summary Judgment filed May 30, 2014. Plaintiff's summary judgment motions are *denied* in their entirety.

**3. PLAINTIFF'S MOTION TO COMPEL, FILED MAY 30, 2014**

Plaintiff's Motion to Compel requests the Court to order Wells Fargo to produce five categories of documents. The first two categories relate to Wells Fargo's ACLS system. Plaintiff is hereby ordered to provide Wells Fargo with a list of tables and/or reports he believes are maintained in ACLS and contain information he is seeking regarding the servicing of his loan. Upon receipt of the list from Plaintiff, Wells Fargo shall conduct a timely review of the list and determine whether the requested documents relate to the servicing of Plaintiff's loan. If Wells Fargo believes that any of the documents sought are not related to the servicing of Plaintiff's loan or will be unduly burdensome to produce, then Wells Fargo is ordered to submit to the Court within fifteen (15) days of receipt of Plaintiff's list a detailed explanation of why the documents sought are either not related to the servicing of Plaintiff's loan or will be unduly burdensome for Wells Fargo to produce. Otherwise, Wells Fargo shall produce such documents

to Plaintiff. As to the remaining categories of documents requested by Plaintiff, the Court *denies* Plaintiff's motion.

**4. WELLS FARGO'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 19, 2014**

Wells Fargo moved for summary judgment as to sixteen of Plaintiff's seventeen causes of action, the only exception being the twelfth cause of action for an Accounting. Viewing the facts in the light most favorable to Plaintiff, the Court hereby grants Wells Fargo's motion for Summary Judgment as to the following causes of action:

- Breach of Implied Covenant of Good Faith and Fair Dealing (Third Cause of Action)
- Conversion (Fifth and Tenth Causes of Action)
- Fraud/Fraudulent Misrepresentation (Sixth Cause of Action)
- Constructive Fraud (Seventh Cause of Action)
- South Carolina Unfair Trade Practices Act (Eighth Cause of Action)
- Slander of Title (Ninth Cause of Action)
- Civil Conspiracy (Eleventh Cause of Action)
- Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (Thirteenth Cause of Action)
- South Carolina Consumer Protection Code; S.C. Code Ann. § 37-5-108 (Fourteenth Cause of Action)
- Mail Fraud (Sixteenth Cause of Action)
- Declaratory Judgment (Seventeenth Cause of Action)

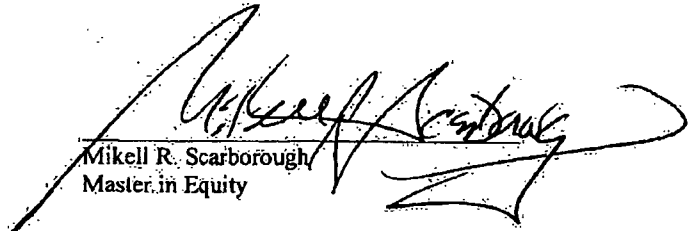
The Court requests further briefing as to the remaining causes of action on which Wells Fargo seeks summary judgment and takes those matters under advisement. After reviewing the

additional briefing, the Court will issue an order either granting or denying Wells Fargo's Motion for Summary Judgment as to these causes of action.

**5. SCHEDULING**

The Court has set a status conference for January 12, 2015, at 11:00 a.m. to discuss further scheduling issues.

**AND IT IS SO ORDERED.**



Mikell R. Scarborough  
Master in Equity

CHARLESTON, SC.  
October 16, 2014

**EXHIBIT B**

**AFFIDAVIT**

The State of Florida  
County of Clay

Personally appeared before me Casimira Kita who first being duly sworn would depose and testify as follows:

1. I am an independent consultant and subject matter expert in CGI's Advanced Consumer Lending System (ACLS) and CAS.
2. I spent 23 years with CGI and its clients on ACLS, including designing, programming and testing software changes.
3. I am intimately familiar with the reporting capabilities and loan data held in ACLS and have reviewed the ACLS files provided by the Defendant to the Plaintiff.
4. I have reviewed WF 2294 and 2302 and determined these reports were generated from ACLS.
5. I have determined from WF 2294 and 2302 that the loans in Pool 794 were securitized and sold to investors.
6. I have reviewed WF 2388 -2390 and determined this record was generated from ACLS.
7. I have determined based on WF 2388 that Pool 794 is a Trust.
8. I have determined based on WF 2389 the Trust was sold to investors (securitized) on November 29, 2006.

Subscribed and Sworn To  
Before me on the  
13<sup>th</sup> day of November, 2014

Heather R. Mouhourtis  
Notary Public  
My Commission Expires on 2-11-15

  
Casimira Kita



WACOVIA BANK, N.A.

ADVANCED CONSUMER LOAN SYSTEM  
SECURIZATION TRIAL BALANCE  
AS OF DATE: 05/29/2009

1A7SC0601

PAGE: 6,539

DATE: 05/30/2009

INVESTOR	BANK APP	LOAN NUMBER	ACCT PURCHASE STAT DATE	CURRENT INT RTE	CURRENT LOAN BALANCE	INTEREST DUE	INTEREST ACCR MTD	MSF FEES MTD	LATE CHARGE MTD	INTEREST PAID YTD	D C
794	28	3 322801000572300	0 11/01/2006	6.940	69,300.10	1,447.57	402.57				
794	28	3 322801000572318	0 10/27/2006	7.690	53,476.33	157.73	349.42				
794	28	3 322801000572326	0 10/27/2006	8.190	50,634.31	159.06	352.25				
794	28	3 322801000572649	0 11/02/2006	7.940	189,913.43	5,089.45	934.56				
794	28	3 322801000572672	0 10/30/2006	1.500	447,091.22	9,484.51	569.58		52.28		
794	28	3 322801000572789	0 11/03/2006	8.440	80,650.98	249.23	578.12				
794	28	3 322801000573290	0 11/02/2006	7.040	84,130.21	34.05	264.91				
794	28	3 322801000573308	0 11/02/2006	6.250	281,434.54	674.67	1,497.01				
794	28	3 322801000573340	0 11/02/2006	6.250	207,068.25	496.39	1,101.34				
794	28	3 322801000573530	0 10/27/2006	8.440	30,983.50	175.64	217.88				
794	28	3 322801000573596	0 11/01/2006	7.190	5,357.22	17.94	33.17				
794	30	3 030901024004192	0 03/15/2000	9.250	28,479.79	129.88	224.50				
794	30	3 323001000001694	0 12/08/2005	8.150	20,180.45	58.86	141.31				
794	30	3 323001000001793	0 12/21/2005	6.500	44,319.97	94.71	244.76				
794	30	3 323001000003088	0 04/19/2006	7.840	29,980.77	167.43	200.11				
794	30	3 323001000003278	0 05/04/2006	6.790	132,466.43	517.49	765.13				
794	30	3 323001000004003	0 06/19/2006	6.390	129,493.16	408.06	703.07				
794	30	3 323001000004029	0 06/24/2006	6.390	181,374.78	422.69	1,012.81				
794	30	3 323001000004367	0 07/19/2006	6.740	17,102.80	55.41	143.81				
794	30	3 323001000004458	0 07/22/2006	7.940	3,586.47	12.48	24.83				
794	30	3 323001000004524	0 07/14/2006	8.840	84,259.74	632.61	632.61				
794	30	3 323001000004532	0 07/24/2006	6.790	25,387.09	83.73	153.78				
794	30	3 323001000004821	0 08/04/2006	8.590	12,408.40	84.68	90.53				
794	30	3 323001000004946	0 08/08/2006	6.690	11,614.05	74.66	85.76				
794	30	3 323001000005117	0 08/18/2006	7.990	41,789.93	283.58	283.58				
794	30	3 323001000005125	0 08/25/2006	7.440	69,772.96	505.27	559.43				
794	30	3 323001000005265	0 08/30/2006	7.590	29,008.55	102.55	187.63				
794	30	3 323001000005604	0 10/04/2006	8.790	9,137.53	61.62	68.35				
794	30	3 323001000005612	0 09/28/2006	9.100	33,635.55	190.70	259.96				
794	30	3 323001000005679	0 09/27/2006	7.790	6,277.04	5.36	41.89				
794	30	3 323001000005778	0 10/13/2006	8.190	78,009.48	455.11	542.91				
794	30	3 323001000005865	0 10/16/2006	7.840	49,010.47	323.34	286.39				
794	30	3 323001000005893	8 10/12/2006	9.190			31.95				
794	30	3 323001000005919	0 10/13/2006	9.190	20,938.53	105.44	153.55			1,593.57	05/04/2009
794	41	3 000041100198640	0 05/18/1999	5.000	7,431.88	6.10	32.47		5.61		
794	41	3 000041100215635	0 01/28/2003	7.240	5,832.51	16.20	36.25				
794	41	3 000041100216102	0 03/20/2003	6.490	91,094.84	194.37	502.43				
794	41	3 000041100216388	0 04/22/2003	6.740	26,310.86	88.58	151.65				
794	41	3 000041100216168	0 07/08/2003	6.240	18,399.31	62.91	97.81				
794	41	3 000041100218647	0 07/28/2003	6.490	63,346.04	226.31	337.14				
794	41	3 000041200205635	0 07/15/2000	10.140	37,128.26	123.77	320.98				
794	41	3 000041200213034	0 03/15/2002	7.740	43,370.44	303.50	285.11		10.00		
794	41	3 000041200213089	2 03/12/2002	7.490	174,804.20	6,205.72					
794	41	3 000041200213584	0 05/03/2002	7.740	47,879.19	60.92	315.21				
794	41	3 000041200213799	0 06/10/2002	7.490	14,252.05	29.24	91.81				
794	41	3 000041200213887	0 11/11/2002	6.490	104,721.10	242.06	578.05				
794	41	3 000041200215944	0 03/05/2003	6.990	56,761.00	184.79	337.18				
794	41	3 000041200216060	0 03/19/2003	6.490	89,086.79	242.20	485.88				
794	41	3 000041200216099	0 03/21/2003	6.350	73,506.73	127.88	396.89				
794	41	3 000041200217001	0 05/24/2003	5.990	102,944.15	202.73	524.23				
794	41	3 000041200217388	0 05/27/2003	6.240	55,966.19	105.25	296.88				
794	41	3 000041200218101	0 07/02/2003	6.490	66,271.48	200.32	366.15				
794	41	3 000041200218619	0 07/23/2003	6.490	31,137.31	132.87	171.78				
794	41	3 000041300218619	0 08/25/1997	9.500	47,281.01	159.91	383.38				
794	41	3 000041300217230	0 10/26/2000	19.400	9,420.07	27.10	84.39				
794	41	3 000041300207546	0 11/22/2000	3.050	41,739.49	49.47	109.77				

WACORZA BANK, N.A.

ADVANCED CONSUMER LOAN SYSTEM  
REGISTRATION TRAIL BALANCE  
AS OF DATE: 11/30/2006

8479C462

PAGE: 9,875

DATE: 12/01/2006

INVESTOR	BASE APP	LOAN NUMBER	ACCT PURCHASE	CONTRIB	CURRENT	INTEREST DUE	INTEREST	MSY	LAST	INTEREST	D	
			DATE	MTS	LOAN BALANCE		ACCR WTD	FREQ WTD	CHARGE WTD	PAID WTD	C	
794	54	3 325401000111177	0 10/20/2006	11.648	6,884.36	21.98	60.72					
794	54	3 325401000111183	0 10/20/2006	0.230	113,991.29	731.62	621.27					
794	54	3 325401000111242	0 10/20/2006	10.820	76,618.81	761.39	675.20					
794	54	3 325401000111243	0 10/20/2006	10.630	51,307.41	1,012.07	801.37					
794	54	3 325401000111474	0 10/17/2006	1.660	49,519.20	221.62	268.62					
794	54	3 325401000111507	0 10/30/2006	6.100	35,618.00	241.80	222.91					
794	54	3 325401000111523	0 10/27/2006	6.620	60,818.25	287.26	206.18					
794	54	3 325401000111571	0 10/23/2006	6.780	54,724.20	257.31	277.76					
794	54	3 325401000111600	0 10/21/2006	6.440	30,400.00	130.09	128.64					
794	54	3 325401000111644	0 10/21/2006	6.630	20,188.24	114.49	120.98					
794	54	3 325401000111717	0 10/21/2006	11.190	30,491.75	301.91	165.16					
794	54	3 325401000111804	0 10/18/2006	7.200	3,946.87	11.79	89.19					
794	54	3 325401000111809	0 10/19/2006	6.628	78,771.79	852.49	238.27					
794	54	3 325401000111809	0 10/20/2006	6.260	0.233.00	24.28	33.61					
794	54	3 325401000111820	0 10/11/2006	6.870	27,807.99	178.04	322.43					
794	54	3 325401000111829	0 10/10/2006	6.870	29,110.16	176.11	183.11					
794	54	3 325401000111829	0 10/21/2006	6.290	33,624.25	222.81	182.19					
794	54	3 325401000111829	0 10/27/2006	6.640	196,390.60	1,122.83	1,928.18					
794	54	3 325401000111829	0 10/21/2006	6.290	40,649.90	321.88	347.96					
794	54	3 325401000111829	0 10/21/2006	6.290	28,327.01	96.42	141.25					
794	54	3 325401000111829	0 10/20/2006	6.800	197,329.18	647.94	606.69					
794	54	3 325401000111829	0 10/21/2006	7.000	81,466.65	289.52	272.93					
794	54	3 325401000111829	0 10/21/2006	6.280	80,682.85	311.83	291.49					
794	54	3 325401000111829	0 10/28/2006	6.130	108,922.90	2,688.56	0,588.51					
794	54	3 325401000111829	0 11/01/2006	6.210	126,715.20	838.89	837.88					
794	54	3 325401000111829	0 10/26/2006	9.280	83,745.20	494.87	601.81					
794	54	3 325401000111829	0 11/01/2006	6.250	89,479.78	320.23	340.69					
794	54	3 325401000111829	0 10/28/2006	7.690	78,281.10	149.80	149.80					
794	54	3 325401000111829	0 11/01/2006	7.290	69,200.00	459.29	346.49					
794	54	3 325401000111829	0 10/30/2006	1.788	24,998.00	324.11	223.21					
794	54	3 325401000111829	0 10/30/2006	6.130	52,768.79	274.82	341.21					
794	54	3 325401000111829	0 11/01/2006	6.258	181,072.65	871.27	761.16					
794	54	3 325401000111829	0 11/01/2006	1.128	101,247.60	527.27	529.62					
794	54	3 325401000111829	0 11/01/2006	1.128	28,322.67	213.69	216.81					
INVESTOR TOTAL						1,989,111,683.20	7,721,621.23	0,826,182.68	569.00	23,191.60	188,241.78	
TOTAL OF ACTIVE FIELD LOANS						21,758						
TOTAL OF CLOSURE/CHARGED OFF						96						
TOTAL NUMBER OF LOANS						21,854						

1,989,111,683.20  
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SEQUENTIAL

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5	TAB-NUM	4/NUM	271
5	INV-REC-KEY-INV	60/GRP	
10	BK-NUM-INV	3/PS	41
10	INV-NUM-INV	4/PS	794
10	KEY-PAD	53/AN	
5	INV-REC-DTL-INV	242/GRP	
10	DAT-OF-LAS-CHG-INV	5/PS	20061114
10	NM-LIN-1-INV	30/AN	TMS SWAP
10	NM-LIN-2-INV	30/AN	
10	ADR-LIN-1-INV	30/AN	301 SOUTH COLLEGE ST.
10	ADR-LIN-2-INV	30/AN	
10	CTY-ST-ZIP-INV	30/GRP	
15	CTY-INV	18/AN	CHARLOTTE
15	ST-INV	3/AN	NC
15	ZIP-COD-INV	9/AN	282885578
10	DMO-COU-COD-INV	3/AN	
10	BUS-PH-NUM-INV	10/AN	
10	BUS-EX-NUM-INV	3/PS	0
10	HOM-PH-NUM-INV	10/AN	
10	FED-ID-INV	9/AN	
10	INV-TYP-INV	1/AN	T
10	FILLER	50/AN	
10	CHANGE-COUNT-INV	1/AN	

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RECORD: 9495239

LENGTH: 335

SLD-LN-POO-REC-POO

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+-----9-----

5	TAB-NUM	4/NUM	297
5	SLD-LN-POO-REC-KEY-POO	60/GRP	
10	BK-NUM-POO	3/PS	41
10	SLD-LN-POO-NUM-POO	4/PS	794
10	KEY-PAD	53/AN	
5	SLD-LN-POO-REC-DTL-POO	262/GRP	
10	SLD-LN-CMN-DTL-POO	117/GRP	
15	POO-DES-POO	40/AN	TMS SWAP
15	POO-STA-POO	1/AN	R
15	PCT-CRT-RT-POO	3/PS	0.00001
15	ANN-SRV-FEE-RT-POO	3/PS	0.00001
15	DAT-POO-EST-POO	5/PS	20061114
15	DAT-POO-SLD-POO	5/PS	20061129
15	DAT-NXT-INV-STL-POO	5/PS	20100931
15	DAT-POO-MAT-POO	5/PS	20981231
15	PCT-BAL-RPU-POO	3/PS	0
15	PRN-BAL-OGL-POO	7/PS	61556379.07
15	NUM-LN-OGL-POO	4/PS	924
15	PRN-BAL-CUR-MO-POO	7/PS	0
15	NUM-LN-CUR-MO-POO	4/PS	36
15	PRN-BAL-PRV-MO-POO	7/PS	61556379.07
15	NUM-LN-PRV-MO-POO	4/PS	36
15	SVC-ADJ-CUR-MO-POO	7/PS	0
15	COF-RCO-CUR-MO-POO	7/PS	0
10	SLD-LN-SPR-DTL-POO	38/GRP	
15	SPR-PCT-PRN-BAL-POO	3/PS	0
15	SPR-MIN-BAL-POO	7/PS	0
15	SPR-AMT-ADV-POO	7/PS	0
15	SPR-AMT-ADV-REM-POO	7/PS	0
15	SPR-BAL-CUR-MO-POO	7/PS	0
15	SPR-BAL-PRV-MO-POO	7/PS	0
10	SLD-LN-LTR-CR-POO	38/GRP	
15	LTR-PCT-PRN-BAL-POO	3/PS	0
15	LTR-CR-OGL-POO	7/PS	0
15	LTR-CR-PRV-MO-POO	7/PS	0
15	LTR-CR-CUR-MO-POO	7/PS	0
15	LTR-DRW-CUR-MO-POO	7/PS	0
15	LTR-DRW-AMT-REM-POO	7/PS	0
10	ORG-CTL-KEY-POO	18/GRP	
15	ORG-CTL-KEY-CON-POO	18/GRP	
20	ORG-LVL-NUM-1-POO	3/PS	41
20	ORG-LVL-NUM-2-POO	3/PS	0
20	ORG-LVL-NUM-3-POO	3/PS	0
20	ORG-LVL-NUM-4-POO	3/PS	0
20	ORG-LVL-NUM-5-POO	3/PS	0
20	ORG-LVL-NUM-6-POO	3/PS	0
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10	SPR-CUM-REL-AMT-POO	7/PS	8732738.74

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RECORD: 9495239

LENGTH: 335

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10	POO-DAY-STP-ACR-POO	2/PS 0
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 2015 JAN -9 PM 3:52  
 JULIE ARMSTRONG  
 CLERK OF COURT  
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STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) CASE NO. 2011-CP-10-2946

BRENT E. BENTRIM,

Plaintiff,

) **DEFENDANT WELLS FARGO BANK N.A.'S**  
 ) **MEMORANDUM IN OPPOSITION TO**  
 ) **PLAINTIFF'S MOTION TO RECONSIDER**

v.

WELLS FARGO BANK, N.A.,

Defendant.

The Defendant, Wells Fargo Bank, N.A. ("**Defendant**" or "**Wells Fargo**"), submits this memorandum in opposition to Plaintiff's Motion To Reconsider Section 4 of the Order of October 28, 2014 ("Motion").

The Court held a lengthy hearing on several discovery and dispositive motions on June 9, 2014. Prior to the hearing, the Plaintiff, Brent E. Bentrin ("**Plaintiff**" or "**Bentrin**"), filed a 91-page Memorandum in Opposition to Defendant's Motion for Summary Judgment ("Memorandum in Opposition"). Following the hearing, on June 23, 2014, Plaintiff filed a 42-page Supplemental Memorandum of Law in Opposition to Wells Fargo's Motion for Summary Judgment ("Supplemental Memorandum in Opposition"). Wells Fargo similarly filed a Memorandum in Support of Summary Judgment and a Supplemental Memorandum in Support of Summary Judgment.

The Court held a brief status conference on October 16, 2014, and then filed a four-page Order on October 28, 2014 ("Order"). Section 1 of the Order concluded that Wells Fargo is the "holder" and "holder in due course" of the subject promissory note. Plaintiff filed a Notice of Appeal on or about November 28, 2014 which appealed that section of the Order. Section 4 of

the Order granted Wells Fargo's Motion for Summary Judgment as to twelve of Plaintiff's seventeen causes of action. Plaintiff now requests that the Court reconsider its ruling as to each of these twelve causes of action. The Motion, however, is simply a rehashing of Plaintiff's old arguments, and should therefore be denied.

#### **LEGAL STANDARD**

Plaintiff makes his Motion pursuant to Rules 59(e) of the South Carolina Rules of Civil Procedure. (Mot., p. 1). Rule 59(e), which is substantially the Federal Rule, permits a court to "alter or amend [a] judgment." Rule 59(e), SCRPC & Notes (stating that "Rule 59 is substantially the Federal Rule"). Rule 59(e) motions are appropriate in very limited circumstances. The rule "permits a court to amend a judgment within ten days for three reasons: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *E.E.O.C. v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997). Reconsideration of a judgment pursuant to Rule 59(e) is an "extraordinary remedy which should be used sparingly." *Pacific Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

The purpose of Rule 59(e) is *not* "to give an unhappy litigant one additional chance to sway the judge." *Phillips v. McKie*, CA 1:12-438-CMC-SVH, 2012 WL 4378183 (D.S.C. Sept. 25, 2012) (citing *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625 (S.D.Miss.1990)); *see also, Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993) ("Mere disagreement does not support a Rule 59(e) motion."). Therefore, a Rule 59(e) motion fails if it simply repeats an argument already presented to the court. "Motions under Rule 59 are limited in scope and are not to be used to rehash the same arguments and facts previously presented." *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998) (internal citations omitted). Similarly, a Rule

59(e) motion fails if it attempts to make new arguments which have not previously been presented to the court. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); see also *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (same).

### ARGUMENT

Plaintiff's Motion fails to identify a single valid ground to alter or amend the Order. While titled a Motion to Reconsider, in reality, the motion ignores the Rule 59(e) legal standards. At no point does the Motion reference an intervening change in controlling law, claim new evidence not previously available, or attempt to correct a clear error of law or prevent manifest injustice. See *E.E.O.C.*, 116 F.3d at 112. On its face, the Motion does not attempt to, and therefore fails to, meet the applicable legal standards.

#### **1. Plaintiff's rehashing of old legal arguments cannot overturn the Court's Order.**

Prior to the Court's Order, Plaintiff had already filed 137 pages of briefing in opposition to Wells Fargo's Motion for Summary Judgment. Not surprisingly, Plaintiff's Motion is, almost in its entirety, a restatement of prior arguments which the Court has already rejected. These arguments are not proper grounds for reversal of the Court's Order.

Plaintiff's Motion asks for the Court to reconsider its ruling on the following causes of action:

- Breach of Implied Covenant of Good Faith and Fair Dealing. The argument found in Plaintiff's Motion is identical to the argument found in his Memorandum in Opposition.
- Conversion. Again, the argument found in Plaintiff's Motion is identical to the argument found in his Memorandum in Opposition.

- Fraud/Fraudulent Misrepresentation/Constructive Fraud. The arguments included in the Motion are copied partially from Plaintiff's Memorandum in Opposition and partially from his Supplemental Memorandum in Opposition.
- South Carolina Unfair Trade Practices Act. The argument found in Plaintiff's Motion is identical to the argument found in his Memorandum in Opposition.
- Slander of Title. Plaintiff's argument is essentially identical to that found in his Memo in Opposition. The only difference is the addition of the claim that more discovery is needed- a claim made numerous times in Plaintiff's prior filings.
- Civil Conspiracy. Plaintiff's argument is identical to the argument found in his Memorandum in Opposition, but also adds the allegation that Wells Fargo's attorneys are co-conspirators. To the extent the Court considers this a "new argument," please see Section 2, below.
- Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. The argument found in Plaintiff's Motion is identical to the argument found in his Memorandum in Opposition, with the addition of a final paragraph making additional factual allegations. These factual allegations do not constitute "new evidence not available" at the time of the hearing.
- South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108. The argument found in Plaintiff's Motion is identical to the argument found in his Memorandum in Opposition.
- Declaratory Judgment. The Amended Complaint sought a declaration that "Defendant has no ownership interest, or any rights whatsoever, associated with the Property." In Plaintiff's Motion, he restates his theory, already rejected by the Court, that Wells Fargo is not the "holder" or "holder in due course" of the Note.

"A motion to reconsider cannot appropriately be granted where the moving party simply seeks to have the Court rethink what the Court has already thought through—rightly or wrongly." *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998) *aff'd*, 176 F.3d 745 (4th Cir. 1999) (citing *United States v. Dickerson*, 971 F. Supp. 1023, 1024 (E.D.Va.1997) (internal punctuation omitted). Plaintiff requests the Court to revisit his prior arguments but offers no valid reason to do that. He offers no new law and no new evidence. As such, Plaintiff's Motion should be denied as to the causes of action above.

**2. Plaintiff's untimely introduction of new legal arguments cannot overturn the Court's Order.**

Plaintiffs' Amended Complaint included a cause of action for mail fraud (sixteenth cause of action). In his original Memorandum in Opposition, Plaintiff devoted only two sentences to this cause of action and cited no cases. The cause of action was not mentioned at all in Plaintiff's Supplemental Memorandum in Opposition. In the pending Motion, however, Plaintiff shows some renewed interest in mail fraud, and sets out a theory for the first time. South Carolina law expressly forbids this litigation tactic. *See, e.g. Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.") (citing *C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268 (1993)); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.") Because Plaintiff's new legal argument is improper at this stage in the litigation, it cannot overturn the Court's Order, and the Plaintiff's Motion to Reconsider should be denied.

**CONCLUSION**

For the reasons set forth above, Plaintiff's Motion should be denied in its entirety.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



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(843) 722-3400

ATTORNEYS FOR WELLS FARGO BANK, N.A.

Charleston, South Carolina  
January 9, 2015



2011-CP-10-29416


**CERTIFICATE OF SERVICE**

I do hereby certify that on the 9th day of January, 2015, I served a copy of the within

**WELLS FARGO'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO**

**RECONSIDER** to Plaintiff in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to his attorney:

Robert B. Varnado  
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FILED  
2015 JAN - 9 PM 3:53  
JULIE Y. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

COURT OF COMMON PLEAS )  
NINTH JUDICIAL CIRCUIT )  
CASE NO. 2011-CP-10-2946 )

BRENT E. BENTRIM, )  
 )  
Plaintiff, )

v. )

WELLS FARGO BANK, N.A., )  
 )  
Defendant. )

REPLY TO DEFENDANT'S )  
MEMORANDUM IN OPPOSITION TO )  
PLAINTIFF'S MOTION TO )  
RECONSIDER )

FILED  
2015 JAN 12 AM 10:41  
JULIE J. ARMSTRONG  
CLERK OF COURT

INTRODUCTION

On November 17, 2008, the Defendant's predecessor, Wachovia Bank, NA ("Wachovia") claimed it held a valid lien on the Plaintiff's property. On that date, it sent the Plaintiff a letter demanding \$4,920.09 in past due principal and interest, stating: "the purpose of this letter was to make one final attempt to possibly avoid acceleration or foreclosure." It further stated 'upon acceleration, your total obligation will be immediately due and payable without further notice or demand.' The demand clearly established that unless 'payments received that are less than the amount the amount required to reinstate the loan will be returned....'

It was clear that unless Bentrin paid \$4,920.09 by December 14, 2008, his 'total obligation will be immediately due and payable without further notice or demand.' The Plaintiff disputed this amount and requested a complete transaction history on his account. On December 19, 2008, Wachovia employee Sherrie Caudill wrote Bentrin describing that principal, interest and fees on his loan were being assessed in a manner different from the terms of the Negotiable Promissory Note and Adjustable Rate Disclosure Statement he signed and issued to First Union National Bank on March 12, 2002.

Bentrim further brought to Wachovia's attention that the Payment History provided revealed a discrepancy between payments due in regards to the November 17, 2008 Acceleration Demand as well the principal balance on the loan. He once again raised the issue that \$2,700.00 in payments were missing. Bentrim finally alerted Wachovia that the terms of his loan were not being followed. The Defendant received such the same yet refused to accept further payments.

Litigation ensued and the foreclosure complaint filed July 30, 2009 was dismissed by this Court on July 7, 2010. Bentrim continued to seek a solution. In fact, the Plaintiff in December 2009 tendered all amount that was due from December 2008 along with January 2009 payment to reinstate the loan if Wachovia would agree to correct the errors and follow the terms of the Note and Adjustable Rate Disclosure Statement moving forward. Wachovia refused to accept this payment. Defendant, however, began to threaten the Plaintiff he must modify his loan or lose his home.

The Plaintiff asserts he made good faith efforts to pay under the terms of his loan and was met with:

1. failing to properly identify the foreclosing party;
2. charging improper fees related to foreclosures;
3. preparing, executing, notarizing or presenting false and misleading documents, filing false and misleading documents with courts and government agencies, or otherwise using false or misleading documents as part of the foreclosure process (including, but not limited to, affidavits, declarations, certifications, substitutions of trustees, and assignments);
4. Preparing, executing, or filing affidavits in foreclosure proceedings without personal knowledge of the assertions in the affidavits and without review of any information or

documentation to verify the assertions in such affidavits. This practice of repeated false attestation of information in affidavits is popularly known as “robosigning.”;

5. providing borrowers false or misleading information in response to borrower complaints; and
6. failing to timely and accurately apply payments and failing to maintain accurate account statements.

The Defendant has not denied such acts occurred but instead has argued the conduct is covered and immune from the SC Code and a private cause of action because it was the “creditor who at all times the debt was owed,” and it is a National Bank.

The Plaintiff after having exhausted all avenues filed the instant complaint. The Defendant, unwilling to prove how it came into possession of the Note has filed a counterclaim alleging it is the ‘holder’ of the Note by virtue of being the successor by merger with Wachovia Bank, N.A. and alleging that Bentrin has failed to make the very payments that they refused to take from him. Defendant also falsely claim that Bentrin’s action is based on the notion that the Note is unenforceable, rather than the correct argument that it has not demonstrated it’s right to enforce under the UCC.

The Plaintiff has been clear and consistent throughout this entire process. He was not in default when the Defendant accelerated his loan and further claims that Wells Fargo is not entitled to enforce the Note.

#### **Rule 59(e) Motions Generally**

In its memorandum, when it attacks the motion to reconsider as simply rehashing arguments, Wells Fargo fails to cite controlling South Carolina precedent. In South Carolina, Rule 59(e) is widely regarded as a ‘motion to reconsider.’ Such motions are required when “the

losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 (e) motion to alter or amend the judgment in order to preserve the issue for appellate review” I'on, LLC v. Town of Mt. Pleasant, 526 SE 2d 716 (2000). All of Wells Fargo’s citations are to federal authority which of course has a “clear error” standard for appeals and does not used Rule 59(e) for issue preservation. Bluntly, these arguments that ignore South Carolina practice are a waste of the Court’s time.

#### **Order from Judge Anderson**

On June 16, 2014, United States District Judge Joseph F. Anderson, in Hamlin v. Wells Fargo, ruled on the issue of the applicability of the Unfair Trade Practices Act to Wells Fargo – finding that it does apply to the Defendant and citing two opinion letters of the South Carolina Attorney General that under *United States v Bank of Am. Corp.*, Case No. 1:12-cv-361-RMC (D.D.C.) (“National Mortgage Litigation”) a private borrower who loan is secured by his primary residence like Bentrin can bring a private cause of action against Wells Fargo for the same covered conduct reached a final consent judgment. See Exhibits.

In Judge Anderson’s case Wells Fargo was represented by the same firm as in the instant case. Despite being in possession of these letters from the Attorney General, Defendant has never provided them to the Court and has repeatedly argued that that only the South Carolina Attorney General can bring a UTPA action against it.

The Plaintiff has alleged and largely proven the following specific conduct (and ongoing conduct) on behalf of the Defendant are violations of SCUPTA and South Carolina Consumer Code:

- failing to properly identify the foreclosing party;
- charging improper fees related to foreclosures;

- preparing, executing, notarizing or presenting false and misleading documents, filing false and misleading documents with courts and government agencies, or otherwise using false or misleading documents as part of the foreclosure process (including, but not limited to, affidavits, declarations, certifications, substitutions of trustees, and assignments);
- preparing, executing, or filing affidavits in foreclosure proceedings without personal knowledge of the assertions in the affidavits and without review of any information or documentation to verify the assertions in such affidavits. This practice of repeated false attestation of information in affidavits is popularly known as “robo signing.”;
- providing borrowers false or misleading information in response to borrower complaints; and
- failing to timely and accurately apply payments and failing to maintain accurate account statements.

In reply, Defendant simply arguing that because it is a bank it is immune to the SCUPTA and SC Consumer Code and that Bentrin has no private cause of actions. Judge Anderson’s order, however, exposes this argument as invalid. Defendant is not immune from the alleged Unfair and Deceptive Trade Practices. See AG Letter Dated April 29, 2014. The Defendant should further be judicially and collaterally estopped from any assertion to the contrary. At a minimum, Defendant should have disclosed the Attorney General letters to this Court, as they directly bore on the issues at bar. See Hutchinson v. Staton, 994 F.2<sup>nd</sup> 1076, 1081 (4<sup>th</sup> Cir. 1993)(a motion to reconsider may be granted when (2) additional evidence not previously available has been presented and (3) the prior decision was based on clear error or would work

manifest injustice.”). Therefore Summary Judgment on the UTPA and Consumer Protection causes of actions should be reversed.

**Critical New Evidence Produced October 23, 2014.**

There is no dispute that the Promissory Note issued by the Plaintiff to First Union National Bank on March 12, 2002 is a Negotiable Instrument.

South Carolina Code Annotated section 36-3-104 (1976) provides:

- (1) Any writing to be a negotiable instrument within this chapter must
  - (a) be signed by the maker or drawer;
  - (b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter;
  - (c) be payable on demand or at a definite time; and
  - (d) be payable to order or to bearer.
- (2) A writing which complies with the requirements of this section is ...
  - (d) a “note” if it is a promise other than a certificate of deposit.

Clearly each of these requirements is met in this case. Furthermore, neither party asserts the instrument fails to satisfy the above criteria. Therefore as a matter of law, “Article 3 [of the UCC] applies to negotiable instruments.” *Swindler v. Swindler*, 35 S.C. 245, 250 (S.C. Ct. Ap. 2003)

In its finding concluding “Wells Fargo is the holder of the Note as a matter of law and a holder in due course of the Note as a matter of law. Further, even if Wells Fargo was not the holder, it would still qualify as a “person entitled to enforce” as defined under S.C. Code 36-3-301” the Court alludes to Article 3 as the law, yet fails to find it as ‘controlling.’

If Article 3 of Title 36 of the South Carolina Code controls Negotiable Promissory Notes, the above order could only be made if the Court failed to recognize that this change is in respect to a typical promissory note, or non-negotiable instrument. Once Banks like First Union National Bank began having homeowners issue Negotiable Instruments, a change in controlling law occurred.

The 'person entitled to enforce the note' (PETE) is not synonymous with its "owner". In fact the Official Comments stress that "[t]he right to enforce an instrument and ownership of the instrument are two different concepts." Article 3 does not specifically address the assignment of ownership of an instrument and instead focuses on how enforcement rights are obtained and transferred. Assignments are contracts and, as a general matter, are regulated by the common law of contracts, wholly unrelated to Article 3.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.' SC 36-3-301

Under Section 36-3-301, we also learn that 'holder' is not an umbrella term under which all owners and or persons entitled to enforce a negotiable instrument fall. It is a specific type of PETE with specific rights. Further – holder is in no way to be defined as in possession of an original note.

A 'holder' is defined as "person in possession of an instrument issued, endorsed to him or to his order or to bearer or in blank." S.C. Code Ann. § 36-1-201(20)

All copies the Note produced thus far is proof positive that Wells Fargo cannot be the 'holder.' The Note is issued to 'First Union National Bank or order,' and lacks any endorsement by First Union.

The only manner in which a third party can obtain 'holder' status is through negotiation. Negotiation is defined as "a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder." S.C. Code Ann. 36-3-201 (a)

Because the Note is payable to an identifiable person (as opposed to a bearer instrument) an endorsement by First Union was required under S.C. Code Ann. 36-3-201(b) to endorse it in order for Negotiation to occur.

In its memorandum, Wells Fargo argues the applicability of 12 USCA § 215 (e) -- which basically says that when banks merge, property rights shall be transferred to the successor bank. The Plaintiff agrees.

Under the first set of unfair and deceptive conduct, the Defendant has for years asserted, even going as far as sworn statements and testimony, that Bentrims' loan was never sold -- qualifying for holder status under 12 USCA § 215 (e).

Although presented with sufficient evidence to refute such (WF 187, WF 2294, 2299-2305 & Bodiford Affidavit) the Court relied on the notion no sale was made in its original finding of 'holds,' in May 2014.

Presented with overwhelming evidence a sale did occur, the Defendant next obtained an Affidavit from Matthew Wakefield (see Wakefield Affidavit) on June 6, 2014 which its counsel used to spin a tale that TMS Service Corp owned the loan when it was purportedly dissolved and absorbed into Wells Fargo Bank, NA.

The Wakefield Affidavit is silent on this matter because, unlike early affiants, it appears Wakefield was not willing to commit perjury. However, had such a transfer taken place as described, Wells Fargo would not be a holder as no 12 USCA § 215 (e) merger occurred.

However, additional evidence not previously available has been presented by the Defendant on October 23, 2014. WF 2388-2390 clearly reveal the Plaintiff's loan was owned not by TMS Service Corp after November 29, 2006 but instead by a trust identified as 'TMS Swap' who sold beneficial interests to unknown parties. (See Kita Affidavit). See Hutchinson v. Staton, 994 F.2<sup>nd</sup> 1076, 1081 (4<sup>th</sup> Cir. 1993) (a motion to reconsider may be granted when (2) additional evidence not previously available has been presented and (3) the prior decision was based on clear error or would work manifest injustice.)..

Based upon the evidence and governing law, Section 1 of the Court's order should be reversed as it was a clear error and is manifestly unjust to the Plaintiff. To the extent discovery is still ongoing, the Defendant wishes to withhold production of records so it can obtain judgment on various aspects of Bentrin's complaint.

The production of WF 2371-2572 should also result in reversing summary judgment on the following causes of action:

**1. Breach of Implied Covenant of Good Faith and Fair Dealing:**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. The Defendant's records clearly reveal the Plaintiff made all required payments and was not in default when the Demand and Acceleration Notice was sent on November 17, 2008.

**2. Conversion**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. Its previous testimony that EIN 56-1948921 is 'it' and it loe was the only entity to receive payments from the Plaintiff reveal it converted Bentrim's money for its own use.

### **3. Fraud/Fraudulent Misrepresentation/Constructive Fraud**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. The Defendant's records clearly reveal the Plaintiff made all required payments and was not in default when the Demand and Acceleration Notice was sent on November 17, 2008. The Defendant's records clearly reveal it did not intend nor had the capacity to honor the terms of the Adjustable Rate Disclosure Statement to induce the Plaintiff into signing the Negotiable Promissory Note dated March 12, 2002.

### **4. Slander of Title**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. It has slandered the Plaintiff's title with malice by failing to enter a satisfaction of the mortgage as requested in March 2011 and by filing a lis pendens as 'successor by merger' to Wachovia Bank, NA in is counterclaim and 2007 and 2009 actions.

### **5. Mail Fraud and Civil Conspiracy**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. The Defendant has admitted the authenticity of the Wells Fargo Home Mortgage Foreclosure Attorney Procedure Manual which provides access by its counsel to determine the

authenticity of assertions made by the Bank to the ownership, enforcement rights and default of the loan. With access and knowledge such facts were patently and materially wrong, Wells Fargo, TMS and its agents as debt collectors have conspired through the mail and Courts to take property from the Plaintiff.

**6. Violation of the Fair Debt Collection Practices Act, 15 USC 1692**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. Therefore the Defendant's assertion it was protected from such action under the Fair Debt Collection Practices Act because of a creditor/debtor relationship was materially false.

BROWN & VARNADO LLC

By:



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January 12, 2015  
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

11-CR-10-2946

This is to certify that the undersigned has on this date served the attached *Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Reconsider* in the above-captioned action by hand delivery to the attorney for the Defendant as follows:

Charles M. Baker III, Esquire  
S. Sterling Laney III, Esquire  
John C. Hawk IV, Esquire  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
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*[Handwritten Signature]*  
Elizabeth T. Plasters  
Paralegal to Robert B. Varnado, Esq.

FILED  
2015 JAN 12 AM 10:41  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

January 12, 2015  
Mount Pleasant, South Carolina

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Emily M. Harlin,  
Plaintiff,

vs.

Wells Fargo Bank NA,  
Defendant.

C/A No. 3:13-cv-02719-JFA

**ORDER**

**I. INTRODUCTION**

Before the court is Defendant's motion for this court to reconsider<sup>1</sup> the denial of Defendant's motion for judgment on the pleadings as it relates to Plaintiff's claim under the South Carolina Unfair Trade Practices Act ("SCUTPA"). Ordinarily, a court should grant a motion to reconsider only when: (1) an intervening change in controlling law occurs; (2) additional evidence not previously available has been presented; or (3) the prior decision was based on clear error or would work manifest injustice. *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). None of those circumstances exist here. However, because the court offered no rationale for allowing Plaintiff's SCUTPA claim to proceed, the court now offers its rationale in full. For the following reasons, the court denies Defendant's motion for reconsideration and affirms its denial of Defendant's motion for judgment on the pleadings as to Plaintiff's SCUTPA claim.

**II. FACTUAL AND PROCEDURAL HISTORY**

This action stems from a home loan and mortgage entered into between Plaintiff (the borrower) and Defendant (the lender). Plaintiff defaulted, and on April 11, 2007, Defendant

<sup>1</sup> Defendant moved pursuant to FRCP 54(b)(2) and FRCP 59(e). ECF No. 31, p.3.

filed suit to foreclose on Plaintiff's home. In December 2010, Plaintiff and Defendant settled that foreclosure suit by Defendant allowing Plaintiff to live in her home, without making any payments to Defendant. Otherwise, Defendant retained its rights under the note and mortgage—namely to make itself whole from any sale of the home. Obviously, this meant that Defendant's collection efforts were to cease. Defendant also agreed to request credit bureaus to remove credit references to Plaintiff in connection with the accounts related to Plaintiff's home loan.

Defendant did not hold its end of the bargain. On January 25, 2011,<sup>2</sup> the trustee for the pool in which Plaintiff's note was held filed a new foreclosure action against Plaintiff. Subsequently, Defendant, or its agents, attempted to collect the alleged debt from Plaintiff on fifteen separate occasions, ranging from visits to Plaintiff's home to mailed statements. Defendant also failed to request or cause credit bureaus to remove all credit references to Plaintiff in connection with the accounts related to Plaintiff's home loan. This suit followed.

After filing an Answer, Defendant moved pursuant to Rule 12(c) for a partial judgment on the pleadings. Plaintiff stipulated to the dismissal of "Plaintiff's claims of breach of contract accompanied by a fraudulent act, intentional infliction of emotional distress, and violation of S.C. Code § 37-5-108." ECF No. 18, p.1. However, Plaintiff objected to the dismissal of Plaintiff's claim under SCUTPA. This court agreed with Plaintiff, and denied Defendant's Rule 12(c) motion as to SCUTPA in a short order, without providing a rationale. Defendant moved the court to reconsider its decision.

As argued in its Rule 12(c) motion, Defendant argued in its motion to reconsider that Plaintiff's SCUTPA claim had already been settled in a previous suit<sup>3</sup> by the South Carolina

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<sup>2</sup> Plaintiff's complaint alleges January 24, 2010, but a review of publicly available records shows that suit was actually filed on January 25, 2011. See *HSBC Bank NA v. Emily M. Harlin*, 2011CP1000475 (S.C. Ct. of Comm. Pleas).

<sup>3</sup> *United States v. Bank of Am. Corp.*, Case No. 1:12-cv-361-RMC (D.D.C.) ("National Mortgage Litigation").

Attorney General, representing Plaintiff in the Attorney General's *parens patriae* capacity. That settlement is commonly referred to as the National Mortgage Settlement and the terms of that settlement were reduced to a Consent Judgment. *See* ECF No. 17-3 ("Consent Judgment"). The United States, every state except for Oklahoma, and the District of Columbia were signatories of the Consent Judgment on the one hand, and five major banks, including Defendant, were signatories on the other. Having already received ample briefing on the meaning of the Consent Judgment, this court requested additional briefing on the adequacy of the South Carolina Attorney General's alleged representation of Plaintiff, considering that the vast majority of monies obtained by South Carolina in the National Mortgage Settlement went to the state's general fund, and not to victims of unfair mortgage practices. *See* 2012-2013 Appropriations Bill, H. 4813, Part IB, Section 90, proviso 90.19, 2011-2012 Leg., 119th Sess. (S.C.).

The South Carolina Attorney General filed two letters with this court, the first opining that South Carolina specifically reserved the *private* causes of action citizens may have under SCUTPA, and the second opining that the Attorney General's representation in obtaining the Consent Judgment was, therefore, constitutionally adequate, regardless of how the monies obtained from the settlement were used.<sup>4</sup> ECF No. 36-1; ECF No. 42. In two unsolicited responses to the South Carolina Attorney General's letters, Defendant argued for the first time that Defendant is exempted from SCUTPA liability because banks are part of a regulated industry.

### III. LEGAL STANDARD

Courts "appl[y] the same standard for Rule 12(c) motions as for motions made pursuant to Rule 12(b)(6)." *Burbach Broad. Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401, 405-

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<sup>4</sup> The South Carolina Attorney General requested to replace the first letter with the second letter. The two letters are not inconsistent, and this court left both letters on the docket.

06 (4th Cir. 2002). When considering a motion to dismiss under Rule 12(b)(6), the court must accept as true the facts alleged in the complaint and view them in the light most favorable to the plaintiff. *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (4th Cir. 1999). The United States Supreme Court has stated, however, that “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). Although “a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations,” a pleading “will not do” if it merely offers “labels and conclusions,” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555. Likewise, “a complaint [will not] suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancements.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). Accordingly, Plaintiff must put forth claims that cross “the line from conceivable to plausible.” *Id.* at 680 (internal quotation omitted). The court “need not accept the [plaintiff’s] legal conclusions drawn from the facts,” nor need it “accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 616 n.26 (4th Cir. 2009) (citation omitted).

#### IV. PRECLUSION

For the doctrine of res judicata to be applicable, there must be: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits. *Nash County Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 486 (4th Cir. 1981). Defendant argues that the State of South

Carolina represented Plaintiff in *parens patriae* when the Attorney General of South Carolina entered into the Consent Judgment, settling all claims for causes of action based upon covered conduct and the laws of the various states creating causes of action for "Unfair and Deceptive Acts and Practices" ECF No. 17-3, p.1. There is no dispute that Plaintiff is asserting SCUTPA, an identified cause of action in both the National Mortgage Litigation and this litigation, based upon the same covered conduct—a wide range of allegedly improper mortgage practices, including the practices giving rise to Plaintiff's SCUTPA claim.

The plain text of the Consent Judgment, however, shows that a borrower, such as the plaintiff here, is specifically exempted from the Consent Judgment. The Consent Judgment provides:

The following claims are hereby not released and are specifically reserved ... [c]laims and defenses asserted by third parties, including individual mortgage loan borrowers on an individual or class basis.

ECF No. 17-3, p. 273-277. Plaintiff, an individual mortgage loan borrower, squarely meets this exemption. Further evidence that the Consent Judgment does not apply to Plaintiff's claim as an individual is that the release of covered conduct applies only to claims "that an Attorney General or Regulator, respectively, has or may have or assert."<sup>5</sup> ECF No, 17-3, p. 272.

Defendant argues that:

Wells Fargo agreed to pay over \$5 billion in exchange for a full release from potential liability with respect to all conduct that formed the basis of the government's claims. It would make little sense for any litigant to resolve a case by paying such a high sum of money, only to leave itself eligible to be sued for the exact same alleged conduct by the very people who were represented by the named parties in the prior suit.

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<sup>5</sup> SCUTPA provides for a private cause of action, S.C. Code Ann. § 39-5-140, and causes of action for the Attorney General to seek an injunction and civil penalties, S.C. Code Ann. § 39-5-110 and S.C. Code Ann. § 39-5-50. See ECF No. 36-1.

ECF No. 20, p. 4. The court notes that the settlement related to allegedly improper home mortgage practices in almost the entire country; the court is, therefore, not in a position to accept Defendant's inference that \$5 billion is a large amount of money in context. Even if the court were to accept this inference, the court cannot ignore the plain language exempting "individual mortgage loan borrowers." ECF No. 17-3, p. 277.

The court finds Defendant's assertion that Wells Fargo paid "for a full release"<sup>6</sup> disingenuous in light of the several exemptions, including the one at issue, provided for in the Consent Judgment. ECF No. 20, p. 4; ECF No. 17-3. The court also rejects Defendant's argument that the third parties—"individual mortgage loan borrowers on an individual or class basis"—refers to the State of Oklahoma. ECF No. 20, p. 4. It is true that the State of Oklahoma was not a party to the Consent Judgment, but it would defy reason for any drafter to exempt "individual mortgage loan borrowers on an individual or class basis," when the drafter in fact meant to exempt the State of Oklahoma. There is also no need to exempt a party that is plainly not a part of an agreement.

This court is not the only court to find private citizen claims exempted from the Consent Judgment. Judge James E. Boasberg, also of the United States District Court for the District of Columbia, held that a private citizen did not have standing to enforce the Consent Judgment because "claims by individual borrowers, such as Plaintiff, are excluded from the Consent Judgment. In other words, such borrowers may still bring suits against Wells Fargo." *Ghaffari v. Wells Fargo Bank, N.A.*, CV 13-115 (JEB), 2013 WL 6070364 (D.D.C. Nov. 19, 2013). Similarly, Judge Rosemary M. Collyer,<sup>7</sup> United States District Court for the District of

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<sup>6</sup> The Court of Appeals for the District of Columbia rejected this week a similar argument by Wells Fargo construing the same Consent Judgment, but in a different context. See *United States of America v. Bank of America Corporation, et al.*, No. 13-5112 (D.C. Cir. June 10, 2014).

<sup>7</sup> Judge Collyer is the Judge that approved the Consent Judgment.

Columbia, rejected an objection to a different consent judgment by a private citizen, in part, because the private citizen could not “actually claim injury from the [c]onsent [j]udgment because the [c]onsent [j]udgment preserves the claims of individual homeowners.” *Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp.*, CV 13-2025 (RMC), 2014 WL 1925552 (D.D.C. May 15, 2014). The consent judgment in that case—also settling alleged misconduct in home mortgage practices on behalf of every state but Oklahoma—used the exact same language as the Consent Judgment in this case, exempting “[c]laims and defenses asserted by third parties, including individual mortgage loan borrowers on an individual or class basis.” *Id.* The application of that exemption in this instance has also been confirmed by the South Carolina Attorney General on two occasions by letter to this court.<sup>8</sup>

#### V. DEFENDANT’S MOTION TO STRIKE

In asking this court to strike Defendant’s references to pleadings in the National Mortgage Litigation, Defendant argues that “pleadings from another case cannot support a claim under [the public interest element of SCUTPA].” ECF No. 31. Defendant cites to an unreported Fourth Circuit Court of Appeals case for this proposition. The Fourth Circuit “ordinarily do[es] not accord precedential value to [its] unpublished decisions ... and they are ‘entitled only to the weight they generate by the persuasiveness of their reasoning.’” *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 219 (4th Cir. 2006). There is little persuasiveness of the reasoning in the case cited by Defendant, because that case held that references to another “complaint offered without further evidentiary support did not establish an adverse impact on the public interest and were not sufficient to withstand [the opposing party’s] factually supported request for summary judgment.” *Beattie v. Nations Credit Fin. Servs. Corp.*, 69 F. App’x 585, 590 (4th Cir. 2003). In

<sup>8</sup> “It is our position that Ms. Harlin’s claim is not precluded by the 2012 settlement ... [w]e did not settle—and, in fact, expressly excluded from the settlement—all *private* claims citizens of our State may elect to bring.” ECF No. 36-1. “Our representation of the State ... does not affect the consumer case.” ECF No. 42.

other words, that case found that one party failed to overcome another party's properly supported motion for summary judgment, and this case involves a motion for judgment on the pleadings.

Because courts "appl[y] the same standard for Rule 12(c) motions as for motions made pursuant to Rule 12(b)(6)," a court may properly consider public records integral to the complaint, the authenticity of which are unchallenged, on a Rule 12(c) motion. *Burbach*, 278 F.3d at 405-06; *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999); *see also Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001). Therefore, the court will not strike Plaintiff's references to publicly available documents in the litigation that led to the Consent Judgment. The court notes that this is not a ruling on the discoverability or admissibility of information from that case.

#### VI. SCUTPA AND FEDERALLY REGULATED BANKS

Defendant filed two unsolicited briefs, arguing that "Wells Fargo, as well as all other federally-regulated banks, is exempt from claims under [SCUTPA] ... [because SCUTPA] does not apply to entities that are regulated by other administrative bodies." ECF No. 43. Plaintiff replied. The court construes this new argument as another motion for a judgment on the pleadings, pursuant to Rule 12(c). The unpublished Fourth Circuit opinion cited by Defendant in support of its motion to strike is directly on point. It provides:

Section 39-5-40(a) of the SCUTPA provides that the Act does not apply to "[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law." ...

The South Carolina Supreme Court has stated that this exemption "is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes." *Ward v. Dick Dyer & Assocs., Inc.*, 304 S.C. 152, 403 S.E.2d 310, 312 (1991). The Ward court indicated that the exemption is not meant to exclude *every* activity regulated by another agency or statute, rather it is meant to ensure that companies are not subjected to lawsuits for following an agency regulation or statute. *Id.* Therefore, NationsCredit is not

protected from lawsuits for "general activity." *See id.* There is no indication that a statute or agency regulation requires or permits Nations Credit to pursue collection and foreclosure activities on accounts purportedly satisfied by an LMS affidavit. Therefore, NationsCredit is not exempt from liability under the SCUTPA.

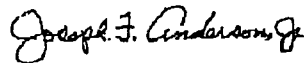
*Beattie v. Nations Credit Fin. Servs. Corp.*, 69 F. App'x 585, 587-88 (4th Cir. 2003). Although an unpublished decision, the court finds *Beattie* to accurately state and apply the law, and also finds the reasoning of *Beattie* persuasive on this point. *Collins*, 468 F.3d at 219 (4th Cir. 2006). The court, therefore, rejects Defendant's eleventh-hour argument in support of dismissing Plaintiff's SCUTPA claim pursuant to Rule 12(c).

**VII. CONCLUSION**

The court denies Defendant's Motion for Reconsideration. ECF No. 31.

IT IS SO ORDERED.

June 16, 2014  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge



ALAN WILSON  
ATTORNEY GENERAL

April 29, 2014

The Honorable Joseph F. Anderson, Jr.  
U.S. District Judge  
U.S. District Court, District of South Carolina  
901 Richland Street  
Columbia, SC 29201

Re: Emily M. Harlin v. Wells Fargo Bank, N.A.  
Case No.: 3:13-cv-2719-JFA

Dear Judge Anderson:

The case of Emily Harlin versus Wells Fargo was brought to our attention recently. Specifically, the issue of whether Ms. Harlin's claim pursuant to Section 39-5-140 of the South Carolina's Unfair Trade Practices Act (SCUTPA) is precluded by our 2012 settlement with Wells Fargo in which we represented the State of South Carolina in our *parens patriae* capacity and under our SCUTPA capacity pursuant to Section 39-5-50. It is our position that Ms. Harlin's claim is not precluded by the 2012 settlement.

When we represented South Carolina in our *parens patriae* capacity,<sup>1</sup> in the mortgage settlement, we did so on behalf of the *public* citizenry (S.C. Code Ann. § 39-5-50).<sup>2</sup> We did not settle—and, in fact, expressly excluded from the settlement—all *private* claims citizens of our State may elect to bring pursuant to Section 39-5-140 against the defendants in that settlement. See *In re Exxon Valdez*, 270 F.3d 1215, 1227–28 (9th Cir. 2001) (rejecting defendant's argument that the consent decree between defendant and the Alaskan Attorney General's Office, acting in its *parens patriae* authority, foreclosed the plaintiff's private action against the defendant where the consent decree expressly excluded private claims from the settlement).

<sup>1</sup> See *South Carolina v. LG Display Co.*, No. 3:11-cv-00729, 2011 WL 4344074, at \*6 (D.S.C. Sep. 14, 2011) ("Under a wholesale approach, the case is a *parens patriae* action, where the State has a clear quasi-sovereign interest in enforcing its own antitrust and consumer protection laws.")

<sup>2</sup> See *Condon v. Hodges*, 349 S.C. 232, 240, 349 S.E.2d 623, 627 (2002) ("The Attorney General has a dual role. He is an attorney for the Governor and he is an attorney for vindicating wrongs against the collective citizens of the State."); see also *Condon v. State*, 354 S.C. 634, 641, 583 S.E.2d 430, 434 (2003) ("This Court has recognized that the Attorney General has broad statutory authority and common law authority in his capacity as the chief legal officers of the State to institute actions involving the welfare of the State and its citizens, including vindications of wrongs committed collectively against the citizens of the State.")

Our office sought to “protect a public interest that far exceed[ed] the interests of individual citizens. . . . [:] to protect the integrity of a public market.” *Commodity Futures Trading Comm’n v. Commercial Hedge Serv., Inc.*, 422 F.Supp.2d 1057, 1060 (D. Neb 2006). “[Q]uite apart from whether the individual victims are satisfied with their private settlements, full and ample restitution, and other equitable remedies such as disgorgement of profits, serve distinct deterrence functions that are vital” to the State’s public interest. *Id.* at 1061.

It is important to note that SCUTPA provides for two separate remedies for the Attorney General and for private parties. Section 39-5-50 provides for the Attorney General to seek equitable relief and civil penalties where appropriate under Section 39-5-110. In comparison, Section 39-5-140 provides a mechanism for private parties to seek damages—a legal remedy—and treble damages where appropriate. As further evidence that the two causes of action may be brought separately, Section 39-5-140(c) specifically states that “[a]ny permanent injunction, judgment or order of the court made under Section 39-5-50 shall be *prima facie* evidence in an action brought under Section 39-5-140 that the respondent used or employed a method, act or practice declared unlawful by Section 39-5-20.” Actions by the Attorney General therefore do not foreclose a private party’s claim against a defendant. Instead, under the law, the Attorney General’s actions pursuant to Section 39-5-50 may actually be used as evidence to prove a private party’s claim against the same defendant pursuant to Section 39-5-140(c).

We hope this letter provides clarity on the State’s role in this issue. Should you have questions or concerns, please contact me at 803-734-3733.

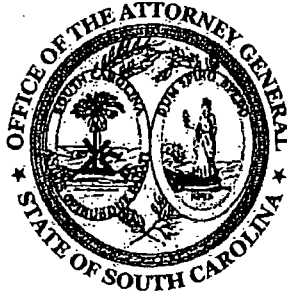
Sincerely,



Johanna C. Valenzuela  
Assistant Attorney General  
Consumer Protection and Antitrust Section  
Civil Division

cc:

Brian L. Boger (attorney for Plaintiff)  
Kevin A. Hall (attorney for Defendant)  
Matthew Todd Carroll (attorney for Defendant)  
John W. McIntosh (Chief Deputy Attorney General, S.C. Attorney General’s Office)  
Robert D. Cook (Solicitor General, S.C. Attorney General’s Office)  
C. Havird Jones, Jr. (Assistant Deputy Attorney General, S.C. Attorney General’s Office)



ALAN WILSON  
ATTORNEY GENERAL

May 6, 2014

The Honorable Joseph F. Anderson, Jr.  
U.S. District Judge  
U.S. District Court, District of South Carolina  
901 Richland Street  
Columbia, SC 29201

Re: Emily M. Harlin v. Wells Fargo Bank, N.A.  
Case No.: 3:13-cv-2719-JFA

Dear Judge Anderson:

The case of Emily Harlin versus Wells Fargo was brought to our attention recently. We write this letter to squarely address your April 4, 2014 text order.

Our representation of the State in the 2012 Mortgage Settlement was constitutionally adequate. The fact that the recovery from the Settlement went to the General Fund is not unconstitutional and does not affect the consumer case. *See Texas v. New Mexico*, 482 U.S. 124, 132 n.7 (1987) (discussing a concern about a money judgment that may go to the state's general coffers instead of to "benefit those who were hurt" and stating that, because the state action was of such general public interest, the state is free to spend the money awarded "in the way it determines is in the public interest").

We hope this letter provides clarity on the State's role in this issue. Should you have questions or concerns, please contact me at 803-734-3733.

Sincerely,

Johanna C. Valenzuela  
Assistant Attorney General  
Consumer Protection and Antitrust Section  
Civil Division

cc:  
Brian L. Boger (attorney for Plaintiff)  
Kevin A. Hall (attorney for Defendant)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

BRENT E. BENTRIM, )  
 )  
Plaintiff, )

v. )

WELLS FARGO BANK, N.A., )  
 )  
Defendant. )

COURT OF COMMON PLEAS )  
NINTH JUDICIAL CIRCUIT )  
CASE NO. 2011-CP-10-2946 )

FILED  
2015 FEB 20 PM 12:15  
JULIE J. ARMSTRONG  
CLERK OF COURT

BY )  
 )  
**NOTICE OF MOTION AND** )  
**PLAINTIFF'S MOTION FOR RELIEF** )  
**FROM OCTOBER 28, 2014 ORDER** )

TO: CHARLES M. BAKER III, ESQUIRE, S. STERLING LANEY III, ESQUIRE and JOHN C. HAWK IV, ESQUIRE, ATTORNEYS FOR DEFENDANT:

PLEASE TAKE NOTICE that the Plaintiff, Brent E. Bentrim ("Bentrim"), by and through his undersigned attorneys and pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such other time, date and place as counsel may be heard, for relief from the Court's Order of October 28, 2014, on grounds of mistake, inadvertence, surprise or excusable neglect [Rule 60(b)(1)]; newly discovered evidence with which due diligence was unavailable to the Plaintiff in time to move under Rule 59(e) [Rule 60(b)(2)]; and fraud, misrepresentation and misconduct of the part of the Defendant Wells Fargo Bank, N.A. ("Wells Fargo") [Rule 60(b)(3)], on the following grounds:

**A. Introduction**

On February 12, 2014, Wells Fargo produced a "Participation Agreement" and "Servicing Agreement" between Wachovia Bank N.A. ("Wachovia") and an entity known as TMS Service Corp., Inc. ("TMS/SC") [WF 2341-2370]. If valid, these documents demonstrate

that (A) Wells Fargo has engaged in discovery abuse in this case; (B) that Wachovia filed two foreclosure actions before this Court in 2007 and 2009 based on material misrepresentations of fact; and (C) has produced a materially altered note on at least five (5) occasions, three times to this Court. Based on the foregoing, the Court should vacate its October 28, 2014 order in its entirety.

**B. Relevant Procedural History**

In initial discovery requests to Wells Fargo served in 2011, Bentrim requested that Wells Fargo whether it had ever sold the Bentrim loan and/or had ever acted as a servicer. Wells Fargo expressly denied both.

At a hearing in October 5, 2011, when Plaintiff moved to compel production of the original note, counsel for Wells Fargo argued that a copy would suffice because: *"This note is a portfolio note. It's not securitized - a securitized loan."* (Tr. 6:10-11).

After additional demands were made for the original note, Wells Fargo submitted a Lost Note Affidavit dated February 7, 2012. Therein, the affiant (Wells Fargo VP Loan Documentation Tracy Thomas) testified that *"Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, N.A., successor by merger to First Union National Bank (hereinafter "Wells Fargo") has not pledged, assigned, transferred, hypothecated or otherwise disposed of the Note."* (LNA ¶ 5).

In the same Lost Note Affidavit, Ms. Thomas went on to aver *that* *"Affiant has personal knowledge that the Note and Mortgage have not been sold or transferred and that Plaintiff has not relinquished their [sic] right, title and interest in them to any person or entity."* (LNA ¶ 6(d)).

In her deposition, taken August 5, 2013, Ms. Thomas testified repeatedly that the Bentrim loan was never sold, despite evidence on the ACLS History Card print out to the contrary.

At a hearing on February 10, 2014, which largely focused on discovery that would prove or disprove a sale, counsel for Wells Fargo was adamant that there was never a sale:

*"...we say we never sold the Note. We were the owner and holder through First Union, Wachovia and Wells Fargo. I know they disagree with that, but that is our position." (Tr. 11:8-11)*

*"Your Honor, as I have told Mr. Varnado, I can't prove a negative." (Tr. 37:14-15)*

*"Your Honor, we have the original note. There is no allonge to it. There is no assignment of the mortgage. We have the public record. We've seen, you know, so there is no other evidence of a sale. And he's like I want to see all the documents evidencing a sale because this says there's a sale. I have to have somebody explain what that is, but there are no other documents that I have relating to a sale because our position is there was not a sale. We were always the owner and holder of the note." (Tr. 38:19 – 39:2).*

The Court then made the following ruling, as established in the March 5, 2014 Order:

*"Within (30) days of the hearing on this motion, WFB, NA shall produce all records in its possession, custody or control relating in any way to the sale, repurchase, transfer, assignment, delivery or hypothecation of the Notes or Mortgages associated with the subject loan to any third-party, including but not limited to supporting documentation noted on the ACLS History Card at 11/29/06 and then the repurchase on 05/13/10."*

When Wells Fargo refused to comply with the March 5, 2014 order, and Plaintiff moved for sanctions, another hearing took place on April 28, 2014. Once again, counsel for Wells Fargo was adamant there was no sale:

*"You know our client and our law firm takes it very seriously when our opponent comes into court and accuses the client and us of discovery abuse and asks for pleading to be struck. That explains why I'm now involved now in this case" (Tr. 16:9-13)*

*"Your Honor, Wells Fargo and its predecessors have always been the holder of this Note. We got it. It hadn't been endorsed. It hadn't been sold to anybody."* (Tr. 16:22-25)

*"We sold a participation interest in the note, but the note itself was not sold. We've got it"* (Tr. 17:1-4)

*"We believe and we intend to show Your Honor today that we in good faith produced everything Your Honor ordered"* (Tr. 18:11-12)

*"As we've said, we have the original note. It's not endorsed."* (Tr. 66:5-6)

*"There's simply no standing to challenge whether or not, you know, the loan was sold, because that doesn't have anything to do with Mr. Bentrim."* (Tr. 66: 10-13)

*"But a participation interest which is different than selling the note, was sold to The Money Store. And those are internal accounting documents that say sale when it's really not a sale of the note and mortgage itself."* Tr. 76:7-11

Based on these assurances, the Court declined to sanction Wells Fargo. The Court did make the following ruling from the bench, however:

*"Now here is what I am going to do. I am going to make Wells Fargo counsel here provide me with a full accounting. I want the whole record of what has transpired on that account. I will review it. I will do that, because that's what he's asking for."*

On May 7, 2014, Wells Fargo's counsel submitted a letter enclosing the documents responsive to the Court's request for the full accounting. Importantly, Wells Fargo also included the Participation Interest Agreement with this explanation:

*"As you are aware, the Court's March 5 Order (the "Order") requires Wells Fargo to produce records relating to the 'sale, repurchase, transfer, assignment, delivery or hypothecation of the Notes or Mortgages.' Wells Fargo believes that the referenced documents related to The Money Store are not responsive to the Order because they do not evidence a sale, repurchase, transfer, assignment delivery or hypothecation of the Note and Mortgage."*

Immediately before the hearing on motions for summary judgment held June 9, 2014, Wells Fargo produced the affidavit of Wells Fargo senior officer Matthew Wakefield which

conceded that *“the beneficial interest of the Bentrim loan was sold for fair market value to [TMS/SC] on or about November 29, 2006.”*

Despite the foregoing, neither before the hearing nor for the next eight months did Wells Fargo produce the Participation Interest Agreement – or amend its accounting to the Court – or supplement discovery under its obligation pursuant to the March 5 Order. Wells Fargo continued to argue at the June 9, 2014 hearing that there was no outright sale: *“Well, an interest in the Note was sold. I think that is an important distinction.”* (Tr. 37 2:3)

As late as February 3, 2015, Wells Fargo still argued that it was not required to produce the Participation Agreement. Only on February 12, 2015 did it finally turn it over.

**C. What the Participation Agreement Shows.**

The “Participation Agreement” is highly problematic for two reasons:

First, it is incomplete on its face because Schedule A is not attached and counsel for Wells Fargo have indicated it is unavailable. Thus, there is nothing that links the Bentrim loan to this particular document. (See Affidavit of Clifton D. Bodiford, CPA) The Court should require the immediate production of Schedule A as well as the already required DOTS contra journal

However, if the Participation Agreement is a valid document, then the second reason it is problematic is because it demonstrates in 2006 Wachovia sold a 100% interest in the Bentrim loan to TMS/SC – which stands in complete opposition to the years of denial by Wells Fargo outlined above. It also shows that Wells Fargo has not complied with the Court’s March 5, 2014 order and mischaracterized the nature of the Participation Agreement in the May 7, 2014 letter to the Court.

An analysis of the provisions of the Participation Agreement and Service Agreement reveals the following:

a. Total Sale – 100% Transfer of Ownership.

Section 2. Sale of Participation Interest. It is the parties' intention that the terms of this Agreement transfer all of the benefits and burdens of ownership with respect to the Loans and that Participant shall be treated as the Owner of the Loans for US Federal and State tax income purposes. (WF2347)

Section 1. (h) "Participation Interest" means 100% participation interest in the principal, interest of the Loans (WF2347)

Section 16. Participant's Ownership. It is the intention of the Participant and the Lender that Participant has a Participant Interest in the Loans and Collateral as evidenced by the Loan Documents and that this Agreement shall have the same force and effect as if separate assignments of the Participation Interest in each Loan and respective Collateral were executed and delivered by Lender and as if a separate endorsement were made to the promissory note for each Loan to reflect that the Participant owns an undivided interest in such Loan. (WF 2355)

b. Risk of Loss is entirely born by TMS/SC – showing no pecuniary interest by Wachovia

Section 6. Risk of Loss. Except as otherwise provided herein, **Participant shall bear all risk of loss of the outstanding principal, interest, fees or other payments due in respect to the Loans and Collateral**, if any, without recourse to Lender and Lender shall have no obligation to reacquire Participant's Participation Interest in any Loan or Loans. (WF 2351) [emphasis added]

c. Wachovia's Disclaimer of liability for collection also shows no pecuniary interest.

Section 7. Lender's Obligations to Participant. (a) Lender shall distribute, if and when Collections are received on or after the Effective Date, Participant's Share to Participant; provided however, that to the extent collections are received by the Bank ....Lender does not assume any other responsibility to Participant in regards to Collections. (WF 2351-52)

Section 11. Obligations to Cure Defaults. (c) ..Lender shall have no further liability to Participant for any inability to realize any Collections on any Loan. (WF 2354)

d. Requirement for Further Documents if there is a subsequent Sale/Merger

Section 17. Miscellaneous Provisions. (h) ...and further provided that such assignee or successor shall enter into a written agreement in form and content acceptable to all parties hereto agreeing to be bound by the terms hereof. (WF 2357).

e. Foreclosure Must be on Behalf of, and Approved by, TMS/SC

Section 8. (WF 2352) and Section 9. (WF 2365) on "Servicing Agreement" cover the process of Foreclosure. Paraphrasing these sections, under Section 9(a), TMS/SC can either chose to foreclose in its own name, or have Wachovia do so on TMS/SC's behalf. TMS/SC has sole right in determining foreclosure and controlling its process.

Section 9(b) is even clearer – any foreclosure must be brought in TMS/SC's name so that credit bid, required under S.C. law, is in the creditor's name. Furthermore – Section 2 of Servicing Agreement says 'on behalf of Owner' numerous times so as to create a requirement that any foreclosure action would have to be brought in TMS/SC's name. E.g., Section 2(d) provides that loan documents and collateral 'shall be dealt with and enforce by Bank on behalf of Owner.' (WF 2362)

f. Wachovia is merely custodian of records and does not own them.

Section 8. Books, Records and File. (b) Bank shall maintain Servicing Files for benefit of Owner. Owner shall own such files. Bank shall release its custody of the contents of any Servicing File only in accordance with written authorization from Owner or sale of any related Loan under the provisions of this Servicing Agreement. (WF 2364)

**D. Plaintiff is Entitled to Complete Discovery.**

In order to enforce a negotiable instrument, one must have status as a holder under S.C. Code Ann. § 36-1-201 or prove rights of a holder under §§ 3-203 or 3-309. Following Title 29 of the South Carolina Code and Title 36, Article 3, a foreclosing party must also own the Note. (see §§ 3-310 or former § 3-802)

Instead of answering the Plaintiff's legitimate discovery requests as well as orders from this Court, WF has displayed a pattern of conduct memorialized in its Attorney Foreclosure Manual on which it will create such status or rights where it does not exist. It has produced the Note in Court without contemporaneously producing the Participation Agreement, which means it has produced a materially-altered note.

The Bentrin case is not isolated, as evidenced by a recent ruling in Federal Court for the Southern District of New York. (Case No. 10-20010-rdd, U.S. Bankruptcy Court, Southern District of New York) On July 12, 2010 John Kennerty, a “VP of Loan Documentation” at Wells Fargo blank endorsed on behalf of Washington Mutual Bank, FA (“WAMU”) a promissory note despite never have been employed by it. More disturbing is the fact that WAMU had failed and been seized by the FDIC over two years earlier!

Having read the Attorney Foreclosure Manual, verified as accurate by Wells Fargo, the Court’s conscious was shocked, finding *“It is clear, however, that he pretty much signed whatever outside counsel working on the default put in front of him and that these documents often included assignments, including the Assignment of Mortgage, drafted by Wells Fargo’s outside enforcement counsel, to fill in missing gaps in the record. (Doc. 109, p. 17, Case No. 10-20010-rdd, U.S. Bankruptcy Court, Southern District of New York)*

The Court further determined *“it does show a general willingness and practice on Wells Fargo’s part to create documentary evidence, after-the-fact, when enforcing its claims, WHICH IS EXTRAORDINARY.....”* (no emphasis added).

Like Kennerty, another “VP of Loan Documentation,” Tracy Thomas, executed in this action a Lost Note Affidavit drafted by outside counsel. (the Bates Stamps on the “true” copy of the Note attached came from Womble Carlyle). Her affidavit claimed reliance on personal knowledge she later refuted in her deposition.

Most curious is Thomas’s assertion she extensively reviewed the ECaR records to determine Wells Fargo’s ownership and possession of the Note until lost. (Tr. 61:25 62:1,2 92:8,19,21 113:2,5,6,15,17,18 119:23,25 122:19 123:2,14 237:2,17,19 134:3 136:15, 169:24) WF 2144 produced on October 24, 2014 is a redacted ECaR record clearly revealing that on June

9, 2008 anyone with access to the corporate wide system knew the Loan was owned by POOL 794.

Based on the forgoing, the Court should cease giving any benefit of the doubt to Wells Fargo on discovery. Bentrin requests that the Court order the immediate, full and un-redacted disclosure of the ECar, ACLS and DOTs records. Wells Fargo has either withheld or produced redacted copies of records from these software systems. The information contained in them will disprove the notion that Wells Fargo did know about sale to TMS/SC or any subsequent owner. If the Purchase Agreement is genuine in respect to Bentrin's loan, there should be notes to show TMS/SC was making decisions and was informed, according to Servicing Agreement.

**E. Reversal of Summary Judgment in Favor of Defendant.**

Defendant obtained summary judgment on numerous causes of action by arguing "no sale." Previously, Plaintiff asked the Court to reconsider the granting of summary judgment based on WF 2388-2390 and the Affidavit of Kit Kita that Pool 794 had become the owner of the Bentrin Loan at some point.

Now, the disclosure of WF 2341-2370 – if valid – is clear evidence of a 100% sale to TMS/SC that predates any additional sale to Pool 794. (*See* Third Affidavit of Clifton D. Bodiford CPA)

**1. Breach of Implied Covenant of Good Faith and Fair Dealing:**

If the Participation Agreement is valid, Wells Fargo can no longer argue that Wachovia acted in good faith and fair dealing in filing the 2007 and 2009 cases without authorization from TMS/SC or the right to claim ownership over the Bentrin Loan. These facts raise more than a scintilla of material fact requiring reversal of summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). They also demonstrate the need for further

discovery. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery”).

## **2. Conversion**

Its previous testimony, Wells Fargo claimed it was the only entity to receive payments from the Plaintiff and that all payments made to that EIN 56-1948921 were to it. The Participation Agreement shows this to be false. Moreover, it shows that in the 2007 and 2009 foreclosure cases, Wachovia took a note it did not own but still pleaded to the Court it was entitled to foreclose against Bentrin. These facts raise more than a scintilla of material fact and the need for further discovery requiring reversal of summary judgment. *Hancock* at 381 S.C. at 330, 673 S.E.2d at 803; *Baughman*, 306 S.C. at 112, 410 at 543.

## **3. Fraud/Fraudulent Misrepresentation/Constructive Fraud**

The Defendant has attempted to assume ownership of the Bentrin Note by claiming an unbroken chain of ownership by virtue of successor by merger. The Participation Agreement shows this to be false. Moreover, it shows that in the 2007 and 2009 foreclosure cases, Wachovia took a note it did not own and presented it to the Court. These facts raise more than a scintilla of material fact requiring reversal of summary judgment. *Hancock* at 381 S.C. at 330, 673 S.E.2d at 803; *Baughman*, 306 S.C. at 112, 410 at 543.

## **4. Slander of Title**

The Participation Agreement clearly reveals Defendant had knowledge that it did not own the loan nor have an enforceable interest after November 29, 2006. It has slandered the Plaintiff's title with malice by failing to enter a satisfaction of the mortgage as requested in March 2011 and by filing a lis pendens as 'successor by merger' to Wachovia Bank, NA in is

counterclaim and 2007 and 2009 actions. These facts raise more than a scintilla of material fact requiring reversal of summary judgment. *Hancock* at 381 S.C. at 330, 673 S.E.2d at 803; *Baughman*, 306 S.C. at 112, 410 at 543.

#### **5. Mail Fraud and Civil Conspiracy**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. The Defendant has admitted the authenticity of the Wells Fargo Home Mortgage Foreclosure Attorney Procedure Manual which provides access by its counsel to determine the authenticity of assertions made by the Bank to the ownership, enforcement rights and default of the loan. With access and knowledge such facts were patently and materially wrong, Wells Fargo, its employees, TMS/SC and its agents as debt collectors have conspired through the mail and Courts to take property from the Plaintiff. These facts raise more than a scintilla of material fact requiring reversal of summary judgment. *Hancock* at 381 S.C. at 330, 673 S.E.2d at 803; *Baughman*, 306 S.C. at 112, 410 at 543.

#### **6. Fair Debt Collection Practices Act, 15 USC 1692 and Consumer Protection**

The Defendant's records clearly reveal it had knowledge it, its predecessor and or it or its predecessor's subsidiaries did not own the loan nor have an enforceable interest after November 29, 2006. Therefore the Defendant's assertion it was protected from such action under the Fair Debt Collection Practices Act and the Consumer Protection Code because of a creditor/debtor relationship was materially false. These facts raise more than a scintilla of material fact requiring reversal of summary judgment. *Hancock* at 381 S.C. at 330, 673 S.E.2d at 803; *Baughman*, 306 S.C. at 112, 410 at 543.

**7. Declaratory Judgment.**

The Participation Agreement reveals that the argument that Wells Fargo has had an unbroken chain of ownership by virtue of successor by merger status is false. The Affidavit of Columbia, SC-based CPA Clifton Bodiford establishes that the Bentrin Note was securitized as part of a REMIC Trust identified as "Pool 794." These facts raise more than a scintilla of material fact requiring reversal of summary judgment. *Hancock* at 381 S.C. at 330, 673 S.E.2d at 803; *Baughman*, 306 S.C. at 112, 410 at 543.

**CONCLUSION**

For the foregoing reasons, this Court should grant relief from the October 28, 2014 Order.

**BROWN & VARNADO LLC**

By: \_\_\_\_\_



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*Attorneys for Plaintiff*

February 20, 2015  
Mt. Pleasant, South Carolina



6. It is my opinion that the Participation Agreement is incomplete on its face insofar as it is undated and Schedule A is not attached. Absent a dated Participation Agreement with an attached Exhibit A, the Agreement, there is no evidence the Plaintiff's loan was a part of the described transaction.

7. I have reviewed Plaintiff's Exhibit GG, "Fitch Report" as it relates to Wachovia's Home Equity Loan Servicing platform.

8. It is my opinion that the contra-journal loan servicing system known as DOTS will establish what entity received its right to payments in the Bentrim Loan.

9. If applicable to the Bentrim Loan, however, then the transaction described in the Participation Agreement, is a complete transfer of ownership (i.e. a 100% sale) to The Money Store Service Corp., Inc. ("TMS/SC), which divested Wachovia Bank, NA ("Wachovia") of any right or title to the Bentrim Loan.

10. The Participation Agreement further indicates Wachovia has *no recourse* in the loans sold.

11. Under Generally Accepted Accounting Practices (GAAP) and Generally Accepted Auditing Standards (GAAS), as well as industry standards, any sale to subsidiary, as alleged, is still a legal transfer of ownership, resulting in a true sale.

12. I have reviewed the letter to the Court from Defendant's counsel dated May 7, 2015. It is my opinion that if the Participation Agreement is applicable to the Bentrim Loan, then the assertion of Defendant's counsel that the Participation Agreement does 'not evidence a sale, repurchase, transfer, assignment or hypothecation' of the Loans is false.

13. Based on my experience, it is common for a "Participation Agreement" such as the one presented as part of WF 2341-2370 to be a preparatory step to ultimately securitizing the loans included in such a transaction.

14. I have reviewed the sworn Affidavit of Casimira Kita dated November 13, 2014 confirming the securitization of a Trust identified as "Pool 794."

15. Based on the information I have reviewed, and in the absence of contrary evidence at this time, it is my opinion to a reasonable degree of certainty that "Pool 794" is likely a REMIC Trust.

16. Therefore additional Agreements should exist in regards to the securitization of Pool 794, which would be a completely separate transaction that the Participation Agreement.

Clifton D. Bodiford  
Clifton D. Bodiford, CPA

SWORN TO AND SUBSCRIBED BY ME  
This 19 day of February, 2015.

Julie S. Harris  
Notary Public for the State of South Carolina  
My Commission Expires: 6/26/17

**Clifton D. Bodiford**  
**Certified Public Accountant**

**Education**

1965 - University of South Carolina-B.S. Accounting

**Work Experience**

1965-1985 - Clarkson, Harden & Gantt, CPA's, Partner

1985-1992 - Ernst & Young, Partner

1993 - Arthur Andersen & Company, Partner

1994 - Present-self employed CPA

**Clients Served**

Extensive experience serving banks, saving and loan associations and insurance companies providing audit and related consulting services

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 BRENT E. BENTRIM, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 WELLS FARGO BANK, N.A., )  
 )  
 Defendant. )

COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO. 2011-CP-10-2946

FILED  
 2015 FEB 27 PM 4:23  
 JULE J. ARMSTRONG  
 CLERK OF COURT

**NOTICE OF MOTION AND  
 PLAINTIFF'S MOTION TO COMPEL  
 AND FOR PROTECTIVE ORDER**

**TO: CHARLES M. BAKER III, ESQUIRE, S. STERLING LANEY III, ESQUIRE, and  
 JOHN C. HAWK IV, ESQUIRE, ATTORNEYS FOR DEFENDANT:**

PLEASE TAKE NOTICE that the above-named Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), by and through his undersigned attorneys and pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such time, date and place as counsel may be heard, for Order compelling production of the following discovery, subject to previous rulings of this Court, as follows:

**A. All records relating to the sale of the Bentrim Loan.**

The Plaintiff requests Defendant be compelled to produce and/or show cause as to why it has not complied with the Court's March 5, 2014 Discovery Order as to the following records:

5. *Within (30) days of the hearing on this motion, WFB, NA shall produce all records in its possession, custody or control relating in any way to the sale, repurchase, transfer, assignment, delivery or hypothecation of the Notes or Mortgages associated with the subject loan to any third-party, including but not limited to supporting documentation noted on the ACLS History Card at 11/29/06 and then the repurchase on 05/13/10.*

The Defendant has produced a Participation Agreement and Servicing Agreement, but it is incomplete because of (a) the lack of a date; and (b) the lack of schedule A which would show

whether the Bentrin loan was attached. The 6.4.14 Affidavit of Matthew Wakefield, Wells Fargo VP, establishes there was a 100% sale of the Bentrin loan to TMS Service Corp., Inc. ("TMS.SC") on November 29, 2006, but the incomplete Participation Agreement and Servicing Agreement are clearly not "all records ... relating in any way .... to the sale ..." that substantiate this. Moreover, no TMS/SC records have been produced by Wells Fargo despite all the statements that TMS/SC is a Wells Fargo subsidiary.

Additionally, there is the unanswered issue of Pool 794. The Third Affidavit of Clifton Bodiford, CPA (2.19.15) and the Second Affidavit of Casmira Kita (11.13.14) submitted by Plaintiff both conclusively establish by expert testimony that the Bentrin loan ultimately belonged to a REMIC Trust identified as Pool 794. Accordingly, Defendant must provide the records showing the transfer from TMS/SC to Pool 794, and any subsequent transfer of ownership thereafter.

**B. All records relating to the DOTS, Mobius, E-Car and other servicing records.**

The Plaintiff requests Defendant be compelled to produce and/or show cause as to why it has not complied with the Court's March 5, 2014 Discovery Order as to the following records:

- 1. Within thirty (30) days of the hearing on this motion, WFB, NA shall produce any servicing records it has in its possession, custody or control pertaining to the subject loan, whether maintained electronically, or on paper, including by not limited to E-Car, Mobius and DOTS.*

The Defendant has produced a single DOTS record. "As per Wachovia internal guidelines, money collected on securitized accounts must be passed to the investor daily. To keep accurate records, general ledger contra accounts have been set up to house these portfolios via the DOTs system." (See Fitch Ratings – Service Report dated Oct 16, 2009, page 4). DOTS is a contra-journal. This discovery will affirmatively show where all of Bentrin's payments

went. It will also show Wachovia/Wells Fargo knew that they were making material, misleading, and unfair and deceptive statements to the Court and Mr. Bentrin in the 2007 and 2009 suits claiming to be the owner and holder of the Bentrin Note.

No Mobius records have been produced. "Wachovia's Mobius system provides daily reports detailing payment and finance charge activity by pool." See Fitch Ratings, page 5. These records are necessary for the same reason as the DOTS records.

E-Car records have been produced, but in such heavily redacted form that they constitute a non-disclosure. The basis given for redaction is attorney-client privilege.

Plaintiff requests that the Defendant show cause as to why Attorney Client and Work Product Privilege extends to the CACS, Mobius, E-Car, DOTS and or other 'corporate-wide' "accounting and collection systems" that exist and are maintained regardless of litigation. Moreover, the Servicing Agreement (if valid) between TMS/SC and Wachovia/Wells Fargo specifically said that TMS/SC owned all the servicing records. That begs the question how Wells Fargo can claim the attorney-client privilege on records owned by a third-party. It cannot. "In general, the burden of establishing the privilege rests upon the party asserting it." *Wilson v. Preston*, 662 SE 2d 580 (2008).

The CACS and R1 systems are "corporate-wide" accounting and collection systems. "Communication with attorneys is initiated by contacting attorneys form a Wachovia-approved list via desktop fax. Files are sent using this method." See Fitch Ratings page 7. There should be no attorney communications within the above systems as this is done via facsimile.

Further, the Defendant has not produced ACAT records. ACAT tracks a foreclosure and related documents from referral to sale. It too is designed for view-only access to staff and management inside Wachovia. See Fitch Ratings page 7.

Insofar as all these records were required to be produced nearly one (1) year ago, and there is no valid attorney-client privilege, Wells Fargo should be required to produce them immediately.

**C.. ACLS Records.**

The Plaintiff requests Defendant be compelled to produce and/or show cause as to why it has not complied with the Court's October 28, 2014 Order pertaining to the ACLS records:

*"3. Plaintiff is hereby ordered to provide Wells Fargo with a list of tables and/or reports he believes are maintained in ACLS and contain information he is seeking regarding the servicing of his loan. Upon receipt from the Plaintiff, Wells Fargo shall conduct a timely review of the list and determine whether the requested documents relate to the servicing of the Plaintiff's loan. If Wells Fargo believes that any of these documents are not related to the servicing of the Plaintiff's loan or will be unduly burdensome to produce, then Wells Fargo is ordered to submit to the Court within 15 days of receipt of the Plaintiff's list a detailed explanation of why the documents sought are either not related to the servicing of Plaintiff's loan or will be unduly burdensome for Well Fargo to produce. Otherwise, Wells Fargo shall produce such documents to Plaintiff."*

As this matter was originally heard on June 9, 2014, the Plaintiff produced an affidavit from Casimira Kita outlining the requested documents. A formal letter was sent on July 15, 2014 reiterating the requests. The Defendant partially replied to the request on October 23, 2014 yet failed to produce to the Court any rationale within the required 15 days (either from the June hearing or the October 28 Order) as to why it would not comply with the following missing documents.

- Table 200 – Loan History – all records prior to Sept 2, 2009 are missing;
- Table 182 – Please provide the original, unaltered record;
- ALRS 9915;
- ALRS 9905; and
- Table 196 – Loan Payment Schedule – missing all records before October 2008 and after September 2009.

On December 15, 2014 and February 9, 2015 the Plaintiff raised the issue again via letter but no records have been provided. It further raised no objection to the Court in regards to that request.

**D. Supplementation to 2011 Discovery Requests.**

The Plaintiff requests Defendant be compelled to produce and/or show cause as to why it has not supplemented discovery from October, 2011:

1. *All documents setting forth any servicing agreement between the Defendant and any entity with reference to the Note subject to this action.*
2. *All Pooling and Servicing Agreements, Custodial Agreements, Deposit Agreements, Master Purchasing Agreements, Issuer Agreements, Commitment to Guarantee Agreements, Release of Document Agreements, Master Agreements for Servicer's Principal and Interest Custodial Account, Servicer's Escrow Custodial Agreements, Release of Interest Agreements, or Trustee Agreements relating to the Note that is subject to this action.*
3. *All documents setting forth any authority of the Defendant to institute any foreclosure action in the present or past.*
4. *All documents concerning any consideration exchanged between persons or parties in connection with the assignment or sale of any part of, right under or right incident to the sale or assignment of servicing rights.*
5. *All documents evidencing all payments made by the borrower or any third party on or towards the loan obligation the subject of this action at any time.*
6. *All documents setting forth the disposition of all payments made by the borrower or any third party in connection with the loan obligation the subject of this action, including but not limited to documentation setting forth amounts assigned to or credited against principal, interest, insurance, escrow or payments, tax escrows or payments, late fees or any other charges.*
7. *All documents evidencing any agreement between the original lender to whom the rights of the original lender were assigned and any person or party relating to the servicing, in any respect, of the loan subject to this matter.*

On November 8, 2011 the Defendant through its Counsel, Jana Baker answered "None," to request 1&2 raising no objection.

The answers to the above clearly indicate an ongoing pattern to deceive the Plaintiff in regards to the true holder and owner of his note and to frustrate discovery. Although Wells Fargo has conceded a sale took place, it still has not supplemented its discovery request.

**E. Sanctions.**

In its Rule 60(b) motion Plaintiff has articulated the lengths which Wells Fargo has refused to admit a sale took place and the resulting discovery abuse. Plaintiff seeks recovery of attorneys' fees and costs for having to file discovery motions and such other award of sanctions as the Court deems advisable for Wells Fargo's discovery abuse.

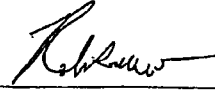
**F. Protective Order.**

By correspondence dated February 20, 2015, Wells Fargo has noticed discovery depositions of Plaintiff's experts for mid-March (3.12.15 and 3.13.15) as well as the resumption of the deposition of Plaintiff (3.4.15). To the extent the court maintains jurisdiction over discovery in this case, Plaintiff seeks a protective order that no depositions should take place until the completion of the written discovery requested herein, on the grounds of fundamental fairness and substantial justice.

This motion is supported by the laws, statutes and Rules of Civil Procedure of South Carolina, and by such other and further supporting materials as referenced herein or which may be provided to the Court. Pursuant to Rule 11, SCRPC, consultation has been made with opposing counsel and/or would serve no useful purpose.

BROWN & VARNADO LLC

By:



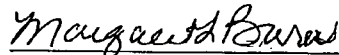
Robert B. Varnado  
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Mt. Pleasant, SC 29465  
(843) 737-7300  
(843) 654-5109 facsimile  
rvarnado@brown-varnado.com  
*Attorney for Plaintiff*

February 27, 2015  
Mount Pleasant, South Carolin

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served the attached *Plaintiff's Motion to Compel and for Protective Order* in the above-captioned action by hand delivery to the attorneys for the Defendant as follows:

S. Sterling Laney, III, Esquire  
Jana Baker, Esquire  
John C. Hawk IV, Esquire  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
P.O. Box 999  
Charleston, SC 29402  
*Attorney for Defendant*



Margaret L. Burns  
*Paralegal to Robert B. Varnado, Esq.*

February 27, 2015  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

05-CP-10-4814

Wachovia Bank, N.A., )  
 )  
successor to First Union )  
National Bank, )

Plaintiff, )

vs. )

Brent E. Bentrim and )  
Citibank, South Dakota, N.A., )

Defendant(s). )

COMPLAINT

FORECLOSURE OF REAL ESTATE )  
MORTGAGE. )

Non-Jury

BY )  
 )  
JULIE ARMSTRONG )  
CLERK OF COURT )  
2005 NOV 28 PM 1:19 )

FILED

The Plaintiff above named, complaining of the Defendant(s) above named, herein alleges:

1. That the Plaintiff is a corporation organized and existing by and under the laws of the United States of America.

*CP*

2. (a) That this is an action for the foreclosure of a mortgage upon certain real estate situate in the county and state aforesaid.

(b) That some lien on, or interest in, the real estate, the subject of this action, may be claimed by the defendant herein.

(c) That the defendant hereinafter described as judgment creditors have, by filing said judgments designated their attorney entering the judgment as their agents for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina for 1976.

3. That heretofore on May 24, 2001, Brent E. Bentrim made, executed and delivered unto First Union National Bank a certain Promissory Note in the principal sum of \$49,000.00 Dollars, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference.

4. That in order to better secure the payment of said note according to the terms and conditions thereof, the aforesaid obligor(s) made, executed and delivered unto First Union National Bank a certain real estate Mortgage, wherein and whereby said obligor(s) conveyed to the said mortgagee by way of a mortgage the following described property:

PZ  
CWH

All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andres parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W.A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat Book F at page 178 and on plat made by W.A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

5. That said Mortgage was duly signed, witnessed and probated. That thereafter said Mortgage was duly recorded in the office of the RMC for Charleston County on June 6, 2001 in Mortgage Book 0373 at Page 230, a copy of which mortgage is attached hereto as Exhibit "B" and made a part hereof by reference.

6. That said Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first lien on the mortgaged premises.

7. That heretofore on March 12, 2002, Brent E. Bentrin made, executed and delivered unto First Union National Bank a certain Promissory Note in the principal sum of \$182,700.00 Dollars, a copy of which is attached hereto as Exhibit "C" and made a part hereof by reference.

8. That in order to better secure the payment of said note according to the terms and conditions thereof, the aforesaid obligor(s) made, executed and delivered unto First Union National Bank a certain real estate Mortgage, wherein and whereby said obligor(s) conveyed to the said mortgagee by way of a mortgage the following described property:

P3  
Curt

All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andres parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W.A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat Book F at page 178 and on plat made by W.A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

9. That said Mortgage was duly signed, witnessed and probated. That thereafter said Mortgage was duly recorded in the office of the RMC for Charleston County on April 3, 2002 in Mortgage Book C402 at Page 182, a copy of which mortgage is attached hereto as Exhibit "D" and made a part hereof by reference.

10. That payment has not been received of the installments due under the notes and mortgages and such non-payment constitutes a breach of the covenants of the mortgages to pay when due the sums secured thereby and Plaintiff as required by

the mortgages, notified the mortgagor(s) of the breach and of what was necessary to cure the same, but mortgagor(s) failed to cure the breach within the time specified in the notice.

11. That Plaintiff, upon Defendants failure to cure the breach on or before the date specified in the notice, at its option and without further demand elected to declare all of the sums secured by the mortgage to be immediately due and payable and to foreclose the mortgage by judicial proceedings.

12. That there is now due and owing on said mortgage indebtedness the following amount:

First Mortgage as of November 1, 2005: \$12,626.76

Second Mortgage as of October 24, 2005: \$177,840.61

13. That all persons having an interest or lien or possible claim in or upon the mortgaged premises as of the date and time of the filing of the Lis Pendens herein have been made defendants herein.

14. That Plaintiff's right to a personal or deficiency judgment is expressly demanded.

15. That it has become and is necessary for the Plaintiff to employ counsel to prosecute this action and that the reasonable value of services of counsel in this action should be added to the sums due Plaintiff.

16. That Plaintiff may, in order to protect its security, be forced to pay sums for taxes and insurance which sums, according to the terms of the mortgage, should be added to the amount of the debt.

17. That the hereinafter named Defendants may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of the plaintiff's Mortgage; said liens or interests are of record in the office of the Clerk of Court as follows:

- a. Citibank, South Dakota, N.A., by virtue of a Mortgage given it by Brent Bentrin dated November 2, 2004 in the amount of \$2,335.20 plus interest and recorded on November 2, 2004 as Civil Action #2004-CP-10-0569.

WHEREFORE, the plaintiff prays judgment:

1. That the amount due upon said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action and that the Plaintiff have judgment therefor; that the rank and priority of the liens affecting said mortgaged premises be ascertained and determined; that the Plaintiff's Mortgage be foreclosed, the equity of redemption barred, and the said mortgaged premises be sold under the direction of this Court, and that the proceeds of sale be applied as follows: First, to the costs and expenses of such sale; Second, the payment and discharge of the liens affecting said mortgaged premises in the order of their priority, including the said Mortgage held by the Plaintiff, together with attorney's fees as aforesaid; and, Third, the surplus, if any, be disbursed according to law.

2. That a Receiver be appointed to collect the rents, issues and profits from the mortgaged premises during the pendency of this action and hold the same subject to the further order of the court.

3. That the Defendants and every person whose conveyance or encumbrance is recorded subsequent to the filing of the notice of the pendency of this action, be forever barred and foreclosed of all right, claim, lien and equity of redemption in the mortgaged premises.

4. That Plaintiff may become a purchaser at the sale; that the Master in Equity of the County of Charleston, State of South Carolina, execute a deed to the purchaser; that the purchaser be let into possession of the premises on production of the Master's deed therefor.

5. For such other and further relief as may be just and proper.

WOODWARD, COTHRAN & HERNDON



BY

Warren R. Herndon, Jr.  
Attorney for the Plaintiff  
Post Office Box 12399  
Columbia, SC 29211  
(803) 799-9772

Columbia, South Carolina

November 22, 2005

wch: 05-8293

Account Number: 4386540410130794

**FIRST UNION NATIONAL BANK  
PRIME EQUITY LINE AGREEMENT AND DISCLOSURE STATEMENT**

Maximum Credit Limit \$ 49000.00 Customer Name(s) BRENT E. BENTRIM

Date of Agreement 05/24/01

This Agreement and Disclosure Statement contains the terms which apply to the Prime Equity Account ("Account") with First Union National Bank. The words "I", "me" and "my" which also mean "we", "us" and "our", if more than one customer, mean the person or persons signing this Agreement. The words "you", "your", "yours", and First Union mean First Union National Bank.

**ACCESSING THE PRIME EQUITY LINE.**

- (a) Concurrent with the approval of the Prime Equity Line, I shall open a special checking account, the number of which will appear on the checks ("Prime Equity Line Checks"). This special checking account shall not be dependent upon the maintenance or use of, or otherwise connected with any other checking or savings account with First Union except as provided herein. The Prime Equity Line Checks issued with special checking account may be used to obtain extensions of credit under the Prime Equity Line up to the amount of the Maximum Credit established and set out above. All amounts advanced by First Union to pay Prime Equity Line Checks and any other charges against my special account shall constitute extensions of credit and shall be charged to my Prime Equity Line.
- (b) First Union Shall issue to me a Credit card for the purpose of obtaining extensions of credit on the Prime Equity Line.
- (c) If I have requested First Union, pursuant to an overdraft protection agreement, to pay checks which would otherwise overdraw my deposit account with First Union, such overdrafts will be charged to my Prime Equity Line and will constitute extensions of credit hereunder.
- (d) The extensions of credit to pay Prime Equity Line Checks will be in the amount of those checks. The extensions of credit made pursuant to an overdraft protection agreement shall be in increments of \$100. The extensions of credit for purchases made using the Credit card will be in the amount of the purchase.
- (e) I may obtain Cash Advances from any of your branches or ATM locations up to the unused portion of the Credit Limit.

**Maximum Credit Limit.** My maximum credit line is indicated above. I agree never to allow the balance due on my Account to exceed this limit. I also agree that you are not obligated to pay any Draft or other charge against my Account, for an amount that would make my Account balance exceed my maximum credit limit, or for any amount if my Account balance is already over the maximum credit limit. Any increases in my maximum credit limit I request will require that I make a written application and sign any additional security agreements which in your opinion are necessary to secure your interest.

**Monthly Statement.** If I have an outstanding debit or credit New Balance in excess of \$1.00 or if there is any finance charge imposed during a billing cycle, you will send me a statement. I promise to pay you for all Drafts plus finance charges on my Account, if any, all payable in United States Dollars according to the terms and conditions of this Agreement. I understand I am prohibited from using my Drafts to make my payments on this Account. I understand I am responsible for any fees or costs associated with the processing of my payments on my Account should I use a method of payment that results in extra costs or fees being assessed to you.

**FINANCE CHARGES.**

- (a) A FINANCE CHARGE computed on a monthly periodic rate will be imposed, if at the end of any day of the billing cycle, there is an outstanding balance owing on my Account. The monthly periodic rate for an initial advance, if any, made by me will begin to accrue on the date of this Agreement. The monthly periodic rate for any Drafts will begin to accrue on the Transaction Date as indicated on my billing statement.
- (b) First Union calculates the FINANCE CHARGE on the Prime Equity Line by applying the monthly periodic rate to the "average daily balance." First Union takes the beginning balance of the Prime Equity Line each day, adds any new advances, and subtracts any payments or credits and unpaid finance charges, Credit Life premiums and late charges. This gives First Union the daily balance. First Union then adds up all the daily balances for the billing cycle and divides the total by the number of days in the billing cycle. This gives the "average daily balance." The annual percentage rate is determined by multiplying the periodic rate by the number of billing cycles in a year (12).
- (c) Finance Charges on purchases made with checks or Credit card will be imposed from the date of transaction.
- (d) On cash advances incurred by use of Prime Equity Line Checks or made pursuant to an overdraft protection agreement, Finance Charges will be imposed from the date of posting. Finance Charges on all cash advances made with the Credit card will be imposed from the date of transaction.
- (e) Finance Charges on the average daily balance will continue to accrue until the new balance is paid. The "new balance" is the unpaid balance of extensions of credit hereunder and Finance Charges thereon as of the last day of the billing cycle. If I pay the new balance appearing on my statement, the Finance Charges which accrued during the billing cycle in which payment was received will appear on my next billing statement.
- (f) On cash advances incurred by the use of an Automatic Teller Machine (ATM), Finance Charges will be imposed as of the date of the transaction.

"A"

(g) Variable-Rate Feature: The line has a variable-rate feature, and the ANNUAL PERCENTAGE RATE (corresponding to the periodic rate) and the minimum monthly payment can change as a result. The initial ANNUAL PERCENTAGE RATE is variable and discounted. The discounted rate is not based on the sum of the index and margin used to make later rate adjustments. This discounted rate will be in effect from the date an aggregate \$5,000 draw is made against your account, through the remaining months left in the first 0 month(s) period following the date your account is opened. If you make an aggregate \$5,000 draw against your account within the first 0 month(s) from the date your account is opened, your discounted monthly variable periodic rate will be 1/12 of the Wall Street Journal Prime Rate plus 0.00%. Prior to the aggregate \$5,000 draw, your monthly variable periodic rate will be 1/12 of the Wall Street Journal Prime Rate plus 1.00%.

(h) The FINANCE CHARGE imposed during a billing cycle will be determined by applying the monthly periodic rate which is 1/12 of the corresponding ANNUAL PERCENTAGE RATE to the average daily balance. The ANNUAL PERCENTAGE RATE and monthly periodic rate are variable rates and subject to change on the first day of each billing cycle, if there was a prior change in the "Prime Rate" which is published regularly in the Wall Street Journal Money Rates table eastern edition published in Charlotte, North Carolina ("WSJ"). The Wall Street Journal is generally available in my state or area. If the WSJ Prime Rate becomes unavailable, you will select a new index which is based on an historical movement substantially similar to the original index and the new index and margin will result in an Annual Percentage Rate substantially similar to the rate in effect at the time the WSJ Prime Rate becomes unavailable. You will give me notice of this change.

The corresponding ANNUAL PERCENTAGE RATE per year is the WSJ Prime Rate published on the 15th day of the last calendar month which ended prior to the billing date indicated on my previous billing statement plus 1.00%. If more than one prime rate is published on the 15th day of the month, you will use the higher rate as the WSJ Prime Rate. If the WSJ Prime Rate is not published on the 15th day of the month, the WSJ Prime Rate will be the prime rate published on the last day prior to the 15th. The initial monthly periodic rate of 0.792% will apply to my Account during my first billing cycle and the initial corresponding ANNUAL PERCENTAGE RATE will be 9.500%. An increase in the ANNUAL PERCENTAGE RATE and monthly periodic rate will result in increased FINANCE CHARGES and increased minimum payment amounts. The ANNUAL PERCENTAGE RATE will never be less than 0.000% and will never exceed the maximum interest rate permitted under State law, but not more than 18.000%. The corresponding ANNUAL PERCENTAGE RATE for each billing cycle will be shown on my billing statement for that cycle. The ANNUAL PERCENTAGE RATE will include my interest and no other costs.

Additional Finance Charges. I agree to pay the following additional FINANCE CHARGES:

- Settlement Fee \$ \_\_\_\_\_
- Points \$ \_\_\_\_\_
- Commitment Fee \$ \_\_\_\_\_
- Broker Fee \$ \_\_\_\_\_

Other Charges. In addition to the FINANCE CHARGE which will be added to my Account each billing cycle, I will pay the following real estate closing and security interest fees:

	"X" = First Union Pays Fee		"X" = First Union Pays Fee
• Survey	\$ _____	• GA/FL Intangible Tax	\$ _____
• Title Examination	\$225.00	• GA Res Mig Per Ln Fee	\$ _____
• Check Fee	\$3.00	• Document Stamps	\$ _____
• Title Insurance	\$ _____	• Misc.	\$ 12.50
• Recording Fees	\$11.00	• Misc.	\$ _____
• Appraisal Fees	\$ _____	TOTAL	\$ <del>263.00</del> 263.00
• Flood Certification Fee	\$11.50		

FIRST UNION FEES PAID \$0.00

CUSTOMER FEES PAID \$263.00

Option for Closing Costs.

1.  If checked, I request that you pay \$0.00 (the total of all the "X" closing costs listed under Other Charges) for me. I will pay the rest. In consideration of your payment of this amount for me, I agree to reimburse you for them in the event I pay the entire outstanding balance and close this Account on or before one calendar year after the opening date of this Account. If I pay the entire outstanding balance and close this Account after one year, but on or before two calendar years after the opening date of this Account, I agree to reimburse you fifty percent (50%) of the amount of closing costs you paid for me. I understand that I may pay my outstanding balance down to zero at any time without having to reimburse you for the closing costs as long as my account remains open.

2. Non-Usage Fee:  If checked, a non-usage fee of \$ \_\_\_\_\_ will be billed on my billing date during the thirteenth (13th) monthly billing cycle after the opening date of my Account and every thirteenth (13th) monthly billing cycle thereafter, following any twelve (12) month period my account balance is zero. If I obtain a credit advance under my Account at any time during the twelve (12) monthly billing cycle period following the opening date of my Account, or at any time during every twelve monthly billing cycle period thereafter, you will waive the non-usage fee.

3. Annual Fee:  If checked, I will pay an annual maintenance fee of \$ \_\_\_\_\_ to be billed on my billing date during the thirteenth (13th) monthly billing cycle after the opening date of my Account and every thirteenth (13th) monthly billing cycle thereafter.

Security. I am giving you a mortgage, deed of trust or deed to secure debt (referred to as "Security Instrument" in this Agreement) on my home or real estate as security for my Account. This security is referred to as "Property" in this Agreement.

Payment Schedule. I will pay:

1. The entire outstanding balance ("New Balance") due on my Account; or
2. (a) Minimum payments equal to the finance charge or \$50.00 for the billing cycle as indicated on my billing statement; or  
(b)  If checked, minimum payments of \$50.00 or 1.5% of balance of the New Balance, whichever is greater; and
3. All amounts of credit extensions over the maximum credit limit, any unpaid minimum payments and other charges, if any.
4. The entire outstanding balance, if not sooner paid, on 06/24/21 (referred to as the "maturity date").

I agree to pay the minimum payment not later than the payment due date on my billing statement. If I should make a payment at any time on or before the due date which is equal to the New Balance, the entire amount of the payment will be applied to the New Balance. Any payment which is less than the New Balance will be applied in the following order: first, to the FINANCE CHARGE due on the outstanding balance and the remainder of the payment to the outstanding balance. I understand that I may prepay my Account in whole or in part at any time without penalty.

I understand that the minimum payment of finance charge only will not fully reduce the balance that is outstanding on my Account and the percentage of the outstanding balance or \$50 payment, may not fully reduce the balance that is outstanding on my Account. I understand that, if this occurs, I will be required to pay the entire balance in a single "balloon" payment on the maturity date specified in this Agreement.

#### ASSUMPTION NOTICE

THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

**Obligation to Lend.** You are absolutely obligated under the terms of this Agreement to make advances not to exceed, at any one time in the aggregate, the amount indicated as the maximum credit limit and I agree to repay any advances under the terms of this Agreement. Your obligation to make advances to me under this Agreement ends when you terminate advances and demand repayment of the outstanding obligation or prohibit additional extensions of credit under this Agreement or the Security Instrument. Nevertheless, you may waive the right to terminate or prohibit additional advances. If you do not terminate or prohibit additional advances, you remain obligated to make advances to me under the terms of this Agreement. However, that waiver does not bind you if the same or a different event occurs or is continuing at a later time. Your obligation to make advances under the terms of this Agreement also terminates when this Agreement is terminated or advances suspended by me in accordance with the terms of this Agreement.

**Change of Terms of this Agreement.** In addition to other rights you may have under this Agreement, you may change the terms and conditions of this Agreement when any of the following events shall occur:

- (1) if the index and margin used with this Account are no longer available;
- (2) if you make a change that I specifically agree to in writing;
- (3) if you make a change that will unequivocally benefit me throughout the remainder of the term of this Agreement;
- (4) if you make any insignificant change in the terms of this Agreement.

**Temporary Suspension of Credit and Reduction of Credit Limit.** I agree that you may prohibit additional extensions of credit or reduce the credit limit when any of the following events shall occur:

- (1) if the value of the Property that secures this Agreement declines significantly below the Property's appraisal value during the time of this Agreement;
- (2) if you reasonably believe I will be unable to fulfill the repayment obligations under this Agreement due to a material change in my financial circumstances;
- (3) if I am in default of any material obligations under this Agreement;
- (4) if action by a governmental body does not allow you to impose the Annual Percentage Rate currently applicable to this Agreement;
- (5) if action by a governmental body adversely affects the priority of your Security Instrument to the extent that the value of the security interest is less than 120 percent of the amount of my maximum credit limit;
- (6) if you are notified by a governmental agency that regulates your lending activities that continuing advances constitute an unsafe and unsound practice;
- (7) if during any period in which the Annual Percentage Rate corresponding to the monthly periodic rate reaches the maximum interest rate allowed under this Agreement. Provided I am in compliance with the other terms of this Agreement, I understand you will reinstate credit privileges if the Annual Percentage Rate declines below the maximum Annual Percentage Rate;
- (8) if I request that you suspend any advances or reduce the credit limit;
- (9) if I indicated at the time of application that I would occupy the Property and I no longer occupy the Property or I rent a part or all of the Property to other parties.

I understand at no time will you reduce my credit limit below the outstanding balance. I understand that it is my responsibility to request reinstatement of my credit privileges that have been suspended. I further understand that I may be required to pay for an appraisal of the Property to determine if the value has changed. I agree to furnish you current personal financial statements within 30 days of your written request.

If you temporarily suspend advances or reduce the maximum credit limit, I understand you will mail or deliver written notice of your action no later than three business days after the action and the specific reason for the action.

**Termination of this Agreement.** I will be in default and you may terminate this Agreement and demand repayment of the entire outstanding balance in advance of the maturity date if any of the following events shall occur:

- (1) if I fail to make my payments within 10 days of the due date;
- (2) if I write Drafts in excess of my available credit limit or my maximum credit limit;
- (3) if a petition is filed or other proceedings started under the Federal Bankruptcy code or any state insolvency statute or if a receiver is appointed or writ or order of attachment, levy or judgment is issued against me or my Property, assets or income that affects my ability to repay this Agreement in accordance with the terms of this Agreement or that adversely affects your security rights in the Property;
- (4) if I permit any other lienholder to gain or appear to gain priority over you, except whatever first mortgage, deed of trust or deed to secure debt is outstanding on the Property, as you agree, at the time of recording of your Security Instrument to secure this Agreement;
- (5) if the Property is condemned or is totally or partially destroyed by fire or other hazards or any proceeding is commenced which materially affects your interest in the Property;
- (6) if the secured note for any prior mortgage, deed of trust or deed to secure debt or lien on the real Property is in default by failure to pay principal, interest, charges, fees, escrow items or the commencement of a foreclosure proceeding or collection action that adversely affects your security interest in the Property;
- (7) if you believe, in good faith, that I have allowed the Property to deteriorate, committed waste or destructively used or failed to maintain the Property;
- (8) if I commit fraud or misrepresent any information in the loan application, this Agreement or the Security Instrument at any time;
- (9) if I fail to disclose any known environmental condition or hazard which adversely affects your security interest in the Property;
- (10) if I fail to maintain adequate insurance coverage on the Property naming you as insured;
- (11) if I fail to pay taxes and assessments on the Property that results in a filing of a lien senior to your lien that impairs your security interest in the Property; or
- (12) if I transfer any interest or title to the Property without your consent as set forth in the terms of the Security Instrument or transfer of title occurs due to my death or by governmental action such as condemnation, however, I understand you will not terminate this Agreement and accelerate payment if such action is prohibited by federal law as of the date of this Agreement.

If an event occurs which allows the termination of advances and demand for repayment of the outstanding balance, you may, at your option and in your sole discretion, take the following action:

- (1) temporarily or permanently prohibit additional advances or reduce the maximum credit limit without demanding payment in full;
- (2) change the payment terms or payment option for the repayment of the loan; or
- (3) charge a higher rate or higher fees if I fail to meet the repayment terms or otherwise act so that the creditor is permitted to terminate the Account and accelerate the balance.

If you do not immediately terminate the Account and demand repayment, you may take such action at a later time, if the event still exists or another event occurs at that time.

If you do terminate the Account, you may require that the outstanding balance shall become due and payable immediately in full in a single payment, without notice to me unless required by law and with interest due on the balance at the Annual Percentage Rate as provided for in the Agreement until paid. If I do not immediately pay the outstanding balance and if this obligation is referred to an attorney-at-law for collection, I agree to pay all costs and expenses, including court costs and reasonable attorney's fee, not exceeding fifteen percent (15%) of the unpaid balance and interest, providing the attorney is not a salaried employee of yours.

**Minimum Payment Change.** If I fail to pay any minimum payment by its due date or if I request a different minimum payment, you may, at your option, change the minimum payment and cancel the payment schedule 2(b) option.

I agree to give you prior written notice of my request to change my minimum payment option.

**Required Property Insurance.** I agree to purchase and to continue to maintain property insurance, including flood coverage if required, on the secured Property in an amount not less than the entire outstanding balance for all prior and current obligations secured by my Property for this loan or in such an amount satisfactory to you. If I fail to maintain adequate coverage as described above, you may, either at your option or as required by law, obtain coverage to protect your rights in accordance with other provisions of this Agreement. If my Property is damaged or destroyed, I agree that you may use any insurance settlement either to repair the Property or to apply it to my outstanding balance.

I agree to assign the proceeds of my insurance to you to the extent of the debt I owe and agree that the insurance company may pay you directly. I agree that you have an irrevocable power of attorney to file proofs of loss and anything else necessary to obtain the insurance proceeds in my name. Loss, damage or destruction of Property will not release me from any liability under this Agreement.

**Ownership of Drafts.** Any Draft which you supply to me is your property and must be returned to you immediately upon demand in accordance with this Agreement.

**Transfer of Account.** I cannot transfer or assign my Account to any other person, however, I recognize you can assign this Agreement.

**Change of Address.** I will advise you promptly if I change my mailing address. All written notices and statements from you to me will be considered given when placed in the United States mail, postage prepaid, and addressed to me at my current address as it appears in your records. If this is a joint account, written notice to one person is notice to the other person(s).

**Irregular Payments.** You may accept late payments or partial payments, or checks, drafts or money orders marked "Payment in Full", without losing any of your rights under this Agreement.

**Deferred Payment Option.** At your option and as you designate, I understand that I may not be required to make a minimum payment during certain billing cycles. If I elect not to make my minimum payment as provided in the Agreement, I understand that this election does not eliminate the accrual of charges, including finance charges, which will continue to be applied to my account. Beginning with the next billing cycle following a deferred payment, I understand all of the provisions of this Agreement shall apply.

**Amendments.** You may change any part of this Agreement at any time, as long as you give me notice required by this Agreement or as may be required by law. I agree that the new terms, including any increase in the finance charge or other charges provided in this Agreement shall apply to credit extensions made on and after the effective date and to any outstanding balance owing to you on the effective date, provided that the new terms shall not apply to the outstanding balance if I pay the entire outstanding balance before the effective date of the change in terms.

**Cancellation.** I can cancel my Account at any time by returning to you all of my unused Prime Equity Line Drafts, along with a letter requesting that you cancel my Account. However, my obligations under this Agreement and any changes made under it prior to cancellation will continue to apply until I have paid you all the money I owe on the Account.

**Termination or Suspension of Credit by Me and/or Joint Account Owner(s).** If one or more persons are liable with me under this Agreement, and less than all of us request in writing that future advances be terminated or temporarily suspended hereunder, you will block or otherwise suspend advances under this Agreement for ten (10) days. You will also give notice of the request for suspension or termination to all borrowers. If you do not receive a court order enforcing the termination or suspension of advances under this Agreement beyond the ten day period stated above, from the person requesting the termination or suspension of advances within a ten-day period stated above, you will unblock the Account and allow advances as if no request for termination or suspension was made.

**Removal of Lien.** At any time when the outstanding balance secured by the Security Instrument is zero, you shall at my request, return the Security Instrument to me appropriately marked as satisfied and satisfy the Security Instrument of record, however, I will pay the recording costs of that satisfaction. Absent my request, this Security Instrument will remain in full force and effect for the period of time indicated in this Agreement.

**Other Provisions.** Each of us who signed this Agreement or are issued Drafts or are allowed to use this Account, are both individually and jointly obligated for all payments due under this Agreement. If you request, I will give you any information needed to reevaluate my Account or my creditworthiness. You may, at any time seek information about my financial condition from others and may provide information about my Account to others. If I apply for an increase in the credit limit for my Account or if you require that an appraisal be obtained to continue my Account, you will advise me of the cost of the appraisal before the appraisal is conducted. I understand that the appraisal will be for your use only and that I will not be entitled to a copy of the appraisal report. I agree that this Agreement shall be governed by and interpreted entirely under South Carolina law. In the event that the amount of interest on my Account exceeds the maximum permitted by law, you agree to repay me upon demand the amount paid which exceeds the maximum interest rate, or at your option, to reduce the then outstanding principal balance by the excess amount of interest. If any part of this Agreement is not valid, all other parts will remain enforceable. I understand I should consult a tax advisor regarding the deductibility of interest and charges for my Account.

**My Rights and Your Responsibilities After You Receive My Written Notice.**

You must acknowledge my letter within 30 days, unless you have corrected the error by then. Within 90 days, you must either correct the error or explain why you believe the Statement was correct.

After you receive my letter, you cannot try to collect any amount I question, or report as delinquent. You can continue to bill me for the amount I question, including finance charges, and you can apply any unpaid amount against my credit limit. I do not have to pay any questioned amount while you are investigating, but I am still obligated to pay the parts of my Statement that are not in question.

If you find that you made a mistake on my Statement, I will not have to pay any finance charges related to any questioned amount. If you didn't make a mistake, I may have to pay finance charges, and I will have to make up any missed payments on the questioned amount. In either case, you will send me a statement of the amount I owe and the date that it is due.

If I fail to pay the amount that you think I owe, you may report me as delinquent. However, if your explanation does not satisfy me and I write to you within ten days telling you that I still refuse to pay, you must tell anyone you report me to that I have a question about my Statement. And, you must tell me the name of anyone you reported me to. You must tell anyone you report me to that the matter has been settled between us when it finally is.

If you don't follow these rules, you can't collect the first \$50 of the questioned amount, even if my Statement was correct.


**ARBITRATION:** At my, any guarantor, or your request, any controversy arising out of or relating to this loan shall be decided by binding arbitration under to Commercial Arbitration Rules of the American Arbitration Association. Any controversy that is related to a class action or is part of a class action shall, at my, any guarantor, or your request, be referred for decision by arbitration as provided herein. A judgment upon award may be entered by any court having jurisdiction.

Notwithstanding the preceding binding arbitration provisions, I, any guarantor, or you may employ or exercise freely, either alone, in conjunction with or during an arbitration proceeding, any provisional or ancillary remedies including foreclosure and sale of any collateral by judicial or non-judicial foreclosure, self help, set-off, attachment, garnishment and sequestration. Preservation of these remedies does not limit the power of the arbitrator to grant similar remedies.

**INFORMATION REPORTED TO CONSUMER REPORTING AGENCIES:** Under the Fair Credit Reporting Act, I have the right to notify you if I believe you have reported inaccurate information about my account to any Consumer Reporting Agency. Such notices should be sent in writing and include my complete name, current address, Social Security number, telephone number, account number, type of account, specific item of dispute and the reason why I believe the information reported is in error. I must send my notice to: First Union, P.O. Box 560726, Charlotte, NC 28256-0726.

**SHARING INFORMATION REGARDING MY FIRST UNION RELATIONSHIPS.** I understand that from time to time you may share and use with any First Union Corporation Affiliate (e.g. First Union National Bank, First Union Brokerage Services, Inc., First Union Mortgage Corporation, etc.) my account and "other information" as you in your sole discretion consider necessary or appropriate. I have the right to direct you not to share my "other information" by notifying you in writing. I must send my name, address, Social Security number, telephone number and account type and number to: First Union, P.O. Box 11726, Roanoke, VA 24022-1726.

By signing below, I agree to all the terms contained herein and certify that I received a completed copy of this Agreement and Disclosure Statement, and Important Terms, and 2 copies of a Notice of Right to Cancel this Agreement on the date shown above, I will refer to the above instructions if I have a problem with any billing statement you send to me.

 (SEAL)  
Signature  
BRENT E. BENTRIN

\_\_\_\_\_  
Signature (SEAL)

\_\_\_\_\_  
Signature (SEAL)

\_\_\_\_\_  
Signature (SEAL)

Account Number: 4386540410130794

BR 0 373PG230

RETURN TO: First Union National Bank  
Consumer Loan Operations  
P.O. Box 50010, VA0343  
Roanoke, VA 24040-9901

This instrument was prepared by:

Claudia Praccacini  
(Name)  
  
(Address)

### MORTGAGE

THIS MORTGAGE is made this 24 day of May, 2001 between the Mortgagor, Brent E. Bentrim and

National Bank, a national banking association, whose address is 301 South Tryon Street, NCS434, Charlotte, NC 28288-5434 (herein "Borrower"), and the Mortgagee, First Union "Lender").

WHEREAS, Lender and Borrower have entered into a Prime Equity Line Agreement and Disclosure statement of even date herewith (hereinafter referred to as the "Note") which allows for advances to Borrower of up to 49000.00 Dollars, of which                      Dollars has been advanced upon execution of the Note and this Mortgage. The entire indebtedness evidenced by the Note, if not sooner paid, is due and payable on the 24 day of April, 2021. The outstanding principal balance due under the Note at any time may be obtained by contacting the Lender at the address shown in the first paragraph of this Mortgage.

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Charleston, State of South Carolina.

\* SEE ATTACHED FOR LEGAL DESCRIPTION \*

which has the address of 10 NICHOLSON ST CHARLESTON SC 29407 (herein "Property Address");

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized 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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

#### OPEN-END MORTGAGE.

This is an "open-end" Mortgage and the Lender shall have all the rights, powers and protection to which the holder of any open-end mortgage is entitled. Pursuant to the terms of the Note and subject to the terms and conditions therein, Borrower may borrow, repay and re-borrow such amounts as desired during the term specified in the Note. Each loan advance pursuant to the Note shall bear interest at a rate set forth in the Note; provided that the amount of principal secured by this Mortgage and remaining unpaid shall at no time exceed \$ 49000.00. This mortgage secures a Note which provides for changes in the interest rate, which changes are more particularly described in the Note.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and credit life insurance premiums, if any as provided in the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.
2. **Application of Payments.** Unless applicable law requires otherwise, all payments received by Lender under the Note and Paragraph 1 of the Mortgage shall be applied by Lender, first to pay interest then due on the Note, second to credit life insurance premiums, if applicable, and then to pay the outstanding balance due on the Note.
3. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

"B"

4. **Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

5. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

6. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fee, and take such action as is necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

8. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

9. **Borrower Not Released; Forbearance By Lender Not A Waiver.** The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following:

(a) The sale of all or a part of the premises, (b) the assumption by another party of the Borrower's obligations hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder.

Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

11. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and any other person personally liable on this Note as these persons' names and addresses appear in the Lender's records at the time of giving notice, and (b) any notice to Lender shall be given by first class mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

12. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorney's fees" include all sums to the extent not prohibited by applicable law or limited herein.

13. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

14. **Transfer of the Property or a Beneficial Interest in Borrower, Assumption.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by Federal law as of the date of this Mortgage. If Lender exercised 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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

This Mortgage may not be assumed by a purchaser without the Lender's consent. If an assumption is allowed, the Lender may charge an assumption fee and require the person(s) assuming the loan to pay additional charges as authorized by law.

This Mortgage may not be assumed by a purchaser without the Lender's consent. If an assumption is allowed, the Lender may charge an assumption fee and require the person(s) assuming the loan to pay additional charges as authorized by law.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

15. **Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, unless required by law, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice unless required by law or the Note and may foreclose this Mortgage by judicial proceedings. Lender shall be entitled to collect in such proceedings all expenses of foreclosure, including, but not limited to reasonable attorney's fees and cost of documentary evidence, abstracts and title reports. In addition to the remedies provided on Borrower's breach of any covenant or agreement of the Borrower in the Mortgage, Lender may declare Borrower in default under the Mortgage if any of the following events occur:

(a) if Borrower fails to make the payments within 10 days of the due date; (b) if Borrower writes Drafts in excess of the available credit limit or the maximum credit limit; (c) if a petition is filed or other proceedings started under the Federal Bankruptcy code or any state insolvency statute or if a receiver is appointed or writ or order of attachment, levy or judgment is issued against Borrower or the Property, assets or income that affects the ability to repay this Agreement in accordance with the terms of this Agreement or that adversely affects Lender's security rights in the Property; (d) if Borrower permits any other lienholder to gain or appear to gain priority over Lender, except whatever first mortgage, deed of trust or deed to secure debt is outstanding on the Property, as Lender agrees, at the time of recording of Lender's Security Instrument to secure this Agreement; (e) if the Property is condemned or is totally or partially destroyed by fire or other hazards or any proceeding is commenced which materially affects Lender's interest in the Property; (f) if the secured note for any prior mortgage, deed of trust or deed to secure debt or lien on the real Property is in default by failure to pay principal, interest, charges, fees, escrow items or the commencement of a foreclosure proceeding or collection action that adversely affects Lender's security interest in the Property; (g) if Lender believes, in good faith, that Borrower has allowed the Property to deteriorate, committed waste or destructively used or failed to maintain the Property; (h) if Borrower commits fraud or misrepresents any information in the loan application, this Agreement or the Security Instrument at any time; (i) if Borrower fails to disclose any known environmental condition or hazard which adversely affects Lender's security interest in the Property; (j) if Borrower fails to maintain adequate insurance coverage on the Property naming Lender as insured; (k) if Borrower fails to pay taxes and assessments on the Property that results in a filing of a lien senior to Lender's lien that impairs Lender's security interest in the Property; or (l) if Borrower transfers any interest or title to the Property without Lender's consent as set forth in the terms of the Security Instrument or transfer of title occurs due to Borrower's death or by governmental action such as condemnation, however, Borrower understands Lender will not terminate this Agreement and accelerate payment if such action is prohibited by federal law as of the date of this Agreement.

In case of a conflict between the terms of the Note and this Security Instrument governing remedies on default or termination of advances, the priority of controlling terms shall be the Note and then this Security Instrument.

16. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 16 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

17. **Loan Charges** If the loan secured by this Mortgage 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 permitted limits, then: (1) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (2) 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 under the Note.

18. **Legislation.** If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rate Rider unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in the Mortgage or any Rider, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

19. **Release.** When the balance of all outstanding sums secured by the Security Instrument including outstanding Drafts, finance charges or other charge if any, is zero, the Lender shall upon request of the Borrower, release the Security Instrument without a charge to the Borrower, however Borrower will pay all cost of recordation, if any, of the satisfaction or release. Absent a request from the Borrower, the Security Instrument shall remain in full force and effect for the term set forth above. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to the Lender may charge a release fee.

20. Waiver of Homestead. Borrower hereby waives all right of homestead exemption in the Property.

21. Termination of lender's obligation to Advance Funds. Borrower acknowledges that Lender may cancel its obligation to make any future credit extensions on further advances under the Note at any time by giving written notice to the Borrower in accordance with the Note. Borrower acknowledges that its obligation under the Note will continue until all sums owed by Borrower to Lender have been paid.

22. Additional Representations, Warranties and Covenants. Borrower further represents, warrants and agrees that:

- (a) Borrower is the owner of the Property;
- (b) All representations made by Borrower in the loan application are correct and there has not been any material adverse change in the financial condition of Borrower from the date of the application;
- (c) Borrower has no knowledge of any environmental condition or hazard which adversely affects the Property;
- (d) No work has been done on or materials furnished to or improvements made to the Property within the last 90 days, except such improvements, work and materials, if any, as have been paid in full;
- (e) There are no lien rights, or possibility of lien rights, judgments, executions, suits or bankruptcies, which may be or have been asserted against the Property except for any lien or encumbrance listed below;
- (f) Borrower will indemnify and save harmless Noteholder from loss or damage which it may suffer on account of any lien claims, valid or invalid, that may be asserted against the Property;
- (g) The Property is used as Borrower's principal dwelling;

The only liens or encumbrances on the Property in addition to the lien created by this Deed of Trust are as follows:

11-00  
A

0 373P6234  
Davidson  
Bennett  
& Wigger  
ATTORNEYS AT LAW  
R22  
R21

If the proceeds of this loan are being used to purchase the Property, the total purchase price of \$ \_\_\_\_\_ is being paid to \_\_\_\_\_ (Seller) and no credits of any type, including, but not limited to, rent credits or credits of any improvement to the Property, will reduce the purchase price; and If the Property is a condominium, this Deed of Trust is permitted under any condominium documents and if any approvals are required, such approvals have been obtained.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word "(SEAL)" appearing beside his name.

[Signature] (SEAL)  
Witness

[Signature] (SEAL)  
Signature Brent E. Bentrim

[Signature] (SEAL)  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

Signature FILED (SEAL)

\_\_\_\_\_  
Witness

Signature 0373-230 (SEAL)  
2001 JUN -6 PM 3:40

STATE OF SOUTH CAROLINA )

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

COUNTY OF Charleston )

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-named Brent E. Bentrim sign, seal, and as his act and deed, deliver the within-written Mortgage or Real Property; and that (s)he with the other witness witnessed the execution thereof.

SWORN to before me this

24th day of May, 2001

[Signature]  
Notary Public for South Carolina

My Commission Expires: 9/22/02

[Signature]

**EXHIBIT "A"**

**BOOK 0 373PG233**

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W. A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat book F, Page 178 and on plat made by W. A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS # 421-02-00-107

**NEGOTIABLE PROMISSORY NOTE**  
(Fixed or Variable Interest Rate)



BK: 41  
RC: 0006774

LOC:

LN TP: 39  
0180000/00

Ref. No. 0205200092

Date: 03/12/02

Acct. No.

\$ 182700.00

CREDITOR: FIRST UNION NATIONAL BANK,

301 SOUTH TRYON STREET, NC5434  
CHARLOTTE, NC 28288-5434

BORROWER(S): BRENT E. BENTRIM

10 NICHOLSON STREET  
CHARLESTON, SC 29407

FOR VALUE RECEIVED, I the Borrower (which means everyone who signs below as a borrower, jointly and severally), promise to pay FIRST UNION NATIONAL BANK, or order, the principal amount of this loan as stated above (the Amount Financed, plus the prepaid finance charge, if any, as disclosed in the Itemization of Amount Financed), together with interest from the date of this Note on the unpaid principal balance at the interest rate for a fixed or variable rate loan disclosed below until fully paid. "I," "me," and "my" refer to Borrower(s) while "you" and "your" refer to FIRST UNION NATIONAL BANK.

- If indicated, this is a fixed rate loan and my Interest Rate is
- If indicated, this is a variable rate loan and my initial Interest Rate is 4.99 which is tied to the Wall Street Journal (WSJ) "Prime Rate."

The Initial Interest Rate is computed as follows: Prime Rate of 4.75 % Plus .24 Percentage Points.

<b>ANNUAL PERCENTAGE RATE:</b> The cost of my credit as a yearly rate.  5.19 %	<b>FINANCE CHARGE:</b> The dollar amount the credit will cost me.  \$ 1743 15.60	<b>Amount Financed.</b> The amount of credit provided to me or on my behalf.  \$ 180000.00	<b>Total of Payments.</b> The amount I will have paid after I have made all payments as scheduled.  \$ 3543 15.80
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I have the right to receive at this time an itemization of the Amount Financed: ( ) I want an itemization. ( ) I do not want an itemization.  
(Initials) (Initials)

**My payment schedule will be:**

No. of Payments	Payment Amount	Frequency	Due Date	No. of Payments	Payment Amount	Frequency	Due Date
360	\$984.21	M	05/11/02		\$		
	\$				\$		

**Variable Rate.**

If my loan, as indicated above, has a variable rate, my interest rate may increase during the term of my loan based on movement of the WSJ Prime Rate. My interest rate will not increase more than once each month. If my loan is secured by a principal dwelling for a term greater than one year, disclosures about the variable rate have been provided to me earlier.

- If indicated, my loan has multiple payments for a term of more than 60 months. Any increase in my interest rate will increase the number of payments and may increase the payment amounts. If my loan were for \$10,000 for 144 months at 12% and the interest rate increased to 12.50% in three months, my regular payment would increase by \$7.30 beginning with my Sixty-First payment.

- MAXIMUM RATE.**  
If indicated, the maximum interest rate will not exceed: ~~15.00~~  
18.00

If indicated, my loan has multiple payments for a term of 60 months or less. Any increase in my interest rate will increase the number of payments. If my loan were for \$10,000 for 60 months at 12% and the interest rate increased to 12.50% in three months I would have to make one additional payment of \$196.56.

If indicated, my loan has a single payment. Any increase in my interest rate will increase the amount due at maturity. If my loan were for \$10,000 at 12% for 90 days, and my interest rate increased to 12.25% in 20 days, then my final payment would increase by \$4.80.

Security. I am giving a security interest in:

- the goods or property being purchased.  other (describe): REAL ESTATE

Collateral securing other loans with you may also secure this loan, except my principal dwelling or household goods.

Filing Fees. \$ Prepayment. If I pay off early, I will not have to pay a penalty and I may be entitled to a refund of part of any prepaid finance charge.

Late charges. If you receive any payment 15 days or more after the due date, I agree to pay you a late charge of 5% of my payment.

If indicated, this loan is for the purchase of property used as my principal dwelling and someone buying my principal dwelling cannot assume the remainder of my loan on the original terms.

If indicated, the Annual Percentage Rate does not take into account my required deposit.

I may see my contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled due date, and prepayment refunds and penalties.

**INSURANCE DISCLOSURES**

I understand that credit life and credit disability insurance are not required to get this loan. You will not provide it unless I sign this credit insurance section and agree to pay the cost. If I want any of these insurance coverages, I must be sure that the insurance coverage I want is indicated, that the amount of the premium is filled in, and that I have signed below. If I request credit life insurance or credit disability insurance, I have the right to rescind the insurance policy or certificate of insurance by giving written notice to the insurance company within 30 days from the date I received the policy or certificate. The term and amount of any insurance I request is for the stated term/amount of this loan unless otherwise indicated below.

INSURED #1	INSURED #2	TYPE	PREMIUM	TERM IN MOS.	AMT. OF COVERAGE	DISABILITY MONTHLY BENEFIT
_____	_____	Credit Life	\$ _____	_____	\$ _____	
_____	_____	Credit Disability	\$ _____	_____	\$ _____	\$ _____

If this loan is secured, I may obtain property insurance from any insurer I choose.

I request coverage(s) checked for the premiums shown above

Signature of Insured #1

I request coverage(s) checked for the premiums shown above

Signature of Insured #2

**PROPERTY AS SECURITY**

To secure payment of this Note I grant you a security interest in the collateral described below, or in the Mortgage as indicated by the date below or on Schedule A, plus all additions, replacements or accessions to, and proceeds of the collateral. This collateral will secure any other loans with you, now or in the future unless the collateral is used as a principal dwelling or household goods. Any additional collateral is listed on the attached Schedule A.

Real property located at  
10 NICHOLSON STREET  
CHARLESTON

SC. 29407

As more fully described on mortgage dated 03/12/02

If indicated, I (we) authorize you to draft all amounts due from my (our) deposit account as provided in my (our) application.

**INTEREST RATE CHANGES: VARIABLE RATE;** If my loan is a variable rate loan, I understand and agree that you will adjust the number and amount of my payments, the interest rate, the term to maturity and other relevant terms of my loan in accordance with your variable rate consumer lending procedures and programs, as they may change from time to time, the terms of which are described herein. My interest rate will change in an amount equal to the change in the WSJ Prime Rate. WSJ Prime Rate is announced and changed, from time to time. I understand that this rate is not represented or intended to be the lowest or most favorable rate of interest offered by you to any of your borrowers. My interest rate will be the sum of the number of percentage points, as indicated on the front of this Note, plus WSJ Prime Rate, as it may change from time to time. My interest rate may not change more than once each month during the term of my loan which will occur on the first day of each calendar month and will be based on WSJ "Prime Rate" published in the Charlotte, N.C. edition on the 25th day of the prior calendar month. If more than one rate is published, you will use the higher rate as the WSJ Prime Rate. If the 25th falls on a day when the WSJ Prime Rate is not published, the WSJ Prime Rate will be the rate published the last day prior to the 25th. Changes in the interest rate will be subject to any maximum rate stated in this Note. If no maximum interest rate is indicated, my interest rate will not exceed the highest interest rate permitted by applicable law. If the amount of any payment does not pay all interest due, you will collect the unpaid interest from future payments.

**PAYMENT ADD PROVISIONS:** If my loan has an original term of 60 months or less, you will extend the number of my payments if on the date of my final scheduled payment the amount of the scheduled payment will not pay the outstanding principal balance and unpaid interest. You will continue to bill me for my payment as long as any balance remains unpaid on my loan.

**VARIABLE RATE PAYMENT CHANGES:** If my loan is a variable rate loan with an original term of more than 60 months, the amount of my payment may change in the 61st calendar month and every 60th calendar month thereafter. Prior to each payment change date, you will calculate a payment estimated to pay the outstanding principal balance and any unpaid interest at the then current interest rate during the remaining term of the loan. My payment will never increase more than 25% of the previously calculated payment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. At the final payment change, if necessary, you will increase my payment up to 25% of my previous payment and you will continue to bill me for my payment as long as any balance remains unpaid on my loan.

**BALLOON NOTE PROVISIONS:** If my payment schedule on this Promissory Note indicates a balloon payment (a single payment scheduled at the end of the loan term which is larger than any of the earlier scheduled payments) as a final payment, the following provisions apply: If my loan has a fixed interest rate, my payment habits and any loan extensions may change the amount of my finance charge which will be reflected in my final balloon payment. If my loan has a variable interest rate with a term of 60 months or less, my payment habits and any loan extensions or interest rate changes may change the amount of my finance charge which will be reflected in my final balloon payment. If my loan has a variable interest rate with a term of more than 60 months, the amount of my regular payment may change in the 61st calendar month and every 60th calendar month thereafter. My regular payment will never increase more than 25% of the previously calculated payment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. However, after the final payment change, my payment habits and any loan extensions or interest rate changes may change the amount of my finance charge which will be reflected in my final balloon payment.

BEB

**INSURANCE:** If I have given you a security interest in my property, I agree to keep physical damage insurance covering loss or damage to any collateral for the term of this loan. My insurance must cover any physical damage, including damage caused by flood(s), if you require such coverage. My insurance shall be maintained in the amounts and for the periods that you require. If I fail to maintain adequate coverage as described above, you may, at either your option or as required by law, obtain coverage to protect your rights in accordance with other provisions of this Note. If collateral is lost, damaged or destroyed, I agree that you may use any insurance settlement either to repair the collateral or to apply it to my debt. I agree to assign the proceeds of any insurance to you to the extent of the debt I owe and agree that the insurance company may pay you directly. I agree that you have an irrevocable power of attorney to file proofs of loss and anything else necessary to obtain the insurance proceeds in my name. Loss, damage or destruction of collateral will not release me from any liability under this Note.

**SECURITY AGREEMENT:** If I have given you a security interest in any collateral, I pledge as security for repayment of this loan the collateral which includes any accessories, equipment, replacement parts installed in the collateral, any accessions to the collateral, and the proceeds of collateral. This security interest also covers (1) insurance premiums and other similar charges, (2) proceeds of any insurance policies or similar coverage on the collateral, and (3) proceeds of any insurance policies on my life or health which are financed in this Note. In addition, I give you a security interest in any collateral (other than household goods or principal dwelling) which secures any other loans I have with you, now or in the future. You expressly waive as collateral for this loan any security interest in collateral I use as my principal dwelling and household goods for any other existing or future transactions between us.

If I grant you a security interest in securities as collateral, I agree to deliver immediately to you, fully endorsed, any certificates for shares representing any stock dividend, and stock split-up, or a right to subscribe. I further pledge and agree to deliver to you, upon demand, additional collateral satisfactory to you and in accordance with all margin requirements.

**EVENTS OF DEFAULT:** I will be in default under this Note if any of the following events occur: (1) I fail to make a payment as required under this Note; (2) The prospect of payment, performance, or realization by you on my collateral is significantly impaired; or (3) If I fail to perform any term(s) of any Mortgage which secures payment of the Note.

**REMEDIES ON DEFAULT:** If this is a consumer credit transaction which is payable in two or more installments and I fail to make any payment within 10 days of its due date, you will give me one opportunity to cure the payment default by making the payment, if (1) I do not cure the default within 20 days, (2) I am ever late with payment again, or (3) the prospect of payment or realization of collateral is significantly impaired, you may demand that this loan be paid immediately.

**ATTORNEY'S FEES:** If you hire an attorney to collect what I owe, I agree to pay your reasonable attorney's fees, up to 15% of the unpaid debt.

**OTHER PROVISIONS:** Each borrower, including co-maker, co-signer, surety, endorser or guarantor, individually and jointly, waive presentment, demand, protest or notice of protest and any notice that you are demanding payment in full of the entire outstanding balance because of default or for any other reason. You may accept late or partial payments, even if they are marked "payment in full," without losing any of your rights. If you receive any payment 15 days or more after the due date, I agree to pay you a late charge of 5% of my payment. You may exercise your right to setoff against any funds I have on deposit with you. The information in my credit application is true and complete. This note contains the entire agreement between us except, to the extent it becomes necessary, reference, for further details, is made to your variable rate consumer lending procedures and programs, as may change from time to time. Any waiver or change in the terms of this Note must be in writing and signed by you. No oral changes are binding. This Note is governed by the laws of the United States and South Carolina. Your failure to insist upon prompt payment or to enforce any other right shall not be deemed a waiver of any such right or privilege. I understand that my payment habits and any loan extensions may also change the amount of finance charge and total payments disclosed on the front of this Note. This loan cannot be assumed by any other party. If I make a payment by check and a check is returned unpaid for any reason, I agree to pay a charge of \$20 for each returned payment check. Said returned check fee may be added to my outstanding principal balance hereunder, and accrue interest at the rate provided in this note, without notice.

**ARBITRATION:** At my, Guarantor or your request, any controversy arising out of or relating to this loan shall be decided by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Any controversy that is related to a class action or is part of a class action shall, at my, Guarantor or your request, be referred for decision by arbitration as provided herein. A judgment upon award may be entered by any court having jurisdiction.

Notwithstanding the preceding binding arbitration provisions, I, Guarantor or you may employ or exercise freely, either alone, in conjunction with or during an arbitration proceeding, any provisional or ancillary remedies including foreclosure and sale of any collateral by judicial or non-judicial foreclosure, self help, set-off, attachment, garnishment and sequestration. Preservation of these remedies does not limit the power of the arbitrator to grant similar remedies.

**ASSUMPTION NOTICE:** The debt secured hereby is subject to call in full or the terms thereof being modified in the event the real estate securing the debt is sold, conveyed or otherwise transferred.

**DRUGS AND LIQUOR:** I promise you that I do not have a reputation for the unlawful use of drugs or liquor, I also promise you that I have never been arrested, nor convicted, for any violation of the drug or of the liquor laws of any State or of the United States.

**INFORMATION REPORTED TO CONSUMER REPORTING AGENCIES:** Under the Fair Credit Reporting Act, I have the right to notify you if I believe you have reported inaccurate information about my account to any Consumer Reporting Agency. Such notices should be sent in writing and include my complete name, current address, Social Security number, telephone number, account number, type of account, specific item of dispute and the reason why I believe the information reported is in error. I must send my notice to: First Union, P.O. Box 560726, Charlotte, NC 28256-0726.

**SHARING INFORMATION REGARDING MY FIRST UNION RELATIONSHIPS.** I understand that from time to time you may share and use with any First Union Corporate Affiliates (e.g. First Union National Bank, First Union Brokerage Services, Inc., First Union Mortgage Corporation, etc.) my account and "other information" as you in your sole discretion consider necessary or appropriate. I have the right to direct you not to share my "other information" by notifying you in writing. I must send my name, address, Social Security number, telephone number and account type and number to: First Union, P.O. Box 11726, Roanoke, VA 24022-1726.

**GUARANTY OF THIRD PERSONS:** The undersigned jointly and severally guarantee the payment, when due, to any holder hereof of all amounts from time to time owing on this Note. The undersigned jointly and severally waive notice of acceptance of this guaranty, of any extensions in time of payment, of sale of any collateral, and of all other notices to which the undersigned would otherwise be entitled by law and agree to pay all amounts owing hereunder upon demand, without requiring any prior action or proceedings against the borrowers. The undersigned further agrees that the failure by the holder of this instrument to perfect any security interest granted by the foregoing Note shall not affect in any manner the liability of any guarantor hereon. The undersigned acknowledges receipt and execution of the Co-Signers Notice before signing this guaranty.

\_\_\_\_\_  
Guarantor - Co-Signer (SEAL)

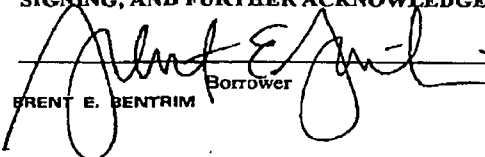
\_\_\_\_\_  
Guarantor - Co-Signer (SEAL)

**THIRD PARTY OWNER(S) AGREEMENT:** The undersigned, as owner(s) or co-owner(s) of the collateral, grant you a security interest in the collateral and agree that the terms and conditions of this Note shall apply to the collateral.

\_\_\_\_\_  
Owner or Co-Owner (SEAL)

\_\_\_\_\_  
Owner or Co-Owner (SEAL)

**EACH BORROWER ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE, FULLY COMPLETED PRIOR TO SIGNING, AND FURTHER ACKNOWLEDGES THAT THIS IS A SEALED INSTRUMENT.**

  
\_\_\_\_\_  
BRENT E. BENTRIM Borrower (SEAL)

\_\_\_\_\_  
Borrower (SEAL)

<b>Return To:</b>	<b>Prepared By:</b>
<u>First Union National Bank</u>	_____
<u>Consumer Loan Operations</u>	_____
<u>P.O. Box 50010</u>	_____
<u>Roanoke, VA 24022</u>	_____
<b>Parcel No:</b>	_____

**MORTGAGE**

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrin

(herein "Borrower"), and the Mortgagee, First Union National Bank, a national banking association organized and existing under the laws of the United States of America, whose address is First Union National Bank, 301 South College Street, NC 0630, Charlotte, North Carolina 28288-0630 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 182700.00 which indebtedness is evidenced by Borrower's Note dated 03/12/02 extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 04/11/32

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described Property located in the County of Charleston, State of South Carolina:

SEE ATTACHED EXHIBIT "A" INCORPORATED HEREIN BY REFERENCE

which has the address of 10 NICHOLSON STREET  
CHARLESTON SC 29407  
and Parcel No. 421-02-00-107 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the Property covered by this Mortgage; and all of the foregoing, together with said Property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenant and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

Borrower covenants that Borrower is lawfully seized 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 encumbrances of record.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.

**2. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

**3. Hazard Insurance.** a) 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 floods or flood, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 5.

b) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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.

c) Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. 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 any excess paid to Borrower. If Borrower abandons the Property or does not answer within thirty (30) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

d) Except as provided in subparagraph 3(e) below, should partial or complete destruction or damage occur to the Property, Borrower hereby agrees that any and all instruments evidencing insurance proceeds received by Lender as a result of said damage or destruction, shall be placed in a non-interest bearing escrow account with Lender. At Lender's discretion, Lender may release some or all of the proceeds from escrow after Borrower presents Lender with a receipt(s), invoice(s), written estimates(s) or other document(s) acceptable to Lender which relates to the repair and/or improvements of the Property necessary as a result of said damage and/or destruction. Absent an agreement to the contrary, Lender shall not be required to pay Borrower any interest on the proceeds held in the escrow account. Any amounts remaining in the account after all repairs and/or improvements have been made to the Lender's satisfaction, shall be applied to the sums secured by this Mortgage. Borrower further agrees to cooperate with Lender by endorsing all checks, drafts and/or other instruments evidencing insurance proceeds and any necessary documents. Should Borrower fail to provide any required endorsement and/or execution within thirty (30) days after Lender sends Borrower notice that Lender has received an instrument evidencing insurance proceeds, or document(s) requiring Borrower's signature, Borrower hereby authorizes Lender to endorse said instrument and/or document(s) on Borrower's behalf, and collect and apply said proceeds at Lender's option, either to restoration or repair of the Property or to sums secured by this Mortgage. It is not the intention of either party that this escrow provision, and/or Lender's endorsement or execution of an instrument(s) and/or document(s) on behalf of Borrower create a fiduciary or agency relationship between Lender and Borrower.

e) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 15 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument.

**4. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**5. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest in the Property.

Any amounts disbursed by Lender pursuant to this paragraph 5, with interest thereon from the date of disbursement, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon

notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

**6. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

**8. Borrower Not Released; Forbearance by Lender Not a Waiver.** The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) the sale of all or a part of the premises; (b) the assumption by another party of the Borrower's obligations hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent permitted by applicable law.

Any forbearance by Lender in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**9. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** 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 paragraph 14, 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 and benefit the successors and assigns of Lender.

**10. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate in writing by notice to Lender as provided herein, and any other person personally liable on this Note as these persons' names and addresses appear in the Lender's records at the time of giving notice and (b) any notice to Lender shall be given by first class mail to Lender's address at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**11. Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**12. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note, this Mortgage and Rider(s) at the time of execution or after recordation hereof.

**13. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**14. Transfer of the Property or a Beneficial Interest in Borrower; Assumption.** As used in this paragraph 14, "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 escrow 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 federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with paragraph 10 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 by this Security Instrument without further notice or demand on Borrower.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**15. Default; Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived. Lender may invoke the power of sale hereby granted. Lender shall have the right to enter upon and take possession of the Property hereby conveyed or shall without taking such possession have the right to sell the same at public auction for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale, in some newspaper published in said county, and upon payment of the purchase money, the Lender, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors, a good and sufficient deed to the Property sold; the Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said Property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of said sale; and fourth, the balance, if any, shall be paid over to the said Borrowers or to whomever then appears of record to be the owner of said Property. The Lender may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, this Note and Notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 15 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action, as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**17. Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that so long as Borrower is not in default hereunder, Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration and/or foreclosure under paragraph 15 hereof, or abandonment of the Property, Lender, in person or by agent, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. The Lender shall be liable to account only for those rents actually received prior to the foreclosure sale as provided in paragraph 15. Lender shall not be liable to account to Borrower or to any other person claiming any interest in the Property for any rents received after foreclosure.

**18. Loan Charges.** If the loan secured by this Mortgage 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 permitted limits, then: (a) any such loan charges 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 mailing a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment under the Note.

**19. Legislation.** If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rider, unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Mortgage or the Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

**20. Satisfaction.** Upon payment of all sums secured by this Mortgage, the conveyance of the Property pursuant to this Mortgage shall become null and void and Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

**21. Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of dower and curtesy in the Property.

B9B

22. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 22, "Hazardous Substances" are those substances defined as toxic or Hazardous Substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of:

[Signature]
Witness

Robert J. Donaldson, III

Witness Name Typed or Printed

[Signature]
Witness

Bridget G. Legare

Witness Name Typed or Printed

[Signature] [SEAL]
Borrower Brent E. Bentrin

Borrower

[Signature] [SEAL]
Borrower

Borrower

State of South Carolina

County of Charleston

Before me, the undersigned Notary Public, personally appeared Robert J. Donaldson, III

who being duly sworn, deposed and said that (s)he saw Brent E. Bentrin

sign, seal and deliver the foregoing Mortgage and that (s)he, together with Bridget G. Legare

witnessed the execution thereof.

SWORN to and subscribed before me this 12th day of March, 2002

[Signature]
Witness

[Signature] [SEAL]
Notary Public for South Carolina

Bridget G. Legare

Notary Public Name (Typed or Printed)

My Commission Expires: 1/31/12

**EXHIBIT "A"**

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block 1, on a plat of the subdivision known as Bymes Downs, which plat was made by W. A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat book F, Page 178 and on plat made by W. A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS # 421-02-00-107

BKC: 402PG188

**Davidson  
Bennett  
& Wigger**  
ATTORNEYS AT LAW

*MW*

FILED  
C402-182  
2002 APR -3 PM 3:15  
CHARLIE LYERAND  
REGISTER  
CHARLESTON COUNTY SC

12-00  
C

SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

C/A NO.: 2007-CP-10-3933

Wachovia Bank, National Association, )  
successor by merger to First Union )  
National Bank, )

Plaintiff, )

**SUMMONS AND NOTICES**

vs. )

(Non-Jury)

Brent E. Bentrim; Citibank South Dakota )  
N.A.; and the County of Charleston; )

Defendants. )

FORECLOSURE )  
OF REAL ESTATE )  
MORTGAGE )

BY  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2007 SEP -5 PM 1:01

FILED

07-010280

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 3800 Fernandina Road, Suite 110, Columbia, SC 29210, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

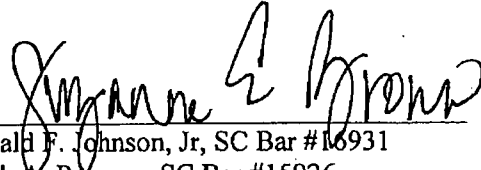
YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Attorney for Plaintiff.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an Order of Reference or the Court may issue a general Order of Reference of this action to a Master-in-Equity/Special Referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached

B&S No.: 07-09327

mortgage is perfected and Attorney for Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the 10<sup>th</sup> day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage and the Complaint attached hereto.



Ronald F. Johnson, Jr, SC Bar #16931  
Mark A. Pearson, SC Bar #15926  
Brian L. Campbell, SC Bar #74521  
John M. Mosser, SC Bar #71929  
Andrew M. Thompson, SC Bar #71090  
Suzanne E. Brown, SC Bar#76440  
Brock & Scott, PLLC  
3800 Fernandina Road, Suite 110  
Columbia, SC 29210  
Phone 888-726-9953 Fax 888-207-9353  
Attorneys for Plaintiff

Dated: 8 / 31 / 07  
Wilmington, North Carolina

SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

C/A NO.: 2007-CP-10-3933

Wachovia Bank, National Association, )  
successor by merger to First Union National )  
Bank, )

Plaintiff, )

vs. )

Brent E. Bentrin; Citibank South Dakota )  
N.A.; and the County of Charleston; )

Defendants. )

**COMPLAINT**

(Non-Jury)

FORECLOSURE  
OF TWO REAL ESTATE  
MORTGAGES

(Deficiency Judgment Demand)

BY

JULIE J. ARHSEBORG  
CLERK OF COURT

2007 SEP -5 PM 1:02

**FILED**

The Plaintiff above named, complaining of the Defendants herein alleges that:

1. Plaintiff, Wachovia Bank, National Association, successor by merger to First Union National Bank, is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant Brent E. Bentrin is a resident and citizen of the County of Charleston, State of South Carolina; Defendant Citibank South Dakota N.A. is a business entity duly authorized to conduct business in the State of South Carolina; and the County of Charleston is a governmental subdivision of the State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Charleston, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on May 24, 2001, Brent E. Bentrin made, executed, and delivered to First Union National Bank a certain Mortgage Note in writing, wherein and whereby Brent E. Bentrin promised to pay to First Union National Bank, the principal sum of \$49,000.00,

B&S No.: 07-09327

together with a variable rate of interest per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said note is fully paid. A copy of said Note is attached hereto as Exhibit "A".

5. In order to secure the payment of said note, the said Brent E. Bentrin, did on the same date, to wit, May 24, 2001, make, execute, and deliver to First Union National Bank, its successors and assigns, a certain mortgage covering real property located in the County and State aforesaid and in said mortgage described as follows: See Attached Exhibit "B".
6. On June 6, 2001, said mortgage was recorded in the Office of the Register of Mesne Conveyances for Charleston County in Mortgage Book O-373 at Page 230.
7. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a valid first lien on the mortgaged premises.
8. Subsequently, on March 12, 2002, Brent E. Bentrin made, executed, and delivered to First Union National Bank a certain Modification Agreement to Prime Equity Line and Mortgage, wherein and whereby the mortgage principal balance was modified to \$10,000.00. Said modification agreement was recorded on April 3, 2002 in Book D402 at Page 551. A copy of the Modification is attached hereto as Exhibit "C".
9. Also, on March 12, 2002, Brent E. Bentrin made, executed, and delivered to First Union National Bank a certain second Mortgage Note in writing, wherein and whereby Brent E. Bentrin promised to pay to First Union National Bank, the principal sum of \$182,700.00, together with a variable rate of interest per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said note is fully paid. A copy of said Note is attached hereto as Exhibit "D".

10. In order to secure the payment of said note, the said Brent E. Bentrim, did on the same date, to wit, March 12, 2002, make, execute, and deliver to First Union National Bank, its successors and assigns, a certain second mortgage covering real property located in the County and State aforesaid and in said mortgage described as follows: See Attached Exhibit "E".
11. On April 3, 2002, said mortgage was recorded in the Office of the Register of Mesne Conveyances for Charleston County in Mortgage Book C-402 at Page 182.
12. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a valid second lien on the mortgaged premises.
13. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant prior to the commencement of this action.
14. In and by the terms of said notes and the mortgages securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the mortgages securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.
15. In and by the terms of the said notes it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said note be placed in the hands of an attorney for collection after default.
16. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker of its notes, Brent E. Bentrim. That in the

event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant in the amount of such deficiency.

17. The installments of principal and interest falling due on Plaintiff's first mortgage from and after February 23, 2007, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$11,022.69, together with a variable rate of interest per annum from January 23, 2007, together with reasonable attorneys fees for the collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

18. The installments of principal and interest falling due on Plaintiff's second mortgage from and after June 11, 2007, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$174,504.20, together with a variable rate of interest per annum from May 11, 2007, together with reasonable attorneys fees for the collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be

added to the amount of the debt.

19. Upon information and belief, said information having been obtained from the records of Charleston County, South Carolina, the Defendants below named has or may claim to have some interest in or lien upon the subject premises by virtue of the matters and things herein below alleged, to-wit:

- i. The Defendant, Citibank South Dakota N.A., has or may claim to have some interest in or lien upon the subject property by virtue of that certain judgment in the amount of \$2,335.20 obtained by it against Brent Bentrin, dated November 2, 2004, and filed November 2, 2004, in Case Number 2004-CP-10-0569. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the subject property.
- ii. The Defendant, County of Charleston, has or may claim to have some interest in or lien upon the subject property by virtue of that certain judgment in the amount of \$169.00 obtained by it against Brent E. Bentrin, dated June 20, 2006, and filed September 29, 2006, Judgment Roll Number 2006-JG-10-1241. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the subject property.

WHEREFORE, Plaintiff prays judgment that:

1. The amount due upon the said notes and mortgages held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. Plaintiff's mortgages be declared valid first and second liens and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, together with

attorney's fees and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

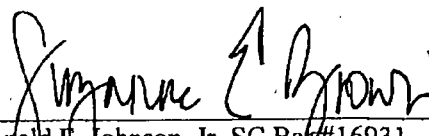
Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant, Brent E. Bentrim, in the event that the proceeds of the sale of the mortgaged property are insufficient to pay in full the indebtedness, including costs of collection.

4. For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendants in possession herein, the Sheriff of Charleston County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep the successful bidder or his assigns in such peaceable possession.



Ronald F. Johnson, Jr, SC Bar #16931

Brian L. Campbell, SC Bar #74521

Suzanne E. Brown, SC Bar #76440

Brock & Scott, PLLC

3800 Fernandina Road, Suite 110

Columbia, SC 29210

Phone 888-726-9953 Fax 888-207-9353

Attorneys for Plaintiff

Dated: 8/21/02

Wilmington, North Carolina

**NOTICE REQUIRED BY THE FAIR DEBT  
COLLECTION PRACTICES ACT  
15 U.S.C. Section 1601, As Amended**

- The amount of the debt is stated in the Complaint attached hereto.
- The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
- The debt is described in the Complaint attached hereto and evidenced by the copy of the Mortgage Note attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
- If the debtor notifies the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
- If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original written requests should be addressed to Brock & Scott, PLLC, 3800 Fernandina Road, Suite 110, Columbia, SC 29210.
- This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

**\*\*\* THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN  
DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING  
PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS  
AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS\*\*\***

B&S No.: 07-09327

Account Number: 4386540410130794

**FIRST UNION NATIONAL BANK**  
**PRIME EQUITY LINE AGREEMENT AND DISCLOSURE STATEMENT**

Maximum Credit Limit \$ 49000.00 Customer Name(s) BRENT E. BENTRIM

Date of Agreement 05/24/01

This Agreement and Disclosure Statement contains the terms which apply to the Prime Equity Account ("Account") with First Union National Bank. The words "I", "me" and "my" which also mean "we", "us" and "our", if more than one customer, mean the person or persons signing this Agreement. The words "you", "your", "yours", and First Union mean First Union National Bank.

**ACCESSING THE PRIME EQUITY LINE.**

- (a) Concurrent with the approval of the Prime Equity Line, I shall open a special checking account, the number of which will appear on the checks ("Prime Equity Line Checks"). This special checking account shall not be dependent upon the maintenance or use of, or otherwise connected with any other checking or savings account with First Union except as provided herein. The Prime Equity Line Checks issued with special checking account may be used to obtain extensions of credit under the Prime Equity Line up to the amount of the Maximum Credit established and set out above. All amounts advanced by First Union to pay Prime Equity Line Checks and any other charges against my special account shall constitute extensions of credit and shall be charged to my Prime Equity Line.
- (b) First Union Shall issue to me a Credit card for the purpose of obtaining extensions of credit on the Prime Equity Line.
- (c) If I have requested First Union, pursuant to an overdraft protection agreement, to pay checks which would otherwise overdraw my deposit account with First Union, such overdrafts will be charged to my Prime Equity Line and will constitute extensions of credit hereunder.
- (d) The extensions of credit to pay Prime Equity Line Checks will be in the amount of those checks. The extensions of credit made pursuant to an overdraft protection agreement shall be in increments of \$100. The extensions of credit for purchases made using the Credit card will be in the amount of the purchase.
- (e) I may obtain Cash Advances from any of your branches or ATM locations up to the unused portion of the Credit Limit.

**Maximum Credit Limit.** My maximum credit line is indicated above. I agree never to allow the balance due on my Account to exceed this limit. I also agree that you are not obligated to pay any Draft or other charge against my Account, for an amount that would make my Account balance exceed my maximum credit limit, or for any amount if my Account balance is already over the maximum credit limit. Any increases in my maximum credit limit I request will require that I make a written application and sign any additional security agreements which in your opinion are necessary to secure your interest.

**Monthly Statement.** If I have an outstanding debit or credit New Balance in excess of \$1.00 or if there is any finance charge imposed during a billing cycle, you will send me a statement. I promise to pay you for all Drafts plus finance charges on my Account, if any, all payable in United States Dollars according to the terms and conditions of this Agreement. I understand I am prohibited from using my Drafts to make my payments on this Account. I understand I am responsible for any fees or costs associated with the processing of my payments on my Account should I use a method of payment that results in extra costs or fees being assessed to you.

**FINANCE CHARGES.**

- (a) A FINANCE CHARGE computed on a monthly periodic rate will be imposed, if at the end of any day of the billing cycle, there is an outstanding balance owing on my Account. The monthly periodic rate for an initial advance, if any, made by me will begin to accrue on the date of this Agreement. The monthly periodic rate for any Drafts will begin to accrue on the Transaction Date as indicated on my billing statement.
- (b) First Union calculates the FINANCE CHARGE on the Prime Equity Line by applying the monthly periodic rate to the "average daily balance." First Union takes the beginning balance of the Prime Equity Line each day, adds any new advances, and subtracts any payments or credits and unpaid finance charges, Credit Life premiums and late charges. This gives First Union the daily balance. First Union then adds up all the daily balances for the billing cycle and divides the total by the number of days in the billing cycle. This gives the "average daily balance." The annual percentage rate is determined by multiplying the periodic rate by the number of billing cycles in a year (12).
- (c) Finance Charges on purchases made with checks or Credit card will be imposed from the date of transaction.
- (d) On cash advances incurred by use of Prime Equity Line Checks or made pursuant to an overdraft protection agreement, Finance Charges will be imposed from the date of posting. Finance Charges on all cash advances made with the Credit card will be imposed from the date of transaction.
- (e) Finance Charges on the average daily balance will continue to accrue until the new balance is paid. The "new balance" is the unpaid balance of extensions of credit hereunder and Finance Charges thereon as of the last day of the billing cycle. If I pay the new balance appearing on my statement, the Finance Charges which accrued during the billing cycle in which payment was received will appear on my next billing statement.
- (f) On cash advances incurred by the use of an Automatic Teller Machine (ATM), Finance Charges will be imposed as of the date of the transaction.

EXHIBIT A

(g) **Variable-Rate Feature:** The line has a variable-rate feature, and the ANNUAL PERCENTAGE RATE (corresponding to the periodic rate) and the minimum monthly payment can change as a result. The initial ANNUAL PERCENTAGE RATE is variable and discounted. The discounted rate is not based on the sum of the index and margin used to make later rate adjustments. This discounted rate will be in effect from the date an aggregate \$5,000 draw is made against your account, through the remaining months left in the first 0 month(s) period following the date your account is opened. If you make an aggregate \$5,000 draw against your account within the first 0 month(s) from the date your account is opened, your discounted monthly variable periodic rate will be 1/12 of the Wall Street Journal Prime Rate plus 0.00%. Prior to the aggregate \$5,000 draw, your monthly variable periodic rate will be 1/12 of the Wall Street Journal Prime Rate plus 1.00%.

(h) The FINANCE CHARGE imposed during a billing cycle will be determined by applying the monthly periodic rate which is 1/12 of the corresponding ANNUAL PERCENTAGE RATE to the average daily balance. The ANNUAL PERCENTAGE RATE and monthly periodic rate are variable rates and subject to change on the first day of each billing cycle, if there was a prior change in the "Prime Rate" which is published regularly in the Wall Street Journal Money Rates table eastern edition published in Charlotte, North Carolina ("WSJ"). The Wall Street Journal is generally available in my state or area. If the WSJ Prime Rate becomes unavailable, you will select a new index which is based on an historical movement substantially similar to the original index and the new index and margin will result in an Annual Percentage Rate substantially similar to the rate in effect at the time the WSJ Prime Rate becomes unavailable. You will give me notice of this change.

The corresponding ANNUAL PERCENTAGE RATE per year is the WSJ Prime Rate published on the 15th day of the last calendar month which ended prior to the billing date indicated on my previous billing statement plus 1.00%. If more than one prime rate is published on the 15th day of the month, you will use the higher rate as the WSJ Prime Rate. If the WSJ Prime Rate is not published on the 15th day of the month, the WSJ Prime Rate will be the prime rate published on the last day prior to the 15th. The initial monthly periodic rate of 0.782% will apply to my Account during my first billing cycle and the initial corresponding ANNUAL PERCENTAGE RATE will be 9.500%. An increase in the ANNUAL PERCENTAGE RATE and monthly periodic rate will result in increased FINANCE CHARGES and increased minimum payment amounts. The ANNUAL PERCENTAGE RATE will never be less than 0.000% and will never exceed the maximum interest rate permitted under State law, but not more than 18.000%. The corresponding ANNUAL PERCENTAGE RATE for each billing cycle will be shown on my billing statement for that cycle. The ANNUAL PERCENTAGE RATE will include my interest and no other costs.

**Additional Finance Charges.** I agree to pay the following additional FINANCE CHARGES:

- Settlement Fee \$ \_\_\_\_\_
- Points \$ \_\_\_\_\_
- Commitment Fee \$ \_\_\_\_\_
- Broker Fee \$ \_\_\_\_\_

**Other Charges.** In addition to the FINANCE CHARGE which will be added to my Account each billing cycle, I will pay the following real estate closing and security interest fees:

	"X" = First Union Pays Fee		"X" = First Union Pays Fee
• Survey	\$ _____	• GA/FL Intangible Tax	\$ _____
• Title Examination	\$225.00	• GA Res Mig Per Ln Fee	\$ _____
• Check Fee	\$3.00	• Document Stamps	\$ _____
• Title Insurance	\$ _____	• Misc.	\$12.50
• Recording Fees	\$11.00	• Misc.	\$ _____
• Appraisal Fees	\$ _____	<b>TOTAL</b>	<b>\$263.00</b>
• Flood Certification Fee	\$11.50		

FIRST UNION FEES PAID \$0.00      CUSTOMER FEES PAID \$263.00

**Option for Closing Costs.**

1.  If checked, I request that you pay \$0.00 (the total of all the "X" closing costs listed under Other Charges) for me. I will pay the rest. In consideration of your payment of this amount for me, I agree to reimburse you for them in the event I pay the entire outstanding balance and close this Account on or before one calendar year after the opening date of this Account. If I pay the entire outstanding balance and close this Account after one year, but on or before two calendar years after the opening date of this Account, I agree to reimburse you fifty percent (50%) of the amount of closing costs you paid for me. I understand that I may pay my outstanding balance down to zero at any time without having to reimburse you for the closing costs as long as my account remains open.

2. **Non-Usage Fee:**  If checked, a non-usage fee of \$ \_\_\_\_\_ will be billed on my billing date during the thirteenth (13th) monthly billing cycle after the opening date of my Account and every thirteenth (13th) monthly billing cycle thereafter, following any twelve (12) month period my account balance is zero. If I obtain a credit advance under my Account at any time during the twelve (12) monthly billing cycle period following the opening date of my Account, or at any time during every twelve monthly billing cycle period thereafter, you will waive the non-usage fee.

3. **Annual Fee:**  If checked, I will pay an annual maintenance fee of \$ \_\_\_\_\_ to be billed on my billing date during the thirteenth (13th) monthly billing cycle after the opening date of my Account and every thirteenth (13th) monthly billing cycle thereafter.

**Security:** I am giving you a mortgage, deed of trust or deed to secure debt (referred to as "Security Instrument" in this Agreement) on my home or real estate as security for my Account. This security is referred to as "Property" in this Agreement.

**Payment Schedule.** I will pay:

1. The entire outstanding balance ("New Balance") due on my Account; or
2. (a) Minimum payments equal to the finance charge or \$50.00 for the billing cycle as indicated on my billing statement; or (b)  If checked, minimum payments of \$50.00 or 1.5% of balance of the New Balance, whichever is greater; and
3. All amounts of credit extensions over the maximum credit limit, any unpaid minimum payments and other charges, if any.
4. The entire outstanding balance, if not sooner paid, on 06/28/23 (referred to as the "maturity date").

I agree to pay the minimum payment not later than the payment due date on my billing statement. If I should make a payment at any time on or before the due date which is equal to the New Balance, the entire amount of the payment will be applied to the New Balance. Any payment which is less than the New Balance will be applied in the following order: first, to the FINANCE CHARGE due on the outstanding balance and the remainder of the payment to the outstanding balance. I understand that I may prepay my Account in whole or in part at any time without penalty.

I understand that the minimum payment of finance charge only will not fully reduce the balance that is outstanding on my Account and the percentage of the outstanding balance or \$50 payment, may not fully reduce the balance that is outstanding on my Account. I understand that, if this occurs, I will be required to pay the entire balance in a single "balloon" payment on the maturity date specified in this Agreement.

#### ASSUMPTION NOTICE

THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

**Obligation to Lend.** You are absolutely obligated under the terms of this Agreement to make advances not to exceed, at any one time in the aggregate, the amount indicated as the maximum credit limit and I agree to repay any advances under the terms of this Agreement. Your obligation to make advances to me under this Agreement ends when you terminate advances and demand repayment of the outstanding obligation or prohibit additional extensions of credit under this Agreement or the Security Instrument. Nevertheless, you may waive the right to terminate or prohibit additional advances. If you do not terminate or prohibit additional advances, you remain obligated to make advances to me under the terms of this Agreement. However, that waiver does not bind you if the same or a different event occurs or is continuing at a later time. Your obligation to make advances under the terms of this Agreement also terminates when this Agreement is terminated or advances suspended by me in accordance with the terms of this Agreement.

**Change of Terms of this Agreement.** In addition to other rights you may have under this Agreement, you may change the terms and conditions of this Agreement when any of the following events shall occur:

- (1) if the index and margin used with this Account are no longer available;
- (2) if you make a change that I specifically agree to in writing;
- (3) if you make a change that will unequivocally benefit me throughout the remainder of the term of this Agreement;
- (4) if you make any insignificant change in the terms of this Agreement.

**Temporary Suspension of Credit and Reduction of Credit Limit.** I agree that you may prohibit additional extensions of credit or reduce the credit limit when any of the following events shall occur:

- (1) if the value of the Property that secures this Agreement declines significantly below the Property's appraisal value during the time of this Agreement;
- (2) if you reasonably believe I will be unable to fulfill the repayment obligations under this Agreement due to a material change in my financial circumstances;
- (3) if I am in default of any material obligations under this Agreement;
- (4) if action by a governmental body does not allow you to impose the Annual Percentage Rate currently applicable to this Agreement;
- (5) if action by a governmental body adversely affects the priority of your Security Instrument to the extent that the value of the security interest is less than 120 percent of the amount of my maximum credit limit;
- (6) if you are notified by a governmental agency that regulates your lending activities that continuing advances constitute an unsafe and unsound practice;
- (7) if during any period in which the Annual Percentage Rate corresponding to the monthly periodic rate reaches the maximum interest rate allowed under this Agreement. Provided I am in compliance with the other terms of this Agreement, I understand you will reinstate credit privileges if the Annual Percentage Rate declines below the maximum Annual Percentage Rate;
- (8) if I request that you suspend any advances or reduce the credit limit;
- (9) if I indicated at the time of application that I would occupy the Property and I no longer occupy the Property or I rent a part or all of the Property to other parties.

I understand at no time will you reduce my credit limit below the outstanding balance. I understand that it is my responsibility to request reinstatement of my credit privileges that have been suspended. I further understand that I may be required to pay for an appraisal of the Property to determine if the value has changed. I agree to furnish you current personal financial statements within 30 days of your written request.

If you temporarily suspend advances or reduce the maximum credit limit, I understand you will mail or deliver written notice of your action no later than three business days after the action and the specific reason for the action.

**Termination of this Agreement.** I will be in default and you may terminate this Agreement and demand repayment of the entire outstanding balance in advance of the maturity date if any of the following events shall occur:

- (1) if I fail to make my payments within 10 days of the due date;
- (2) if I write Drafts in excess of my available credit limit or my maximum credit limit;
- (3) if a petition is filed or other proceedings started under the Federal Bankruptcy code or any state insolvency statute or if a receiver is appointed or writ or order of attachment, levy or judgment is issued against me or my Property, assets or income that affects my ability to repay this Agreement in accordance with the terms of this Agreement or that adversely affects your security rights in the Property;
- (4) if I permit any other lienholder to gain or appear to gain priority over you, except whatever first mortgage, deed of trust or deed to secure debt is outstanding on the Property, as you agree, at the time of recording of your Security Instrument to secure this Agreement;
- (5) if the Property is condemned or is totally or partially destroyed by fire or other hazards or any proceeding is commenced which materially affects your interest in the Property;
- (6) if the secured note for any prior mortgage, deed of trust or deed to secure debt or lien on the real Property is in default by failure to pay principal, interest, charges, fees, escrow items or the commencement of a foreclosure proceeding or collection action that adversely affects your security interest in the Property;
- (7) if you believe, in good faith, that I have allowed the Property to deteriorate, committed waste or destructively used or failed to maintain the Property;
- (8) if I commit fraud or misrepresent any information in the loan application, this Agreement or the Security Instrument at any time;
- (9) if I fail to disclose any known environmental condition or hazard which adversely affects your security interest in the Property;
- (10) if I fail to maintain adequate insurance coverage on the Property naming you as insured;
- (11) if I fail to pay taxes and assessments on the Property that results in a filing of a lien senior to your lien that impairs your security interest in the Property; or
- (12) if I transfer any interest or title to the Property, without your consent as set forth in the terms of the Security Instrument or transfer of title occurs due to my death or by governmental action such as condemnation, however, I understand you will not terminate this Agreement and accelerate payment if such action is prohibited by federal law as of the date of this Agreement.

If an event occurs which allows the termination of advances and demand for repayment of the outstanding balance, you may, at your option and in your sole discretion, take the following action:

- (1) temporarily or permanently prohibit additional advances or reduce the maximum credit limit without demanding payment in full;
- (2) change the payment terms or payment option for the repayment of the loan; or
- (3) charge a higher rate or higher fees if I fail to meet the repayment terms or otherwise act so that the creditor is permitted to terminate the Account and accelerate the balance.

If you do not immediately terminate the Account and demand repayment, you may take such action at a later time, if the event still exists or another event occurs at that time.

If you do terminate the Account, you may require that the outstanding balance shall become due and payable immediately in full in a single payment, without notice to me unless required by law and with interest due on the balance at the Annual Percentage Rate as provided for in the Agreement until paid. If I do not immediately pay the outstanding balance and if this obligation is referred to an attorney-at-law for collection, I agree to pay all costs and expenses, including court costs and reasonable attorney's fee, not exceeding fifteen percent (15%) of the unpaid balance and interest, providing the attorney is not a salaried employee of yours.

**Minimum Payment Change.** If I fail to pay any minimum payment by its due date or if I request a different minimum payment, you may, at your option, change the minimum payment and cancel the payment schedule 2(b) option. I agree to give you prior written notice of my request to change my minimum payment option.

**Required Property Insurance.** I agree to purchase and to continue to maintain property insurance, including flood coverage if required, on the secured Property in an amount not less than the entire outstanding balance for all prior and current obligations secured by my Property for this loan or in such an amount satisfactory to you. If I fail to maintain adequate coverage as described above, you may, either at your option or as required by law, obtain coverage to protect your rights in accordance with other provisions of this Agreement. If my Property is damaged or destroyed, I agree that you may use any insurance settlement either to repair the Property or to apply it to my outstanding balance. I agree to assign the proceeds of my insurance to you to the extent of the debt I owe and agree that the insurance company may pay you directly. I agree that you have an irrevocable power of attorney to file proofs of loss and anything else necessary to obtain the insurance proceeds in my name. Loss, damage or destruction of Property will not release me from any liability under this Agreement.

**Ownership of Drafts.** Any Draft which you supply to me is your property and must be returned to you immediately upon demand in accordance with this Agreement.

**Transfer of Account.** I cannot transfer or assign my Account to any other person, however, I recognize you can assign this Agreement.

**Change of Address.** I will advise you promptly if I change my mailing address. All written notices and statements from you to me will be considered given when placed in the United States mail, postage prepaid, and addressed to me at my current address as it appears in your records. If this is a joint account, written notice to one person is notice to the other person(s).

**Irregular Payments.** You may accept late payments or partial payments, or checks, drafts or money orders marked "Payment in Full" without losing any of your rights under this Agreement.

**Deferred Payment Option.** At your option and as you designate, I understand that I may not be required to make a minimum payment during certain billing cycles. If I elect not to make my minimum payment as provided in the Agreement, I understand that this election does not eliminate the accrual of charges, including finance charges, which will continue to be applied to my account. Beginning with the next billing cycle following a deferred payment, I understand all of the provisions of this Agreement shall apply.

**Amendments.** You may change any part of this Agreement at any time, as long as you give me notice required by this Agreement or as may be required by law. I agree that the new terms, including any increase in the finance charge or other charges provided in this Agreement shall apply to credit extensions made on and after the effective date and to any outstanding balance owing to you on the effective date, provided that the new terms shall not apply to the outstanding balance if I pay the entire outstanding balance before the effective date of the change in terms.

**Cancellation.** I can cancel my Account at any time by returning to you all of my unused Prime Equity Line Drafts, along with a letter requesting that you cancel my Account. However, my obligations under this Agreement and any changes made under it prior to cancellation will continue to apply until I have paid you all the money I owe on the Account.

**Termination or Suspension of Credit by Me and/or Joint Account Owner(s).** If one or more persons are liable with me under this Agreement, and less than all of us request in writing that future advances be terminated or temporarily suspended hereunder, you will block or otherwise suspend advances under this Agreement for ten (10) days. You will also give notice of the request for suspension or termination to all borrowers. If you do not receive a court order enforcing the termination or suspension of advances under this Agreement beyond the ten day period stated above, from the person requesting the termination or suspension of advances within a ten-day period stated above, you will unblock the Account and allow advances as if no request for termination or suspension was made.

**Removal of Lien.** At any time when the outstanding balance secured by the Security Instrument is zero, you shall at my request, return the Security Instrument to me appropriately marked as satisfied and satisfy the Security Instrument of record, however, I will pay the recording costs of that satisfaction. Absent my request, this Security Instrument will remain in full force and effect for the period of time indicated in this Agreement.

**Other Provisions.** Each of us who signed this Agreement or are issued Drafts or are allowed to use this Account, are both individually and jointly obligated for all payments due under this Agreement. If you request, I will give you any information needed to reevaluate my Account or my creditworthiness. You may, at any time seek information about my financial condition from others and may provide information about my Account to others. If I apply for an increase in the credit limit for my Account or if you require that an appraisal be obtained to continue my Account, you will advise me of the cost of the appraisal before the appraisal is conducted. I understand that the appraisal will be for your use only and that I will not be entitled to a copy of the appraisal report. I agree that this Agreement shall be governed by and interpreted entirely under South Carolina law. In the event that the amount of interest on my Account exceeds the maximum permitted by law, you agree to repay me upon demand the amount paid which exceeds the maximum interest rate, or at your option, to reduce the then outstanding principal balance by the excess amount of interest. If any part of this Agreement is not valid, all other parts will remain enforceable. I understand I should consult a tax advisor regarding the deductibility of interest and charges for my Account.

**My Rights and Your Responsibilities After You Receive My Written Notice.**

You must acknowledge my letter within 30 days, unless you have corrected the error by then. Within 90 days, you must either correct the error or explain why you believe the Statement was correct.

After you receive my letter, you cannot try to collect any amount I question, or report as delinquent. You can continue to bill me for the amount I question, including finance charges, and you can apply any unpaid amount against my credit limit. I do not have to pay any questioned amount while you are investigating, but I am still obligated to pay the parts of my Statement that are not in question.

If you find that you made a mistake on my Statement, I will not have to pay any finance charges related to any questioned amount. If you didn't make a mistake, I may have to pay finance charges, and I will have to make up any missed payments on the questioned amount. In either case, you will send me a statement of the amount I owe and the date that it is due.

If I fail to pay the amount that you think I owe, you may report me as delinquent. However, if your explanation does not satisfy me and I write to you within ten days telling you that I still refuse to pay, you must tell anyone you report me to that I have a question about my Statement. And, you must tell me the name of anyone you reported me to. You must tell anyone you report me to that the matter has been settled between us when it finally is.

If you don't follow these rules, you can't collect the first \$50 of the questioned amount, even if my Statement was correct.


**ARBITRATION:** At my, any guarantor, or your request, any controversy arising out of or relating to this loan shall be decided by binding arbitration under to Commercial Arbitration Rules of the American Arbitration Association. Any controversy that is related to a class action or is part of a class action shall, at my, any guarantor, or your request, be referred for decision by arbitration as provided herein. A judgment upon award may be entered by any court having jurisdiction.

Notwithstanding the preceding binding arbitration provisions, I, any guarantor, or you may employ or exercise freely, either alone, in conjunction with or during an arbitration proceeding, any provisional or ancillary remedies including foreclosure and sale of any collateral by judicial or non-judicial foreclosure, self help, set-off, attachment, garnishment and sequestration. Preservation of these remedies does not limit the power of the arbitrator to grant similar remedies.

**INFORMATION REPORTED TO CONSUMER REPORTING AGENCIES:** Under the Fair Credit Reporting Act, I have the right to notify you if I believe you have reported inaccurate information about my account to any Consumer Reporting Agency. Such notices should be sent in writing and include my complete name, current address, Social Security number, telephone number, account number, type of account, specific item of dispute and the reason why I believe the information reported is in error. I must send my notice to: First Union, P.O. Box 560726, Charlotte, NC 28256-0726.

**SHARING INFORMATION REGARDING MY FIRST UNION RELATIONSHIPS.** I understand that from time to time you may share and use with any First Union Corporation Affiliate (e.g. First Union National Bank, First Union Brokerage Services, Inc., First Union Mortgage Corporation, etc.) my account and "other information" as you in your sole discretion consider necessary or appropriate. I have the right to direct you not to share my "other information" by notifying you in writing. I must send my name, address, Social Security number, telephone number and account type and number to: First Union, P.O. Box 11726, Roanoke, VA 24022-1726.

By signing below, I agree to all the terms contained herein and certify that I received a completed copy of this Agreement and Disclosure Statement, and Important Terms, and 2 copies of a Notice of Right to Cancel this Agreement on the date shown above, I will refer to the above instructions if I have a problem with any billing statement you send to me.

 (SEAL)  
Signature  
BRENT E. BENTRIM

\_\_\_\_\_  
Signature (SEAL)

\_\_\_\_\_  
Signature (SEAL)

\_\_\_\_\_  
Signature (SEAL)

Account Number: 4386540410130794

BK 0 373PG230

This instrument was prepared by:

RETURN TO: First Union National Bank  
Consumer Loan Operations  
P.O. Box 50010, VA0343  
Roanoke, VA 24040-9901

Claudia Prossocini  
(Name)  
  
(Address)

### MORTGAGE

THIS MORTGAGE is made this 24 day of May, 2001 between the Mortgagor, Brent E. Bentrim and

(herein "Borrower"), and the Mortgagee, First Union National Bank, a national banking association, whose address is 301 South Tryon Street, NC5434, Charlotte, NC 28288-5434 (herein "Lender").

WHEREAS, Lender and Borrower have entered into a Prime Equity Line Agreement and Disclosure statement of even date herewith (hereinafter referred to as the "Note") which allows for advances to Borrower of up to 48000.00 Dollars, of which Dollars has been advanced upon execution of the Note and this Mortgage. The entire indebtedness evidenced by the Note, if not sooner paid, is due and payable on the 24 day of April, 2021. The outstanding principal balance due under the Note at any time may be obtained by contacting the Lender at the address shown in the first paragraph of this Mortgage.

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Charleston, State of South Carolina.

• SEE ATTACHED FOR LEGAL DESCRIPTION •

which has the address of 10 NICHOLSON ST CHARLESTON SC 29407 (herein "Property Address");

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized 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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

#### OPEN-END MORTGAGE.

This is an "open-end" Mortgage and the Lender shall have all the rights, powers and protection to which the holder of any open-end mortgage is entitled. Pursuant to the terms of the Note and subject to the terms and conditions therein, Borrower may borrow, repay and re-borrow such amounts as desired during the term specified in the Note. Each loan advance pursuant to the Note shall bear interest at a rate set forth in the Note; provided that the amount of principal secured by this Mortgage and remaining unpaid shall at no time exceed \$ 48000.00. This mortgage secures a Note which provides for changes in the interest rate, which changes are more particularly described in the Note.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and credit life insurance premiums, if any as provided in the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.
2. Application of Payments. Unless applicable law requires otherwise, all payments received by Lender under the Note and Paragraph 1 of the Mortgage shall be applied by Lender, first to pay interest then due on the Note, second to credit life insurance premiums, if applicable, and then to pay the outstanding balance due on the Note.
3. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

EXHIBIT B

13. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recording hereof.

12. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorney's fees" include all sums, to the extent not prohibited by applicable law or limited herein.

11. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by first class mail to Lender's address as stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forfeit, or make any other accommodations with regard to the terms of this Mortgage or the Note without the Borrower's consent and without releasing the Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

Any foreclosure by Lender to exercise any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following:  
(a) The sale of all or a part of the premises, (b) the assumption by another party of the Borrower's obligations hereunder, (c) the foreclosure or extension of time for payment, or performance of any obligation hereunder, (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the property, and (e) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action by Borrower may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

5. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, periods as Lender may require. The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender, provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

3. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

2. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, periods as Lender may require. The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender, provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

1. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, periods as Lender may require. The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender, provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

BR 0 373P6231

14. **Transfer of the Property or a Beneficial Interest in Borrower, Assumption.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by Federal law as of the date of this Mortgage.

If Lender exercised 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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

This Mortgage may not be assumed by a purchaser without the Lender's consent. If an assumption is allowed, the Lender may charge an assumption fee and require the person(s) assuming the loan to pay additional charges as authorized by law.

This Mortgage may not be assumed by a purchaser without the Lender's consent. If an assumption is allowed, the Lender may charge an assumption fee and require the person(s) assuming the loan to pay additional charges as authorized by law.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

15. **Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenant to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, unless required by law, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice unless required by law or the Note and may foreclose this Mortgage by judicial proceedings. Lender shall be entitled to collect in such proceedings all expenses of foreclosure, including, but not limited to reasonable attorney's fees and cost of documentary evidence, abstracts and title reports. In addition to the remedies provided on Borrower's breach of any covenant or agreement of the Borrower in the Mortgage, Lender may declare Borrower in default under the Mortgage if any of the following events occur:

(a) if Borrower fails to make the payments within 10 days of the due date; (b) if Borrower writes Drafts in excess of the available credit limit or the maximum credit limit; (c) if a petition is filed or other proceedings started under the Federal Bankruptcy code or any state insolvency statute or if a receiver is appointed or writ or order of attachment, levy or judgment is issued against Borrower or the Property, assets or income that affects the ability to repay this Agreement in accordance with the terms of this Agreement or that adversely affects Lender's security rights in the Property; (d) if Borrower permits any other lienholder to gain or appear to gain priority over Lender, except whatever first mortgage, deed of trust or deed to secure debt is outstanding on the Property, as Lender agrees, at the time of recording of Lender's Security Instrument to secure this Agreement; (e) if the Property is condemned or is totally or partially destroyed by fire or other hazards or any proceeding is commenced which materially affects Lender's interest in the Property; (f) if the secured note for any prior mortgage, deed of trust or deed to secure debt or lien on the real Property is in default by failure to pay principal, interest, charges, fees, escrow items or the commencement of a foreclosure proceeding or collection action that adversely affects Lender's security interest in the Property; (g) if Lender believes, in good faith, that Borrower has allowed the Property to deteriorate, committed waste or destructively used or failed to maintain the Property; (h) if Borrower commits fraud or misrepresents any information in the loan application, this Agreement or the Security Instrument at any time; (i) if Borrower fails to disclose any known environmental condition or hazard which adversely affects Lender's security interest in the Property; (j) if Borrower fails to maintain adequate insurance coverage on the Property naming Lender as insured; (k) if Borrower fails to pay taxes and assessments on the Property that results in a filing of a lien senior to Lender's lien that impairs Lender's security interest in the Property; or (l) if Borrower transfers any interest or title to the Property without Lender's consent as set forth in the terms of the Security Instrument or transfer of title occurs due to Borrower's death or by governmental action such as condemnation, however, Borrower understands Lender will not terminate this Agreement and accelerate payment if such action is prohibited by federal law as of the date of this Agreement.

In case of a conflict between the terms of the Note and this Security Instrument governing remedies on default or termination of advances, the priority of controlling terms shall be the Note and then this Security Instrument.

16. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 16 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

17. **Loan Charges** If the loan secured by this Mortgage 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 permitted limits, then: (1) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (2) 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 under the Note.

18. **Legislation.** If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rate Rider unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in the Mortgage or any Rider, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

19. **Release.** When the balance of all outstanding sums secured by the Security Instrument including outstanding Drafts, finance charges or other charge if any, is zero, the Lender shall upon request of the Borrower, release the Security Instrument without a charge to the Borrower, however Borrower will pay all cost of recordation, if any, of the satisfaction or release. Absent a request from the Borrower, the Security Instrument shall remain in full force and effect for the term set forth above. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to the Lender may charge a release fee.

20. Waiver of Homestead. Borrower hereby waives all right of homestead exemption in the Property.

21. Termination of lender's obligation to Advance Funds. Borrower acknowledges that Lender may cancel its obligation to make any future credit extensions on further advances under the Note at any time by giving written notice to the Borrower in accordance with the Note. Borrower acknowledges that its obligation under the Note will continue until all sums owed by Borrower to Lender have been paid.

22. Additional Representations, Warranties and Covenants. Borrower further represents, warrants and agrees that:

- (a) Borrower is the owner of the Property;
- (b) All representations made by Borrower in the loan application are correct and there has not been any material adverse change in the financial condition of Borrower from the date of the application;
- (c) Borrower has no knowledge of any environmental condition or hazard which adversely affects the Property;
- (d) No work has been done on or materials furnished to or improvements made to the Property within the last 90 days, except such improvements, work and materials, if any, as have been paid in full;
- (e) There are no lien rights, or possibility of lien rights, judgments, executions, suits or bankruptcies, which may be or have been asserted against the Property except for any lien or encumbrance listed below;
- (f) Borrower will indemnify and save harmless Notcholder from loss or damage which it may suffer on account of any lien claims, valid or invalid, that may be asserted against the Property;
- (g) The Property is used as Borrower's principal dwelling;

The only liens or encumbrances on the Property in addition to the lien created by this Deed of Trust are as follows:

11-00  
A

0 373PG234  
DA  
10

Davidson  
Bennett  
& Wigger  
ATTORNEYS AT LAW

If the proceeds of this loan are being used to purchase the Property, the total purchase price of \$ \_\_\_\_\_ is being paid to \_\_\_\_\_ (Seller) and no credits of any type, including, but not limited to, rent credits or credits of any improvement to the Property, will reduce the purchase price; and  
If the Property is a condominium, this Deed of Trust is permitted under any condominium documents and if any approvals are required, such approvals have been obtained.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word "(SEAL)" appearing beside his name.

[Signature] (SEAL)  
Witness

[Signature] (SEAL)  
Signature: Brent E. Bentrin

[Signature] (SEAL)  
Witness

[Signature] (SEAL)  
Signature:

\_\_\_\_\_  
Witness

[Signature] (SEAL)  
Signature: FILED

\_\_\_\_\_  
Witness

[Signature] (SEAL)  
Signature: 0373-230  
2001 JUN -6 PH 3:40

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

STATE OF SOUTH CAROLINA )  
COUNTY OF Charleston )

PROBATE

PERSONALLY appeared before me the undersigned witness made oath that (s)he saw the within-named Brent E. Bentrin sign, seal, and as his act and deed, deliver the within-written Mortgage or Real Property; and that (s)he with the other witness witnessed the execution thereof.

SWORN to before me this

24th day of May, 2001

[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 9/22/02

[Signature]

**EXHIBIT "A"**

**BK F O 373 PG 233**

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Bymes Downs, which plat was made by W. A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat book F, Page 178 and on plat made by W. A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS # 421-02-00-107

BKD 402PG551

Branch Only - Return To:  
First Union National Bank  
Consumer Loan Operations  
P.O. Box 50010, VA 0343  
Roanoke, VA 24040-9901

Decrease in Maximum Credit Limit - SC

Lender Name: ROB DONALDSON  
Prepared by: DELORES WOOTEN

**MODIFICATION AGREEMENT TO PRIME EQUITY LINE AND MORTGAGE**

BRENT E BENTRIM 10 NICHOLSON ST CHARLESTON, SC 29407 [Collateral Address]

10 NICHOLSON ST CHARLESTON, SC 29407 [Mailing Address]

the borrower(s) who signed below (referred to in this Modification Agreement as "I," "me" or "my", whether one or more persons) enter into this Modification Agreement with First Union National Bank this 12TH DAY OF MARCH 2002.

I previously executed and delivered to First Union National Bank a Prime Equity Line Agreement and Disclosure Statement dated 05/31/01 ("Note"), which provides for First Union National Bank to extend credit to me from time to time in an aggregate amount not to exceed the principal sum of \$49,000.00 U.S. Dollars. The Note is secured by a Mortgage of even date recorded in the public land records of the Clerk's Office of the Circuit Court of the city/county of, South Carolina, at Book, Page, Lot, Block, Parcel Number/Tax ID#.

O373, 230,62, I, 421-02-00-107

I have requested First Union National Bank to decrease the maximum credit available under the Note, and First Union National Bank has agreed to do so in consideration of and subject to the terms and conditions stated in this Modification Agreement.

First Union National Bank and I hereby agree that:

1. The maximum credit available to me pursuant to the Note is hereby decreased to the principal sum of TEN THOUSAND and xx/cents U.S. Dollars, \$10,000.00 ("New Maximum Credit Available"), and the Mortgage is hereby amended to secure said New Maximum Credit Available.
2. All provisions of the Note and Mortgage, including the manner and time of repayment, shall remain in full force and effect, except as specifically modified by this Modification Agreement.
3. I agree to pay any and all applicable intangible property taxes due on account of the decrease in the maximum credit available under the Note provided by this Modification Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement, signed, sealed and delivered in the presence of:

[Signature]  
WITNESS

Budget's League  
WITNESS

[Signature] (SEAL)  
Borrower/Owner: BRENT E BENTRIM

\_\_\_\_\_  
Borrower/Owner: (SEAL)

FIRST UNION NATIONAL BANK

BY: [Signature] (SEAL)  
Name: MICHAEL CLOUD  
Title: Vice President

ATTEST: [Signature] (SEAL)  
Name: MARK ENOS  
Title: ASSISTANT VICE PRESIDENT

Exhibit C

MD 402P6552

PROBATE

STATE OF SOUTH CAROLINA )  
 )SS  
COUNTY OF CHARLESTON )

BEFORE ME, the undersigned authority, personally appeared BRENT E BENTRIM, to me known to be the individual(s) described in the foregoing instrument and who acknowledged that (s)he/they executed the same as his/her/their free act.

Witness my hand and official seal this 12th day of March, 2002, in the County and State aforesaid.

Bridget G. Legare  
Notary Public

(Type) Bridget G. Legare

My Commission Expires: 1/31/12  
(as to borrower)

STATE OF NEW JERSEY )  
 )SS  
COUNTY OF MIDDLESEX )

I, CYNTHIA FIRESTINE, Notary Public for said County and State, certify that MICHAEL CLOUD personally came before me and acknowledged that he/she is the Vice President of First Union National Bank, a national banking association, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by its ASSISTANT VICE PRESIDENT.

Witness my hand and official seal this 12TH DAY OF MARCH 2002.

Cynthia Firestine  
Notary Public Signature

Type: CYNTHIA FIRESTINE CYNTHIA FIRESTINE

My Commission Expires: A NOTARY PUBLIC OF NEW JERSEY  
~~My Commission Expires December 2, 2002~~

Davidson  
Bennett  
& Wigger  
ATTORNEYS AT LAW

PH  
CAN

BOOK # 40290553

FILED  
D402-551  
2002 APR -3 PH 3: 15  
CLERK OF COURSE AND  
REGISTER  
CHARLESTON COUNTY SC

MTG/MOD  
7.00  
C

Bentley 02-243 Be

**NEGOTIABLE PROMISSORY NOTE**  
(Fixed or Variable Interest Rate)



BK: 41  
AC: 0006774

LOC:

LN TP: 59  
0180000/00

Ref. No. 0205200092

Date: 03/12/02

Acct. No.

\$ 182700.00

**CREDITOR: FIRST UNION NATIONAL BANK,**

**301 SOUTH TRYON STREET, NC5434  
CHARLOTTE, NC 28288-5434**

**BORROWER(S): BRENT E. BENTRIM**

**10 NICHOLSON STREET  
CHARLESTON, SC 29407**

FOR VALUE RECEIVED, I the Borrower (which means everyone who signs below as a borrower, jointly and severally), promise to pay FIRST UNION NATIONAL BANK, or order, the principal amount of this loan as stated above (the Amount Financed, plus the prepaid finance charge, if any, as disclosed in the Itemization of Amount Financed), together with interest from the date of this Note on the unpaid principal balance at the interest rate for a fixed or variable rate loan disclosed below until fully paid. "I," "me," and "my" refer to Borrower(s) while "you" and "your" refer to FIRST UNION NATIONAL BANK.

If indicated, this is a fixed rate loan and my Interest Rate is

If indicated, this is a variable rate loan and my initial Interest Rate is **4.99** which is tied to the Wall Street Journal (WSJ) "Prime Rate."

The Initial Interest Rate is computed as follows: Prime Rate of **4.75** % Plus **.24** Percentage Points.

ANNUAL PERCENTAGE RATE: The cost of my credit as a yearly rate.	FINANCE CHARGE: The dollar amount the credit will cost me.	Amount Financed. The amount of credit provided to me or on my behalf.	Total of Payments. The amount I will have paid after I have made all payments as scheduled.
5.13 %	\$ 174315.60	\$ 180000.00	\$ 354315.60

I have the right to receive at this time an Itemization of the Amount Financed: ( ) I want an itemization ( ) I do not want an Itemization.  
(initials) (initials)

My payment schedule will be:

No. of Payments	Payment Amount	Frequency	Due Date	No. of Payments	Payment Amount	Frequency	Due Date
360	\$984.21	M	05/11/02		\$		
	\$				\$		

**Variable Rate.**

If my loan, as indicated above, has a variable rate, my interest rate may increase during the term of my loan based on movement of the WSJ Prime Rate. My interest rate will not increase more than once each month. If my loan is secured by a principal dwelling for a term greater than one year, disclosures about the variable rate have been provided to me earlier.

If indicated, my loan has multiple payments for a term of more than 60 months. Any increase in my interest rate will increase the number of payments and may increase the payment amounts. If my loan were for \$10,000 for 144 months at 12% and the interest rate increased to 12.50% in three months, my regular payment would increase by \$7.30 beginning with my Sixty-First payment.

**MAXIMUM RATE.**  
If indicated, the maximum interest rate will not exceed: ~~15.00~~  
**18.00**

If indicated, my loan has multiple payments for a term of 60 months or less. Any increase in my interest rate will increase the number of payments. If my loan were for \$10,000 for 60 months at 12% and the interest rate increased to 12.50% in three months I would have to make one additional payment of \$196.56.

If indicated, my loan has a single payment. Any increase in my interest rate will increase the amount due at maturity. If my loan were for \$10,000 at 12% for 90 days, and my interest rate increased to 12.25% in 20 days, then my final payment would increase by \$4.80.

Security. I am giving a security interest in:

the goods or property being purchased.  other (describe): **REAL ESTATE**

Collateral securing other loans with you may also secure this loan, except my principal dwelling or household goods.

Filing Fees. \$ Prepayment. If I pay off early, I will not have to pay a penalty and I may be entitled to a refund of part of any prepaid finance charge.

Late charges. If you receive any payment 15 days or more after the due date, I agree to pay you a late charge of 5% of my payment.

If indicated, this loan is for the purchase of property used as my principal dwelling and someone buying my principal dwelling cannot assume the remainder of my loan on the original terms.

If indicated, the Annual Percentage Rate does not take into account my required deposit.

*399*

**EXHIBIT D**

I may see my contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled due date, and prepayment refunds and penalties.

**INSURANCE DISCLOSURES**

I understand that credit life and credit disability insurance are not required to get this loan. You will not provide it unless I sign this credit insurance section and agree to pay the cost. If I want any of these insurance coverages, I must be sure that the insurance coverage I want is indicated, that the amount of the premium is filled in, and that I have signed below. If I request credit life insurance or credit disability insurance, I have the right to rescind the insurance policy or certificate of insurance by giving written notice to the insurance company within 30 days from the date I received the policy or certificate. The term and amount of any insurance I request is for the stated term/amount of this loan unless otherwise indicated below.

INSURED #1	INSURED #2	TYPE	PREMIUM	TERM IN MOS.	AMT. OF COVERAGE	DISABILITY MONTHLY BENEFIT
_____	_____	Credit Life	\$ _____	_____	\$ _____	_____
_____	_____	Credit Disability	\$ _____	_____	\$ _____	\$ _____

If this loan is secured, I may obtain property insurance from any insurer I choose.

I request coverage(s) checked for the premiums shown above

Signature of Insured #1

I request coverage(s) checked for the premiums shown above

Signature of Insured #2

**PROPERTY AS SECURITY**

To secure payment of this Note I grant you a security interest in the collateral described below, or in the Mortgage as indicated by the date below or on Schedule A, plus all additions, replacements or accessions to, and proceeds of the collateral. This collateral will secure any other loans with you, now or in the future unless the collateral is used as a principal dwelling or household goods. Any additional collateral is listed on the attached Schedule A.

Real property located at  
10 NICHOLSON STREET  
CHARLESTON SC 29407

As more fully described on mortgage dated 03/12/02

\_\_\_\_\_ If indicated, I (we) authorize you to draft all amounts due from my (our) deposit account as provided in my (our) application.

**INTEREST RATE CHANGES: VARIABLE RATE:** If my loan is a variable rate loan, I understand and agree that you will adjust the number and amount of my payments, the interest rate, the term to maturity and other relevant terms of my loan in accordance with your variable rate consumer lending procedures and programs, as they may change from time to time, the terms of which are described herein. My interest rate will change in an amount equal to the change in the WSJ Prime Rate. WSJ Prime Rate is announced and changed, from time to time. I understand that this rate is not represented or intended to be the lowest or most favorable rate of interest offered by you to any of your borrowers. My interest rate will be the sum of the number of percentage points, as indicated on the front of this Note, plus WSJ Prime Rate, as it may change from time to time. My interest rate may not change more than once each month during the term of my loan which will occur on the first day of each calendar month and will be based on WSJ "Prime Rate" published in the Charlotte, N.C. edition on the 25th day of the prior calendar month. If more than one rate is published, you will use the higher rate as the WSJ Prime Rate. If the 25th falls on a day when the WSJ Prime Rate is not published, the WSJ Prime Rate will be the rate published the last day prior to the 25th. Changes in the interest rate will be subject to any maximum rate stated in this Note. If no maximum interest rate is indicated, my interest rate will not exceed the highest interest rate permitted by applicable law. If the amount of any payment does not pay all interest due, you will collect the unpaid interest from future payments.

**PAYMENT ADD PROVISIONS:** If my loan has an original term of 60 months or less, you will extend the number of my payments if on the date of my final scheduled payment the amount of the scheduled payment will not pay the outstanding principal balance and unpaid interest. You will continue to bill me for my payment as long as any balance remains unpaid on my loan.

**VARIABLE RATE PAYMENT CHANGES:** If my loan is a variable rate loan with an original term of more than 60 months, the amount of my payment may change in the 61st calendar month and every 60th calendar month thereafter. Prior to each payment change date, you will calculate a payment estimated to pay the outstanding principal balance and any unpaid interest at the then current interest rate during the remaining term of the loan. My payment will never increase more than 25% of the previously calculated payment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. At the final payment change, if necessary, you will increase my payment up to 25% of my previous payment and you will continue to bill me for my payment as long as any balance remains unpaid on my loan.

**BALLOON NOTE PROVISIONS:** If my payment schedule on this Promissory Note indicates a balloon payment (a single payment scheduled at the end of the loan term which is larger than any of the earlier scheduled payments) as a final payment, the following provisions apply: If my loan has a fixed interest rate, my payment habits and any loan extensions may change the amount of my finance charge which will be reflected in my final balloon payment. If my loan has a variable interest rate with a term of 60 months or less, my payment habits and any loan extensions or interest rate changes may change the amount of my finance charge which will be reflected in my final balloon payment. If my loan has a variable interest rate with a term of more than 60 months, the amount of my regular payment may change in the 61st calendar month and every 60th calendar month thereafter. My regular payment will never increase more than 25% of the previously calculated payment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. However, after the final payment change, my payment habits and any loan extensions or interest rate changes may change the amount of my finance charge which will be reflected in my final balloon payment.

BEB

**INSURANCE:** If I have given you a security interest in my property, I agree to keep physical damage insurance covering loss or damage to any collateral for the term of this loan. My insurance must cover any physical damage, including damage caused by flood(s), if you require such coverage. My insurance shall be maintained in the amounts and for the periods that you require. If I fail to maintain adequate coverage as described above, you may, at either your option or as required by law, obtain coverage to protect your rights in accordance with other provisions of this Note. If collateral is lost, damaged or destroyed, I agree that you may use any insurance settlement either to repair the collateral or to apply it to my debt. I agree to assign the proceeds of any insurance to you to the extent of the debt I owe and agree that the insurance company may pay you directly. I agree that you have an irrevocable power of attorney to file proofs of loss and anything else necessary to obtain the insurance proceeds in my name. Loss, damage or destruction of collateral will not release me from any liability under this Note.

**SECURITY AGREEMENT:** If I have given you a security interest in any collateral, I pledge as security for repayment of this loan the collateral which includes any accessories, equipment, replacement parts installed in the collateral, any accessions to the collateral, and the proceeds of collateral. This security interest also covers (1) insurance premiums and other similar charges, (2) proceeds of any insurance policies or similar coverage on the collateral, and (3) proceeds of any insurance policies on my life or health which are financed in this Note. In addition, I give you a security interest in any collateral (other than household goods or principal dwelling) which secures any other loans I have with you, now or in the future. You expressly waive as collateral for this loan any security interest in collateral I use as my principal dwelling and household goods for any other existing or future transactions between us.

If I grant you a security interest in securities as collateral, I agree to deliver immediately to you, fully endorsed, any certificates for shares representing any stock dividend, and stock split-up, or a right to subscribe. I further pledge and agree to deliver to you, upon demand, additional collateral satisfactory to you and in accordance with all margin requirements.

**EVENTS OF DEFAULT:** I will be in default under this Note if any of the following events occur: (1) I fail to make a payment as required under this Note; (2) The prospect of payment, performance, or realization by you on my collateral is significantly impaired; or (3) If I fail to perform any term(s) of any Mortgage which secures payment of the Note.

**REMEDIES ON DEFAULT:** If this is a consumer credit transaction which is payable in two or more installments and I fail to make any payment within 10 days of its due date, you will give me one opportunity to cure the payment default by making the payment. If (1) I do not cure the default within 20 days, (2) I am ever late with payment again, or (3) the prospect of payment or realization of collateral is significantly impaired, you may demand that this loan be paid immediately.

**ATTORNEY'S FEES:** If you hire an attorney to collect what I owe, I agree to pay your reasonable attorney's fees, up to 15% of the unpaid debt.

**OTHER PROVISIONS:** Each borrower, including co-maker, co-signer, surety, endorser or guarantor, individually and jointly, waive presentment, demand, protest or notice of protest and any notice that you are demanding payment in full of the entire outstanding balance because of default or for any other reason. You may accept late or partial payments, even if they are marked "payment in full," without losing any of your rights. If you receive any payment 15 days or more after the due date, I agree to pay you a late charge of 5% of my payment. You may exercise your right to setoff against any funds I have on deposit with you. The information in my credit application is true and complete. This note contains the entire agreement between us except, to the extent it becomes necessary, reference, for further details, is made to your variable rate consumer lending procedures and programs, as may change from time to time. Any waiver or change in the terms of this Note must be in writing and signed by you. No oral changes are binding. This Note is governed by the laws of the United States and South Carolina. Your failure to insist upon prompt payment or to enforce any other right shall not be deemed a waiver of any such right or privilege. I understand that my payment habits and any loan extensions may also change the amount of finance charge and total payments disclosed on the front of this Note. This loan cannot be assumed by any other party. If I make a payment by check and a check is returned unpaid for any reason, I agree to pay a charge of \$20 for each returned payment check. Said returned check fee may be added to my outstanding principal balance hereunder, and accrue interest at the rate provided in this note, without notice.

**ARBITRATION:** At my, Guarantor or your request, any controversy arising out of or relating to this loan shall be decided by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Any controversy that is related to a class action or is part of a class action shall, at my, Guarantor or your request, be referred for decision by arbitration as provided herein. A judgment upon award may be entered by any court having jurisdiction.

Notwithstanding the preceding binding arbitration provisions, I, Guarantor or you may employ or exercise freely, either alone, in conjunction with or during an arbitration proceeding, any provisional or ancillary remedies including foreclosure and sale of any collateral by judicial or non-judicial foreclosure, self help, set-off, attachment, garnishment and sequestration. Preservation of these remedies does not limit the power of the arbitrator to grant similar remedies.

**ASSUMPTION NOTICE:** The debt secured hereby is subject to call in full or the terms thereof being modified in the event the real estate securing the debt is sold, conveyed or otherwise transferred.

**DRUGS AND LIQUOR:** I promise you that I do not have a reputation for the unlawful use of drugs or liquor, I also promise you that I have never been arrested, nor convicted, for any violation of the drug or of the liquor laws of any State or of the United States.

**INFORMATION REPORTED TO CONSUMER REPORTING AGENCIES:** Under the Fair Credit Reporting Act, I have the right to notify you if I believe you have reported inaccurate information about my account to any Consumer Reporting Agency. Such notices should be sent in writing and include my complete name, current address, Social Security number, telephone number, account number, type of account, specific item of dispute and the reason why I believe the information reported is in error. I must send my notice to: First Union, P.O. Box 560726, Charlotte, NC 28256-0726.

**SHARING INFORMATION REGARDING MY FIRST UNION RELATIONSHIPS.** I understand that from time to time you may share and use with any First Union Corporate Affiliates (e.g. First Union National Bank, First Union Brokerage Services, Inc., First Union Mortgage Corporation, etc.) my account and "other information" as you in your sole discretion consider necessary or appropriate. I have the right to direct you not to share my "other information" by notifying you in writing. I must send my name, address, Social Security number, telephone number and account type and number to: First Union, P.O. Box 11726, Roanoke, VA 24022-1726.

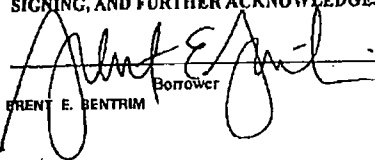
**GUARANTY OF THIRD PERSONS:** The undersigned jointly and severally guarantee the payment, when due, to any holder hereof of all amounts from time to time owing on this Note. The undersigned jointly and severally waive notice of acceptance of this guaranty, of any extensions in time of payment, of sale of any collateral, and of all other notices to which the undersigned would otherwise be entitled by law and agree to pay all amounts owing hereunder upon demand, without requiring any prior action or proceedings against the borrowers. The undersigned further agrees that the failure by the holder of this instrument to perfect any security interest granted by the foregoing Note shall not affect in any manner the liability of any guarantor hereon. The undersigned acknowledges receipt and execution of the Co-Signers Notice before signing this guaranty.

\_\_\_\_\_  
Guarantor - Co-Signer (SEAL)      \_\_\_\_\_ (SEAL)  
Guarantor - Co-Signer

**THIRD PARTY OWNER(S) AGREEMENT:** The undersigned, as owner(s) or co-owner(s) of the collateral, grant you a security interest in the collateral and agree that the terms and conditions of this Note shall apply to the collateral.

\_\_\_\_\_  
Owner or Co-Owner (SEAL)      \_\_\_\_\_ (SEAL)  
Owner or Co-Owner

**EACH BORROWER ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE, FULLY COMPLETED PRIOR TO SIGNING, AND FURTHER ACKNOWLEDGES THAT THIS IS A SEALED INSTRUMENT.**

 \_\_\_\_\_ (SEAL)      \_\_\_\_\_ (SEAL)  
Brent E. Benthim      Borrower  
Borrower

<b>Return To:</b> <u>First Union National Bank</u> <u>Consumer Loan Operations</u> <u>P.O. Box 50010</u> <u>Roanoke, VA 24022</u> <u>Parcel No:</u>	<b>Prepared By:</b> <hr/> <hr/> <hr/> <hr/>
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**MORTGAGE**

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrin

(herein "Borrower"), and the Mortgagee, First Union National Bank, a national banking association organized and existing under the laws of the United States of America, whose address is First Union National Bank, 301 South College Street, NC 0630, Charlotte, North Carolina 28288-0630 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 182700.00 which indebtedness is evidenced by Borrower's Note dated 03/12/02 extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 04/11/32

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described Property located in the County of Charleston, State of South Carolina:

SEE ATTACHED EXHIBIT "A" INCORPORATED HEREIN BY REFERENCE

which has the address of 10 NICHOLSON STREET  
CHARLESTON SC 29407  
and Parcel No. 421-02-00-107 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the Property covered by this Mortgage; and all of the foregoing, together with said Property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenant and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

Borrower covenants that Borrower is lawfully seized 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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

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EXHIBIT E

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.
  2. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.
  3. **Hazard Insurance.** a) 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 floods or flood, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 5.
  - b) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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.
  - c) Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. 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 any excess paid to Borrower. If Borrower abandons the Property or does not answer within thirty (30) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.
  - d) Except as provided in subparagraph 3(e) below, should partial or complete destruction or damage occur to the Property, Borrower hereby agrees that any and all instruments evidencing insurance proceeds received by Lender as a result of said damage or destruction, shall be placed in a non-interest bearing escrow account with Lender. At Lender's discretion, Lender may release some or all of the proceeds from escrow after Borrower presents Lender with a receipt(s), invoice(s), written estimate(s) or other document(s) acceptable to Lender which relates to the repair and/or improvements of the Property necessary as a result of said damage and/or destruction. Absent an agreement to the contrary, Lender shall not be required to pay Borrower any interest on the proceeds held in the escrow account. Any amounts remaining in the account after all repairs and/or improvements have been made to the Lender's satisfaction, shall be applied to the sums secured by this Mortgage. Borrower further agrees to cooperate with Lender by endorsing all checks, drafts and/or other instruments evidencing insurance proceeds and any necessary documents. Should Borrower fail to provide any required endorsement and/or execution within thirty (30) days after Lender sends Borrower notice that Lender has received an instrument evidencing insurance proceeds, or document(s) requiring Borrower's signature, Borrower hereby authorizes Lender to endorse said instrument and/or document(s) on Borrower's behalf, and collect and apply said proceeds at Lender's option, either to restoration or repair of the Property or to sums secured by this Mortgage. It is not the intention of either party that this escrow provision, and/or Lender's endorsement or execution of an instrument(s) and/or document(s) on behalf of Borrower create a fiduciary or agency relationship between Lender and Borrower.
  - e) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 15 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument.
4. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.
  5. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest in the Property.
- Any amounts disbursed by Lender pursuant to this paragraph 5, with interest thereon from the date of disbursement, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon

notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

**6. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

**8. Borrower Not Released; Forbearance by Lender Not a Waiver.** The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) the sale of all or a part of the premises; (b) the assumption by another party of the Borrower's obligations hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent permitted by applicable law.

Any forbearance by Lender in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**9. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** 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 paragraph 14, 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 and benefit the successors and assigns of Lender.

**10. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate in writing by notice to Lender as provided herein, and any other person personally liable on this Note as these persons' names and addresses appear in the Lender's records at the time of giving notice and (b) any notice to Lender shall be given by first class mail to Lender's address at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**11. Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**12. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note, this Mortgage and Rider(s) at the time of execution or after recordation hereof.

**13. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**14. Transfer of the Property or a Beneficial Interest in Borrower; Assumption.** As used in this paragraph 14, "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 escrow 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

BEP

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 federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with paragraph 10 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 by this Security Instrument without further notice or demand on Borrower.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**15. Default; Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived. Lender may invoke the power of sale hereby granted. Lender shall have the right to enter upon and take possession of the Property hereby conveyed or shall without taking such possession have the right to sell the same at public auction for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale, in some newspaper published in said county, and upon payment of the purchase money, the Lender, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors, a good and sufficient deed to the Property sold; the Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said Property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of said sale; and fourth, the balance, if any, shall be paid over to the said Borrowers or to whomever then appears of record to be the owner of said Property. The Lender may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, this Note and Notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 15 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action, as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**17. Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that so long as Borrower is not in default hereunder, Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration and/or foreclosure under paragraph 15 hereof, or abandonment of the Property, Lender, in person or by agent, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. The Lender shall be liable to account only for those rents actually received prior to the foreclosure sale as provided in paragraph 15. Lender shall not be liable to account to Borrower or to any other person claiming any interest in the Property for any rents received after foreclosure.

**18. Loan Charges.** If the loan secured by this Mortgage 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 permitted limits, then: (a) any such loan charges 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 under the Note.

**19. Legislation.** If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rider, unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Mortgage or the Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

**20. Satisfaction.** Upon payment of all sums secured by this Mortgage, the conveyance of the Property pursuant to this Mortgage shall become null and void and Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

**21. Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of dower and curtesy in the Property.

B9B

22. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 22, "Hazardous Substances" are those substances defined as toxic or Hazardous Substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of:

Robert J. Donaldson, III  
Witness

Robert J. Donaldson, III

Witness Name Typed or Printed

Bridget G. Legare  
Witness

Bridget G. Legare

Witness Name Typed or Printed

Brent E. Bentrin (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

State of South Carolina

County of Charleston

Before me, the undersigned Notary Public, personally appeared Robert J. Donaldson, III

who being duly sworn, deposed and said that (s)he saw Brent E. Bentrin

sign, seal and deliver the foregoing Mortgage and that (s)he, together with

Bridget G. Legare

witnessed the execution thereof.

SWORN to and subscribed before me this 12th day of March, 2002.

Bridget G. Legare  
Witness

Bridget G. Legare (SEAL)  
Notary Public for South Carolina

Bridget G. Legare

Notary Public Name (Typed or Printed)

My Commission Expires: 1/31/12

BKC: 402PG188

**Davidson  
Bennett  
& Wigger**  
ATTORNEYS AT LAW

MAK

FILED  
C402-182  
2002 APR -3 PH 3: 15  
CHARLES LYERAND  
REGISTER  
CHARLESTON COUNTY SC

12.00  
c

**EXHIBIT "A"**

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Bymes Downs, which plat was made by W. A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat book F, Page 178 and on plat made by W. A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS # 421-02-00-107

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Bank, National Association s/b/m  
to First Union National Bank,

Plaintiff,

vs.

Brent E. Bentrim, Citibank South Dakota,  
N.A., United States of America, acting  
through its agency, Department of Treasury -  
Internal Revenue Service and County of  
Charleston,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 09-CP-10-4700

**SUMMONS AND NOTICES**

(Non-Jury)

BY  
FORECLOSURE  
OF REAL ESTATE  
MORTGAGE

JULIE J. ARMSTRONG  
CLERK OF COURT

2009 JUL 30 AM 11:16

FILED

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 3800 Fernandina Road, Suite 110, Columbia, SC 29210, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

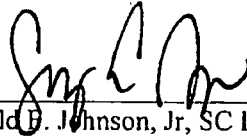
YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Attorney for Plaintiff.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an Order of Reference or the Court may issue a general Order of Reference of this action to a Master-in-Equity/Special Referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

B&S No.: 09-07779

09. 12543

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Attorney for Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the 10<sup>th</sup> day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage and the Complaint attached hereto.



Ronald F. Johnson, Jr, SC Bar #16931  
Mark A. Pearson, SC Bar #15926  
Brian L. Campbell, SC Bar #74521  
John M. Mosser, SC Bar #71929  
Andrew M. Thompson, SC Bar #71090  
Suzanne E. Brown, SC Bar#76440  
Brock & Scott, PLLC  
3800 Fernandina Road, Suite 110  
Columbia, SC 29210  
Phone 888-726-9953 Fax 866-676-7658  
Attorneys for Plaintiff

Dated: 7 / 27 / 09  
Wilmington, North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Bank, National Association s/b/m to  
First Union National Bank,

Plaintiff,

vs.

Brent E. Bentrin, Citibank South Dakota, N.A.,  
United States of America, acting through its  
agency, Department of Treasury - Internal  
Revenue Service and County of Charleston,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 09-P-10.4700

COMPLAINT

(Non-Jury)

FORECLOSURE  
OF REAL ESTATE  
MORTGAGE

(Deficiency Judgment Demanded as to Defendant  
Brent E. Bentrin)

FILED  
2009 JUL 30 AM 11:11  
JULIE J. ARMSTRONG  
CLERK OF COURT

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, Wachovia Bank, National Association s/b/m to First Union National Bank, is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant(s) Brent E. Bentrin, is a resident(s) and citizen(s) of the County of Charleston, State of South Carolina; and, Defendant(s) Citibank South Dakota, N.A is a business entity and is duly authorized to conduct business in the State of South Carolina; Defendant County of Charleston is an Agency of the State of South Carolina; and, Defendant(s) United States of America, acting through its agency, Department of Treasury - Internal Revenue Service is an Agency of the Federal Government.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Charleston, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on March 12, 2002, Brent E. Bentrin (hereinafter "Borrower(s)") made, executed, and delivered to First Union National Bank (hereinafter "Lender") a certain

B&S No.: 09-07779

Note in writing (hereinafter "Note"), wherein and whereby Brent E. Bentrin promised to pay to First Union National Bank, the principal sum of \$182,700.00, together with a variable rate of interest per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid. A copy of said Note is attached hereto as Exhibit "A."

5. In order to secure the payment of said Note, the said Brent E. Bentrin (hereinafter "Mortgagor(s)"), did on the same date, to wit, March 12, 2002, make, execute, and deliver to First Union National Bank, its successors and assigns, a certain mortgage (hereinafter "Mortgage") securing real property located in the County and State aforesaid and described in said Mortgage (hereinafter "Property"). See Attached Exhibit "B."
6. On April 3, 2002, said Mortgage was recorded in the Charleston County Registry in Mortgage Book C402 at Page 182.
7. The Mortgage evidences and secures the repayment of money advanced by the Lender to, or on behalf of, the Mortgagor(s) and constitutes a valid second lien on the Property.
8. As required by an administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Servicer states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, this loan is not eligible for modification under the HMP because it is a second mortgage.
9. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant(s) prior to the commencement of this action.

10. In and by the terms of said Note and the Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.
11. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said Note be placed in the hands of an attorney for collection after default.
12. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker(s) of its Note, Brent E. Bentrin. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.
13. The installments of principal and interest falling due from and after October 11, 2008, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of \$174,504.20, together with a variable rate of interest per annum from the date of the last payment, together with reasonable attorneys fees for the collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of

the Mortgage, should be added to the amount of the debt.

14. Upon information and belief, said information having been obtained from the records of Charleston County, South Carolina, the Defendant(s) below named has/have or may claim to have some interest in or lien upon the Property by virtue of the matters and things herein below alleged, to-wit:

1. The Defendant, Citibank South Dakota, NA has or may claim to have some interest in the Property by virtue of that certain judgment obtained by it against Brent Bentrin in the amount of \$2,335.20 plus interest filed November 2, 2004 in Judgment Roll # 2004-CP-10-0569. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the Property.

2. The Defendant, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, has or may claim to have some interest in the subject property by virtue of Tax Lien Serial Number 311265706 in the amount of \$9,575.39 and filed August 28, 2006 in Book 2006 at Page 12886 against Brent E. Bentrin. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the Property.

3. The Defendant, County of Charleston, has or may claim to have some interest in the subject property by virtue of Transcript of Judgment in the amount of \$169.00 filed September 29, 2006 in Judgment Roll # 2006-JG-10-1241 against Brent E. Bentrin. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the Property.

WHEREFORE, Plaintiff prays judgment that:

1. The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. Plaintiff's Mortgage be declared a valid second lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been

paid by Plaintiff, together with attorney's fees and for the costs of this action.

3. The Property be sold according to law and the practice of this Court. the equity of redemption be barred and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

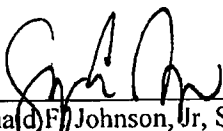
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Brent E. Bentrim, in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

4. For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Charleston County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Property without delay, and to keep the successful bidder or his assigns in such peaceable possession.

  
\_\_\_\_\_  
Ronald F. Johnson, Jr, SC Bar #16931  
Mark A. Pearson, SC Bar #15926  
Brian L. Campbell, SC Bar #74521  
John M. Mosser, SC Bar #71929  
Andrew M. Thompson, SC Bar #71090  
Suzanne E. Brown, SC Bar#76440  
Brock & Scott, P.L.L.C  
3800 Fernandina Road, Suite 110  
Columbia, SC 29210  
Phone 888-726-9953 Fax 866-676-7658  
Attorneys for Plaintiff

Dated: 7/27/09  
Wilmington, North Carolina

**NOTICE REQUIRED BY THE FAIR DEBT  
COLLECTION PRACTICES ACT  
15 U.S.C. Section 1601, As Amended**

1. The amount of the debt is stated in the Complaint attached hereto.
2. The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt is described in the Complaint attached hereto and evidenced by the copy of the Mortgage Note attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original written requests should be addressed to Brock & Scott, PLLC, 3800 Fernandina Road, Suite 110, Columbia, SC 29210.
6. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

**\*\*\* THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN  
DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING  
PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS  
AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS\*\*\***

B&S No.: 09-07779

**NEGOTIABLE PROMISSORY NOTE**  
(Fixed or Variable Interest Rate)



BK: 41      LOC:      LN TP: 39  
RC: 0006774      0180000/00

Ref. No. 0205200092

Date: 03/12/02      Acct. No.

\$182700.00

CREDITOR: FIRST UNION NATIONAL BANK,

301 SOUTH TRYON STREET, NCS434  
CHARLOTTE, NC 28288-5434

BORROWER(S): BRENT E. BENTRIM  
10 NICHOLSON STREET  
CHARLESTON, SC 28407

FOR VALUE RECEIVED, I the Borrower (which means everyone who signs below as a borrower, jointly and severally), promise to pay FIRST UNION NATIONAL BANK, or order, the principal amount of this loan as stated above (the Amount Financed, plus the prepaid finance charge, if any, as disclosed in the Itemization of Amount Financed), together with interest from the date of this Note on the unpaid principal balance at the interest rate for a fixed or variable rate loan disclosed below until fully paid. "I," "me," and "my" refer to Borrower(s) while "you" and "your" refer to FIRST UNION NATIONAL BANK.

If indicated, this is a fixed rate loan and my Interest Rate is

If indicated, this is a variable rate loan and my initial Interest Rate is 4.88 which is tied to the Wall Street Journal (WSJ) "Prime Rate."

The Initial Interest Rate is computed as follows: Prime Rate of 4.75      % Plus .24      Percentage Points.

ANNUAL PERCENTAGE RATE: The cost of my credit as a yearly rate.	FINANCE CHARGE: The dollar amount the credit will cost me.	Amount Financed. The amount of credit provided to me or on my behalf.	Total of Payments. The amount I will have paid after I have made all payments as scheduled.
5.13 %	\$ 174315.60	\$ 180000.00	\$ 354315.60

I have the right to receive at this time an itemization of the Amount Financed: ( ) I want an itemization ( ) I do not want an itemization.  
(Initials) (Initials)

**My payment schedule will be:**

No. of Payments	Payment Amount	Frequency	Due Date	No. of Payments	Payment Amount	Frequency	Due Date
360	\$984.21	M	05/11/02		\$		
	\$				\$		

**Variable Rate.**

If my loan, as indicated above, has a variable rate, my interest rate may increase during the term of my loan based on movement of the WSJ Prime Rate. My interest rate will not increase more than once each month. If my loan is secured by a principal dwelling for a term greater than one year, disclosures about the variable rate have been provided to me earlier.

If indicated, my loan has multiple payments for a term of more than 60 months. Any increase in my interest rate will increase the number of payments and may increase the payment amounts. If my loan were for \$10,000 for 144 months at 12% and the interest rate increased to 12.50% in three months, my regular payment would increase by \$7.30 beginning with my Sixty-First payment.

**MAXIMUM RATE.**  
If indicated, the maximum interest rate will not exceed: ~~15.00~~  
18.00

If indicated, my loan has multiple payments for a term of 60 months or less. Any increase in my interest rate will increase the number of payments. If my loan were for \$10,000 for 60 months at 12% and the interest rate increased to 12.50% in three months I would have to make one additional payment of \$196.56.

If indicated, my loan has a single payment. Any increase in my interest rate will increase the amount due at maturity. If my loan were for \$10,000 at 12% for 90 days, and my interest rate increased to 12.25% in 20 days, then my final payment would increase by \$4.80.

Security. I am giving a security interest in:

the goods or property being purchased.       other (describe): REAL ESTATE

Collateral securing other loans with you may also secure this loan, except my principal dwelling or household goods.

Filing Fees. \$      Prepayment. If I pay off early, I will not have to pay a penalty and I may be entitled to a refund of part of any prepaid finance charge.

Late charges. If you receive any payment 15 days or more after the due date, I agree to pay you a late charge of 5% of my payment.

If indicated, this loan is for the purchase of property used as my principal dwelling and someone buying my principal dwelling cannot assume the remainder of my loan on the original terms.

If indicated, the Annual Percentage Rate does not take into account my required deposit.

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EXHIBIT   A

I may see my contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled due date, and prepayment refunds and penalties.

**INSURANCE DISCLOSURES**

I understand that credit life and credit disability insurance are not required to get this loan. You will not provide it unless I sign this credit insurance section and agree to pay the cost. If I want any of these insurance coverages, I must be sure that the insurance coverage I want is indicated, that the amount of the premium is filled in, and that I have signed below. If I request credit life insurance or credit disability insurance, I have the right to rescind the insurance policy or certificate of insurance by giving written notice to the insurance company within 30 days from the date I received the policy or certificate. The term and amount of any insurance I request is for the stated term/amount of this loan unless otherwise indicated below.

INSURED #1	INSURED #2	TYPE	PREMIUM	TERM IN MOS.	AMT. OF COVERAGE	DISABILITY MONTHLY BENEFIT
_____	_____	Credit Life	\$ _____	_____	\$ _____	
_____	_____	Credit Disability	\$ _____	_____	\$ _____	\$ _____

If this loan is secured, I may obtain property insurance from any insurer I choose.

I request coverage(s) checked for the premiums shown above

\_\_\_\_\_  
Signature of Insured #1

I request coverage(s) checked for the premiums shown above

\_\_\_\_\_  
Signature of Insured #2

**PROPERTY AS SECURITY**

To secure payment of this Note I grant you a security interest in the collateral described below, or in the Mortgage as indicated by the date below or on Schedule A, plus all additions, replacements or accessions to, and proceeds of the collateral. This collateral will secure any other loans with you, now or in the future unless the collateral is used as a principal dwelling or household goods. Any additional collateral is listed on the attached Schedule A.

Real property located at  
10 NICHOLSON STREET  
CHARLESTON

SC 29407

As more fully described on mortgage dated 03/12/02

\_\_\_\_ If indicated, I (we) authorize you to draft all amounts due from my (our) deposit account as provided in my (our) application.

**INTEREST RATE CHANGES: VARIABLE RATE:** If my loan is a variable rate loan, I understand and agree that you will adjust the number and amount of my payments, the interest rate, the term to maturity and other relevant terms of my loan in accordance with your variable rate consumer lending procedures and programs, as they may change from time to time, the terms of which are described herein. My interest rate will change in an amount equal to the change in the WSJ Prime Rate. WSJ Prime Rate is announced and changed, from time to time. I understand that this rate is not represented or intended to be the lowest or most favorable rate of interest offered by you to any of your borrowers. My interest rate will be the sum of the number of percentage points, as indicated on the front of this Note, plus WSJ Prime Rate, as it may change from time to time. My interest rate may not change more than once each month during the term of my loan which will occur on the first day of each calendar month and will be based on WSJ "Prime Rate" published in the Charlotte, N.C. edition on the 25th day of the prior calendar month. If more than one rate is published, you will use the higher rate as the WSJ Prime Rate. If the 25th falls on a day when the WSJ Prime Rate is not published, the WSJ Prime Rate will be the rate published the last day prior to the 25th. Changes in the interest rate will be subject to any maximum rate stated in this Note. If no maximum interest rate is indicated, my interest rate will not exceed the highest interest rate permitted by applicable law. If the amount of any payment does not pay all interest due, you will collect the unpaid interest from future payments.

**PAYMENT ADD PROVISIONS:** If my loan has an original term of 60 months or less, you will extend the number of my payments if on the date of my final scheduled payment the amount of the scheduled payment will not pay the outstanding principal balance and unpaid interest. You will continue to bill me for my payment as long as any balance remains unpaid on my loan.

**VARIABLE RATE PAYMENT CHANGES:** If my loan is a variable rate loan with an original term of more than 60 months, the amount of my payment may change in the 61st calendar month and every 60th calendar month thereafter. Prior to each payment change date, you will calculate a payment estimated to pay the outstanding principal balance and any unpaid interest at the then current interest rate during the remaining term of the loan. My payment will never increase more than 25% of the previously calculated payment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. At the final payment change, if necessary, you will increase my payment up to 25% of my previous payment and you will continue to bill me for my payment as long as any balance remains unpaid on my loan.

**BALLOON NOTE PROVISIONS:** If my payment schedule on this Promissory Note indicates a balloon payment (a single payment scheduled at the end of the loan term which is larger than any of the earlier scheduled payments) as a final payment, the following provisions apply: If my loan has a fixed interest rate, my payment habits and any loan extensions may change the amount of my finance charge which will be reflected in my final balloon payment. If my loan has a variable interest rate with a term of 60 months or less, my payment habits and any loan extensions or interest rate changes may change the amount of my finance charge which will be reflected in my final balloon payment. If my loan has a variable interest rate with a term of more than 60 months, the amount of my regular payment may change in the 61st calendar month and every 60th calendar month thereafter. My regular payment will never increase more than 25% of the previously calculated payment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. However, after the final payment change, my payment habits and any loan extensions or interest rate changes may change the amount of my finance charge which will be reflected in my final balloon payment.

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**INSURANCE:** If I have given you a security interest in my property, I agree to keep physical damage insurance covering loss or damage to any collateral for the term of this loan. My insurance must cover any physical damage, including damage caused by flood(s), if you require such coverage. My insurance shall be maintained in the amounts and for the periods that you require. If I fail to maintain adequate coverage as described above, you may, at either your option or as required by law, obtain coverage to protect your rights in accordance with other provisions of this Note. If collateral is lost, damaged or destroyed, I agree that you may use any insurance settlement either to repair the collateral or to apply it to my debt. I agree to assign the proceeds of any insurance to you to the extent of the debt I owe and agree that the insurance company may pay you directly. I agree that you have an irrevocable power of attorney to file proofs of loss and anything else necessary to obtain the insurance proceeds in my name. Loss, damage or destruction of collateral will not release me from any liability under this Note

**SECURITY AGREEMENT:** If I have given you a security interest in any collateral, I pledge as security for repayment of this loan the collateral which includes any accessories, equipment, replacement parts installed in the collateral, any accessions to the collateral, and the proceeds of collateral. This security interest also covers (1) insurance premiums and other similar charges, (2) proceeds of any insurance policies or similar coverage on the collateral, and (3) proceeds of any insurance policies on my life or health which are financed in this Note. In addition, I give you a security interest in any collateral (other than household goods or principal dwelling) which secures any other loans I have with you, now or in the future. You expressly waive as collateral for this loan any security interest in collateral I use as my principal dwelling and household goods for any other existing or future transactions between us.

If I grant you a security interest in securities as collateral, I agree to deliver immediately to you, fully endorsed, any certificates for shares representing any stock dividend, and stock split-up, or a right to subscribe. I further pledge and agree to deliver to you, upon demand, additional collateral satisfactory to you and in accordance with all margin requirements.

**EVENTS OF DEFAULT:** I will be in default under this Note if any of the following events occur: (1) I fail to make a payment as required under this Note; (2) The prospect of payment, performance, or realization by you on my collateral is significantly impaired; or (3) If I fail to perform any term(s) of any Mortgage which secures payment of the Note.

**REMEDIES ON DEFAULT:** If this is a consumer credit transaction which is payable in two or more installments and I fail to make any payment within 10 days of its due date, you will give me one opportunity to cure the payment default by making the payment, if (1) I do not cure the default within 20 days, (2) I am ever late with payment again, or (3) the prospect of payment or realization of collateral is significantly impaired, you may demand that this loan be paid immediately.

**ATTORNEY'S FEES:** If you hire an attorney to collect what I owe, I agree to pay your reasonable attorney's fees, up to 15% of the unpaid debt.

**OTHER PROVISIONS:** Each borrower, including co-maker, co-signer, surety, endorser or guarantor, individually and jointly, waive presentment, demand, protest or notice of protest and any notice that you are demanding payment in full of the entire outstanding balance because of default or for any other reason. You may accept late or partial payments, even if they are marked "payment in full," without losing any of your rights. If you receive any payment 15 days or more after the due date, I agree to pay you a late charge of 5% of my payment. You may exercise your right to setoff against any funds I have on deposit with you. The information in my credit application is true and complete. This note contains the entire agreement between us except, to the extent it becomes necessary, reference, for further details, is made to your variable rate consumer lending procedures and programs, as may change from time to time. Any waiver or change in the terms of this Note must be in writing and signed by you. No oral changes are binding. This Note is governed by the laws of the United States and South Carolina. Your failure to insist upon prompt payment or to enforce any other right shall not be deemed a waiver of any such right or privilege. I understand that my payment habits and any loan extensions may also change the amount of finance charge and total payments disclosed on the front of this Note. This loan cannot be assumed by any other party. If I make a payment by check and a check is returned unpaid for any reason, I agree to pay a charge of \$20 for each returned payment check. Said returned check fee may be added to my outstanding principal balance hereunder, and accrue interest at the rate provided in this note, without notice.

**ARBITRATION:** At my, Guarantor or your request, any controversy arising out of or relating to this loan shall be decided by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Any controversy that is related to a class action or is part of a class action shall, at my, Guarantor or your request, be referred for decision by arbitration as provided herein. A judgment upon award may be entered by any court having jurisdiction.

Notwithstanding the preceding binding arbitration provisions, I, Guarantor or you may employ or exercise freely, either alone, in conjunction with or during an arbitration proceeding, any provisional or ancillary remedies including foreclosure and sale of any collateral by judicial or non-judicial foreclosure, self help, set-off, attachment, garnishment and sequestration. Preservation of these remedies does not limit the power of the arbitrator to grant similar remedies.

**ASSUMPTION NOTICE:** The debt secured hereby is subject to call in full or the terms thereof being modified in the event the real estate securing the debt is sold, conveyed or otherwise transferred.

**DRUGS AND LIQUOR:** I promise you that I do not have a reputation for the unlawful use of drugs or liquor, I also promise you that I have never been arrested, nor convicted, for any violation of the drug or of the liquor laws of any State or of the United States.

**INFORMATION REPORTED TO CONSUMER REPORTING AGENCIES:** Under the Fair Credit Reporting Act, I have the right to notify you if I believe you have reported inaccurate information about my account to any Consumer Reporting Agency. Such notices should be sent in writing and include my complete name, current address, Social Security number, telephone number, account number, type of account, specific item of dispute and the reason why I believe the information reported is in error. I must send my notice to: First Union, P.O. Box 560726, Charlotte, NC 28256-0726.

**SHARING INFORMATION REGARDING MY FIRST UNION RELATIONSHIPS.** I understand that from time to time you may share and use with any First Union Corporate Affiliates (e.g. First Union National Bank, First Union Brokerage Services, Inc., First Union Mortgage Corporation, etc.) my account and "other information" as you in your sole discretion consider necessary or appropriate. I have the right to direct you not to share my "other information" by notifying you in writing. I must send my name, address, Social Security number, telephone number and account type and number to: First Union, P.O. Box 11726, Roanoke, VA 24022-1726.

**GUARANTY OF THIRD PERSONS:** The undersigned jointly and severally guarantee the payment, when due, to any holder hereof of all amounts from time to time owing on this Note. The undersigned jointly and severally waive notice of acceptance of this guaranty, of any extensions in time of payment, of sale of any collateral, and of all other notices to which the undersigned would otherwise be entitled by law and agree to pay all amounts owing hereunder upon demand, without requiring any prior action or proceedings against the borrowers. The undersigned further agrees that the failure by the holder of this instrument to perfect any security interest granted by the foregoing Note shall not affect in any manner the liability of any guarantor hereon. The undersigned acknowledges receipt and execution of the Co-Signers Notice before signing this guaranty.

\_\_\_\_\_  
Guarantor - Co-Signer (SEAL)

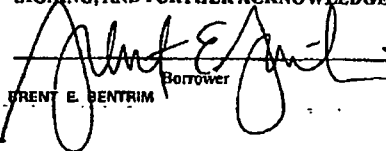
\_\_\_\_\_  
Guarantor - Co-Signer (SEAL)

**THIRD PARTY OWNER(S) AGREEMENT:** The undersigned, as owner(s) or co-owner(s) of the collateral, grant you a security interest in the collateral and agree that the terms and conditions of this Note shall apply to the collateral.

\_\_\_\_\_  
Owner or Co-Owner (SEAL)

\_\_\_\_\_  
Owner or Co-Owner (SEAL)

**EACH BORROWER ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE, FULLY COMPLETED PRIOR TO SIGNING, AND FURTHER ACKNOWLEDGES THAT THIS IS A SEALED INSTRUMENT.**

  
\_\_\_\_\_  
Brent E. Bentrin  
Borrower (SEAL)

\_\_\_\_\_  
Borrower (SEAL)

<b>Return To:</b>	<b>Prepared By:</b>
<u>First Union National Bank</u>	_____
<u>Consumer Loan Operations</u>	_____
<u>P.O. Box 50010</u>	_____
<u>Roanoke, VA 24022</u>	_____
<b>Parcel No:</b>	_____

**MORTGAGE**

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrin

(herein "Borrower"), and the Mortgagee, First Union National Bank, a national banking association organized and existing under the laws of the United States of America, whose address is First Union National Bank, 301 South College Street, NC 0830, Charlotte, North Carolina 28288-0630 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 182700.00 which indebtedness is evidenced by Borrower's Note dated 03/12/02 extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 04/11/32

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described Property located in the County of Charleston State of South Carolina:

SEE ATTACHED EXHIBIT "A" INCORPORATED HEREIN BY REFERENCE

which has the address of 10 NICHOLSON STREET  
CHARLESTON SC 29407  
and Parcel No. 421-02-00-107 (herein "Property Address");

TOGETHER with all the Improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the Property covered by this Mortgage; and all of the foregoing, together with said Property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenant and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

Borrower covenants that Borrower is lawfully seized 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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

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EXHIBIT B

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.

**2. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

**3. Hazard Insurance.** a) 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 floods or flood, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 5.

b) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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.

c) Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. 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 any excess paid to Borrower. If Borrower abandons the Property or does not answer within thirty (30) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

d) Except as provided in subparagraph 3(e) below, should partial or complete destruction or damage occur to the Property, Borrower hereby agrees that any and all instruments evidencing insurance proceeds received by Lender as a result of said damage or destruction, shall be placed in a non-interest bearing escrow account with Lender. At Lender's discretion, Lender may release some or all of the proceeds from escrow after Borrower presents Lender with a receipt(s), invoice(s), written estimates(s) or other document(s) acceptable to Lender which relates to the repair and/or improvements of the Property necessary as a result of said damage and/or destruction. Absent an agreement to the contrary, Lender shall not be required to pay Borrower any interest on the proceeds held in the escrow account. Any amounts remaining in the account after all repairs and/or improvements have been made to the Lender's satisfaction, shall be applied to the sums secured by this Mortgage. Borrower further agrees to cooperate with Lender by endorsing all checks, drafts and/or other instruments evidencing insurance proceeds and any necessary documents. Should Borrower fail to provide any required endorsement and/or execution within thirty (30) days after Lender sends Borrower notice that Lender has received an instrument evidencing insurance proceeds, or document(s) requiring Borrower's signature, Borrower hereby authorizes Lender to endorse said instrument and/or document(s) on Borrower's behalf, and collect and apply said proceeds at Lender's option, either to restoration or repair of the Property or to sums secured by this Mortgage. It is not the intention of either party that this escrow provision, and/or Lender's endorsement or execution of an instrument(s) and/or document(s) on behalf of Borrower create a fiduciary or agency relationship between Lender and Borrower.

e) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 15 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument.

**4. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**5. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest in the Property.

Any amounts disbursed by Lender pursuant to this paragraph 5, with interest thereon from the date of disbursement, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon

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notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

**6. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

**8. Borrower Not Released; Forbearance by Lender Not a Waiver.** The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) the sale of all or a part of the premises; (b) the assumption by another party of the Borrower's obligations hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent permitted by applicable law.

Any forbearance by Lender in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**9. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** 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 paragraph 14, 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 and benefit the successors and assigns of Lender.

**10. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate in writing by notice to Lender as provided herein, and any other person personally liable on this Note as these persons' names and addresses appear in the Lender's records at the time of giving notice and (b) any notice to Lender shall be given by first class mail to Lender's address at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**11. Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**12. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note, this Mortgage and Rider(s) at the time of execution or after recordation hereof.

**13. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**14. Transfer of the Property or a Beneficial Interest in Borrower; Assumption.** As used in this paragraph 14, "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 escrow 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 federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with paragraph 10 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 by this Security Instrument without further notice or demand on Borrower.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**15. Default; Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived. Lender may invoke the power of sale hereby granted. Lender shall have the right to enter upon and take possession of the Property hereby conveyed or shall without taking such possession have the right to sell the same at public auction for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale, in some newspaper published in said county, and upon payment of the purchase money, the Lender, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors, a good and sufficient deed to the Property sold; the Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said Property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of said sale; and fourth, the balance, if any, shall be paid over to the said Borrowers or to whomsoever then appears of record to be the owner of said Property. The Lender may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, this Note and Notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 15 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action, as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**17. Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that so long as Borrower is not in default hereunder, Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration and/or foreclosure under paragraph 15 hereof, or abandonment of the Property, Lender, in person or by agent, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. The Lender shall be liable to account only for those rents actually received prior to the foreclosure sale as provided in paragraph 15. Lender shall not be liable to account to Borrower or to any other person claiming any interest in the Property for any rents received after foreclosure.

**18. Loan Charges.** If the loan secured by this Mortgage 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 permitted limits, then: (a) any such loan charges 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 under the Note.

**19. Legislation.** If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rider, unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Mortgage or the Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

**20. Satisfaction.** Upon payment of all sums secured by this Mortgage, the conveyance of the Property pursuant to this Mortgage shall become null and void and Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

**21. Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of dower and curtesy in the Property.

B9B

22. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 22, "Hazardous Substances" are those substances defined as toxic or Hazardous Substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of: [Signature] [Signature] (SEAL)  
Witness Borrower Brent E. Bentrin

Robert J. Donaldson, III (SEAL)  
Borrower

Witness Name Typed or Printed [Signature] (SEAL)  
Witness Borrower

Bridget G. Legare (SEAL)  
Borrower

State of South Carolina  
County of Charleston

Before me, the undersigned Notary Public, personally appeared Robert J. Donaldson, III  
who being duly sworn, deposed and said that (s)he saw Brent E. Bentrin

sign, seal and deliver the foregoing Mortgage and that (s)he, together with  
Bridget G. Legare

witnessed the execution thereof.

SWORN to and subscribed before me this 12th day of March 2002

[Signature] (SEAL)  
Witness Notary Public for South Carolina

Bridget G. Legare  
Notary Public Name (Typed or Printed)

My Commission Expires: 1/31/12

**Davidson  
Bennett  
& Wigger**  
ATTORNEYS AT LAW

BKC 402PG188

FILED

C402-182

2002 APR -3 PH 3:15

CHARLENE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

12.00  
c

*mm*

**EXHIBIT "A"**

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Bymes Downs, which plat was made by W. A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat book F, Page 178 and on plat made by W. A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS # 421-02-00-107

Oct 4, 2011 - MTC

1

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
  
BRENT E. BENTRIM, ) TRANSCRIPT OF RECORD  
PLAINTIFF, ) 2011-CP-10-2946  
V. )  
WELLS FARGO BANK, NA, )  
DEFENDANT. )

OCTOBER 5, 2011

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE

A P P E A R A N C E S:

WILLIAM SLOAN, ESQUIRE

ATTORNEY FOR THE PLAINTIFF

JANA BEBERGAL BAKER, ESQUIRE

ATTORNEY FOR THE DEFENDANT

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SHARON L. VIZER  
CIRCUIT COURT REPORTER

♀

2

I N D E X

Plaintiff's Motion to Compel.....3  
Certificate of Reporter.....11

\*\*NO EXHIBITS WERE INTRODUCED\*\*

♀

3

1                   Tuesday, October 5, 2011  
2           THE COURT: Bentrin vs. Wells Fargo.  
3           MR. SLOAN: Good afternoon, Your Honor.

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4 THE COURT: Good afternoon.

5 MS. BAKER: Good afternoon, Your Honor.

6 THE COURT: Counsel, if you'll state your name for  
7 the record and the party you represent.

8 MR. SLOAN: William Sloan, Your Honor, for the  
9 plaintiff. I just filed a notice of appearance this  
10 afternoon. I was just retained on the case.

11 THE COURT: Are you prepared to go forward at this  
12 time?

13 MR. SLOAN: Yes, ma'am, I am.

14 THE COURT: And you are?

15 MR. BENTRIM: I'm Mr. Bentrim.

16 THE COURT: All right. Thank you.

17 And, Ms. Baker, you represent Wells Fargo?

18 MS. BAKER: Yes, I do.

19 THE COURT: Have we heard matters in this case  
20 before?

21 MS. BAKER: That was a different Wells Fargo. That  
22 was the Williams case, actually.

23 THE COURT: All right. We're here on your motion  
24 to compel?

25 No, your motion to compel, correct?

♀

4

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1 MR. SLOAN: It's Mr. Bentrin's motion to compel.

2 THE COURT: Thank you. I have not had an

3 opportunity to review the memos, so I may take this

4 matter under advisement to give me an opportunity to do

5 so. Thank you.

6 MR. SLOAN: Thank you, Your Honor. This action was

7 filed by Mr. Bentrin against Wells Fargo as servicer of

8 his mortgage on property at Nicholson Street. Wells

9 Fargo had previously filed foreclosure against

10 Mr. Bentrin, and Mr. Bentrin answered that action and

11 disputed, A, the ownership of the note of Wells Fargo;

12 and B, their accurate accounting.

13 In that previous action Judge Scarborough --

14 THE COURT: All we're here for today is for the

15 original promissory note signed on March 12th, 2002,

16 right?

17 MR. SLOAN: Yes.

18 THE COURT: You want Wells Fargo to turn that over

19 to you, right?

20 MR. SLOAN: For production and inspection, yes,

21 ma'am.

22 THE COURT: All right. Can you do that, Ms. Baker?

23 MS. BAKER: No, I can't do that.

24 THE COURT: Why not?

Page 4

25 MS. BAKER: The rules don't allow it. I mean, the

5

1 loaner of the note can't give away the original note. We  
2 produced a copy. Rule 34 allows it. The Rules of  
3 Evidence 1001 says the copy is as good as the original.  
4 So we complied. They produced it, we produced a copy of  
5 it. That's all the rules require. So I ask that you  
6 deny their motion.

7 MR. SLOAN: Your Honor, Judge Scarborough in the  
8 previous foreclosure requested that Wells Fargo produce  
9 that original note for inspection, and Wells Fargo could  
10 not produce the original note and therefore he dismissed  
11 the case pending Wells Fargo refiling it.

12 And defendant's counsel has sent Mr. Bentrin a --  
13 we'll call it a demand letter dated September 27th where  
14 it certainly appears they are getting ready to file  
15 foreclosure again against Mr. Bentrin, in which case that  
16 case will almost be certainly referred to Judge  
17 Scarborough and he will almost certainly again request  
18 that Wells Fargo produce that original note for  
19 inspection.

20 THE COURT: Well, Counsel, tell me why a copy is  
21 not sufficient.

22 MR. SLOAN: A copy is not sufficient because we  
23 don't -- because first Union was the original holder, was  
24 the original creditor in the case, and we would like to  
25 inspect the original note to make sure that it was

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6

1 properly --

2 THE COURT: Counsel, Ms. Baker, can they come and  
3 look at the original note?

4 MS. BAKER: I think I'll request it with Wells  
5 Fargo. As you know, it's a huge institution so it may  
6 take -- it could take them -- it takes me a while to get  
7 in touch with them. It could take six weeks for them to,  
8 you know, get ahold of it, find it and send it over to  
9 me. So I can request it but I need plenty of time for  
10 them to do what they do because this note is a portfolio  
11 note. It's not securitized -- a securitized loan. And,  
12 actually, Wells Fargo is the holder of the note but it  
13 first started exactly as two banks merged. So the  
14 initial holder was First Union National Bank that merged  
15 with Wachovia, now it's Wells Fargo so...

16 But in terms of this motion we complied with the  
17 rule, I mean, the Rules of Evidence and the Rules of  
18 Civil Procedure. We sent a demand letter recently. The

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19 foreclosure action has not been filed yet. There are a  
20 bunch of claims, about five or six claims asserted  
21 against my client --

22 THE COURT: Counsel, is there any allegation or  
23 anything -- why is it that you need to physically see the  
24 note?

25 MR. SLOAN: Your Honor, that is standard protocol

7

1 in a foreclosure case, which I do expect Wells Fargo to  
2 refile. Even regardless if they do not file foreclosure  
3 if they cannot produce the original note as the servicer  
4 then that does lead cause to damages against Mr. Bentrim,  
5 his credit report, the title to his property.

6 MS. BAKER: Foreclosure is not an action -- a cause  
7 of action at this moment, and I also respectfully  
8 disagree with whether you need the original note or not.  
9 There's been a lot made about that. I was in front of  
10 the Master-in-Equity in Georgetown County who just  
11 requires copies, not the original.

12 And if for some reason a note is lost anyway I know  
13 Scarborough, all he needs is a type of loss-note  
14 affidavit where the bank can trace exactly the ownership  
15 of the note. I mean, and you can even look at the Rules

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16 of Evidence. You know, 1001 and 1002, if for some reason  
17 it is lost there's nothing you can do about it and a copy  
18 is as good as the original. But I think for purposes of  
19 this motion we are getting into way too much detail about  
20 everything else --

21 THE COURT: I'm just determining whether or not I'm  
22 going to order you to produce the original for  
23 inspection.

24 MS. BAKER: Okay. Right.

25 THE COURT: What causes of action are you going

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8

1 forward on at this time?

2 MR. SLOAN: Your Honor, at this time I am certain,  
3 as I've just been retained on the case today, I am going  
4 to further meet with Mr. Bentrin as to possibly amending  
5 our complaint for further causes of action, and we would  
6 likely make a motion to refer this case against Wells  
7 Fargo as the servicer to Judge Scarborough.

8 THE COURT: All right. Answer my question so I  
9 don't have to pull the complaint back out of the file,  
10 what cause of action did you file?

11 MR. SLOAN: Your Honor, may Mr. Bentrin answer that  
12 question?

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13 THE COURT: Ms. Baker, what --

14 MS. BAKER: It's in my memo right here that you got  
15 a copy of. There's five causes of action. There's RESPA  
16 violation, breach of contract, Truth-in-Lending Act  
17 violations, Violation of Unfair Trade Practices Act, and  
18 punitive damages. So those are the claims.

19 THE COURT: All right. Anything further, Counsel?

20 MR. SLOAN: May I have a moment to confer with  
21 Mr. Bentrin?

22 THE COURT: You may.

23 (PAUSE.)

24 MR. SLOAN: Your Honor, Mr. Bentrin contends that  
25 Wells Fargo has produced inaccurate or possibly false

9

1 copies of the note. So Mr. Bentrin is actually bringing  
2 the accuracy of the note -- of the copy of the note he  
3 received. He received a copy of the note that was only  
4 certified by Bridget Lagree, who is actually the closing  
5 paralegal for Mr. Donaldson, the attorney who did this  
6 closing back in 2002.

7 MS. BAKER: If you want someone at Wells Fargo to  
8 certify it or authenticate it I'll be happy to do that.  
9 And that note is secured by this mortgage right here

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10 which is, you know, recorded. So if anyone wants to see  
11 a copy of the mortgage I can pass this up as well.

12 MR. SLOAN: And, Your Honor, I would rely on Judge  
13 Dukes, the Master-In-Equity in Beaufort County, who will  
14 not take a foreclosure without the original note.

15 THE COURT: We are not here on a foreclosure.

16 MR. SLOAN: Yes, ma'am.

17 THE COURT: And we are not in Beaufort County.

18 MR. SLOAN: Yes, ma'am.

19 THE COURT: We are not in the master-in-equity's  
20 courtroom.

21 MR. SLOAN: Yes, ma'am.

22 THE COURT: All right. Your motion to compel is  
23 denied at this time. I am not going to order that  
24 Ms. Baker make it available; although, I do not see what  
25 is preventing you if you can make an effort to have it

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10

1 available for physical inspection.

2 A copy based upon the rules of what I'm hearing as  
3 to the nature of the claim is acceptable and admissible  
4 under the rules. So I am not going to order them to  
5 produce, to give to you the original.

6 Counsel, of course, at any time you may refile a

Page 10

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7 motion to compel if you believe that circumstances or  
8 your new causes of action would indicate that you do need  
9 an original document. Thank you.

10 Good luck to you, sir.

11 MR. SLOAN: Thank you, Your Honor.

12 MS. BAKER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MS. BAKER: Will this be a form order or do I need

15 a --

16 THE COURT: A form order will be fine.

17 MS. BAKER: Okay. I appreciate it.

18 (WHEREUPON, the hearing was concluded.)

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11

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the

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4 Ninth Judicial Circuit of the State of South Carolina, do  
5 hereby certify that the foregoing is a true, accurate and  
6 complete transcript of record of all the proceedings had,  
7 and the evidence introduced in the hearing of the  
8 captioned case in Circuit Court on the 5th day of October  
9 2011.

10 I do further certify that I am neither of kin, counsel  
11 nor have an interest to any party hereto.

12

13

April 25, 2014

14

15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

17

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<p>1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS Page 1 2 COUNTY OF CHARLESTON ) Case No. 2011-CP-10-2946 3 4 BRENT E. BENTRIM ) 5 Plaintiff(s,)) 6 -vs- ) DEPOSITION OF: 7 BRENT E. BENTRIM 8 WELLS FARGO BANK, NA, ) 9 Defendant(s,)) 10 11 12 Given before John P. Crawford, Jr., Court Reporter 13 and Notary Public, at Womble Carlyle Sandridge &amp; Rice, 14 LLP, 5 Exchange Street, Charleston, South Carolina, on 15 Wednesday, May 8th, 2013, commencing at 10:10 o'clock, 16 a.m. 17 18 19 20 21 22 23 24 25</p>	<p>1 INDEX TO EXAMINATIONS Page 3 2 DIRECT EXAMINATION BY MS. BAKER ..... 6 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>1 APPEARANCES Page 2 2 3 For the Plaintiff(s): Brown &amp; Varnado, LLC 4 By: Robert B. Varnado, Esquire 5 103 Church Street 6 Mount Pleasant, SC 29464 7 8 For the Defendant(s): Womble Carlyle Sandridge &amp; Rice, LLP 9 By: Jana B. Baker, Esquire 10 5 Exchange Street 11 Charleston, SC 29401 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 INDEX TO EXHIBITS Page 4 2 3 Defendant's Exhibits Marked for Identification: 4 1. Deed ..... 19 5 2. Promissory Note ..... 21 6 3. Mortgage ..... 27 7 4. Truth-In-Lending Disclosure ..... 31 8 5. Settlement Statement ..... 33 9 6. Loan Information Statement ..... 38 10 7. Modification Agreement ..... 46 11 8. Notice of Foreclosure ..... 55 12 9. Notice of Foreclosure ..... 58 13 10. Notice of Default ..... 61 14 11. Demand Letters ..... 64 15 12. Letter of 8/24/10 ..... 70 16 13. Foreclosure Dismissal ..... 75 17 14. Letter of 8/25/10 ..... 82 18 15. Letter of 9/1/10 ..... 84 19 16. Letter of 9/5/10 ..... 85 20 17. Letter of 9/13/10 ..... 91 21 18. Letter of 10/25/10 ..... 92 22 19. Notice of Intention to Foreclose ..... 100 23 20. Letter of 10/26/10 ..... 106 24 21. Letter of 10/25/10 ..... 108 25</p>



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1 (Brent E. Bentrim, being duly sworn,  
2 testified as follows):  
3 DIRECT EXAMINATION BY MS. BAKER:  
4 Q. Mr. Bentrim, as you know, we met beforehand. My  
5 name is Jana Baker. I represent Wells Fargo, the  
6 defendant, in this case. I'm going to start out  
7 just a little bit like the ground rules. First  
8 of all, you received notice of this deposition  
9 through your counsel, I believe.  
10 A. Yes.  
11 Q. Okay. This deposition is taken pursuant to  
12 notice. All objections to or defects in notice  
13 are waived. All other objections except to the  
14 form of the question are reserved until the time  
15 of the trial. The deposition is taken pursuant  
16 to Rule 30 of the South Carolina Rules of Civil  
17 Procedure for all of the reasons permitted by the  
18 rule. And then, your attorney, you know,  
19 reserves your right to read and sign the  
20 transcript. Would you please state your full  
21 name for the record?  
22 A. Brent Bentrim.  
23 Q. Okay. Mr. Bentrim, do you feel well enough today  
24 to listen to the questions that I'm asking you?  
25 A. Yes.

Page 7

1 Q. Okay. And do you feel well enough to give  
2 truthful answers?  
3 A. Yes.  
4 Q. Are you under the influence of any prescription  
5 drugs that would affect your ability?  
6 A. No.  
7 Q. Okay. And also, just, I guess you knew what I  
8 was going to ask that time, but let's try to, you  
9 know, not interrupt each other, wait for me to  
10 finish the question so the record's clear. And  
11 also, right now you're answering perfectly yes or  
12 no, I just remind you to keep doing that versus  
13 saying, versus shaking your head just so again  
14 the record's clear.  
15 A. Right.  
16 Q. Yes. And if at any time during this deposition  
17 you don't understand a question, just please feel  
18 free to ask me to restate it.  
19 A. Okay.  
20 Q. Because, you know, your answer will be binding on  
21 the court reporter, you know, it will be binding  
22 on the record.  
23 A. Okay.  
24 Q. And also as we discussed, if you need to take a  
25 break at all for any reason, just let me know and

Page 8

1 we will take a break.  
2 A. Okay.  
3 Q. If you need to go to the bathroom, get water, or  
4 whatnot. And if you speak to your attorney at  
5 all when there's a break, just know that there's  
6 no privilege of communication between you and  
7 your attorney.  
8 A. Okay.  
9 Q. Therefore I can ask, you know, what you guys  
10 spoke about and get the answers to the questions.  
11 A. Okay.  
12 Q. Okay. Do you understand the rules?  
13 A. Yes.  
14 Q. Okay. Do you understand you're under oath today?  
15 A. Yep.  
16 Q. Okay.  
17 A. And I may stand up. I've got a bad lower back so  
18 sometimes I'll just stand up just to stretch.  
19 Q. That's fine. Yeah.  
20 A. I just didn't want you to think that --  
21 MR. VARNADO: That you were leaving?  
22 THE WITNESS: Yeah. What's he doing?  
23 Q. Yeah. That's fine. Just you know, whatever,  
24 however you, whatever you want to do to make sure  
25 you're fine.



Page 9

1 A. Okay.  
2 Q. Mr. Bentrим, have you ever been deposed before?  
3 A. No.  
4 Q. Okay. You have not. Okay. Have you ever been  
5 in a law suit before?  
6 A. No.  
7 Q. Okay. Have you ever needed to be represented by  
8 a law before?  
9 A. Yes.  
10 Q. Okay. In what context?  
11 A. For securities when I left Wachovia Securities or  
12 First Union years ago, just, you know, contract,  
13 leaving type of dispute stuff. Actually Rob  
14 worked it out. So, yeah.  
15 Q. Okay. So, you worked for First Union in the  
16 past?  
17 A. Uh-huh.  
18 Q. Yes?  
19 A. Yes. Sorry.  
20 Q. Yes. That's okay. When did you work for First  
21 Union?  
22 A. From July 2000 until March 2002.  
23 Q. Okay. And then, and you said you worked for  
24 Wachovia Securities?  
25 A. When I went over to First Union, that was right

Page 10

1 at the time that they purchased Wachovia. So,  
2 you know, it was like First Union Securities and  
3 then it became Wachovia Securities through the  
4 merger.  
5 Q. Okay. And when did you finish working for  
6 Wachovia, or what did you leave Wachovia  
7 Securities --  
8 A. Yeah. In March of 2002.  
9 Q. Okay. And that's when you had issues with you  
10 said some certain employment issues?  
11 A. Yeah. You know, firms always make you sign  
12 contract and non-disclosure and who's getting,  
13 you know, clients, et cetera. You know, people  
14 try to deal with those stuff.  
15 Q. Okay. But you didn't have to file a law suit?  
16 A. No.  
17 Q. Okay. It was just more of the reviewing certain  
18 contracts when you were leaving type of thing?  
19 A. Yes. Sometimes there'll be like an arbitration,  
20 hey, we paid you to come here for X and, you  
21 know, we say X is owed, I say X is owed, you  
22 know, and that's where we were.  
23 Q. Okay. And so, was that the only time you've been  
24 represented with a, I guess, lawyer?  
25 MR. VARNADO: Jana, I'm going to object. I

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1 don't think you can ask if he's ever gone to a  
2 lawyer and what did he go to a lawyer for,  
3 because that would impact the privilege. I think  
4 the question is, I think it's pushing the  
5 envelope a little on have you ever been to a  
6 lawyer? I mean, you can ask if you've ever been  
7 in a law suit or --  
8 MS. BAKER: Rob, I'm not trying to get, I  
9 was just trying to go around, just, you know, it  
10 kind of becomes relevant in this case. But,  
11 anyway.  
12 A. Yes. Other than that, well, no. Bill Sloan, but  
13 other than that, no.  
14 Q. Right, right. Or if you've closed on a home  
15 before.  
16 A. Oh, yeah. Gosh, sorry.  
17 Q. Okay. Did you review any documents to prepare  
18 for this deposition?  
19 A. I did.  
20 Q. Okay. What did you review?  
21 A. I reviewed my complaint, the answers that were  
22 originally given by McAngus.  
23 Q. McAngus.  
24 A. Law Firm. They're the original counsel.  
25 Q. Okay. For Wells Fargo?

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1 A. For Wells Fargo.  
2 Q. Okay.  
3 A. Reviewed your discovery answers, reviewed the  
4 counterclaim. Our answers to your discovery,  
5 when I'm saying yours, I mean Wells Fargo  
6 obviously. And just the exhibits.  
7 Q. Exhibits to?  
8 A. The ones that were attached both in discovery and  
9 our answers to discovery.  
10 Q. Okay. So, the documents that were produced --  
11 A. Yeah.  
12 Q. Okay. Have you spoken to anyone about this  
13 deposition, any witnesses, besides your attorney?  
14 I mean, have you spoken to anyone recently about  
15 this case, this law suit?  
16 A. Huh-uh. No.  
17 Q. Okay. Have you ever been arrested in South  
18 Carolina or any other place?  
19 A. In South Carolina.  
20 Q. Okay. What was it for?  
21 A. In college, party, mouthing off to a cop, you  
22 know, when they came to bust it up. And I had to  
23 do some community service.  
24 Q. Okay.  
25 A. Yeah.



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1 Q. But that was it?  
2 A. That was it.  
3 Q. Okay. Any prior alcohol or drug treatment in  
4 your past?  
5 A. No.  
6 Q. Okay. And your full name, what's, it's Brent E.  
7 Bentrim?  
8 A. Yes.  
9 Q. Okay.  
10 A. E-R-I-K.  
11 Q. Erik?  
12 A. Uh-huh.  
13 Q. Okay. And what's your date of birth?  
14 A. March 24th, 1971.  
15 Q. And where were you born?  
16 A. Findlay, Ohio.  
17 Q. And what's your Social?  
18 A. 251-61-1089.  
19 Q. Okay. And where are you living now currently,  
20 what's your address?  
21 A. 10 Nicholson Street.  
22 Q. Okay. Do you own that home or are you renting  
23 it?  
24 A. I own it.  
25 Q. Okay. When did you buy 10 Nicholson Street?

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1 A. September 2000.  
2 Q. Okay. Is there a mortgage on there or did you, I  
3 mean, is there a mortgage?  
4 A. That's the hundred thousand dollar question.  
5 Q. Okay.  
6 A. Yeah. I don't know. We've asked your client  
7 that and haven't been able to get answers.  
8 MR. VARNADO: Can we go off the record real  
9 quick?  
10 MS. BAKER: Yeah.  
11 (The deposition went off the record for a  
12 brief period of time.)  
13 Q. Okay. So, you live on 10 Nicholson Street which  
14 is the house involved in this law suit?  
15 A. Yes.  
16 Q. But you have an office located on Archdale  
17 Street?  
18 A. Uh-huh.  
19 Q. Okay. And what's the address on Archdale?  
20 MR. VARNADO: Say yes or no.  
21 A. Yes. 49 Archdale Street.  
22 Q. Okay.  
23 A. Suite 2E.  
24 Q. Now, do you own or rent this office?  
25 A. I rent.

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1 Q. Okay. And what's your monthly payment?  
2 A. Eleven ninety-five.  
3 Q. Okay. And who's your landlord?  
4 A. Keith Culbreth.  
5 Q. And are you making the monthly rental payments  
6 for your office?  
7 A. Yes.  
8 Q. Okay. And this is, what work are you in right  
9 now?  
10 A. I have an investment advisory firm.  
11 Q. Okay. And what's the name of it?  
12 A. Carolopolis, C-A-R-O-L-O-P-O-L-I-S.  
13 Q. Okay. And how long have you, is this your own  
14 company?  
15 A. Yes.  
16 Q. How long have you been running it?  
17 A. Since March of 2002.  
18 Q. Okay. And do you have any employees?  
19 A. No.  
20 Q. Okay. So, it's just you?  
21 A. Yeah.  
22 Q. So, have you been, how long has your company, how  
23 long has it been located at 49 Archdale Street?  
24 A. I believe since 2007, June 2007, maybe 2008. I  
25 can't remember when I moved over there.

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1 Q. Okay. And before that, where was your office?  
2 A. In the Franke Building.  
3 Q. Okay. Okay. So, and do you own any other homes  
4 besides 10 Nicholson Street?  
5 A. No.  
6 Q. Okay. And so, and at 10 Nicholson, have you  
7 lived there since --  
8 A. September 2000.  
9 Q. -- since when you purchased the house?  
10 A. Yes.  
11 Q. Okay. Who do you live with?  
12 A. A dog and a cat.  
13 Q. Okay. So, you're not married?  
14 A. No.  
15 Q. And no kids, any kids?  
16 A. None that I know of.  
17 Q. Okay.  
18 A. Furiously shaking his head no, no, no.  
19 Q. You hope not, right?  
20 A. Yeah.  
21 Q. Okay. So, when did you move to South Carolina?  
22 You said you were from Ohio.  
23 A. When I was three years old.  
24 Q. Okay. Did you go to high school in South  
25 Carolina?



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1 A. Yes.  
2 Q. In Charleston?  
3 A. No. In Greenville, Taylors.  
4 Q. Okay. And where did you go to college?  
5 A. I started at the University of Miami down in  
6 Florida.  
7 Q. Right.  
8 A. And then transferred and finished up at the  
9 College of Charleston.  
10 Q. Okay. What year did you finish?  
11 A. '94.  
12 Q. Okay. And what was your degree at the College of  
13 Charleston?  
14 A. I had a degree in both business finance and  
15 corporate communications.  
16 Q. Okay. And so after, you said you graduated in  
17 '94?  
18 A. Uh-huh.  
19 MR. VARNADO: Say yes or no.  
20 A. Oh, yes.  
21 Q. Do you have any military background?  
22 A. I do not.  
23 Q. Okay. When you graduated in '94, what did you do  
24 or where did you start working right after?  
25 A. I did. I moved to Richmond, Virginia and worked

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1 for my national fraternity headquarters.  
2 Q. Okay. Which was?  
3 A. Sigma Phi Epsilon.  
4 Q. Okay. And then after that? I mean, how long  
5 were you there for?  
6 A. Right at a year and a half.  
7 Q. Okay. And so, until about 1996 or so?  
8 A. Mid-'95, 1996. Yeah.  
9 Q. Okay. And then where did you go to work after  
10 that?  
11 A. I spent about six months back in Greenville just  
12 working BS retail and then moved to Charleston  
13 and started working with Merrill Lynch in April  
14 of 1996.  
15 Q. Okay. And then, were you with Merrill until  
16 2000?  
17 A. 2000. Yes.  
18 Q. When you started working for First Union?  
19 A. Yes.  
20 Q. Okay. Okay. You said you had no military  
21 background, correct?  
22 A. No.  
23 Q. Okay. Do you belong to a church?  
24 A. Not really, no.  
25 Q. Okay. Okay. Well, let's go to, you know, why

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1 we're here today. Okay. You know, with  
2 regarding this -- I apologize on that earlier  
3 today.  
4 A. That's all right.  
5 (DEED MARKED AS DEFENDANT'S EXHIBIT NO. 1  
6 FOR IDENTIFICATION.)  
7 Q. And this is just so I want to make sure the  
8 record is clear. This is, we can use this as --  
9 I wish I hadn't marked this, but this is the  
10 deed, or you can take a look at this first.  
11 MR. VARNADO: Do you have an extra?  
12 MS. BAKER: Yeah. I just --  
13 MR. VARNADO: That's all right. I'll just  
14 share with him.  
15 MS. BAKER: I'm sorry about that, Rob.  
16 MR. VARNADO: As long as you don't mind, can  
17 I write on this? If that's the real exhibit for  
18 the court reporter, can I just write number one  
19 on this, and I'll just take a copy home?  
20 MS. BAKER: You can take it all with you.  
21 Yes.  
22 Q. Okay.  
23 A. Okay.  
24 Q. Okay. And have you seen this deed before?  
25 A. I believe so.

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1 Q. Okay. And this is the deed showing that you  
2 purchased the 10 Nicholson property, correct?  
3 A. Right. From Ms. Zervos.  
4 Q. Okay. Exactly. And what was the year that you,  
5 when was the original closing for this?  
6 A. September 2000. I know it's dated here on  
7 October 6th, but I think that's when they stamped  
8 it.  
9 Q. Is it September 29th, 2000?  
10 A. Right around, yeah. It's going to be somewhere  
11 around there.  
12 Q. Okay. And did you, when you initially purchased  
13 the property, did you obtain a mortgage?  
14 A. I did.  
15 Q. Okay. And was it with Bank of America?  
16 A. It was.  
17 Q. Okay. And were you able to make the monthly  
18 payments at that time?  
19 A. I was.  
20 Q. Okay. And what was the amount of the mortgage  
21 with Bank, B of A, if you recall?  
22 A. I believe it was one sixty, I'm trying to think  
23 if I did like an eighty/twenty, but I don't  
24 believe I did. I believe it was just one sixty.  
25 I don't think there was a second on there.



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1 Q. Okay. I'm not going to hold you to that.  
2 A. Yeah. No. I was just trying to --  
3 Q. Okay.  
4 A. -- some of these questions, you're like, wow, why  
5 don't, you know.  
6 Q. It was a long time ago. Right, exactly. Okay.  
7 And then you, after that, you went ahead and  
8 refinanced with First Union, correct?  
9 A. Right.  
10 (PROMISSORY NOTE MARKED AS DEFENDANT'S  
11 EXHIBIT NO. 2 FOR IDENTIFICATION.)  
12 Q. Okay. And take a look, we're going to use this  
13 as Exhibit Two. This is the note. I'll just let  
14 you hold onto that. Okay. And so, do you recall  
15 the date that you refinanced with First Union?  
16 A. Yes. It was March 12th, 2002.  
17 Q. Okay. And take a look at what's marked as  
18 Exhibit Two which is a negotiable promissory  
19 note?  
20 A. Right.  
21 Q. Have you seen that before, have you seen the  
22 document before that you're looking at?  
23 A. Yes.  
24 Q. Okay. And does it appear to be a true and  
25 accurate copy of the note that you signed?

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1 A. At this point, I have no idea, Jana. There's  
2 been three or four notes proffered by your client  
3 that says that this is a true and accurate copy.  
4 Q. Do you know the original note we have here in our  
5 vault?  
6 A. Right.  
7 Q. Okay. And you're welcome to look at it with your  
8 attorney.  
9 MR. VARNADO: In fact, we might do that. We  
10 might take you up on that at a break.  
11 MS. BAKER: We can do that.  
12 THE WITNESS: Okay.  
13 Q. Well, how about this, if you turn, this is again  
14 Exhibit Two of the note, if you turn to the last  
15 page of the document which is at the bottom, it's  
16 labeled WF eight.  
17 A. Yep.  
18 Q. Is that your signature?  
19 A. Yes. It is.  
20 Q. Okay. And do you recall the amount of the loan  
21 with First Union?  
22 A. One eighty-two seven hundred.  
23 Q. Okay. And do you recall what the interest rate  
24 was?  
25 A. Yes. I do.

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1 Q. Okay.  
2 A. It was an adjustable rate mortgage.  
3 Q. Okay.  
4 A. It was based off the prime plus a quarter.  
5 Q. Okay. Or you could actually, if you look at the  
6 note, it may, where the X is on the first page  
7 it's indicated. Is that correct? Here, I can  
8 show it to you.  
9 A. Yeah. That is correct.  
10 Q. Do you want to read it just for the record?  
11 A. The interest rate is prime rate which was then  
12 four point seven five percent plus point two four  
13 percentage points or twenty-four basis points.  
14 Q. Okay. And where are you? Sorry about this.  
15 Okay. I see what you're saying. Okay. That's  
16 the initial interest rate?  
17 A. Yeah.  
18 Q. And then, if you read above that where the X is  
19 located, is that correct? If indicated, which is  
20 where the X is. I can point it.  
21 A. Four point nine nine.  
22 Q. You can just read that sentence.  
23 A. "If indicated, this is a variable rate loan and  
24 my initial interest rate is four point nine  
25 nine."

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1 MR. VARNADO: Just in the future, if Ms.  
2 Baker asks you to read something, just remember  
3 Jay's trying to write it down. And some people,  
4 they read real quick.  
5 THE WITNESS: Okay. I'm sorry.  
6 Q. Okay. And so, and then the variable rate was  
7 tied to the Wall Street Journal, the prime rate,  
8 correct?  
9 A. Correct.  
10 Q. And initially, if you take a look at the note, do  
11 you recall, and you can take a look at the note  
12 if you don't recall, the amount of monthly  
13 payments needed to pay off the loan?  
14 A. Three hundred and sixty.  
15 Q. Okay. And you were supposed to make monthly  
16 payments, correct?  
17 A. Yes.  
18 Q. Okay. And what was the initial amount?  
19 A. Nine eighty-four twenty-one.  
20 Q. Okay. Do you agree that this amount could  
21 increase based on an increase in the interest  
22 rate?  
23 A. Absolutely.  
24 Q. Okay. Now --  
25 A. Every sixty months.

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1 Q. Every sixty months. Okay.  
2 A. Not to exceed point, not to exceed twenty-five  
3 percent over what the previous one was.  
4 Q. Well, I guess, and if you take a look at the note  
5 again, where the X is down on page one, it says  
6 variable, I'll show it to you just so we're  
7 making sure that we're on the same page. I think  
8 we are. And if you want, if you look at where  
9 the X is and read that paragraph just to explain.  
10 This has to do with the payments and what you  
11 were talking about with the sixty months.  
12 A. Right. And I'll go ahead and read that, but the  
13 payments are also governed by the adjustable rate  
14 disclosure statement.  
15 Q. We'll get to there, yeah.  
16 A. Okay.  
17 Q. I just want to start with the note first, so.  
18 A. "If indicated, my loan has multiple payments for  
19 a term more than sixty months. Any increase in  
20 my interest rate will increase the number of  
21 payments, it may increase the payment amounts.  
22 If my loan were for ten thousand for a hundred  
23 and forty-four months at twelve percent and the  
24 interest rate increased to twelve point five  
25 percent in three months, my payment would

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1 increase by seven hundred, or seven dollars and  
2 thirty cents beginning with the sixty-first  
3 payment."  
4 Q. Okay. So, basically, you know, this loan was,  
5 you know, it has multiple payments for more than  
6 sixty months as we discussed earlier, so it's  
7 possible that if any increase in the interest  
8 rate would increase the payment?  
9 A. Absolutely.  
10 Q. Okay. And then, the maximum interest rate would  
11 not exceed eighteen percent, correct?  
12 A. Yes.  
13 Q. Okay. And why did you decide just to refinance  
14 with First Union versus stay with Bank of  
15 America?  
16 A. When I was working with First Union, we were as a  
17 financial advisor or whatever they were calling  
18 us at that time, you know, everybody basically  
19 was a financial advisor, financial consultant. I  
20 can't remember what it was. We would work with  
21 the, you know, the folks in the branches to cross  
22 sell stuff, and I was approached, hey, this is a  
23 great loan, look at it for some of your  
24 customers. And when I saw the adjustable rate  
25 disclosure on how the principal and interest were

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1 actually calculated and put on a loan, that's  
2 what made me say, hey, this is not a bad loan to  
3 get.  
4 (MORTGAGE MARKED AS DEFENDANT'S EXHIBIT NO.  
5 3 FOR IDENTIFICATION.)  
6 Q. Well, let me, the next, the next Exhibit Three  
7 will be the mortgage. Take a look at that.  
8 MS. BAKER: And Rob, if you want to make a  
9 note, that's Three.  
10 Q. Have you seen this document before?  
11 A. All except the last page.  
12 Q. It's probably a document from Wells Fargo's  
13 files, but you've seen one through fifteen?  
14 A. I --  
15 Q. I mean, what's labeled, excuse me, WF nine  
16 through WF fifteen which is really one through --  
17 A. Right. Yeah. I'm assuming it's the same one.  
18 MR. VARNADO: Is the last page Bates  
19 labeled?  
20 THE WITNESS: Base load?  
21 MR. VARNADO: Okay. This stamp down here is  
22 called a Bates label in lawyer slang. Can you  
23 flip to the last page? Yeah. Okay. Thank you.  
24 Q. Mr. Bentrin, did you sign the mortgage on what's  
25 labeled WF thirteen which is page five of the

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1 mortgage?  
2 A. I did.  
3 Q. Okay. And what's the date of the mortgage?  
4 A. It should be March 12th, 2002, and it is.  
5 Q. Okay. And it is. Okay. Now, do you recall, did  
6 you have a closing attorney?  
7 A. I did.  
8 Q. Okay. Who was your closing attorney?  
9 A. Rob Donaldson.  
10 Q. Okay. Do you agree that this mortgage secures  
11 the property located at 10 Nicholson Street?  
12 A. I do not.  
13 Q. You do not. Okay. And why, why is that?  
14 A. One is no evidence that your client funded the  
15 loan and, two, you know, we don't know if this is  
16 still in effect as a valid lien.  
17 Q. Well, the note doesn't evidence the debt on  
18 Exhibit Two, does the note evidence the debt?  
19 A. I don't believe so, but that would be a legal  
20 conclusion.  
21 Q. Well, I mean, I can still ask you a question.  
22 We're in a deposition.  
23 A. Yeah. And I've said, I don't believe so, but I  
24 think that's a legal conclusion.  
25 Q. Okay. So, who recorded this mortgage?



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1 A. Am I supposed to -- where would I, I don't  
2 understand the question.  
3 Q. Well, typically it would be your attorney for  
4 this.  
5 A. Okay.  
6 Q. I mean, if you look on page WF fourteen on the  
7 bottom right, it says Davidson Bennett and Wigger  
8 Law Firm.  
9 A. Okay.  
10 Q. So, do you know if, I mean, typically you would  
11 think that your attorney would be responsible for  
12 it?  
13 A. Right.  
14 Q. Okay. Well, so why did you purchase this  
15 property?  
16 A. As a home to live in.  
17 Q. Okay. But you just, is there a reason for this,  
18 I mean, you like, was this for a home to live in,  
19 you liked it?  
20 A. Good location, yeah.  
21 Q. Okay. Was this the first home you ever  
22 purchased?  
23 A. It was.  
24 Q. Okay. Have you ever purchased any other homes  
25 individually? I mean, this was the first one you

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1 purchased, but after this, have you purchased any  
2 other homes?  
3 A. I've not.  
4 Q. Okay. Have you purchased homes with other  
5 people?  
6 A. I have not.  
7 Q. Are you a member of any LLC that owns property?  
8 A. No.  
9 Q. Okay. Are you a member of a corporation that  
10 owns property?  
11 A. No.  
12 Q. Okay. Are you a partner in a partnership?  
13 A. By property, you're referring to real estate?  
14 Q. Real property.  
15 A. Yeah. No.  
16 Q. Yes. Real estate. Yes.  
17 A. Yeah.  
18 Q. Okay. And are you a partner in a partnership  
19 that owns real estate?  
20 A. I am not.  
21 Q. Okay. And right now, the only space you rent is  
22 on Archdale Street where your office is?  
23 A. Yes.  
24 Q. And before that was the Franke Home when you were  
25 renting out of there?

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1 A. The Franke Building.  
2 Q. The Franke Building. Yeah. Do you rent any  
3 other spaces right now, you know, or is it just  
4 the one on Archdale Street?  
5 A. Just on Archdale.  
6 Q. Okay. So, you only have one office?  
7 A. Right.  
8 Q. Okay. And you're current on your rental payments  
9 right now?  
10 A. Absolutely.  
11 Q. Okay. And how are you making those payments?  
12 A. Through the corporation.  
13 Q. Through, you mean, through your business, the  
14 corporation that you're talking about?  
15 A. Yes.  
16 Q. Okay.  
17 A. The corporation's actually the lease, leasee?  
18 Q. Okay. As a leasee?  
19 A. Yeah. It's not really me.  
20 Q. The tenant. Okay. Well, let's mark this as  
21 Exhibit Four.  
22 (TRUTH-IN-LENDING DISCLOSURE MARKED AS  
23 DEFENDANT'S EXHIBIT NO. 4 FOR IDENTIFICATION.)  
24 Q. You can look at it.  
25 MR. VARNADO: Jana, I'm just going to ask

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1 Mr. Bentrin just for ease to number.  
2 Q. All right. I'll wait for you. Have you seen  
3 this document which is labeled as Exhibit Four?  
4 A. I have.  
5 Q. Okay. And what is this?  
6 A. Truth-in-lending disclosure statement.  
7 Q. Okay. Did you sign this document?  
8 A. I did.  
9 Q. Okay. And what is the date of this disclosure  
10 statement?  
11 A. March 12th, '02.  
12 Q. Okay. And do you agree this shows your, you  
13 know, estimated payment schedule?  
14 A. No.  
15 Q. Okay. Tell me why.  
16 A. Because of the variable rate of the payment  
17 itself, it can't estimate it. I mean, that's the  
18 nature of the variable loan.  
19 Q. Well, when I say estimate, I mean, I think we're  
20 saying that we both that the payments can change  
21 because it's a variable rate, but does it set  
22 forth the number of payments, you know?  
23 A. Yes.  
24 Q. Okay. And the amount of the initial payments you  
25 make?



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1 A. Yes. That's fair.  
2 Q. Okay. And again, it does disclose, you know, or  
3 does it disclose, you know, the interest, you  
4 know, the fact that the interest will not, should  
5 not increase over eighteen percent?  
6 A. It does.  
7 Q. Okay. And the fifteen percent was crossed out?  
8 A. Yes.  
9 Q. It looks like to me. Okay. Okay. Well, let's  
10 just go the next document, Exhibit Number Five.  
11 (SETTLEMENT STATEMENT MARKED AS DEFENDANT'S  
12 EXHIBIT NO. 5 FOR IDENTIFICATION.)  
13 Q. Have you seen this document before?  
14 A. I have.  
15 Q. Okay. And is this the settlement statement for  
16 the, showing the refinance for the closing in  
17 regard to the 10 Nicholson Street property?  
18 A. It is.  
19 Q. Okay. And what was the date of the settlement or  
20 of the closing of the refinance?  
21 A. March 12th, 2002.  
22 Q. Okay. And is that your signature on the bottom  
23 of the page?  
24 A. It is.  
25 Q. Okay. And you said Mr. Donaldson, Rob Donaldson

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1 was your attorney?  
2 A. Yes.  
3 Q. Okay. And then, on the settlement statement if  
4 you look at one, I guess it's line one o four  
5 under summary of borrower's transaction?  
6 A. Yes.  
7 Q. Okay. And is that the mortgage, the payoff to  
8 Bank of America, is that accurate, a hundred and  
9 fifty thousand nine twenty forty-four to the best  
10 of your knowledge?  
11 A. Yeah. It's ballpark.  
12 Q. Okay.  
13 A. I mean, that depends on the disbursement of  
14 moves, I believe.  
15 Q. If you turn to the next page of this document,  
16 the bottom is labeled WF twenty.  
17 A. Yes.  
18 Q. Okay. And there's the line that says eight o  
19 one loan origination fee?  
20 A. Yes.  
21 Q. And it's to, you know, one point five percent to  
22 First Union National Bank?  
23 A. Yes.  
24 Q. And the amount is, what is the amount right  
25 there?

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1 A. Two thousand seven hundred dollars.  
2 Q. Okay. Are you contending that this is part of  
3 your damages in this law suit, the twenty-seven  
4 hundred dollars here?  
5 A. No.  
6 Q. You're not. Okay. You were represented by  
7 counsel, you already testified, in this closing.  
8 Did your counsel review the loan documents before  
9 you signed them?  
10 A. I would assume so.  
11 Q. Okay.  
12 A. I would have no way to know.  
13 Q. Okay.  
14 A. We'd have to ask him.  
15 Q. Okay. So, this twenty-seven hundred dollars is  
16 not part of this law suit?  
17 A. No.  
18 Q. Okay. Are you contending anything is incorrect  
19 on this settlement?  
20 A. Yes.  
21 Q. Okay. Tell me what's incorrect.  
22 A. The, if you'll notice, the note was for one  
23 eighty-two seven hundred.  
24 Q. Right.  
25 A. The origination fee was charged on the settlement

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1 statement and then charged again.  
2 Q. But you had an attorney at this time?  
3 A. Yes.  
4 Q. Okay. So, theoretically, your attorney should  
5 have caught this?  
6 A. Absolutely. Yeah. Absolutely.  
7 Q. Okay. And you knew about this since the  
8 closing, this discrepancy here, that it's part of  
9 your law suit, too?  
10 A. I knew about it since April, like April, right  
11 around the end of March, early April of 2000.  
12 Q. Of 2000?  
13 A. 2002. Sorry.  
14 Q. 2002. Okay. And how did you realize about,  
15 when did you, so when you discovered this in  
16 April 2002, how did you discover the discrepancy?  
17 A. The attorney called me and said, we've got a  
18 discrepancy on the closing.  
19 Q. Okay. And did the attorney, the attorney's Rob  
20 Donaldson?  
21 A. Yes.  
22 Q. Did he try to fix this in April of 2002?  
23 A. He did.  
24 Q. Okay. And did he fix this?  
25 A. Yes.



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1 Q. Okay. And how did he fix it?  
2 A. We disbursed the twenty-seven hundred dollar  
3 check to your client to pay principal which they  
4 booked as origination fee again.  
5 Q. They booked as origination fee again?  
6 A. Yes.  
7 Q. Okay. And when was that?  
8 A. It is showing on one of the discovery documents  
9 that you provided on March 21st of 2002.  
10 Q. Okay. And when did you discover that they  
11 booked it incorrectly?  
12 A. I first saw that it was missing as far as  
13 payment, you know, not being applied in December  
14 of 2008. And then when I got the discovery from  
15 you from Wells Fargo, that's when we actually had  
16 the ledger to see how it was booked.  
17 Q. Okay. So, did you try to, and so you realized  
18 it was wrong in December of 2008?  
19 A. I did.  
20 Q. Okay. And did you do anything at that time?  
21 A. Oh, yeah. I called your client. I sent them  
22 letters. I did it for years prior to that.  
23 Q. Now, and then can you, you're saying that there's  
24 a document that shows it was booked incorrectly.  
25 Can you just provide that? You said I produced,

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1 we produced it in discovery. Can you let me know  
2 what document that is or can you, I guess at the  
3 break you can exactly we can -- I'm curious as to  
4 which document you're talking about.  
5 A. It was the last like big bulk of the discovery  
6 that you guys sent over. It was like those last  
7 pages. It was that ledger balance. So, if  
8 you've got it, I can point to it fairly quickly.  
9 Q. Okay. I'll probably just, I don't want to, in  
10 the interest of time, if I have follow up you can  
11 tell me exactly what document pretty quickly?  
12 A. Yes.  
13 Q. Okay.  
14 A. I believe you've got them all marked with page  
15 numbers.  
16 Q. Okay. It's probably, it's probably here anyway.  
17 A. Yeah.  
18 Q. But it's a ledger you're referring to, your  
19 payment history or ledger something?  
20 A. Yes.  
21 (LOAN INFORMATION STATEMENT MARKED AS  
22 DEFENDANT'S EXHIBIT NO. 6 FOR IDENTIFICATION.)  
23 Q. Okay. And I think, this is number, this will be  
24 Number Six, I believe.  
25 A. Yes.

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1 Q. Okay. You can go ahead and -- Mr. Bentrin, let  
2 me know when you're, after you, when you've  
3 reviewed what's marked as Exhibit Six.  
4 A. I have reviewed it.  
5 Q. Okay. And what is this document?  
6 A. It is the First Union adjustable rate loan  
7 information sheet.  
8 Q. Okay. And what's the date of this document?  
9 A. It is dated March 12th, 2002.  
10 Q. Okay. And did you, is that your signature at the  
11 bottom of the page?  
12 A. It is.  
13 Q. Okay. Earlier you referred to this, the First  
14 Union, this document earlier.  
15 A. Yes.  
16 Q. And you were, I don't know if you said there was  
17 a mistake on it, or explain to me what you were,  
18 what you want to explain to me, I guess, about  
19 this document.  
20 A. The document under how my payment can change  
21 bullet point four.  
22 Q. How my interest or how my payment can change?  
23 A. How my payment.  
24 Q. The bold how my payment can change; is that what  
25 you're referring to?

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1 A. Yes.  
2 Q. Okay. Okay.  
3 A. It says, "because my periodic payment may change  
4 once every sixty months."  
5 Q. Okay. Where are you looking right now?  
6 A. Can I point for you?  
7 Q. Yeah. You can --  
8 A. Starting here (indicating).  
9 Q. Oh, the fourth bullet point.  
10 A. Yeah. Sorry.  
11 Q. Oh, I got you.  
12 A. "Because my periodic payment may change once  
13 every sixty months and my interest rate may  
14 change monthly, my periodic payments may not  
15 fully cover the interest due. Such interest will  
16 be added to the loan amount and due at the end of  
17 the term of my loan. In such cases, unless the  
18 program I choose has a balloon provision, I will  
19 continue to make my final adjusted periodic  
20 payment for as long as any unpaid balance remains  
21 on my loan. If I have a balloon provision, I  
22 must make a single payment of the total of my  
23 periodic payment plus the remaining unpaid  
24 balance including any accrued interest and other  
25 unpaid fees and charges I owe at the end of the



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1 loan term."  
2 Q. Okay. So, do you want to explain what you just  
3 read to me?  
4 A. Yes. What it says is the payments are set for  
5 sixty months, but the prime rate can change  
6 monthly. So, you can have a situation where the  
7 prime rate goes above four percent or, you know,  
8 up to eight, nine, ten, eighteen percent, or it  
9 could go underneath what it is. Basically it  
10 says, okay, if it goes to the point where that  
11 nine eighty-four twenty-one, the initial payment  
12 does not cover all the interest, that interest is  
13 put on the back of the loan, not applied to the  
14 next statement.  
15 Q. Okay. Okay. But is there any other, okay, I  
16 just didn't know if you had any other issues with  
17 anything.  
18 A. Okay.  
19 Q. Because as you were referring to it earlier --  
20 A. But that's very important as to how the loan is  
21 calculated.  
22 Q. Okay. And how might, but if you go back, okay,  
23 and you go back to how my payment can change, you  
24 were at bullet point number four, correct?  
25 A. Right.

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1 Q. Okay. Can you read the first bullet point?  
2 A. Yes. "My monthly payment can increase or  
3 decrease substantially upon the interest, the  
4 changes in interest."  
5 Q. Based upon the changes in the interest rate?  
6 A. Yes.  
7 Q. Okay. So, did you read, do you understand and  
8 did you read this at the time that you signed the  
9 document?  
10 A. Absolutely.  
11 Q. Okay. Okay. And then, I think the, well, you  
12 know, we've discussed this earlier, but if you  
13 could read the third, there's a third bullet  
14 point, just the first sentence.  
15 A. Yeah. "My payment can change on the sixty-first  
16 calendar month and, if applicable, every sixty  
17 calendar months thereafter based on changes in  
18 the interest rate."  
19 Q. Okay.  
20 A. Wow, I'm getting old. I'm like, holy cow, that's  
21 small.  
22 Q. Small print. Exactly. It is small print. Okay.  
23 And you read that and understand that sentence  
24 when you refinanced?  
25 A. I did.

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1 Q. Okay. And how my interest rate can change, if  
2 you read the, can you read the first bullet  
3 point?  
4 A. My interest rate can change monthly.  
5 Q. Okay. And you read that at the time you  
6 refinanced and you understood that, correct?  
7 A. Yes.  
8 Q. Okay. And then, the next bullet point?  
9 A. "My interest rate cannot exceed eighteen  
10 percent."  
11 Q. Okay. And you agree with that statement as well?  
12 A. Yes.  
13 Q. Okay. Okay. And can you, if you could go back  
14 to, do you want to --  
15 A. I'm just going to check to see if it's anything  
16 urgent, if you don't mind.  
17 Q. We'll go off the record for a second while you  
18 check something.  
19 (The deposition went off the record for a  
20 brief period of time.)  
21 Q. Okay. Can you go back to exhibit, the note will  
22 be Exhibit Three, I believe; is that correct? Or  
23 is Two, Two. Let's go back to Exhibit Two.  
24 A. Okay. I'm going to grab a cup of water while  
25 you're talking, if that's okay.

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1 Q. Do you need a break?  
2 A. No.  
3 Q. Okay. If you look at this, are you looking at  
4 the negotiable promissory note which is Exhibit  
5 Two?  
6 A. I am.  
7 Q. Okay. It's actually four pages, I believe. If  
8 you could look at page, the second page of it,  
9 it's labeled WF six at the bottom right hand  
10 corner.  
11 A. Yes.  
12 Q. Okay. And there's some bold on the left and one  
13 is, one says, interest rate changes, is one, you  
14 know, I guess portion, and then it goes to  
15 payment provisions?  
16 A. Yeah.  
17 Q. And then variable rate payment changes.  
18 A. Yeah.  
19 Q. Okay. And do you see variable rate payment  
20 changes?  
21 A. I do.  
22 Q. Okay. Can you just read the second sentence for  
23 me of that paragraph, if you can read it? It's  
24 small as well.  
25 A. Yeah. "Prior to each payment change, you will

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1 calculate a payment estimated to pay the  
2 outstanding principal balance and any unpaid  
3 interest at the then current interest rate during  
4 the remaining term of the loan."  
5 Q. Okay. So, prior to each payment change date, you  
6 will calculate the payment estimated to pay the  
7 outstanding principal balance?  
8 A. Yes.  
9 Q. So, what does that mean to you?  
10 A. It means that First Union, after sixty months  
11 expires, they're going to say, hey, here's the  
12 principal balance left on your loan. Here's the  
13 current interest rate, and in order to say, let's  
14 say that was after the first sixty month period.  
15 Q. Right.  
16 A. In order to amortize this over the next twenty-  
17 five years, your payment's going to be X,  
18 assuming the interest rate stays static.  
19 Q. Assuming, so therefore it's an estimated number?  
20 A. Yes.  
21 Q. Okay. I got it. And so, the payoff amount's  
22 theoretically estimated as well because the  
23 interest rate could change?  
24 A. Right.  
25 Q. Right. Yeah. Okay.

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1 A. Yeah.  
2 Q. Okay. And then, did you also obtain a prime  
3 equity loan and mortgage with First Union on May  
4 24th, 2001?  
5 A. I did.  
6 Q. Okay. Is that paid off?  
7 A. No.  
8 Q. Okay. Is this, let me just -- this will be  
9 Exhibit Number Seven.  
10 (MODIFICATION AGREEMENT MARKED AS  
11 DEFENDANT'S EXHIBIT NO. 7 FOR IDENTIFICATION.)  
12 Q. Have you seen this document before?  
13 A. I have.  
14 Q. Okay. And did you sign, is this the modification  
15 agreement to prime equity line of mortgage?  
16 A. It is.  
17 Q. Okay. And did you sign this document?  
18 A. I did.  
19 Q. Okay. And so --  
20 MR. VARNADO: Is this Number Seven? I'm  
21 sorry.  
22 MS. BAKER: Yes. It is.  
23 Q. So, is the amount, the amount on this loan, how  
24 much was the initial amount of this loan?  
25 A. Forty-nine thousand.

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1 Q. Okay. And then, was this, did this reduce, what  
2 did the modification do?  
3 A. Ten grand. Ten thousand.  
4 Q. It reduced it to ten thousand dollars?  
5 A. Yeah.  
6 Q. Okay. You said, is it still open?  
7 A. What happened last or in 2011 when your firm sent  
8 me out an acceleration on the other loan is they  
9 quit accepting payments and quit sending me  
10 statements on this loan. So, it's still got  
11 something on it.  
12 Q. Okay. So, there's still a -- okay. What did  
13 you, did you use the loan proceeds to buy  
14 anything or did you --  
15 A. Heck if I know.  
16 Q. All right.  
17 A. Yeah.  
18 Q. Does this law suit that we're here, does it have  
19 anything to do with this amount?  
20 A. No.  
21 Q. No. Okay. Okay. Now --  
22 A. However.  
23 Q. Okay.  
24 A. Sorry. When I did call and say hey, you know,  
25 why did you quit accepting my payments and quit

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1 sending me statements, they said because we're  
2 foreclosing, so I believe Wells Fargo believes  
3 this is part of it.  
4 Q. Okay.  
5 A. Yeah.  
6 Q. But it's not part of any of your claims against  
7 Wells Fargo?  
8 A. No. Not part of my claims against them.  
9 Q. Okay. Now, in regard to, let's see here, the  
10 current, you know, the mortgage and note and  
11 mortgage, are you currently, you know, which is  
12 Exhibit Two that we looked at and probably Three.  
13 A. Three.  
14 Q. Are you making payments now on this loan?  
15 A. No.  
16 Q. Okay. When did you stop making payments, do you  
17 recall?  
18 A. In January 2009, your client refused to take  
19 further payments.  
20 Q. So, you were making payments in January of 2009;  
21 is that a yes?  
22 A. Yes. It is. Sorry.  
23 Q. Okay. Why did Wells Fargo, why did they stop  
24 accepting the payments?  
25 MR. VARNADO: Object to form. You can

<p style="text-align: right;">Page 49</p> <p>1 answer. Remember I, I sometimes can object to 2 her question. Unless I instruct you not to 3 answer, you should go ahead and answer. 4 THE WITNESS: I didn't hear what he said. 5 What did you just say? 6 A. In November 2008, I maybe have the dates off a 7 little bit here, but it was October, November 8 2008, I got a notice and intent to foreclose 9 letter from your client. 10 Q. 2008, you did? 11 A. Yes. 12 Q. Okay. 13 A. And they said, you know, you owe X, I said 14 there's something not right here, call in. And 15 when I called in, they said no, no, everything's 16 fine. And then, the next day, I actually got a 17 different letter that says, you know, pay this 18 amount. And we went back and forth. And so, I 19 said, something's not right here and asked for a 20 payment history on the account. And that's when 21 I noticed the twenty-seven hundred dollars was 22 not credited, and I also got a letter from, I 23 believe it was Sherrie Caudill or Caudill that 24 said, hey, this is a ledger and this is how your 25 principal and interest is calculated, and it</p>	<p style="text-align: right;">Page 51</p> <p>1 accounting. 2 Q. Okay. 3 A. Is that fair? Yeah. 4 Q. Right. But you contend you were making payments? 5 A. Yes. 6 Q. Okay. And going back, so, okay. Just you left, 7 okay, when did you leave Wachovia Securities 8 exactly? 9 A. March 2002. 10 Q. Okay. 11 A. So, right after -- 12 Q. Right after the closing or the refinance? Yeah. 13 And again, why did you leave Wachovia Securities? 14 A. To start my own firm. 15 Q. Okay. And did you have a problem with Wachovia? 16 I mean, did you? 17 A. I mean -- 18 Q. Why did you leave? 19 A. Oh, okay. That's fair. 20 Q. Yeah. 21 A. To start my own firm. They had recruited me to 22 come over from Merrill Lynch. 23 Q. They is Wachovia? 24 A. First Union, Wachovia. 25 Q. Okay.</p>
<p style="text-align: right;">Page 50</p> <p>1 didn't meet any of the stuff that was described 2 in the note, et cetera and so forth. 3 Q. And this is in 2008? 4 A. '08. 5 Q. Okay. Did you ever have any problems before 2008 6 making payments? 7 A. Yes. 8 Q. Okay. And when was that? 9 A. We fought about this for years because I was -- 10 Q. When you say we, who is -- 11 A. Wachovia and, it was Wachovia Bank at the time. 12 Q. Okay. 13 A. And me, because with the twenty-seven hundred, my 14 assumption is I'm three payments ahead, and 15 they're always putting me in arrears. It was, 16 you know, just never could get an answer out of 17 them. So, it was pay up or we're going to 18 foreclose. 19 Q. Okay. Were you working for Wachovia Securities, 20 you said, around, were you having trouble making 21 payments when you were working for Wachovia 22 Securities? 23 A. No. And I don't, I wouldn't say it was trouble 24 making payments. I would say there was trouble 25 with the payment history ledger as to an accurate</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Because the CEO of First Union wanted to be the 2 next Merrill Lynch. But once I got there, I 3 realized that they didn't, that wasn't really 4 their desire. And so, it was not a good fit. It 5 was seniority based instead of a merit based 6 system there. 7 Q. Okay. 8 A. So, yeah. 9 Q. So, you, it wasn't a good fit, so you wanted to 10 leave? 11 A. Yeah. 12 Q. Okay. And who was your supervisor over there at 13 the time? 14 A. Todd Gauthier, hired me, and I've got to tell you, 15 Jana, there was so many mergers and stuff going 16 on at that point, literally one of the reasons 17 why is I think I went through about five 18 supervisors at that time. Yeah. 19 Q. Okay. 20 A. I would love to remember them all. 21 Q. Okay. 22 A. Everybody was merging left and right at that 23 point. 24 Q. Okay. So, but your position is that you were 25 making, I just want to be clear as I understand,</p>



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1 is it your position that you were making  
2 payments?  
3 A. Yes.  
4 Q. Okay.  
5 A. And that I was ahead on payments.  
6 Q. Okay. And do you have evidence to show, either  
7 bank statements, I know they're older, probably  
8 back in 2008 or maybe 2003, just to show that you  
9 were making or that you were ahead of the  
10 payments?  
11 A. Yes. And your client's ledger balance shows it  
12 as well.  
13 Q. Okay. But you also can show --  
14 A. Yes.  
15 Q. You have the documents in your house somewhere?  
16 A. The twenty-seven hundred dollar signed over, that  
17 would be the only piece that would have to be  
18 gotten.  
19 Q. Well, but you're saying you can show that to me  
20 in our documents?  
21 A. Yes.  
22 Q. Okay.  
23 MR. VARNADO: I'm sorry, Jana. I don't  
24 understand. When you mean, since you're asking  
25 about documents, what documents do you mean? I

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1 want to make sure that, you know, that we're up  
2 to date on our discovery.  
3 MS. BAKER: Just, and maybe we could, proof  
4 of, he just said that he was ahead of the  
5 payments.  
6 MR. VARNADO: So, you mean the documents  
7 that he would have received from your client,  
8 too?  
9 MS. BAKER: If I have the documents, there's  
10 no reason for you to --  
11 MR. VARNADO: Oh, I agree.  
12 MS. BAKER: You can tell me, you know, what  
13 documents. I mean, like if there's any, if he  
14 has any bank statements or canceled checks or  
15 something showing that he was making the monthly  
16 mortgage payments, and he said that he has.  
17 A. Yes. And your client's got them in their  
18 records.  
19 Q. Right. But you have your own records?  
20 A. I'm assuming I have the bank statements that  
21 long.  
22 MR. VARNADO: To the extent that you want  
23 that, I might, I'm just going to reserve an  
24 objection now on the record, but let's keep  
25 going.

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1 MS. BAKER: Right. And that's fine.  
2 MR. VARNADO: Okay. Yeah. Well, we'll deal  
3 with that later.  
4 Q. Okay. And this goes back to what we were just  
5 talking about, I guess I'll mark these. Let's  
6 see here. Okay. This next document is  
7 Defendant's Exhibit Number Eight. If you can  
8 just take a look at that, Mr. Bentrin.  
9 (NOTICE OF FORECLOSURE MARKED AS  
10 DEFENDANT'S EXHIBIT NO. 8 FOR IDENTIFICATION.)  
11 MR. VARNADO: What is this?  
12 A. Okay. Number Eight.  
13 Q. It's Number Eight. Yeah. And the document's  
14 labeled notice of intention to foreclose?  
15 A. Yep.  
16 Q. And have you seen this before?  
17 A. Yes.  
18 Q. Okay. And what's the date of this document, the  
19 letter?  
20 A. November 21st, 2003.  
21 Q. Okay. Do you recall receiving this notice of  
22 intention to foreclose in 2003?  
23 A. Yes.  
24 Q. Okay. Do you recall whether or were you in  
25 default?

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1 A. No.  
2 Q. Okay. And what did you do when you received this  
3 letter?  
4 A. I called the bank.  
5 Q. Okay. And what did the bank do?  
6 A. Nothing.  
7 Q. Okay. But did they, but the bank, did they start  
8 foreclosure proceedings in 2003?  
9 A. No.  
10 Q. Okay.  
11 A. That is when I first pointed out to them the  
12 missing amounts, twenty-seven hundred.  
13 Q. Okay. And so, in 2003 -- just to be clear, so  
14 I'm clear for the record, when we look to the  
15 twenty-seven hundred, you know, amount from the  
16 settlement statement, and you can --  
17 A. Yes.  
18 Q. Okay. And at the time, your lawyer said on the  
19 settlement statement, there's an issue with this  
20 twenty-seven hundred dollars?  
21 A. Yes.  
22 Q. And it was supposedly fixed by your lawyer in, at  
23 the time of it, right after the closing?  
24 A. Yes.  
25 Q. Okay. Now, you receive this notice of intention



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1 to close, November 21st, 2003?  
2 A. Yes.  
3 Q. Okay. At this time, is this the time, November  
4 21st, 2003 when you realized again, there's an  
5 issue with the application of twenty-seven  
6 hundred dollars?  
7 A. Yes.  
8 Q. Okay. And how did you figure that out then?  
9 A. Because I thought I was ahead, and your client's  
10 sending me a statement saying you owe us thirty-  
11 nine, thirty-eight ninety-one o five.  
12 Q. Okay. And so -- Okay. And so, you, at that time  
13 you realized the twenty-seven hundred was booked  
14 incorrectly?  
15 A. Yes.  
16 Q. Okay. Did you do anything November 21st, 2003 to  
17 try to correct it?  
18 A. Yes.  
19 Q. Okay. And what did you do?  
20 A. I called your client.  
21 Q. Okay. Do you know who you, I mean -- okay.  
22 A. Yeah. No.  
23 Q. That's fine.  
24 A. Yeah. I know I made numerous calls.  
25 Q. Okay.

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1 A. Yeah.  
2 Q. Around this time frame in 2003?  
3 A. Yes.  
4 Q. Okay. Was anything ever done to correct?  
5 A. No. They basically just ignored me.  
6 Q. Okay. Did you, so you called and you contend  
7 that Wells Fargo, or Wachovia ignored you?  
8 A. Yes.  
9 Q. Okay. Did you ever try to file a law suit at  
10 this time?  
11 A. No.  
12 Q. Okay. Did you ever try to talk to your closing  
13 attorney around this time?  
14 A. No.  
15 Q. Okay. Now, I'm going to show you another  
16 document. This will be Exhibit Nine.  
17 (NOTICE OF FORECLOSURE MARKED AS  
18 DEFENDANT'S EXHIBIT NO. 9 FOR IDENTIFICATION.)  
19 MR. VARNADO: He's waiting for you.  
20 Q. Okay. Mr. Bentrin, have you seen what's  
21 Defendant's Exhibit Number Nine before?  
22 A. I have.  
23 Q. Okay. This is a notice of intention to  
24 foreclose?  
25 A. It is.

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1 Q. Okay. What's the date of this notice?  
2 A. November 12th, 2004.  
3 Q. Okay. So, about a year after, almost a year  
4 after the Exhibit Number Eight?  
5 A. It is.  
6 Q. Okay. At this point in the fall of 2004, do you,  
7 was Wachovia accepting your payments, do you  
8 recall?  
9 A. I believe they were.  
10 Q. Okay. Do you, did you miss any payments in 2004,  
11 any mortgage payments?  
12 A. None that I'm aware of.  
13 Q. Okay. So, none that you're aware of?  
14 A. Yeah.  
15 Q. Okay.  
16 A. No.  
17 Q. Is it possible you could have missed a payment or  
18 two?  
19 A. No. Not based on this what would be past due.  
20 Q. Okay. Tell me why, just so I'm, so I can  
21 understand.  
22 A. If you take twenty-seven hundred dollars off the  
23 past due amount and the ten dollars --  
24 Q. The past due amount, you're looking at the two  
25 thousand nine fifty-two sixty-three?

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1 A. Uh-huh.  
2 Q. Okay.  
3 A. If you take twenty-seven hundred dollars off of  
4 that.  
5 Q. Right.  
6 A. It doesn't add up to a missed payment.  
7 Q. Okay.  
8 A. And then when you take the ten dollars as well.  
9 Q. Okay. So, that's the twenty-seven hundred  
10 dollars that we've been looking at in the  
11 settlement statement?  
12 A. Right.  
13 Q. Okay. So, did you do anything at this point in  
14 2004?  
15 A. Same stuff. Called, tried to get somebody to  
16 talk to me.  
17 Q. Okay. Did you try to file a law suit?  
18 A. Nope.  
19 Q. Okay. Despite receiving the notice, were you  
20 still making your monthly payments that you were  
21 supposed to make?  
22 A. Yes.  
23 Q. Okay. Now, let's move forward to more recently.  
24 We'll mark this as Exhibit Ten, Bentrin's Number  
25 Ten. Thank you.



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1 (NOTICE OF DEFAULT MARKED AS DEFENDANT'S  
2 EXHIBIT NO. 10 FOR IDENTIFICATION.)  
3 Q. Do you recall receiving this notice of default?  
4 A. I do.  
5 Q. Okay. And what was the date of this notice of  
6 default?  
7 A. September 27th, 2011. This is Ten, Jana?  
8 Q. This is Ten.  
9 A. Okay.  
10 Q. Yes.  
11 A. Thank you.  
12 Q. At this point, were you making mortgage payments?  
13 A. I was not.  
14 Q. Okay. Do you know when you stopped making  
15 mortgage payments exactly?  
16 A. January 2009.  
17 Q. Okay. So, you haven't made, January 1st or was  
18 your last payment in January 2009 at some point?  
19 A. Yeah. The last payment was sent in January 2009.  
20 Q. Okay.  
21 A. And it was not accepted.  
22 Q. Okay. It was not accepted. Do you know the  
23 amount?  
24 A. Twelve hundred and some odd bucks.  
25 Q. Was it, did you pay by check?

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1 A. I probably did it on-line then because I had an  
2 account at Wells Fargo. I can pull that monthly  
3 statement.  
4 Q. Okay. When did you start making payments on-  
5 line?  
6 A. Heck if I know.  
7 Q. Okay. But you still have the information that  
8 you could pull?  
9 A. Yeah. And you can see it in your client's  
10 ledgers.  
11 Q. But you can pull it as well if I wanted to get it  
12 from you? Would that be difficult for you to  
13 get?  
14 A. No. I think I've got most of those.  
15 Q. Okay. So, January 2009 was the last time that  
16 you paid. Okay. So, when you received, you  
17 recall receiving Exhibit Ten which is the letter  
18 dated September 27th, 2011?  
19 A. Yes.  
20 Q. Okay. And you just testified, and just correct  
21 me if I'm wrong that you were not making payments  
22 at this time to Wells Fargo?  
23 A. Yeah. I couldn't.  
24 Q. When you say you couldn't --  
25 A. Your client was not accepting payments.

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1 Q. Okay. Did you try to, when your, when do you  
2 contend that Wells Fargo or, you know, its  
3 predecessors exactly stop taking the payments,  
4 was it 2009?  
5 A. Yeah. January 2009.  
6 Q. Okay. In January 2009, did you do anything to  
7 try to resolve this dispute?  
8 A. Oh, yes. Absolutely.  
9 Q. Okay. And what did you do?  
10 A. I continued to contact your client, Wachovia  
11 Bank, at the time. And they said, we can't talk  
12 to you, this has been referred to an attorney for  
13 foreclosure. Once it got to Ms. Suzanne Brown  
14 with Brock and Scott, I communicated with her.  
15 Q. She's the attorney with Brock and Scott, right?  
16 A. Yes. Communicated with her over and over. And  
17 she even sent a letter back and said, hey, the  
18 notice of intent to foreclose that we sent you in  
19 October or November was wrong. We didn't apply a  
20 payment. But they continued on the path for  
21 foreclosure.  
22 Q. Okay. But -- got you. But you're contending,  
23 though, that although you received noticed in '03  
24 and '04, you were still, it was, it was  
25 incorrect, those notices, because of the twenty-

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1 seven hundred dollars?  
2 A. I am.  
3 Q. Okay. Now, let's just go back up a little bit.  
4 I believe the next one will be Exhibit, we'll  
5 mark this as one --  
6 MR. VARNADO: Eleven.  
7 MS. BAKER: Eleven. Yeah.  
8 (DEMAND LETTERS MARKED AS DEFENDANT'S  
9 EXHIBIT NO. 11 FOR IDENTIFICATION.)  
10 Q. I think it will be easier just to mark these all  
11 as a group. Let me see that one more time.  
12 MR. VARNADO: What are we marking, Jana?  
13 Q. Take a look at these.  
14 MR. VARNADO: Are these all one exhibit?  
15 MS. BAKER: Yeah. They're just demand  
16 letters, Exhibit Eleven.  
17 Q. Which ones are you looking at? Do you have the  
18 July 13th, 2005?  
19 A. '05.  
20 Q. December 13th, 2006, do you have a copy of?  
21 A. '06. Uh-huh.  
22 Q. Okay. You have, what's the next one that you  
23 have?  
24 A. '07.  
25 Q. Is that January 19th, 2007?



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1 A. Yeah.  
2 Q. Okay. And then do you a March 20th, 2007?  
3 A. I do.  
4 Q. Okay. And for the record, for Exhibit Eleven,  
5 would you agree with me these are demand letters  
6 from Wachovia to you?  
7 A. I would.  
8 Q. Okay. Have you received all these demand  
9 letters?  
10 A. Yes.  
11 Q. Okay.  
12 A. I believe.  
13 Q. Yeah. Just take a look at it. Let's go through  
14 the first one. Have you received the one, and  
15 you might need to look at it, dated July 13th,  
16 2005?  
17 A. Yes.  
18 Q. Okay. And have you received the one dated  
19 December 13th, 2006?  
20 A. Yes.  
21 Q. Okay. And then, have you received the one dated  
22 January 19th, 2007?  
23 A. I have.  
24 Q. Okay. And did you receive the one dated March  
25 20th, 2007?

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1 A. I have.  
2 Q. Okay. On January 13th, 2005, do you still  
3 contend that you were making the payments to  
4 Wachovia?  
5 A. Yes.  
6 Q. Okay. And with this one, are you contending that  
7 this demand letter is incorrect?  
8 A. Again, yes.  
9 Q. Because of the same reasons we discussed earlier,  
10 the twenty-seven hundred dollars?  
11 A. Yes.  
12 Q. Okay.  
13 A. Yes.  
14 Q. Okay.  
15 A. I was checking the date on it.  
16 Q. Okay. And look at December 13th, 2006 letter.  
17 A. Yes.  
18 Q. Okay. Was the past due payment incorrect there  
19 as well?  
20 A. It was.  
21 Q. Okay. And was it, what else was wrong with it  
22 besides the twenty-seven hundred dollar  
23 inaccuracy?  
24 A. Late charges of ten dollars have been put on the  
25 account, and there's no provision for it.

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1 Q. There's no provision, oh, because you're  
2 contending that you are not late on any of the  
3 payments?  
4 A. Well, even, what's even more bizarre than that,  
5 Jana, is it's not even a part of the note.  
6 Q. There's not a condition for late charges?  
7 A. It's not ten dollars.  
8 Q. Okay. What was the late charge, do you recall or  
9 we can look it up?  
10 A. It's five percent of the next payment.  
11 Q. So, it could be, I guess, let's take a look at  
12 it. Okay. So, you're looking for the five  
13 percent is, you're looking at the note on page  
14 three of four of the note is --  
15 A. I've got it over here.  
16 Q. Okay. And that's Exhibit --  
17 A. Two.  
18 Q. -- Two. Exactly. And if you look on page three  
19 of four of the provisions, page three of four of  
20 the note.  
21 A. Yes.  
22 Q. Okay. And that's the five percent of the  
23 payment?  
24 A. Yes.  
25 Q. And were any of your payments late?

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1 A. No.  
2 Q. None of your payments were late; is that a yes?  
3 I mean, did you have --  
4 A. None of my payments were late is correct.  
5 Q. Okay. Okay. So, next, the next demand, so you  
6 were looking at July 13th, 2005. We're looking  
7 at December 13th, 2006.  
8 A. Uh-huh.  
9 Q. Take a look at, and you received, do you remember  
10 receiving January 19th, 2007 demand letter,  
11 correct?  
12 A. Yes.  
13 Q. Okay. And then the March 20th, 2007 demand  
14 letter?  
15 A. Yes.  
16 Q. Okay. So, did you ever call anyone, I know you  
17 called them many times to discuss what you allege  
18 was improper booking of the twenty-seven hundred  
19 dollars. Did you ever address the late charge  
20 issue?  
21 A. Yes.  
22 Q. Okay. And did you address the late charge issue  
23 in 2003 or when you received a, I could be wrong,  
24 excuse me, the first demand letter that you  
25 received, I believe, it might have been 2004, but



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1 let me take a look. The 2003 demand letter which  
2 was, I believe, it's Exhibit Number Eight. Okay.  
3 If you look at Exhibit Number Eight from 2003,  
4 did you --  
5 A. Yeah. I don't remember when I started  
6 complaining about the ten dollars because it  
7 wasn't until December of 2008 when I got the  
8 payment, the first payment ledger from your  
9 client that showed they were booking both five  
10 percent and charging ten dollars. Yeah.  
11 Q. Okay. So, were you -- okay. But do you recall --  
12 --  
13 A. I don't.  
14 Q. -- in '04 whether you complained about the late  
15 charge?  
16 A. No, no.  
17 Q. Or in '05, you just don't recall?  
18 A. Don't recall.  
19 Q. Don't recall. Okay.  
20 A. Yeah.  
21 Q. But you did complain about the twenty-seven  
22 hundred dollars in 2003?  
23 A. Yeah. I mean --  
24 Q. Okay.  
25 A. -- and I, I know we talked about the HUD one,

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1 Jana, and I just can't remember when. One of  
2 these issues.  
3 Q. Okay. Maybe in 2003 or something?  
4 A. I don't remember which one.  
5 Q. Okay. But it would have been early 2000s, let me  
6 say early to mid?  
7 A. Yes.  
8 Q. Okay. Okay. So, now let's look at, this will be  
9 Bentrin Number Twelve.  
10 (LETTER OF 8/24/10 MARKED AS DEFENDANT'S  
11 EXHIBIT NO. 12 FOR IDENTIFICATION.)  
12 MR. VARNADO: What's the date on that one?  
13 MS. BAKER: Well, it's August 24, 2010.  
14 MR. VARNADO: Oh, again, I'm sorry.  
15 THE WITNESS: Oh, that was the --  
16 MS. BAKER: Eleven is the, was the group of  
17 these demand letters.  
18 THE WITNESS: -- the demand letters.  
19 MR. VARNADO: I got you. I'm sorry.  
20 MS. BAKER: It was from 2005 to 2007.  
21 MR. VARNADO: And you're going to identify  
22 Number Twelve now?  
23 MS. BAKER: Yes.  
24 Q. Yes. Mr. Bentrin, have you seen this document  
25 before?

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1 A. I have.  
2 Q. Did you write this document?  
3 A. I did.  
4 Q. What is the date of this document?  
5 A. August 24th, 2010.  
6 Q. Okay. And who did you send it to?  
7 A. Wells Fargo Bank Credit Bureau Dispute.  
8 Q. Okay. Tell me why you sent this letter to Wells  
9 Fargo Credit Bureau Dispute.  
10 A. After the case, the 2009 foreclosure case that  
11 your client had against me was dismissed --  
12 Q. Right.  
13 A. -- they put on my credit report immediately that  
14 the --  
15 Q. You're saying Wells Fargo?  
16 A. Yes.  
17 Q. Okay.  
18 A. Put it immediately on my credit that the house  
19 had been foreclosed on.  
20 Q. Okay.  
21 A. And they had gotten title and deed of, in lieu in  
22 deed of title or something on my credit.  
23 Q. Okay. So, this was an inaccuracy, there was  
24 just, the credit reporting wasn't accurate, is  
25 that why you wrote this memo?

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1 A. Yes.  
2 Q. Okay.  
3 A. And it was also against the order of the judge.  
4 Q. Was this the first written letter to Wells Fargo?  
5 A. Oh, gosh. No.  
6 Q. Okay. Let's see here. Was this the first  
7 written letter in regard to, when did you start  
8 writing them letters then? Because I thought  
9 that you --  
10 A. November 2008.  
11 Q. Okay. Because I thought the documents produced --  
12 --  
13 A. I may have written before those, but those are  
14 the only ones I've got.  
15 Q. Okay. 2008. Okay.  
16 A. Yeah.  
17 Q. And that was, and the 2008, that was in regard to  
18 just the allegations of, or what was the 2008  
19 letters referring to?  
20 A. When I got the notice of, another notice of  
21 intent to foreclose, and I called and said, you  
22 know, and that's where it got even weirder  
23 because when I called them this time, the person  
24 said no, there's no problem, here's what you owe.  
25 And a couple of days later I got a statement and

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1 another letter that showed different amounts  
2 owed.  
3 Q. Okay. But that was in 2008?  
4 A. Yeah.  
5 Q. Okay.  
6 A. And that's when I sent them the letter saying,  
7 hey, something's not right here, send me a  
8 payment history.  
9 Q. Okay. But there wasn't an issue with the credit  
10 reporting in 2008?  
11 A. I didn't bring up that issue at that point.  
12 Q. Okay. Was there an issue with it in '08, did you  
13 have issues with your credit report in '08, and  
14 did Wells Fargo do anything in 2008?  
15 A. Yeah. They were always showing it as behind.  
16 Q. Okay.  
17 A. Yeah.  
18 Q. Since when did they, when did it affect your  
19 credit, I guess?  
20 A. Probably 2002, 2003.  
21 Q. 2002, 2003. Okay. Did it affect your ability to  
22 obtain a loan with anyone else?  
23 A. Absolutely.  
24 Q. Okay. With, when did it affect you, like what  
25 did it, just --

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1 A. It just, you know, bad credit. It looks bad when  
2 they're always reporting you ninety days late.  
3 Q. Okay. So, it was 2002 when it started or 2003, I  
4 guess?  
5 A. Yeah. Somewhere around there.  
6 Q. Okay. When did you try to obtain a loan, you  
7 know, during the time period --  
8 A. I would have to check my records as to what I was  
9 looking -- yeah.  
10 Q. Do you recall if you tried to obtain a loan in  
11 the past three years?  
12 A. No. I think in the past three years I pretty  
13 much had given up as we started all this  
14 litigation.  
15 Q. The past five years?  
16 A. I'd have to check my records.  
17 Q. Okay. Could you check your records if I, if we  
18 want that information and try to find it to see  
19 if you obtained for a loan and the reason for the  
20 loan and --  
21 A. Yeah. Absolutely.  
22 Q. -- and with, you know, what financial  
23 institution.  
24 A. Yeah.  
25 Q. Okay. Okay. Okay. So, there were issues with

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1 the credit report 2002 to 2003ish or '04?  
2 A. Yeah.  
3 Q. Okay. But in 2010, you're addressing the issue  
4 of the foreclosure with Wells Fargo?  
5 A. Yeah. I'm addressing at that point instead of a  
6 dispute over late, they're actually putting on  
7 there that the home was foreclosed although the  
8 case was dismissed.  
9 Q. Okay. And you, and we're talking about, so we're  
10 clear with our record that when the case, the  
11 initial foreclosure case was dismissed, we'll  
12 make this Exhibit Number Thirteen. Is that what  
13 you were talking about? Just so we're clear for  
14 the record.  
15 A. Yeah.  
16 (FORECLOSURE DISMISSAL MARKED AS  
17 DEFENDANT'S EXHIBIT NO. 13 FOR IDENTIFICATION.)  
18 Q. Okay. So, Exhibit Number -- I'll wait for you.  
19 Sorry. Okay. Exhibit Thirteen.  
20 A. Uh-huh.  
21 Q. Explain this to me. I mean, don't explain this  
22 to me. This is, is this where the judge  
23 dismissed the foreclosure case?  
24 A. Yes.  
25 Q. Okay. And what was the date, when did this

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1 occur?  
2 A. July 10th.  
3 Q. Or July 7th, 2010?  
4 A. Yeah.  
5 Q. Is that right?  
6 A. That would be correct.  
7 Q. Okay. Why, so when, do you recall when the  
8 foreclosure initially, was it, I guess, did it,  
9 did Wachovia initiate the foreclosure in 2009  
10 against you?  
11 A. They did.  
12 Q. Okay. And why was it dismissed?  
13 A. We, I answered affirmatively --  
14 Q. By your, you were pro se?  
15 A. Uh-huh.  
16 Q. That's a yes?  
17 A. That is yes. Sorry about that.  
18 Q. Okay.  
19 A. And the first hearing was scheduled in December  
20 2009, I can get the exact dates for you. And the  
21 Brock and Scott attorney, myself, and Judge  
22 Scarborough sat down and looked at what was  
23 provided. And I said, Your Honor, these payments  
24 are not correct. They're missing, and he said,  
25 okay, obviously there's an issue here. You guys



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1 work this out, and I'll schedule, you know, trial  
2 later. And if you don't, if you guys can't work  
3 it out, Wells Fargo or Wachovia, you're going to  
4 have to bring somebody to testify to these  
5 numbers.  
6 Q. Okay. So, they, so Brock and Scott came to the  
7 foreclosure without somebody to testify?  
8 A. Yeah. And so, I got together with him, their  
9 attorney.  
10 Q. Him being -- okay.  
11 A. Yeah. And said, here's what the principal  
12 balance should be. Here's the money to bring it  
13 current in a certified check from January to  
14 December, and here's January's 2010 payment, if  
15 your client will agree that this is where, you  
16 know, what we should be on balance.  
17 Q. And then what happened?  
18 A. They never responded.  
19 Q. Brock and Scott didn't?  
20 A. No. Wachovia, Wells Fargo never responded.  
21 Didn't show up to court.  
22 Q. Okay. But you were in contact with their  
23 attorney at the time?  
24 A. Uh-huh.  
25 Q. That's a yes?

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1 A. That is a yes.  
2 Q. Yeah. Okay.  
3 A. And I kept asking and he said, they're not, they  
4 won't respond.  
5 Q. Okay. And so, what did the judge say about, did  
6 the judge allow Wachovia to bring this law suit  
7 back again because if it couldn't be resolved?  
8 A. He had two provisions. One, could not refile for  
9 ninety days and before refiling, I had to get a  
10 calculated payoff.  
11 Q. Okay. Did you get the calculated payoff?  
12 A. No.  
13 Q. Didn't you eventually? You never got a  
14 calculated payoff?  
15 A. Not prior to refiling.  
16 Q. Not prior, you didn't -- okay. So --  
17 A. You sent that with the lost note affidavit in  
18 April of 2012.  
19 Q. Okay. So, but so the action was dismissed, and  
20 then you wrote this letter to Wells Fargo  
21 regarding your credit reporting which is shown by  
22 Exhibit Number Twelve?  
23 A. Yes.  
24 Q. Okay.  
25 A. And excuse me, can we take a break?

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1 Q. Yes.  
2 A. Okay.  
3 (The deposition went off the record for a  
4 brief period of time.)  
5 Q. Mr. Bentrin, we're back on the record. I just  
6 want to remind you that you're under oath.  
7 A. Okay.  
8 Q. Did you speak with your attorney at all during  
9 this short break?  
10 A. Yes.  
11 Q. Okay. What did you, did y'all talk about this  
12 law suit?  
13 A. No.  
14 Q. Okay.  
15 MR. VARNADO: I think I told him where the  
16 bathroom was.  
17 THE WITNESS: Yeah. I'm just trying to be  
18 honest.  
19 Q. Okay. Well, let's, earlier we were talking about  
20 this foreclosure law suit instituted by Wachovia  
21 2009 that was dismissed by the judge?  
22 A. Yes.  
23 Q. Which is, I'm referring to Bentrin Exhibit  
24 Thirteen?  
25 A. Yes.

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1 Q. Did Wachovia institute a foreclosure proceeding  
2 ninety days after this was dismissed?  
3 A. They did not.  
4 Q. Okay. Did they wait until, when I say they,  
5 Wachovia or Wells Fargo --  
6 A. Yeah. I think we --  
7 Q. -- was the next suit, foreclosure suit instituted  
8 when you filed the complaint against Wells Fargo  
9 in 2011?  
10 A. Yes.  
11 Q. Okay.  
12 A. I'm trying to keep all the years straight, but  
13 yes, it was.  
14 Q. Okay. So, Wachovia files in 2009 a foreclosure  
15 action?  
16 A. Yes. As a counterclaim?  
17 Q. Okay. So, you initially filed a complaint in  
18 2009?  
19 A. No. I filed -- which one are we talking about?  
20 Q. We're talking about the 2009 case that was  
21 dismissed?  
22 A. Yes. Okay.  
23 Q. Okay. So, was that a foreclosure action filed by  
24 Wachovia, I believe the plaintiff --  
25 A. Yes. It was. It was.



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1 Q. Okay. The case was dismissed?  
2 A. Yes.  
3 Q. Okay. Wachovia couldn't file a law suit pursuant  
4 to this order which is Bentrim Thirteen, they had  
5 to wait at least ninety days?  
6 A. Yes.  
7 Q. Okay. Did they wait ninety days?  
8 A. Yes.  
9 Q. Okay. And isn't it, and Wachovia which is now  
10 Wells Fargo waited until actually you brought the  
11 current law suit that we're in today to  
12 counterclaim in the foreclosure?  
13 A. Yeah. Yes.  
14 Q. Okay. And I believe, and your law suit was  
15 filed, I want to say 2011 but I can look it up  
16 and make sure.  
17 A. April 2011?  
18 Q. Okay. Okay. And then in, you know, as a result  
19 of this law suit, it was dismissed and you're  
20 contending that there was, that Wells Fargo or  
21 Wachovia, Wells Fargo incorrectly or damaged your  
22 credit, damaged your credit because of reporting  
23 the foreclosure on your, to a credit reporting  
24 agency, I mean, to an agency?  
25 A. Yeah.

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1 Q. Okay. Did they ever, do you recall, let's take a  
2 look at it. This will be Exhibit Number  
3 Fourteen. Take a look at this. Mr. Bentrim, do  
4 you, or looking at Exhibit Number Fourteen, do  
5 you recall receiving this letter?  
6 A. I do.  
7 (LETTER OF 8/25/10 MARKED AS DEFENDANT'S  
8 EXHIBIT NO. 14 FOR IDENTIFICATION.)  
9 Q. Okay. And what's the date of this letter?  
10 A. August 25th, 2010.  
11 Q. Okay. And so, Wells Fargo replied to your  
12 inquiry regarding the credit reporting?  
13 A. Yes.  
14 Q. Okay. And did they fix, or did they, Wells Fargo  
15 contended that their investigation showed the  
16 information they reported was accurate; is that  
17 true?  
18 A. That is true.  
19 Q. Okay.  
20 MR. VARNADO: It's true what's said in that  
21 letter? I just want to make sure.  
22 THE WITNESS: Yeah. It's true what it said  
23 in the letter.  
24 Q. Okay. So, here's the question. Did Wells Fargo,  
25 Wells Fargo wrote you a letter in response to

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1 your letter dated August 25th, 2010 which is  
2 Bentrim Fourteen. And Wells Fargo says, if you  
3 read the second sentence, the result of our  
4 investigation establishes that the information we  
5 reported is accurate?  
6 A. That is what the letter says.  
7 Q. Okay. And was that correct?  
8 A. It is not.  
9 Q. Okay. And how do you know it was not correct?  
10 A. We know from ledger balances. We know from the  
11 promissory note. We know from the adjustable  
12 rate mortgage disclosure, and we know from the  
13 HUD one.  
14 Q. Okay. But what about the, was the foreclosure  
15 status removed from your credit report?  
16 A. They removed the entire thing off the credit  
17 report.  
18 Q. When you say thing, what is that?  
19 A. All the history of the loan, boom, disappeared  
20 off the credit report.  
21 Q. Okay. So your credit report was cleared up, I  
22 take it?  
23 A. I wouldn't phrase it as cleared up because then  
24 it looks like you've had no credit. So, it's not  
25 a positive, either.

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1 Q. But they took off the negative, like the  
2 negative?  
3 A. No. They took the whole loan off.  
4 Q. Oh, they took the loan off?  
5 A. Yeah.  
6 Q. Okay. So, if you look at, let's see here, and  
7 you don't recall if you applied for a loan, you  
8 know, since 2009?  
9 A. I seriously doubt it. Yeah.  
10 Q. Okay.  
11 A. I can check records though. I have the credit  
12 monitoring.  
13 Q. Okay. The next will be Exhibit Fifteen.  
14 (LETTER OF 9/1/10 MARKED AS DEFENDANT'S  
15 EXHIBIT NO. 15 FOR IDENTIFICATION.)  
16 Q. Take a look at Exhibit Fifteen. Have you seen  
17 this letter before?  
18 A. Yes.  
19 Q. Okay. What's the date of this letter?  
20 A. September 1st, 2010.  
21 Q. Okay. So, in this letter, Wells Fargo states the  
22 foreclosure status has been removed from credit  
23 reporting for this loan and the former Wachovia  
24 account number, and it gives the account number.  
25 Is that, did that occur?

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1 A. It did occur.  
2 Q. Okay. Did that resolve the previously reported  
3 entries that you were complaining about?  
4 A. Yes. But it did not resolve the fact that,  
5 actually it didn't resolve it by simply removing  
6 it, it doesn't resolve it.  
7 Q. Okay. So, what would have resolved it in your  
8 mind?  
9 A. Putting that this loan has been paid on time and  
10 not, that it was not in foreclosure.  
11 Q. On September 5th, 2010, and this would be Exhibit  
12 Number Sixteen, this is Exhibit Sixteen. Have  
13 you seen this letter before?  
14 A. Yes.  
15 (LETTER OF 9/5/2010 MARKED AS DEFENDANT'S  
16 EXHIBIT NO. 16 FOR IDENTIFICATION.)  
17 Q. Okay. Did you write this letter?  
18 A. Yes.  
19 Q. Okay. And what's the date of this letter?  
20 A. September 5th, 2010.  
21 Q. Okay. And what's the purpose of this letter?  
22 A. Most likely these were crossing in the mail,  
23 because this one's dated the first from Montana  
24 and this is faxed to them on the 5th.  
25 Q. When you're saying this one, from, which one,

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1 when you're saying, it's just so the record's  
2 clear. Are you looking at the September 1st,  
3 2010?  
4 A. Yes. These are, Exhibit Sixteen and Fifteen  
5 probably crossed in the mail.  
6 Q. Okay. When you say derogatory credit  
7 information, what did you mean by that?  
8 A. That the account was, had been foreclosed on and  
9 I had given them title in lieu of foreclosure.  
10 Q. You also say, at the last sentence, "you will  
11 need to report that the account has been in good  
12 standing and paid on time since March 2002."  
13 A. Yes.  
14 Q. Okay. Do you have proof that the account, from  
15 your records, not the bank's records, do you have  
16 proof in your records that your account was in  
17 good standing?  
18 A. Yes.  
19 Q. Okay.  
20 A. And it's in your client's ledger balances as  
21 well.  
22 Q. I know, but I'm saying do you have it in your,  
23 regardless of what's in my client's account  
24 ledger --  
25 A. I was just letting you know that your client has

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1 that information already.  
2 Q. Right. I understand. But you have it, do you  
3 have this information?  
4 A. Yes.  
5 Q. Okay. So, what proof do you have to show that  
6 your account was paid on time and paid, you know,  
7 the correct amount?  
8 A. Bank statements.  
9 Q. Okay. And you have bank statements that you can  
10 give me if I want it?  
11 A. Yes.  
12 Q. Okay.  
13 A. Back to --  
14 Q. Well, how far back do you have the bank  
15 statements?  
16 A. I don't know.  
17 Q. Okay. But you can find that out?  
18 A. Yeah.  
19 Q. Okay. Do you know how far back, you know, I  
20 mean, you don't know how far back that you, how  
21 far back the bank statements go that you have in  
22 your possession, but do you know whether you have  
23 bank statements in your possession since 2008, or  
24 do you not?  
25 A. I would say from at least 2006, 2005.

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1 Q. Okay. So, 2005, 2006?  
2 A. Yeah.  
3 Q. Okay. And maybe, you may still have them  
4 earlier, you just don't know and have to check?  
5 A. Yeah.  
6 Q. Okay. And you can show, were your payments made  
7 via checks pretty much or is it, when did you  
8 start going more on-line?  
9 A. It was a hodgepodge mix.  
10 Q. Okay.  
11 A. Yeah.  
12 Q. But the point is, you can get me this  
13 information?  
14 A. Yes.  
15 Q. Okay. How long, if we need this information, how  
16 long will it take?  
17 A. I wouldn't --  
18 MR. VARNADO: I don't think this is a proper  
19 question.  
20 Q. I mean, could you do it within ten days?  
21 MR. VARNADO: Do what within ten days?  
22 MS. BAKER: What we're talking about, get  
23 proof that his, you know, give me the  
24 documentation that the account was --  
25 MR. VARNADO: Well, we rely partly on proof



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1 that you've provided to.  
2 MS. BAKER: I know. But I have --  
3 MR. VARNADO: Sure. That's fine. I just  
4 want to make sure that you're not trying to box  
5 us in and say our whole case is predicated on his  
6 documents, that your documents don't count.  
7 MS. BAKER: Oh, I'm not saying that, but it  
8 is part of his claim so if we want a right to see  
9 his, you know, his bank statements for records,  
10 you know, my point is, so it's a basic question,  
11 and he answered it. He said if he has them,  
12 definitely from '05 to '06, and my question, and  
13 he can get the documents from me if we need the  
14 documents. The question is, is it going to take  
15 ten days, two weeks?  
16 A. Yeah. I would say two weeks just because that's,  
17 one, it's going to take a while to redact other  
18 stuff on there. And two, if I'm missing  
19 anything, I unfortunately have to rely on your  
20 client to get those, and I don't know if they  
21 would provide those.  
22 Q. Right. Okay. And this would be from a Wells  
23 Fargo bank account? I mean, you said it was a  
24 hodgepodge of, you know, sometimes you made  
25 payments on-line but you also made payments via

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1 check, so I don't know if you have an account  
2 with, you know, some other bank that you were,  
3 you know --  
4 A. No. It was Wachovia, First Union, Wachovia,  
5 Wells Fargo.  
6 MR. VARNADO: I'm going to object to form.  
7 Go ahead.  
8 MS. BAKER: Object? What was wrong with the  
9 last question?  
10 MR. VARNADO: Because it's all over the  
11 place, it's a compound question A, and B, it's  
12 talking about discovery tech stuff and when he  
13 can answer, and I don't think it's, I think it's  
14 outside the scope of discovery, and I don't think  
15 it was a proper question. But I just note my  
16 objection on the record. I'm not even saying I  
17 won't help you and cooperate with you to get it.  
18 We'll do what we can to make you happy about  
19 that.  
20 MS. BAKER: Well, let me start over.  
21 Q. In terms of bank accounts, when you were making  
22 the payments, when you were making the payments  
23 to Wachovia slash Wells Fargo, how many bank  
24 accounts did you have at that time?  
25 A. Institutions?

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1 Q. Or financial institutions?  
2 A. Just one.  
3 Q. And that was?  
4 A. First Union, Wachovia, Wells Fargo.  
5 Q. Okay. So you've only had, you've had one bank  
6 account since 2002 personally?  
7 A. Well, yeah. I've recently changed, but yeah.  
8 Q. Okay. And you made payments through the personal  
9 bank account, not through your business bank  
10 account?  
11 A. I'd have to look and see.  
12 Q. Okay. Okay. So, going back to the, well, and  
13 this may have been a crossover, too. But to the  
14 credit reporting issue, this would be Exhibit  
15 Number Seventeen. Have you seen this document  
16 before?  
17 A. I have.  
18 Q. Okay. And what's the date of this letter?  
19 A. September 13th, 2010.  
20 (LETTER OF 9/13/2010 MARKED AS DEFENDANT'S  
21 EXHIBIT NO. 17 FOR IDENTIFICATION.)  
22 Q. Okay. So, would you agree that Wells Fargo was  
23 not ignoring your request to try to, regarding  
24 the credit reporting issues?  
25 A. No.

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1 Q. Okay.  
2 MR. VARNADO: September 13 what?  
3 THE WITNESS: 2010.  
4 Q. Now, let's move to October 25th, 2010. This will  
5 be Bentrin Number Eighteen. And this is a little  
6 difficult to read. Hopefully I'll have another  
7 copy of that. Have you seen this letter before?  
8 A. I have.  
9 (LETTER OF 10/25/2010 MARKED AS DEFENDANT'S  
10 EXHIBIT NO. 18 FOR IDENTIFICATION.)  
11 Q. Okay. Did you write this letter?  
12 A. I did.  
13 Q. And who did you write it to?  
14 A. April O'Quinn and Rob Donaldson at Brock and  
15 Scott.  
16 Q. Okay. And the date of this letter?  
17 A. October 25th of 2010.  
18 Q. And April O'Quinn worked for Wells, she was the  
19 person who you spoke with at Wells Fargo in the  
20 past or why was it addressed to April, or who is  
21 April O'Quinn?  
22 A. I had forwarded, after the dismissal, like  
23 qualified written requests to --  
24 Q. When you're saying after, you're talking about  
25 just so the record's clear of when the, 2009



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1 foreclosure law suit was dlsmissed.  
2 A. Yeah. The July 10th dismissal.  
3 Q. The order, right. Okay.  
4 A. Right. I had forwarded to your client via their  
5 attorney a qualified written request and hadn't  
6 gotten an answer. And he said, this is the  
7 person to contact.  
8 Q. You forwarded it to Wells Fargo's attorney?  
9 A. Yes.  
10 Q. Okay.  
11 A. Because you guys were represented by counsel.  
12 Q. Okay. And April O'Quinn was, he told you to  
13 speak with her?  
14 A. Yes.  
15 Q. Contact her? Okay. In your letter, you say you,  
16 to stop further harassing, I guess you're asking  
17 to stop further harassing phone calls. What,  
18 explain to me about these about why, one, why  
19 were these phone calls harassing and, two, when  
20 did they start, I guess? Tell me a little bit  
21 about that.  
22 A. Yeah. Almost immediately started, almost  
23 immediately after the 2009 was dismissed.  
24 Q. The case?  
25 A. The case, yes.

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1 Q. Okay. So, it wouldn't have been in July of 2010?  
2 A. Oh, yes.  
3 Q. Okay. What type of, why were the calls  
4 harassing?  
5 A. The repetitive nature of them over and over.  
6 Q. What did they say, the calls? You said  
7 repetitive. Like what was, like what were the  
8 contents of the phone calls?  
9 A. We're calling to see if we can get a  
10 modification.  
11 Q. Okay. And where were they calling you?  
12 A. At my office.  
13 Q. And was it a person on the phone or a recording?  
14 A. Sometimes it was a recording and sometimes it was  
15 a person.  
16 Q. Okay. And when you said your office, that would  
17 be the office on Archdale Street?  
18 A. Yes. Office phone number.  
19 Q. Okay. Did you give Wells Fargo your office  
20 number or that office phone number?  
21 A. I did not.  
22 Q. Okay. Then how did they get the office phone  
23 number?  
24 A. It's a great question.  
25 Q. How many times did Wells Fargo call you that

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1 summer, I guess?  
2 A. I have no idea.  
3 Q. I mean, did you record any of those phone calls?  
4 A. I did not.  
5 Q. Who did you speak, do you recall who you spoke  
6 with because sometimes it's a recording but  
7 sometimes you said it was a person?  
8 A. No. Because I basically said this is, you know,  
9 in dispute, just got dismissed.  
10 Q. But did you recall whether it was a person  
11 sometimes calling?  
12 A. Yeah. Sometimes a person, sometimes it was  
13 recorded.  
14 Q. Okay. Okay. And when did the phone calls stop?  
15 A. After this letter.  
16 Q. Okay. So, you're saying those calls from July  
17 2010 until about October 25th, 2010?  
18 A. Yes.  
19 Q. Okay. Do you recall how many times a day you  
20 received phone calls?  
21 A. No.  
22 Q. Was it daily or weekly or monthly?  
23 A. If I recall correctly, it would be like they  
24 would call, and if you didn't pick up because the  
25 caller ID, they would keep calling until you

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1 picked up. And then, if you said no, you know,  
2 we've got a dispute about this, they would wait  
3 like three days. But if you didn't pick up the  
4 phone, they'd keep calling you over and over  
5 again over a course of several hours.  
6 Q. Did you ever take any notes after you, if it was  
7 a live person on the phone?  
8 A. I don't believe so.  
9 Q. Okay. Are these harassing calls a basis for  
10 your, any of your remaining claims against Wells  
11 Fargo?  
12 A. No. No.  
13 Q. Okay. In this letter, you say towards the end,  
14 not the last, I guess it's the, towards like the  
15 third from the bottom. "I do not believe there's  
16 any question that the loan servicer on this  
17 account lacked the factual basis to ever  
18 determine if the account was current." And then  
19 you can finish the rest, or in arrears or in  
20 default, yet on a hunch negatively impacted my  
21 credit and wrongfully foreclosed. Explain that.  
22 A. Your client has been unable to produce any ledger  
23 or payment records that would support the account  
24 being in arrears or any of the numbers that they  
25 are purporting.



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1 Q. Have you prepared a similar, I guess a payment  
2 history to show that the account is current or  
3 would have been until 2009?  
4 A. I gave that to Rob at, Rob Johnston at Brock and  
5 Scott in 2009 when I forwarded the certified  
6 funds to them.  
7 Q. Okay. So, and you forwarded again the certified  
8 funds to Rob Johnston?  
9 A. Donaldson.  
10 Q. Donaldson. Yeah. Okay.  
11 MR. VARNADO: Wait, wait, wait. You said  
12 Johnston, you said Donaldson?  
13 MS. BAKER: Donaldson.  
14 THE WITNESS: Oh, Johnson. Sorry.  
15 MR. VARNADO: There's three Robs in the case  
16 which is probably --  
17 THE WITNESS: Ron, Ron Johnson.  
18 MS. BAKER: Ron, Ronald Johnson. Okay.  
19 Yeah.  
20 THE WITNESS: Can we start putting stickers  
21 on Robs around here?  
22 MR. VARNADO: Just to make sure, you weren't  
23 sending it to Rob Donaldson?  
24 MS. BAKER: You sent it to Ronald Johnson of  
25 Brock and Scott?

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1 THE WITNESS: Yes.  
2 Q. You also, are you still questioning the stand in?  
3 A. Yes.  
4 Q. And tell me why.  
5 A. Because until, what was it, last month, there was  
6 no, no --  
7 Q. But you know now, you know there's the original,  
8 that it was located?  
9 A. No. I do not.  
10 Q. Okay. Well, we informed your counsel of that.  
11 A. I know, you're, I'm not trying to be picky, but we  
12 don't know that's the original note.  
13 Q. We've had, we welcomed, once we received it, you  
14 know, you guys have, you and your counsel have,  
15 can look at the note whenever you like.  
16 A. Okay. That's fine.  
17 Q. And we've made it available when we, when it was  
18 in our hands. Now, do you want to review the  
19 original note? I'm asking you the question yes  
20 or no?  
21 A. Yes. I would.  
22 Q. Okay. You also mention here about what, you said  
23 Wells Fargo was applying a staggering twenty-  
24 seven three four percent annualized rate of  
25 interest to this account. Explain that to me.

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1 A. The difference between the, what was showing on  
2 the statements and the payoff values that had  
3 been received previously, showed a twenty-seven  
4 percent jump in interest.  
5 Q. Can you, and you're probably relying on what I  
6 would think are our documents.  
7 A. Yes.  
8 Q. And when we get to it, can you show it to me to  
9 help explain that to me, what you're talking to?  
10 A. Yes.  
11 Q. What you're referring to.  
12 A. Yes.  
13 Q. What documents do you recall, you said you  
14 received some balance, like an account, like a  
15 statement or maybe a foreclosure letter or maybe  
16 just a payment history, but what document is  
17 showing that Wells Fargo charged twenty-seven  
18 point three four percent interest rate?  
19 A. The statement that was sent when the forced  
20 placed insurance was put indicated that.  
21 Q. Okay. I will, hopefully it's in one of these  
22 here. If not, I would like just for you just to  
23 show, you know, at some point, show it to me and  
24 help explain why.  
25 A. Okay.

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1 Q. Perhaps it could be, and I don't know what to  
2 show you to look at, but just maybe this will  
3 help explain it, maybe it won't. But let's just  
4 mark these two documents as what will be Exhibit  
5 Nineteen, and it's labeled Bentrin twenty and  
6 twenty-one. And I'll give this to you just so we  
7 can -- Exhibit Number Nineteen.  
8 (NOTICE OF INTENTION TO FORECLOSE MARKED AS  
9 DEFENDANT'S EXHIBIT NO. 19 FOR IDENTIFICATION.)  
10 Q. Okay. Exhibit Number Nineteen, the first  
11 document or the first page is Bentrin twenty. Is  
12 it a notice of intention to foreclose, Mr.  
13 Bentrin?  
14 A. It is.  
15 Q. Okay. And what's the date of this?  
16 A. November 17th, 2008.  
17 Q. Okay. And have you seen this before?  
18 A. I have.  
19 Q. Okay. And if you'll look at Bentrin twenty-one,  
20 the next page --  
21 A. Yes.  
22 Q. Okay. But it's still the same exhibit.  
23 A. Is it twenty or twenty-one?  
24 Q. The exhibit, oh excuse me, the exhibit is  
25 Exhibit, Exhibit Nineteen is Bentrin twenty and



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1 twenty-one. Exhibit Nineteen --  
2 A. And so, these are both Nineteen?  
3 Q. Yes. Exactly.  
4 A. Okay.  
5 Q. So, if you look at the first page, you've sen  
6 that before, right, the notice of intention to  
7 foreclose?  
8 A. Yes.  
9 Q. Okay. And then the second page of Exhibit  
10 Nineteen which is labeled Bentrin twenty-one,  
11 have you see, it's a past due notice, correct?  
12 A. Yes.  
13 Q. Have you seen that document before?  
14 A. Yes.  
15 Q. And what's the date of this past due notice?  
16 A. 11/26/2008.  
17 Q. Okay. Now, do either of these help explain or  
18 maybe the incorrect interest rate or what do  
19 these --  
20 A. They do not.  
21 Q. Okay. Because I believe that you guys produced  
22 both of these, and we probably labeled them. Are  
23 you, what are you, do you have issue with this  
24 first letter and the second payoff statement?  
25 A. What sort of issue?

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1 Q. I guess my question to you is, was there a, did  
2 you take issue with difference, with the  
3 differences in, with the balances or was there --  
4 A. Oh, this was what prompted the calls and the  
5 letters saying you're sending me different --  
6 Q. This, these two documents?  
7 A. Yeah. And the phone calls. Yeah.  
8 Q. Okay.  
9 A. Because this one clearly says --  
10 Q. When you're saying this one -- I'm sorry.  
11 A. Yeah. Page two, the 11/26/08 document clearly  
12 show that it's two thousand two hundred and  
13 seventy-nine dollars and eighty-three cents. And  
14 the other one says four thousand nine hundred and  
15 twenty dollars and o nine cents.  
16 Q. Is it possible that you could have made a payment  
17 and like, you know, the letters passed, you know,  
18 crossed paths in the mail is why the differences?  
19 A. No. And in fact, Suzanne Brown at Brock and  
20 Scott acknowledged that this first notice of  
21 intent to foreclose was incorrectly sent.  
22 Q. Okay. But the note also did say that you may  
23 have received estimated payoff amounts, correct,  
24 as well? The note that you signed?  
25 A. I don't think so.

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1 Q. Based on change in interest rate, how sometimes  
2 you can have an estimated -- well, let's take a  
3 look at it again one more time. This is Exhibit  
4 Number Two, the second page, the variable rate  
5 payment changes. Second sentence. Prior to each  
6 payment change date.  
7 A. Uh-huh.  
8 Q. You will calculate a payment estimated to pay the  
9 outstanding principal, is that a payment  
10 estimated?  
11 A. Uh-huh.  
12 MR. VARNADO: You don't, you have to say yes  
13 or no.  
14 Q. Okay.  
15 A. Yes. But you said pay off.  
16 Q. Okay. Well, is it, I guess I did say pay off.  
17 Exactly. But, however, is it, you know, because  
18 it's a variable interest rate, because you have  
19 one, a variable interest rate --  
20 A. Yes.  
21 Q. The payments will be, some of the payments were  
22 estimated.  
23 A. None of the payments are estimated.  
24 Q. I mean -- okay. You will calculate the payment  
25 estimated to pay the outstanding principal

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1 balance; is that correct?  
2 A. Yes.  
3 Q. Okay. But you don't contend that it's possible  
4 that these two documents are a little bit  
5 different just because of, you know, maybe you  
6 made a payment and the payment crossed paths with  
7 the letter, with one of these letters?  
8 A. No. And Ms. Scott or Ms. Brown at Brock and  
9 Scott sent a letter to that effect.  
10 Q. Saying?  
11 A. That this was an incorrect notice.  
12 Q. The first notice?  
13 A. Yes.  
14 Q. Which is Bentrin, what's Exhibit Number Nineteen  
15 but is page Bentrin twenty.  
16 A. Page one.  
17 Q. Okay. Did they correct the notice, then, Wells  
18 Fargo?  
19 A. No.  
20 Q. So, at this point, you still believe that you are  
21 making payment, that you are current on your  
22 loan?  
23 A. Yes.  
24 Q. Were you the only --  
25 A. In, well, you've been jumping around from 2010 to



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1 2008. We're back in 2008, correct?  
2 Q. Yeah. Because we're at 2008, the time of this,  
3 we're looking at Exhibit Number Nineteen, 2008?  
4 A. Yes.  
5 Q. Right. You contend, I believe, that you were  
6 current under January 2009?  
7 A. I do.  
8 Q. Right. Okay. Yeah. Were you, was anyone else  
9 living with you at the time or have you always,  
10 you know, at the residence?  
11 A. No.  
12 Q. Okay.  
13 A. Sorry. A little OCD. I had to get my stack back  
14 in order there.  
15 Q. This is probably a little bit easler to read and  
16 you produced this one, if I can find it. Hold on  
17 a second. Okay. And then you said around  
18 October, going back to 2010, toward the, you  
19 know, the 25th, 26th, Wells Fargo agreed to stop  
20 calling you regarding the loan modifications?  
21 A. Yes. And --  
22 Q. And they've been requesting you to modify the  
23 loan?  
24 A. And they were also sending overnight FedEx  
25 packages requiring signatures to the office.

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1 Q. Okay. What kind of signatures were they sending  
2 you or what kind of packages were they sending  
3 you?  
4 A. Modification.  
5 Q. Modification packages?  
6 A. Yeah. And I put that in, it was in the complaint  
7 because they were like, don't ask for any counsel.  
8 on this.  
9 Q. Okay. But on Bentrin, I'm giving you a document  
10 now that's labeled Bentrin Twenty. It's a  
11 letter. Have you seen this before?  
12 A. I have not.  
13 (LETTER OF 10/26/10 MARKED AS DEFENDANT'S  
14 EXHIBIT NO. 20 FOR IDENTIFICATION.)  
15 Q. Okay. You've never seen this document before?  
16 MR. VARNADO: Which document are we looking  
17 at?  
18 Q. Oh, it's dated October 26th, 2010, Bentrin number  
19 Twenty.  
20 A. No. I have not.  
21 MR. VARNADO: Okay. The witness is looking  
22 at, what is that, did you write, oh, I'm sorry.  
23 That's my fault. You haven't written -- I'm  
24 sorry, Jana. I thought he was looking at a  
25 different document. Many apologies.

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1 A. Is this Twenty, Jana?  
2 Q. Yeah.  
3 A. Okay. I have not.  
4 Q. Well, the second sentence, can you read this,  
5 well, take a look at this, and when you're ready,  
6 let me know when you've read it. And just to let  
7 you know, we produced this to document. That's  
8 why it's WF one twenty-two at the bottom, so.  
9 A. Okay.  
10 Q. And read the second sentence.  
11 A. "This letter is to advise you we have received  
12 and processed your request."  
13 Q. Okay. And the first sentence as well. Sorry.  
14 A. "We recently received a letter from you  
15 instructing us to cease communication with you  
16 regarding the above referenced account."  
17 Q. Okay. And would you agree that Wells Fargo  
18 stopped, I guess, calling you regarding, I mean,  
19 it says communication, but did they stop calling  
20 you and sending you loan modification packages  
21 regarding --  
22 A. Oh, yeah. I already said that.  
23 Q. Okay. And it was the same time period?  
24 A. Right.  
25 Q. Okay. Now, but the second, okay, the first

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1 sentence of the second paragraph, can you read  
2 that?  
3 A. Yes. "Please be aware that while Wells Fargo has  
4 agreed to cease collection calls and letters,  
5 regardless of this obligation, you do continue to  
6 owe this debt."  
7 Q. Okay. And did you, what was your response to  
8 that, you know, regarding, you know, did you  
9 again try to, I mean, contact Wells Fargo  
10 regarding the debt or speak with anyone?  
11 A. Oh, absolutely.  
12 Q. Okay. And there was still no resolution of this?  
13 A. No.  
14 Q. Okay. This is the one that's a better copy. You  
15 produced this, I believe, to us. We've looked at  
16 this before, but it should be Bentrin Twenty-one.  
17 It's a little easier to read.  
18 A. Oh, yes.  
19 Q. Yeah.  
20 (LETTER OF 10/25/20 MARKED AS DEFENDANT'S  
21 EXHIBIT NO. 21 FOR IDENTIFICATION.)  
22 Q. Okay. So, Ronald Johnson at Brock and Scott,  
23 Bentrin Twenty-one, he's the one who told you to  
24 get in contact with April O'Quinn?  
25 A. Yes.



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1 Q. Okay. And was April O'Quinn was responsive to  
2 your communication when you tried to contact her?  
3 A. Yes.  
4 Q. Okay. This letter which is, or I don't know if  
5 it was sent via fax or via, it looks like via e-  
6 mail, Bentrin one o, which is Bentrin Twenty-one,  
7 the exhibit labeled Bentrin one o one at the  
8 bottom.  
9 A. Yes.  
10 Q. Do you recall whether you faxed this letter to  
11 April O'Quinn?  
12 A. It was faxed to April O'Quinn and e-mailed to Ron  
13 Johnson with attachments.  
14 Q. Okay. And this was on October 25th, 2010, was  
15 that when it was, did you fax it on that date?  
16 A. Yeah. I would assume as such.  
17 Q. You guys don't see the fax transmittal?  
18 A. Yeah.  
19 Q. Okay. Okay. Did you ever, when you were, you  
20 know, in this letter you're concerned about, you  
21 know, the discrepancies, I guess, you know, in  
22 the payment history and whatnot. Did you ever  
23 provide any, you've testified earlier that you  
24 probably, that I think you provided documentation  
25 in a certified check to Ronald Johnson. Did you

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1 also, since you put, since Mr. Johnson put you in  
2 contact with Ms. O'Quinn, did you send Ms.  
3 O'Quinn anything, April O'Quinn?  
4 A. Just the attachments to this letter.  
5 Q. Okay. The attachments, I believe, were -- hold  
6 on one second. Did she respond to this letter?  
7 A. No. She forwarded it.  
8 Q. To?  
9 A. The executive offices.  
10 Q. Of Wells Fargo. Okay. And how do you know that?  
11 A. Because I got a reply from Corrina Gardner.  
12 Q. Okay. And the reply from Corrina Gardner, would  
13 that have been in 2010, do you recall?  
14 A. Yes.  
15 Q. Okay. And I'm sure I have that letter in here  
16 somewhere. Do you know if it was, if this was  
17 October 25th, 2010, would it have been in 2010  
18 that you received a reply from Ms. Gardner?  
19 A. It was right around that time.  
20 Q. Okay. So, Wells Fargo replied, I guess initially  
21 to your request, although Ronald Johnson seemed  
22 not to reply to your -- you know, Ronald Johnson  
23 told you to address your concerns to April  
24 O'Quinn pretty much?  
25 A. Yeah. He said, hey, these are the people that

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1 you contact. I'm passing it off. You can go  
2 ahead and contact them. And that was the first  
3 time I was instructed.  
4 Q. Okay. But once you contacted April O'Quinn,  
5 someone from Wells Fargo returned, contacted you  
6 and responded to your concern?  
7 A. Yes.  
8 Q. Okay. Okay. When you were talking about -- hold  
9 on one second. The, you know, the twenty-seven  
10 point three four percent staggering annualized  
11 rate in your letter that's dated October 25th,  
12 2010 that's marked as Exhibit Twenty-one which, I  
13 believe, it's easier to read.  
14 A. Yes.  
15 (WACHOVIA ACCOUNT HISTORY MARKED AS  
16 DEFENDANT'S EXHIBIT NO. 22 FOR IDENTIFICATION.)  
17 Q. If you'll look at what's, let's label this as  
18 Bentrin Twenty-two. It's exhibit one sixteen  
19 through one nineteen. This is an account, a  
20 Wachovia account history. Can that help explain  
21 or can you show me what that document or was it,  
22 is that one of the documents that you reviewed to  
23 conclude that the interest rate was staggering?  
24 A. Well, no. This ledger balance, well, transaction  
25 statement, excuse me.

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1 Q. Yeah. That's fine. Yeah.  
2 A. Was in response to April O'Quinn and sent by  
3 Corrina Gardner.  
4 Q. Okay.  
5 A. Is this Twenty-two?  
6 Q. Twenty-two.  
7 MR. VARNADO: Yes.  
8 Q. So, that doesn't help show incorrect, or can you  
9 look at that and say Wells Fargo did something  
10 wrong with this transaction statement?  
11 A. Oh, gosh, yes.  
12 Q. Okay. Tell me, well, help explain.  
13 A. One, we've got zero principal balance accruing  
14 from March 21st, 2002 through 9/26/2003.  
15 Q. Okay.  
16 A. We're showing a loan amount of one seven nine  
17 five seven six thirty-four. We're showing the  
18 twenty-seven hundred dollars booked as an  
19 interest rate change.  
20 Q. Which is the twenty-seven hundred that we've been  
21 discussing since 2002?  
22 A. Yes. And we're also seeing late charges of ten  
23 dollars applied. And this in no way matches the  
24 one that was sent in December of 2008.  
25 Q. The transaction statement that was sent in 2008,



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1 you said, when you say the ones, you're talking  
2 about a transaction statement?  
3 A. Yes.  
4 Q. Okay. Let's see.  
5 A. That is it.  
6 Q. This is it. That's what I thought. Okay. This  
7 is the one by Ms. Sherrie Caudill or Caudill.  
8 A. Caudillo.  
9 (CONSUMER LOAN PAYMENT HISTORY MARKED AS  
10 DEFENDANT'S EXHIBIT NO. 23 FOR IDENTIFICATION.)  
11 Q. Okay. Let's mark that as Exhibit Twenty-three,  
12 and this is a consumer loan payment history dated  
13 12/19/2008. Do you agree with that, Mr. Bentrim?  
14 A. I would.  
15 Q. Okay. Now, help, because you're the finance guy.  
16 I'm just, you know, not the wisest lawyer.  
17 Explain to me --  
18 MR. VARNADO: You're a hard core banking  
19 lawyer, Jana. Don't sell yourself short. We saw  
20 it on the web site.  
21 Q. And explain to me, you know, exactly why or, you  
22 know, look at the consumer loan payment history  
23 and help explain, you know, why it's different  
24 which is Exhibit Twenty-three than from Exhibit  
25 Twenty-two which is what you say, you said they

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1 don't match each other at all.  
2 MR. VARNADO: What date is Twenty-two again?  
3 Q. Yeah. Let's look at Twenty-two was prepared --  
4 A. September 9th, 2010 by Helen Arnold.  
5 Q. Exactly. And one, the other one was 2008?  
6 A. Yeah.  
7 Q. The other one, I'm saying Exhibit Twenty-three.  
8 A. Okay. The first one, the loan amount --  
9 Q. When you say the first one, let's just, which  
10 one, the consumer, the transaction statement or  
11 consumer loan payment history?  
12 A. Consumer loan payment history.  
13 Q. Okay.  
14 A. Shows a loan amount of one eighty-two seven  
15 hundred.  
16 Q. Okay.  
17 A. The other one shows a loan amount of one seven  
18 nine five seven six thirty-four.  
19 Q. Okay.  
20 A. The 5/26/2002 principal balance on the consumer  
21 loan payment history is one eighty-two seven  
22 hundred. The same date on the transaction  
23 statement is zero.  
24 Q. Okay. And you're looking at, what date are you  
25 looking at?

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1 A. 5/26/2002.  
2 Q. Okay.  
3 A. Then, 5/28/2002, principal balance of one eighty-  
4 two seven hundred on the consumer loan payment  
5 history, on the other one, zero.  
6 Q. Uh-huh.  
7 A. This goes on for about eighteen months. I mean,  
8 I can go through them all if you'd like.  
9 Q. When you say this goes on, you're looking at the  
10 Bentrim, are you looking at the transaction  
11 statement, when you're saying going on for  
12 eighteen months, or the consumer loan payment  
13 history?  
14 A. It doesn't matter. They're inaccurate.  
15 Q. Okay. You're saying it's --  
16 A. Yeah. They don't match.  
17 Q. Okay. Now, help explain to me, I think you said  
18 the consumer loan payment history which is  
19 Exhibit Twenty-three would help show that the  
20 interest rate was actually, you know, over  
21 twenty-four percentish, about. Can you help me  
22 show me how you came up with that rate?  
23 A. No. I said the statement that was sent with the  
24 forced place flood insurance.  
25 Q. Okay. And you've, we may produce that, but if

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1 you, you can show me that document?  
2 A. Yeah. If I can find it.  
3 Q. Okay. Was that amount ever, so it's just one  
4 document that shows --  
5 A. It was two statements.  
6 Q. It was two statements.  
7 A. That showed payoff balances.  
8 Q. Okay.  
9 A. And you will notice on neither of the transaction  
10 statements is a payoff balance present.  
11 Q. Okay. But going back to the twenty-four percent  
12 interest rate --  
13 A. Yes.  
14 Q. -- are you still contending that Wells Fargo  
15 applied a twenty-four percent interest rate?  
16 A. Yes.  
17 Q. Okay. Based on, based on these, but not based on  
18 these documents, based on --  
19 A. No.  
20 Q. -- based on the two, you said, it was a payoff  
21 summary or not a payoff summary, it was a  
22 statement, a bank statement?  
23 A. What was occurring after they quit accepting  
24 payments in 2009 --  
25 Q. 2009. Okay.



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1 A. -- is the address on my statements changed to the  
2 foreclosure department.  
3 Q. Okay.  
4 A. And so, they would send statements there.  
5 Q. When you're saying they, the foreclosure  
6 department would send --  
7 A. The master servicer.  
8 Q. -- would send statements.  
9 A. To the foreclosure department.  
10 Q. Okay.  
11 A. They changed the address from me to the  
12 foreclosure department.  
13 Q. Okay.  
14 A. And when insurance would be flagged for coming up  
15 as, you know, needing to be renewed, the master  
16 servicer would send the request to the  
17 foreclosure department, and I would never get it  
18 to be able to provide it. They would place the  
19 insurance and then send me a statement along with  
20 that.  
21 Q. Okay. So, there were two statements that you're  
22 referring to?  
23 A. Yes.  
24 Q. And what year was this statement?  
25 A. 2010.

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1 Q. Okay. So, there are two statements in 2010. Do  
2 you recall whether we produced these statements?  
3 I mean, that's a bad question, but I mean it's a  
4 question. Do you recall seeing these two  
5 statements in this law suit? And you know, do  
6 you recall whether Wells Fargo produced these  
7 2010 statements?  
8 A. I do not.  
9 Q. Okay. And do you know if you produced these 2010  
10 statements to us in discovery?  
11 A. I do not.  
12 Q. Okay. Do you know if you have these two 2010  
13 statements?  
14 A. No. But your client would.  
15 Q. Okay. So, based on those two statements where  
16 you were getting the twenty-four percent rate?  
17 A. Yes.  
18 Q. Okay.  
19 A. Or twenty-seven, whatever it was annualizing at  
20 at that point.  
21 Q. The number you used in the letter?  
22 A. Yeah.  
23 Q. Which was, I believe you said, I can't read  
24 backwards, but twenty-seven point three four  
25 percent.

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1 A. Twenty-seven point three four percent.  
2 Q. Okay. But these documents don't help explain the  
3 interest rate is my point? You know, it just  
4 doesn't show inaccurate, you know, application of  
5 an interest rate?  
6 A. Oh, it does.  
7 Q. Okay. Explain that to me again, how this does,  
8 the consumer loan payment history?  
9 A. It doesn't explain the twenty-seven percent, but  
10 it shows the, how the adjustable rate disclosure  
11 statement was not followed.  
12 Q. Okay. And tell me exactly why.  
13 A. Okay. Hold on. I'm sorry.  
14 Q. That's fine.  
15 A. Okay. Exhibit Six under how my payment can  
16 change.  
17 Q. Right.  
18 A. The fourth bullet point.  
19 Q. Right.  
20 A. Second, or first and second paragraphs or first  
21 and second sentences. "Because my periodic  
22 payment may change once every sixty months and my  
23 interest rate may change monthly, my periodic  
24 payments may not fully cover the interest due.  
25 Such interest will be added to my loan amount and

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1 will due at the end of the term of the loan."  
2 This statement shows that they applied it not at  
3 the end of the loan but to the next payment so  
4 that the principal was never dropping.  
5 Q. Okay. I didn't know if you were going to say  
6 something else. Okay. The next, we're on  
7 Exhibit Twenty-four. Okay. Here's a letter, or  
8 Exhibit Twenty-four --  
9 MR. VARNADO: What date is that?  
10 THE WITNESS: October 28th. That was the  
11 letter which Exhibit Twenty-two was attached to.  
12 Q. Okay. That was one of the attachments that you  
13 sent.  
14 (LETTER OE-10/28/10 MARKED AS DEFENDANT'S  
15 EXHIBIT NO. 24 FOR IDENTIFICATION.)  
16 Q. Okay. Exhibit Number Twenty-four, okay, is  
17 this, did you receive this letter, do you recall  
18 receiving this letter?  
19 A. I did receive this letter.  
20 Q. Okay. And what's the date of this letter for the  
21 record?  
22 A. October 28th, 2010.  
23 Q. Okay. And did you send a copy of this letter to  
24 Ms. O'Quinn? Okay. You said it was attached to,  
25 I thought you said something about this letter.



<p style="text-align: right;">Page 121</p> <p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 MR. VARNADO: He said that it was attached</p> <p>4 to Exhibit Twenty-two. Twenty-two and Twenty-</p> <p>5 four go together.</p> <p>6 THE WITNESS: Right.</p> <p>7 MS. BAKER: Right. I know that. Okay.</p> <p>8 Q. Okay. So, this is October 28th, 2010 letter, and</p> <p>9 this is from, did you ever speak with Ms. Gardner</p> <p>10 over the phone, by the way?</p> <p>11 A. No.</p> <p>12 Q. Okay. And did, so they go together because the,</p> <p>13 she enclosed with this letter a copy of the</p> <p>14 transaction history which would be Exhibit Number</p> <p>15 --</p> <p>16 A. Twenty-two.</p> <p>17 Q. Twenty-two. Okay. And did you receive a copy of</p> <p>18 the transaction statement or history on, in</p> <p>19 October 28th, 2010?</p> <p>20 A. With this letter? Yes.</p> <p>21 Q. With the letter. Yeah. Okay. And just to go</p> <p>22 back with Ms. O'Quinn's letter, April O'Quinn, I</p> <p>23 believe you sent her a letter that we were</p> <p>24 looking at as well right here. Okay. On October</p> <p>25 25th, 2010 when you, I guess, faxed Ms. O'Quinn a</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And I believe they also sent you, you</p> <p>3 know, what you dispute but a copy of the note</p> <p>4 that you signed? When I say that you dispute,</p> <p>5 you dispute, you know, whether it's, you have</p> <p>6 some issues with the note, I think, with this law</p> <p>7 suit. But did Ms. Gardner also send you a copy</p> <p>8 of a note that you signed in regard to this loan?</p> <p>9 A. Ms. Gardner said that she sent, and let me read</p> <p>10 from paragraph two.</p> <p>11 Q. That's fine. Go ahead and read. Yeah.</p> <p>12 A. Yeah. The second, "enclosed please find a copy</p> <p>13 of the transaction history" which I said I got.</p> <p>14 Q. Okay.</p> <p>15 A. "And a certified copy of the original notes for</p> <p>16 your records." She did not send a certified</p> <p>17 copy.</p> <p>18 Q. Where does it say certified? I see an a copy of</p> <p>19 the original note?</p> <p>20 A. No. And it says, "and a certified copy."</p> <p>21 Q. Okay. Am I looking, is this Exhibit, are we</p> <p>22 looking at the same paragraph?</p> <p>23 A. Yeah. Paragraph two.</p> <p>24 Q. Oh, you're looking at the second, and a certified</p> <p>25 copy. Okay. So, but didn't, do you recall</p>
<p style="text-align: right;">Page 122</p> <p>1 letter which is Bentrin Twenty-one.</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And you said that April O'Quinn forwarded</p> <p>4 the document to another person in the Wells Fargo</p> <p>5 department?</p> <p>6 A. She said she was forwarding it to the executive</p> <p>7 offices.</p> <p>8 Q. Okay. And the executive office, that would be,</p> <p>9 well, Corrina Gardner would have been the person</p> <p>10 at the executive office responding to your</p> <p>11 inquiry?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So, on October 25th, 2010, you went a</p> <p>14 letter to Wells Fargo --</p> <p>15 A. I sent a letter -- sorry to interrupt, but with a</p> <p>16 ton of attachments.</p> <p>17 Q. Right. I agree with you. With a ton of</p> <p>18 attachments. Exactly.</p> <p>19 A. Yeah.</p> <p>20 Q. To Wells Fargo because you were, and Wells Fargo</p> <p>21 responded three days later with this October 28th</p> <p>22 letter; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And they sent a transaction history which</p> <p>25 you wanted?</p>	<p style="text-align: right;">Page 124</p> <p>1 receiving a certified copy of the original note</p> <p>2 at some point?</p> <p>3 A. No.</p> <p>4 Q. You never did? Okay. I believe we produced a</p> <p>5 certified copy but --</p> <p>6 A. No. You produced a copy of the closing</p> <p>7 attorney's certified copy and tried to pass it</p> <p>8 off as your own.</p> <p>9 Q. The original was never produced, and we have it</p> <p>10 here for you to look at.</p> <p>11 A. Right.</p> <p>12 Q. All right. Okay. But okay. So, you received a</p> <p>13 copy of the note, you're saying, from Wells Fargo</p> <p>14 and a transaction history?</p> <p>15 A. No. This is what I received.</p> <p>16 Q. Okay.</p> <p>17 A. I received a copy of a certified copy at closing.</p> <p>18 Q. Okay.</p> <p>19 A. That your client said was a certified copy.</p> <p>20 Q. But it was -- okay. Say it again. A certified</p> <p>21 copy at closing?</p> <p>22 A. Uh-huh.</p> <p>23 Q. A certified copy of the note from?</p> <p>24 A. The closing file.</p> <p>25 Q. Okay.</p>

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1 A. What the closing attorney does.  
2 Q. Which, but you also could have obtained it from  
3 your attorney as well, your closing attorney?  
4 A. But they mailed it to me.  
5 Q. They being Wells Fargo?  
6 A. Wells Fargo mailed it as evidence that they were  
7 in possession of the note.  
8 Q. Okay.  
9 A. When it was a copy of a certified copy.  
10 Q. That you had -- okay. Got you. Okay. So, oh,  
11 did you have a question? Okay. Now, regarding  
12 this forced place insurance claim that you have,  
13 tell me a little bit about that.  
14 A. Well, again, as I said earlier, after January  
15 2009 they switched the address on the statements.  
16 Q. When you say they, Wells Fargo?  
17 A. The master servicer or whoever was servicing.  
18 Q. Okay.  
19 A. Switched the address to the foreclosure  
20 department.  
21 Q. Okay.  
22 A. And so, you know, as insurance comes up for  
23 renewal --  
24 Q. Right.  
25 A. -- a request goes out that says, hey, we're

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1 looking for a renewal. It was sent to the  
2 foreclosure department. They didn't do anything  
3 on it, waited for the insurance to be placed, and  
4 then send me a copy of it afterwards.  
5 Q. Did your insurance ever lapse?  
6 A. Nope.  
7 Q. Okay. It never did. And can you give us proof  
8 of insurance if we need it?  
9 A. Should be able to.  
10 Q. Okay.  
11 MR. VARNADO: Jana, we're getting close to  
12 12:00.  
13 MS. BAKER: Are you just dying right now or  
14 can we go at least like fifteen minutes?  
15 MR. VARNADO: What have you got, I mean?  
16 MS. BAKER: Are y'all, I'm just in the  
17 middle of just trying to -- just hold on one  
18 second.  
19 (The deposition went off the record for a  
20 brief period of time.)  
21 Q. Mr. Bentrin, we're back on the record again.  
22 A. Okay.  
23 Q. You understand you're still under oath?  
24 A. Yes.  
25 Q. And I assume you went to lunch with your

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1 attorney?  
2 A. Yes.  
3 Q. Did you talk about this case?  
4 A. No.  
5 Q. Or this deposition?  
6 A. No.  
7 Q. Okay. Now earlier, you were explaining to me  
8 about a consumer loan payment that you received  
9 and a transactional, I believe it's called a  
10 transaction statement --  
11 A. Transaction statement.  
12 Q. -- that was provided to you by Wells Fargo, when  
13 we were off the record last. Now, in the  
14 information that you received, which is the  
15 transaction history and a certified copy of the  
16 note, or however you worded it --  
17 A. I worded it as a copy of a certified copy.  
18 Q. A copy of a certified copy. Okay. And this was  
19 provided to you from a Ms. Sherrie Caudill, I'm  
20 not sure how you pronounce her last name, but  
21 it's C-A-U-D-I-L-L?  
22 A. No. The copy of the certified copy and the  
23 transaction statement came from Corrina Gardner  
24 in 2010. Two years earlier, Ms. Caudill sent me  
25 the consumer loan payment history in 2008.

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1 Q. Okay. And I'm one step ahead of myself. And  
2 what you were just referring to would be, and  
3 since you just referred to it, we'll make it  
4 Exhibit Number Twenty-five.  
5 (LETTER OF 12/19/08 MARKED AS DEFENDANT'S  
6 EXHIBIT NO. 25 FOR IDENTIFICATION.)  
7 Q. Okay. So, Exhibit Twenty-five, do you recall  
8 receiving this letter?  
9 A. Absolutely.  
10 Q. Okay. And what's the date of the letter?  
11 A. December 19th, 2008.  
12 Q. And this is the letter we were just talking about  
13 from Sherrie Caudill?  
14 A. Yes.  
15 Q. And this included a consumer loan payment  
16 history, which reviewed earlier today?  
17 A. Yes.  
18 MR. VARNADO: That was Exhibit Twenty-three?  
19 THE WITNESS: Twenty-five.  
20 MS. BAKER: That would have been Exhibit  
21 Twenty-three. Exactly.  
22 Q. Did you speak with Ms. Caudill over the phone, or  
23 was it just via letter?  
24 A. Via letters.  
25 Q. Okay. Did this December 19th, 2008 letter

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1 satisfy your inquiry at the time?  
2 A. Oh, no.  
3 Q. Okay. And tell me why it did not.  
4 (The deposition went off the record for a  
5 brief period of time.)  
6 Q. Tell me why did it did not satisfy your inquiry.  
7 And actually, to refresh your recollection, we'll  
8 mark this as Exhibit Twenty-six.  
9 (LETTER OF 12/22/08 MARKED AS DEFENDANT'S  
10 EXHIBIT NO. 26 FOR IDENTIFICATION.)  
11 Q. It may or may not, but anyway. So, going back,  
12 Exhibit Number Twenty-five, December 19th, 2008  
13 letter, the response from Wells Fargo to you did  
14 not satisfy your inquiry, and tell me why.  
15 A. Right. Oh, you want me to tell you why?  
16 Q. Yeah.  
17 A. It clearly shows that they, Wachovia Bank at the  
18 time, did not follow the adjustable rate  
19 disclosure statement as far as how principal and  
20 interest was to be applied, that they are  
21 charging ten dollars on the loan, and that the  
22 twenty-seven hundred was missing.  
23 Q. Okay. And so, I just gave you a document that's  
24 labeled Exhibit Twenty-six. Do you have it?  
25 A. Uh-huh.

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1 Q. Did you write that letter?  
2 A. Yeah.  
3 Q. Okay. What's the date of the letter?  
4 A. The 22nd of December, 2008.  
5 Q. Okay. And tell me why you wrote this letter.  
6 A. It was in response to getting this (indicating).  
7 Q. When you say this, you're pointing to --  
8 A. Consumer loan payment history.  
9 Q. So, is that in response to the letter from Ms.  
10 Caudill, enclosing the consumer loan payment  
11 history?  
12 A. It is.  
13 Q. Okay. And in this letter, you said you reviewed  
14 the consumer loan payment history and the terms  
15 of the loan, correct?  
16 A. Yes.  
17 Q. And did you do that?  
18 A. Yes.  
19 Q. Okay. And again, and I might be being  
20 repetitive, but you stated, I believe, that  
21 Wachovia has not correctly credited principal  
22 payments to the loan, incorrectly forcing costly  
23 foreclosure procedures over the past few years?  
24 A. Yes.  
25 Q. Okay. As to the first part, they have not

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1 credited the principal payments correctly to the  
2 loan?  
3 A. Yes.  
4 Q. Okay. Explain that to me, just so I'm on board  
5 again.  
6 A. Yes. What is going on is if interest, you know  
7 how on the adjustable rate disclosure, it says  
8 that, you know, your interest is not enough to  
9 cover, or your payment is not enough to cover the  
10 interest due, the interest goes to the end of the  
11 loan. This shows that the interest was applied  
12 to the next payment.  
13 Q. Okay. And then, it says incorrectly forcing  
14 costly foreclosure proceedings over the last few  
15 years. I thought the foreclosure proceeding was  
16 instituted in 2009. Was there another  
17 foreclosure?  
18 A. Oh, gosh. Like I said, we've been at this since  
19 2005.  
20 Q. The letter since 2004, I think?  
21 A. Uh-huh.  
22 Q. Is that a yes?  
23 A. What's the question?  
24 Q. The question is -- maybe explain to me what you  
25 mean by that, incorrectly forcing costly

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1 foreclosure procedures over the years. What do  
2 you mean by that?  
3 A. These, and there's a lot of them, so we can say,  
4 you know, across the board the default notices --  
5 Q. Is that what you mean by foreclosure procedures?  
6 A. No. I'll answer it if you give me a second.  
7 Q. I'm sorry to interrupt you.  
8 A. No, that's okay. The default letters, when I  
9 would call in and say, wait a minute, something  
10 is missing, it was like, no, pay it or we're  
11 going to go and foreclose. So, they would get an  
12 attorney and, you know, start the foreclosure  
13 process. I would try to talk to them, and nobody  
14 would listen. It was just, pay it or we're  
15 foreclosing.  
16 Q. But, how many foreclosure lawsuits were  
17 instituted? Was it just the one?  
18 A. Three and now four.  
19 Q. Okay. There were three instituted?  
20 A. Yeah.  
21 Q. When were the first -- I know one was in 2009,  
22 and the fourth one would be the one that we filed  
23 in response to your complaint?  
24 A. Yeah. And there is 2005 or 2007. It's public  
25 record. We can pull that up pretty easily.



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1 Q. Okay. One was in 2005. When was the next one?  
2 A. I think in 2007.  
3 Q. So, you were involved in other lawsuits, then,  
4 besides this lawsuit?  
5 A. Well, yeah. I guess.  
6 Q. From when I asked you earlier?  
7 A. Yeah.  
8 Q. So, there was a lawsuit in '05 and '07?  
9 A. Yes.  
10 Q. Okay. And did you have a lawyer in either of  
11 those lawsuits?  
12 A. Huh-uh.  
13 Q. Is that a no?  
14 A. That is a no. Sorry.  
15 Q. Okay. So, the first lawsuit, I mean, was it just  
16 allegations of not making payments on the loan?  
17 A. Yes.  
18 Q. Okay. And how was it resolved?  
19 A. I was told by the attorney that was with -- and  
20 I've got that name, go ahead and forward, you  
21 know, payment, and we'll make sure it's  
22 corrected.  
23 Q. Okay. Did you, I mean --  
24 A. Yeah. I brought it up current to what they said,  
25 and with the promise that they would, you know,

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1 get back to me on the records.  
2 Q. So, were you current or were you not current in  
3 2005?  
4 A. I said I was current.  
5 Q. But then, you made an extra payment?  
6 A. Uh-huh.  
7 Q. Is that a yes?  
8 A. That is a yes.  
9 Q. So, was that an accurate extra payment or a non-  
10 accurate extra payment?  
11 A. It was non-accurate. It was a demand.  
12 Q. You mean the demand was, the bank, through their  
13 attorney, sent a demand to you in 2005?  
14 A. Yeah.  
15 Q. And so, you cured, I guess, the default?  
16 A. The default.  
17 Q. Okay. So, were you in default?  
18 A. I have contended over and over again, no.  
19 Q. Okay. Did you try to recoup your money back in  
20 2005?  
21 A. No.  
22 Q. Okay. Why not?  
23 A. I just figured it's further along on the payment.  
24 Q. Okay. What about in 2007, you're saying there  
25 was another lawsuit instituted in 2007?

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1 A. Yes.  
2 Q. And this is another foreclosure lawsuit?  
3 A. Yeah.  
4 Q. Okay. And were you represented by --  
5 A. No. It's the same thing.  
6 Q. So, the lawsuit was actually filed and you were  
7 served in '05?  
8 A. Yeah.  
9 Q. And in '07?  
10 A. Yeah.  
11 Q. Okay.  
12 A. But, the reason why -- I apologize. I wasn't  
13 trying to be deceptive. It never went to court,  
14 so I never looked at it, it was me working with  
15 their attorney going, you know, this doesn't  
16 appear to be right, what do we need to do.  
17 Q. Okay. How did you resolve the 2007 lawsuit?  
18 A. Both times, I mean, I was at the point where,  
19 you've got to pay or they're going to take your  
20 house.  
21 Q. Okay. And so, you paid in 2007. Do you recall  
22 the amount you paid in 2005 to resolve the case?  
23 And you're looking at, just so I know, the  
24 consumer loan payment history or are you looking  
25 at the transaction statement?

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1 A. I'm looking at the -- I can look at either one --  
2 consumer loan payment history.  
3 Q. Okay. Which is Exhibit Twenty-three.  
4 A. Yeah. Thirteen thousand two hundred and forty-  
5 two dollars and five cents.  
6 Q. Okay. What date is that, so I'll know?  
7 A. 9/11/2006.  
8 Q. September 11th, 2006, okay, the thirteen thousand  
9 two forty-two o five?  
10 A. Uh-huh.  
11 Q. Okay. And did you sign a settlement agreement,  
12 do you remember?  
13 A. No.  
14 Q. Okay. Did you answer the complaint, do you know?  
15 A. I don't think I did.  
16 Q. Okay. And then, in 2007 -- let me go back to  
17 2005. So, you paid thirteen thousand two forty-  
18 two o five?  
19 A. Yeah.  
20 Q. Did you contact the attorney for Wells Fargo at  
21 the time? Did you know who the attorney was, for  
22 Wachovia?  
23 A. I've got that. But, I did contact him.  
24 Q. And did you request that this amount be, you  
25 know, applied to the balance of the loan?

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1 A. Yes.  
2 Q. Okay. In writing?  
3 A. Yes.  
4 Q. Okay.  
5 A. And he, they confirmed it in a letter.  
6 Q. That it was?  
7 A. Yeah.  
8 Q. When did you realize that it wasn't applied?  
9 A. 2008, when I got this (indicating).  
10 Q. Okay. And what about in 2007?  
11 A. That's also when I realized that it wasn't  
12 applied.  
13 Q. How much did you pay in 2007 to resolve?  
14 A. Seven thousand one hundred thirty-five fifty-one.  
15 Q. Okay. And that was on 12/5/2007?  
16 A. Yeah.  
17 Q. Now, at this point, did you still contend that  
18 you were making the payments on time and  
19 properly?  
20 A. Yes.  
21 Q. And then, you went ahead and paid another seven  
22 grand?  
23 A. Yeah.  
24 Q. Okay. And you just paid it, even though you  
25 thought it was wrong to pay this amount?

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1 A. Yeah.  
2 Q. Okay. In 2007, did you say, look, we had the  
3 same issue in 2005?  
4 A. I did.  
5 Q. And did you say, did you look into whether the  
6 2005 payment was properly applied?  
7 A. Yeah.  
8 Q. You did in 2007?  
9 A. Yes.  
10 Q. Okay. In --  
11 A. No. You're asking if I asked them that or did I  
12 do it?  
13 Q. My question is did you, you're contending that in  
14 2005, you paid thirteen thousand dollars when you  
15 theoretically shouldn't have paid an extra  
16 thirteen thousand dollars, because your loan was  
17 current?  
18 A. Yes.  
19 Q. Okay. And then again, in 2007, you're --  
20 A. Hold on. I think you're mischaracterizing this.  
21 What would happen -- and I think you're probably  
22 familiar with it -- is they'll say you're behind  
23 or the bank will say you're behind, quit  
24 accepting payments, and you've got a big lag  
25 until everything gets straightened out, gets to

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1 the attorney, et cetera. So, some of those were,  
2 yeah, payments that were not accepted during that  
3 time. You know, it's not like they'll say, let's  
4 keep taking your payments. It's like, you either  
5 pay us what is demanded or we're foreclosing.  
6 It's not like, oh, let me keep paying. So, I  
7 don't want that to be mischaracterized.  
8 Q. Okay. Understandable.  
9 A. Yeah.  
10 Q. But in 2007, the same thing happened?  
11 A. Yeah.  
12 Q. Okay. Did you say, look, there was an issue in  
13 2005?  
14 A. Yeah.  
15 Q. What did you do to my thirteen thousand dollars.  
16 then, like what happened with that? Did you ask?  
17 A. I did.  
18 Q. Okay. And what did the bank tell you or the  
19 bank's attorneys?  
20 A. The bank's attorneys, you know, said this is what  
21 you have.  
22 Q. Okay. Did you go ask about the previous thirteen  
23 thousand dollars?  
24 A. Yeah.  
25 Q. Okay. And then, you went ahead and paid them

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1 seven thousand one thirty-five, whatever, fifty-  
2 one, I believe.  
3 A. Yeah.  
4 MR. VARNADO: Off the record real quick.  
5 (The deposition went off the record for a  
6 brief period of time.)  
7 Q. Okay. Back on the record. So, 2007, did you,  
8 you inquired about what happened to the thirteen  
9 thousand dollars; that's a yes?  
10 A. Yes. And I affirmedly (sic) told the attorneys  
11 both times, you know, I'm not pass due, help me  
12 with this, and all they did was send us a  
13 statement that says this is what you owe or we're  
14 going to foreclose.  
15 Q. Was it the same attorneys or different attorneys?  
16 A. The first one was a different attorney.  
17 Q. '05 was different from '07?  
18 A. Yeah. And then '07 and '09 was Brock and Scott.  
19 Q. And '05 was a different law firm?  
20 A. Yeah. Different law firm.  
21 Q. Which law firm, do you know? We can figure it  
22 out.  
23 A. No.  
24 Q. Okay.  
25 MR. VARNADO: I can tell you right now.



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1 Q. So, did that concern you in 2007?  
2 A. Absolutely.  
3 Q. Okay. Did you do anything besides -- what did  
4 you do?  
5 A. I kept on them into 2008.  
6 Q. Kept on them meaning?  
7 A. Give me records, show me what's going on, calling  
8 in.  
9 Q. Okay. And you got the records in 2008 with the  
10 Ms. Caudillo?  
11 A. Well, no. It was late, but there was one time in  
12 June of 2008, I believe that's the date, where,  
13 you know, again this isn't right, there's, you  
14 know, stuff missing, what do I need to submit to  
15 you? Will you, you know, research it? And  
16 they'll go, well, you know, we'll give you two  
17 months and make this, while we research it.  
18 Q. Okay. But you waited, okay, so you waited, you  
19 weren't concerned about this in '07? Like did  
20 you stay on them in 2007 because you made the  
21 payment, I forgot the date, the dates on here in  
22 2007?  
23 A. It was the end of 2007, so we're in 2008 at that  
24 point.  
25 Q. But you made the payment on, yeah, 12/5/2007.

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1 A. Yeah.  
2 Q. So, did you on, you know, around 12/5/2007 say,  
3 you know, I want to see the records?  
4 A. Yeah.  
5 Q. Okay. And you made the inquiry around, I mean,  
6 in the beginning of 2008 or end of 2007?  
7 A. Oh, I had been making and asking the attorneys,  
8 you know, since 2005.  
9 Q. Okay. So, since 2005, you had an issue with  
10 Wells Fargo regarding the application of  
11 payments?  
12 A. No. Because Wells Fargo was a separate entity  
13 then.  
14 Q. Wachovia, excuse me.  
15 A. Well, I'm --  
16 Q. Wells Fargo's predecessors?  
17 A. Yes.  
18 Q. Okay. But since 2005, you had, that's when you  
19 had this issue?  
20 A. Yes.  
21 Q. Okay. When I say this issue with the application  
22 of payments or is it more, I would say, the  
23 application of the interest or how the --  
24 A. No. At that point, it was the twenty-seven  
25 hundred dollars which really isn't a big part of

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1 the law suit.  
2 Q. Right. Okay. So, that's part of it, and then  
3 what else was your other problem in '05 besides  
4 the twenty-seven hundred dollars?  
5 A. That was it.  
6 Q. But then in '07 when you had to pay the seven  
7 thousand one thirty-five fifty-one, what did you  
8 contend, what did you want from Wells Fargo's  
9 predecessors, Wachovia at that time?  
10 A. To go ahead and make sure that the twenty-seven  
11 was correctly credited. At that point, I did not  
12 know they were misapplying principal and  
13 interest.  
14 Q. Okay. Did you ask for records in '05 when you --  
15 A. Yes. I said that several times.  
16 Q. Okay. In this deposition?  
17 A. Yes.  
18 Q. Right. Okay. I'm just trying to --  
19 A. I understand.  
20 Q. And so, you asked, in '05, and you never got any  
21 records in 2005?  
22 A. I would get a payoff statement from the attorney,  
23 pay this, that's it.  
24 Q. In 2007, you asked again?  
25 A. Yes.

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1 Q. Okay. Now, and so going back to, it was, this is  
2 December 22nd, 2008 letter which is Bentrin  
3 Twenty-six. When you said the foreclosure  
4 procedures, those were the previous two?  
5 A. Yes.  
6 Q. Theoretically three at that point, no, two at  
7 that point because another one was filed in 2009?  
8 A. Yeah.  
9 Q. Okay. Now, the second paragraph, okay, of your  
10 letter, second sentence. In fact, this is again,  
11 we're looking at Bentrin Twenty-six. I'm sorry.  
12 Do you want, is that the December 22nd, 2008  
13 letter? In the second paragraph, second  
14 sentence. In fact, with the very first payment  
15 on 5/28/2002, Wachovia failed to apply two  
16 hundred and twenty-two dollars and forty cents of  
17 the payment towards principal. When did you find  
18 out about, you know, as early as 2002 was pretty  
19 much when you refinanced, I thought, was 2002.  
20 A. When did I find out what?  
21 Q. That the two hundred and twenty-two dollars and  
22 forty cents was not applied towards the  
23 principal?  
24 A. When I got this letter on the 19th.  
25 Q. This letter just so the record's clear would be

<p>Page 145</p> <p>1 Ms. Caudill's letter to you?</p> <p>2 A. Yeah. Exhibit Twenty-five.</p> <p>3 Q. Okay. Okay. Then, the next paragraph, you say,</p> <p>4 in late 2005 when Wachovia refused to accept</p> <p>5 payments forcing my loan into default, evidence</p> <p>6 in your payment history and loan documents, the</p> <p>7 note was in fact nearly six months ahead of</p> <p>8 schedule for payments?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you have proof of this that you can</p> <p>11 show me if we want it?</p> <p>12 A. Yes. It's right here.</p> <p>13 Q. Okay. And show that to me when you say right</p> <p>14 here.</p> <p>15 A. The consumer loan payment history.</p> <p>16 Q. Right. Exhibit Twenty-three.</p> <p>17 A. Exhibit Twenty-three. When you add in the</p> <p>18 twenty-seven hundred dollars plus what was paid.</p> <p>19 Q. The transaction amount.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Under payment?</p> <p>22 A. Uh-huh. That shows that there's almost six</p> <p>23 months ahead schedule.</p> <p>24 Q. Okay. And you also have that, even though it's</p> <p>25 on here, you have it in your records as well,</p>	<p>Page 147</p> <p>1 A. I have.</p> <p>2 Q. Okay. Did you write this letter?</p> <p>3 A. I have. I did.</p> <p>4 Q. Okay. You did. Okay. What's the date of this</p> <p>5 letter?</p> <p>6 A. July 1st, 2009.</p> <p>7 Q. Okay. Who did you send it to?</p> <p>8 A. Ms. Brown, the attorney for Brock and Scott.</p> <p>9 Q. Did you receive, you're saying that, on April</p> <p>10 28th, 2009, you sent a letter to Ms. Brown, I</p> <p>11 believe, to try to settle the matter?</p> <p>12 A. Yep.</p> <p>13 Q. Did you, and did you receive any information on</p> <p>14 the loan or an amortization schedule?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. So, Ms. Brown didn't respond to your</p> <p>17 letter?</p> <p>18 A. She did not.</p> <p>19 Q. Okay.</p> <p>20 A. She responded to one of those, but I did not get</p> <p>21 a loan amortization.</p> <p>22 Q. So, I think when you said you didn't get a loan</p> <p>23 amortization, but you said she responded to the</p> <p>24 letter, and that may have been, may not have</p> <p>25 been, so I just want to, I'm trying to get my</p>
<p>Page 146</p> <p>1 your banking records?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. So in 2005, there was a, you were having</p> <p>4 serious issues or issues with Wachovia then?</p> <p>5 A. I wasn't having serious issues. It was twenty-</p> <p>6 seven hundred dollars we were bantering about.</p> <p>7 In 2008 once they again said that, hey, you're</p> <p>8 behind, that's when I finally got a loan payment</p> <p>9 history, not just a letter that said what I owed,</p> <p>10 and that's when I realized that Wachovia had not</p> <p>11 been applying principal and interest correctly</p> <p>12 and the late, the other charges on the account.</p> <p>13 Q. Okay. Although you paid over that amount in</p> <p>14 2005, you paid thirteen thousand dollars to bring</p> <p>15 it, to bring the account current?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Okay. I think you were talking about</p> <p>18 earlier about your correspondence with Suzanne</p> <p>19 Brown at Brock and Scott or someone at Brock and</p> <p>20 Scott. I thought you said Suzanne Brown. Let's</p> <p>21 make this Exhibit Twenty-seven.</p> <p>22 (LETTER OF 7/1/09 MARKED AS DEFENDANT'S</p> <p>23 EXHIBIT NO. 27 FOR IDENTIFICATION.)</p> <p>24 Q. Okay. Hold on one second. Exhibit Twenty-seven,</p> <p>25 have you seen this letter before?</p>	<p>Page 148</p> <p>1 time line right. Here's a July 10th, which will</p> <p>2 be Bentrin Twenty-eight.</p> <p>3 (LETTER OF 7/10/09 MARKED AS DEFENDANT'S</p> <p>4 EXHIBIT NO. 28 FOR IDENTIFICATION.)</p> <p>5 A. Well, the question is, did you ask if she</p> <p>6 responded to the April 28th letter or the July 1st</p> <p>7 letter?</p> <p>8 Q. Well, did she respond, did she respond to the</p> <p>9 July 1st letter?</p> <p>10 A. I believe the July 10th letter is the response.</p> <p>11 Q. Okay. And that would be Bentrin, which is</p> <p>12 Exhibit or Bentrin Twenty-eight.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And did you receive this letter?</p> <p>15 A. I did.</p> <p>16 Q. Okay. And what's the date of this letter?</p> <p>17 A. July 10th, 2009.</p> <p>18 Q. Okay. But she sent you a letter, this letter,</p> <p>19 did she ever send you any other documentation</p> <p>20 such as an amortization schedule?</p> <p>21 A. She did not.</p> <p>22 Q. Okay. Okay. So, let's move on to, let's look</p> <p>23 at, here's a letter that you wrote, and this will</p> <p>24 be Bentrin Twenty-nine, it appears.</p> <p>25 (LETTER OF 11/16/09 MARKED AS DEFENDANT'S</p>

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1 EXHIBIT NO. 29 FOR IDENTIFICATION.)  
2 Q. You can let me know if you've written this or  
3 not. Have you seen -- okay. Bentrims Twenty-  
4 nine, have you seen this document before?  
5 A. Yes. I have.  
6 Q. Okay. And what's the date of the letter?  
7 A. November 16th, 2009.  
8 Q. Okay. And who did you send this letter to?  
9 A. Ronald Johnson with Brock and Scott.  
10 Q. Okay. And you say in the second paragraph,  
11 you're again, you're complaining about the  
12 incorrectly applied principal and interest?  
13 A. Yes.  
14 Q. And although there were issues in, issues in '05  
15 with, when I say issues, I mean a foreclosure law  
16 suit was filed around '05 or so. And then, in  
17 '07 or so, you contend that you did not know or  
18 do you contend that you did not know that there  
19 were issues with the application of principal and  
20 interest until you received the consumer loan  
21 payment history?  
22 A. Yes.  
23 Q. Okay. Did you ever try to contact the initial  
24 attorney who closed the loan in 2002, your, I  
25 think it was --

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1 A. Yes.  
2 Q. Okay. And the date is July 19th, 2010?  
3 A. Yes.  
4 Q. Okay. And you're talking about a Q, should I  
5 send a QWR to your office, or do you have an  
6 address? The bottom, the last two sentences of  
7 the e-mail. Do you see the e-mail?  
8 A. Yes.  
9 Q. Okay. QWR, qualified written request, is that,  
10 is that what you mean by that?  
11 A. Yes.  
12 Q. Okay. So, did you send what you contend as, you  
13 know, a QWR to counsel for Wachovia slash Wells  
14 Fargo?  
15 A. Yes.  
16 Q. Okay. Did you send any to Wells Fargo directly?  
17 A. Yes.  
18 Q. Okay. And which letters, now did, did the  
19 counsel for Wells Fargo respond to your QWRs  
20 properly?  
21 A. He said on Bentrims eighty, on Bentrims eighty, he  
22 said you can send them in, I will pass it along  
23 to Wachovia.  
24 Q. Okay. But you sent to Ronald Johnson?  
25 A. Yes.

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1 MR. VARNADO: Rob Donaldson.  
2 Q. -- Rob Donaldson?  
3 A. After April 1st?  
4 Q. Around this time, 2009 or 2008?  
5 A. No.  
6 Q. Okay. Okay. In, and now I think we're going to  
7 2010, let's see here. Let me show you this  
8 document. Bentrims Thirty.  
9 (E-MAIL OF 7/9/10 & DOCUMENTS MARKED AS  
10 DEFENDANT'S EXHIBIT NO. 30 FOR IDENTIFICATION.)  
11 Q. Okay. Have you -- sorry. Can you take a look at  
12 Bentrims Thirty? Those were produced, this  
13 Exhibit Thirty which the bottom is, it says  
14 Bentrims seventy-nine through should be Bentrims  
15 ninety-eight.  
16 A. Yes.  
17 Q. And these documents were produced from you to us?  
18 A. Yes.  
19 Q. Okay. So, have you recalled seeing these before  
20 or do you recall?  
21 A. Yes.  
22 Q. Okay. And the first one, it appears, it's an e-  
23 mail, correct?  
24 A. Yes.  
25 Q. Okay. And this is from you to Ronald Johnson?

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1 Q. Okay. Now, but then you also sent a QWR to Wells  
2 Fargo as well, right?  
3 A. Yes.  
4 Q. Okay. Would that be Exhibit, well, let's label  
5 this Exhibit Thirty-one.  
6 (LETTER OF 3/4/11 MARKED AS DEFENDANT'S  
7 EXHIBIT NO. 31 FOR IDENTIFICATION.)  
8 Q. Take a look at that exhibit. Have you seen that  
9 before?  
10 A. I have.  
11 Q. Okay. I believe it's, does it look familiar to  
12 you?  
13 A. It does.  
14 Q. Okay. Did you write this letter to Ms. Gardner?  
15 A. I did.  
16 Q. Okay. And when did you write this?  
17 A. March 4th, 2011?  
18 Q. Okay. And this letter has attachments, but  
19 there's, you attached, okay, you said you sent  
20 attachments, you enclosed other attachments to  
21 Corrina Gardner when you sent her this letter,  
22 correct?  
23 A. Yes.  
24 Q. Okay. So, do you consider this to be, I guess, a  
25 QWR to Wells Fargo?



<p style="text-align: right;">Page 153</p> <p>1 A. This letter is, I think if we read it, it says on 2 July 10th, or July 21st, I sent a qualified 3 written request which is attachment A. Your 4 attorney received acknowledgment of it which was 5 attachment B to this letter. 6 Q. So, right. So, you're forwarding her a document 7 that you sent to Wells Fargo's attorney that you 8 considered a QWR? 9 A. Yes. 10 Q. Okay. 11 A. Yes. And then, paragraph three, I said Wells 12 Fargo ignored this request until I contacted you 13 on October 10th, attachment Correct. 14 Q. October 12th. Okay. 15 A. Oh, sorry. 16 Q. Uh-huh. 17 A. And requested evidence supporting my question on 18 October 25th, 2010. So, on the 12th and 10th, they 19 received a QWR, a copy of the July 21 directly to 20 them. 21 Q. On October 12th, you're saying? 22 A. Yes. 23 Q. Okay. And then, she, did Wells Fargo respond? 24 A. She responded on, partially on October 28th, 25 2010?</p>	<p style="text-align: right;">Page 155</p> <p>1 never receiving A, would a payoff -- I mean, what 2 exactly did you want to receive? Like did you, 3 from Wells Fargo, what were you looking for? 4 A. It's in my QWR. 5 Q. Which I believe is, are you talking about your 6 July 21st, 2010? 7 A. Yes. 8 Q. Okay. That would be, this will, let's just mark, 9 this was Exhibit A to that letter. Okay. Let's 10 make it, what are we at, we're at Thirty-two now. 11 (LETTER OF 7/21/10 MARKED AS DEFENDANT'S 12 EXHIBIT NO. 32 FOR IDENTIFICATION.) 13 MS. BAKER: Okay. This is Bentrin Thirty- 14 two. And why don't you mark this as, why don't 15 we just mark this together or just mark it as 16 Thirty-three. That's fine. 17 (LETTER OF 12/19/08 MARKED AS DEFENDANT'S 18 EXHIBIT NO. 33 FOR IDENTIFICATION.) 19 Q. Okay. Okay. So, Exhibit, so Bentrin Thirty-two 20 and Bentrin Thirty-three, have you seen those 21 before, these documents? 22 A. Yeah. We've gone over Thirty-three a few times. 23 Q. Right. Well, but my question is, is document 24 number Bates number Thirty-two has an attachment 25 A and handwriting on the top of it?</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. Okay. And was it, and tell me, you said 2 partially, is that because you didn't receive the 3 original, how was it partially responded to? 4 A. Paragraph, I'm looking at Exhibit Twenty-four. 5 Q. Okay. 6 A. Paragraph four. She says, as for your request to 7 see the calculation that determined the payoff 8 amount. 9 Q. Whoa, whoa. One quick second. You're saying 10 Exhibit Twenty-four, I thought I had it here, 11 paragraph four. Hold on a second. Here is 12 Twenty-nine, Twenty-seven, Twenty-six. Okay. 13 Exhibit Twenty-four. Go ahead. That is the 14 October 28th, 2010 letter? 15 A. Uh-huh. 16 Q. Okay. Paragraph four, you're looking at, right? 17 A. As for the request to receive the calculation to 18 determine the payoff amount of one ninety-eight 19 nine six twenty reflected on the statement dated 20 May 14th, 2010, once we have completed our 21 review, a copy of our findings will be sent to 22 you in a separate correspondence. 23 Q. Okay. Did you receive -- 24 A. Never received it. 25 Q. Okay. Is that what you have a problem with,</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Yes. 2 Q. And is that your handwriting? 3 A. Yes. 4 Q. And you enclosed that with your letter to Ms. 5 Gardner, correct? 6 A. It was also in the fax to April O'Quinn. 7 Q. Right. But it was, my question is, it was, this 8 was Exhibit A to your March 4th, 2011 letter to 9 Corrina Gardner; is that correct? 10 A. It was. 11 Q. Okay. And then in Exhibit, Bentrin Thirty-three 12 which is marked Exhibit D, is that your 13 handwriting? 14 A. Yes. 15 Q. Okay. And that was also sent as an attachment to 16 your March 4th, 2011 letter to Corrina Gardner? 17 A. Yes. 18 Q. Okay. So, tell me why, again what you wanted, 19 you were looking, you wanted, I believe, to look 20 at your Exhibit Thirty-two to see exactly what 21 you want -- what did you want to get from Wells 22 Fargo? 23 A. "The following information on Wells, Wachovia 24 Wells Fargo's servicing the above" -- 25 Q. You might as well speak a little slower just so</p>



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1 he can hear it.  
2 A. Yeah. That's what I was just getting ready to  
3 do. "The following information on the Wachovia  
4 Wells Fargo servicing of the above referenced  
5 loan is requested. One, date payments received.  
6 Two, total payment amount. Three, interest rate  
7 applied to payment. If more than one rate  
8 applied, please indicate the number of days at  
9 each rate that was applied. Four, fees applied  
10 to the account at any time and the amount of said  
11 fees. Five, evidence supporting the calculation  
12 of a payoff balance statement dated 5/14/2010 of  
13 one ninety-eight zero nine six twenty.  
14 Q. Didn't you receive, though, a payment transaction  
15 history for your loan in 2008 and in 2010 you  
16 also received a payment history or consumer  
17 history that we were looking at earlier today?  
18 A. I did.  
19 Q. Okay. So, what, I mean, did that not satisfy  
20 your inquiry from Wells Fargo?  
21 A. No.  
22 Q. Okay. So, when you say date payment received,  
23 just tell me exactly, when you list these five  
24 items.  
25 A. Let's skip the five. I think that's the big

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1 issue, isn't it?  
2 Q. Okay. Well, tell me what exactly, I mean, I'm  
3 looking at --  
4 A. Yeah. If we look at number five, the payoff  
5 balance.  
6 Q. When you're saying the, okay, this --  
7 A. On Exhibit Thirty-two.  
8 Q. Okay.  
9 A. And then we'll go back and pull --  
10 Q. Evidence supporting calculation of payoff  
11 balance?  
12 A. Uh-huh.  
13 Q. Yes. Number five.  
14 A. Yes. Let's go back. Give me a sec. And we look  
15 at, can I grab this just for a second?  
16 Q. Yeah. That's fine.  
17 A. Twenty-two and then what's the --  
18 Q. The consumer history, is that the one I want to  
19 look at? Yeah. That would be, it's just here.  
20 A. Here. I've got them.  
21 Q. Okay.  
22 A. The consumer loan payment history, I don't know  
23 what exhibit that is, and then Exhibit Twenty-  
24 two.  
25 Q. Which is the transaction statement?

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1 A. The transaction.  
2 Q. Okay.  
3 A. Neither of these have payoff balances, Jana.  
4 They've just got principal balance.  
5 Q. Consumer loan payment history, Exhibit Twenty-  
6 two?  
7 A. Yes.  
8 Q. Okay. You wanted the payoff balance?  
9 A. Yes. How did you calculate the payoff balance?  
10 Q. When you say evidence, what did you mean by  
11 evidence? I know you said how did you calculate  
12 it, but what do you mean by evidence or how did  
13 you, like what documentation did you want?  
14 A. Well, it should show how they arrived at that  
15 number by, you know, how, what interest was being  
16 applied to it, where that number or discrepancy  
17 in between what is being claimed here as far as  
18 the principal balance and what's being claimed as  
19 the payoff balance.  
20 Q. But didn't, did you receive a payoff balance when  
21 you received statements or when you were  
22 receiving statements from Wachovia or Wells  
23 Fargo?  
24 A. On some of them.  
25 Q. Okay. Okay. So, after this inquiry to Ms.

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1 Gardner, did she, how do, do you recall, you  
2 know, what her responding to you?  
3 A. No. She never responded.  
4 Q. Okay. Did anyone respond after that? So, your  
5 problem, I guess, saying that it was a partial,  
6 just so I know, a partial response to the QWRs,  
7 you wanted something showing the evidence of a  
8 payoff balance, not just a payoff balance?  
9 A. Yes.  
10 Q. Okay. And you contend the consumer loan payment  
11 history is not sufficient or the transaction  
12 statement's not sufficient?  
13 A. No. It only has the principal balance.  
14 Q. Okay. But you didn't, it was all, you didn't  
15 have any, of course, any communication with Ms.  
16 Gardner over the telephone? It was just --  
17 A. No.  
18 Q. Okay. I mean, I'm just asking.  
19 A. No. The reason why I'm laughing is their letters  
20 say, hey, call me anytime, and you'd call and  
21 leave messages and she didn't ever respond.  
22 Q. And do you know if Brock and Scott forwarded  
23 your, what you contend is a QWR to Wells Fargo  
24 when you sent the July, I believe it was July  
25 21st, we were just looking at it, July 21st, 2010



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1 e-mail to Brock and Scott's attorney that you  
2 labeled qualified written request which is  
3 Exhibit Thirty-two?  
4 A. Yes.  
5 Q. Okay. Do you know if Mr. or if anyone at Brock  
6 and Scott forwarded what you contend, this letter  
7 to Wells Fargo?  
8 A. Yes. He forwarded it to April O'Quinn, and  
9 that's why he gave me her contact number.  
10 Q. Okay. And then, she forwarded it to the other  
11 folks?  
12 A. Yes. And when he gave me her number to follow  
13 up, she said, yeah, we're researching it, we  
14 can't, we don't know. And that's when I sent her  
15 the fax.  
16 Q. Okay. Do you also have a problem, you know, with  
17 the fact that, when you say partial response, is  
18 that also because you did not receive the  
19 original note from Wells Fargo because you  
20 requested it, I believe, the original note?  
21 A. Yes.  
22 Q. Okay. And so, that's another, is that another  
23 problem with the response from Wells Fargo?  
24 A. I--  
25 Q. When you say it's a partial response to your --

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1 A. The partial response is specifically paragraph  
2 number -- wait a minute, one, two, three, four on  
3 number Twenty-four.  
4 Q. Okay. Which is?  
5 A. We don't know how the, we will figure out the  
6 calculation and send it to you later. I'm  
7 paraphrasing.  
8 Q. When you say twenty-four, you're talking about  
9 the Exhibit Twenty-four?  
10 A. Yeah. Exhibit Twenty-four.  
11 Q. Okay.  
12 A. The problem is the deceptive nature of the  
13 certified copy of the original note.  
14 Q. Okay. How is it deceptive?  
15 A. Because it was not a certified copy.  
16 Q. I mean, do you think that was some type of  
17 intentional action on the part of Wells Fargo or  
18 Wachovia?  
19 A. Absolutely. Absolutely.  
20 Q. Can you tell me why you think that, or just  
21 exactly why you think it was deceptive, though?  
22 Or maybe just explain a little more --  
23 A. Yeah. I don't believe that your client has had  
24 the mortgage since 2002.  
25 Q. The note?

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1 A. The note. Yeah.  
2 Q. Okay. Do you have any reason to believe that?  
3 A. Yes.  
4 Q. Okay. And what's your reasoning?  
5 A. The first one is a public statement of the 2002  
6 annual report which says we didn't do any sub-  
7 prime lending home loans in 2002. So, who was my  
8 lender? The second part was, we sold  
9 substantially all of our home equity loans in the  
10 last quarter of 2002. And then, when you go and  
11 look at their SEC filings for some of those, they  
12 clearly state, we transferred the notes through  
13 blank endorsement to the trustee --  
14 Q. Okay. Do you, on Exhibit Bentrin Thirty-one, the  
15 March 4th, 2011 letter to Wells Fargo, do you  
16 still, are you still demanding three million  
17 dollars in damages? The last paragraph?  
18 A. No. I think we're way above that.  
19 Q. Where's your number?  
20 A. Based off of the consent order your client signed  
21 with the attorney general in South Carolina for  
22 thirty-four million, the recent seven hundred and  
23 twenty-five million settlement with the OCC in  
24 January of this year and then the -- I think my  
25 numbers may be off, but about the two hundred

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1 million settlement in 2011 for not, you know,  
2 doing this stuff any more.  
3 Q. So, how much are you looking for, two hundred  
4 million dollars is what I'm hearing?  
5 A. I don't know. That's not for me to judge.  
6 Q. What's your, you filed the law suit. I mean, I'm  
7 just trying to figure out how much, what are your  
8 damages?  
9 A. Well, in punitive, if I'm to understand it right,  
10 and I don't know if I do or not, what needs to  
11 occur is for Wells Fargo to quit doing this.  
12 Q. Doing what?  
13 A. Claiming to have ownership of notes that they  
14 don't and providing false documents to homeowners  
15 and documents that have been altered or made up.  
16 Q. What false documents did you receive?  
17 A. I received four different payment ledgers.  
18 Q. So, why are you saying those are false?  
19 A. There's a couple of reasons: This one --  
20 Q. You say this one, we're looking at --  
21 A. Exhibit Twenty-two.  
22 Q. Okay.  
23 A. Does not match the consumer loan payment history.  
24 Q. So, why is that, and so, you're saying this is an  
25 intentional, you're saying Exhibit Twenty-two and

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1 Twenty-three are intentionally false documents  
2 created by Wells Fargo?  
3 A. Yes. I'm saying that beginning in October of  
4 2011, no, 2010, Wells Fargo started intentionally  
5 creating documents and trying to pass off the  
6 ownership of the mortgage as their own, or the  
7 loan as their own.  
8 Q. Who are your witnesses if we go to trial who are  
9 going to testify to support your position?  
10 A. I believe Helen Arnold will.  
11 Q. Okay. And so, you think Helen Arnold's going to  
12 say that this is a false document that Wells  
13 Fargo, that she made up these numbers or was told  
14 to do so by Wells Fargo?  
15 A. Yes.  
16 Q. Okay. Are you going to depose Helen Arnold at  
17 some point?  
18 MR. VARNADO: That's work product. You know  
19 that. Don't answer that question.  
20 MS. BAKER: I know. I'm just asking if  
21 you're going to depose --  
22 MR. VARNADO: You can't ask him about work.  
23 MS. BAKER: I'm just asking who your  
24 witnesses are and if you're going to depose her.  
25 I mean, I'm just trying to figure out for trial

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1 purposes who the, you know -- you list them in  
2 discovery.  
3 MR. VARNADO: You're being argumentative.  
4 MS. BAKER: Well, anyway.  
5 Q. So, I guess this Helen Arnold, I mean, is she  
6 listed as a witness or if not, will she be named  
7 as a witness in this law suit?  
8 A. I believe we named her in the responses as a  
9 potential witness.  
10 Q. Okay. So, basically what you're saying is these  
11 transactional statements, Bentrin Twenty-two and  
12 the consumer loan payment history, Exhibit  
13 Twenty-three constitute false documents?  
14 A. Yes.  
15 Q. Okay. What else are false documents that you  
16 know of?  
17 A. The transaction statement that was included in  
18 your discovery response.  
19 Q. This one that we're looking at here, a different  
20 one?  
21 A. There's another one.  
22 Q. Oh, okay. I thought that was a payment.  
23 Whatever. Okay. Another, another document  
24 that's a transaction statement but a different  
25 date, I'm assuming.

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1 A. Yes. You can clearly see where they tried, where  
2 somebody tried to correct the principal amount,  
3 but they put the wrong interest rate in.  
4 Q. And you think that was intentional?  
5 A. Oh, absolutely.  
6 Q. Okay. So, what else --  
7 A. Because the case got dismissed in July of 2010  
8 because of these issues, that the numbers weren't  
9 matching.  
10 Q. I understand. Okay. So, these are intentional  
11 false documents. What else has, what other  
12 documents has Wells Fargo intentionally  
13 falsified, or the word is falsified?  
14 A. The October 2011 demand letter saying it was the  
15 owner of the mortgage, the motion in opposition  
16 for my compelling the note where Wells Fargo said  
17 it was the holder of the note.  
18 Q. That I answered, I believe.  
19 A. Yes.  
20 Q. Okay. So, I've, and so you're saying that I  
21 falsified something, just so I know? Are you  
22 saying I falsified something or Wells Fargo  
23 falsified something?  
24 A. I don't know. I mean, I'm assuming that you just  
25 relied on what they told you.

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1 Q. Okay. That's great, that I'm being accused of, I  
2 don't know if I'm being accused of falsifying  
3 something or not. But go ahead.  
4 MR. VARNADO: Wait. I'm going to object to  
5 that. That's argumentative.  
6 MS. BAKER: I'm just trying to figure out  
7 what else was falsified.  
8 A. Well, let me -- let's back up for a minute.  
9 Q. Or my law firm for something that I need to know  
10 as well.  
11 MR. VARNADO: You're starting to personalize  
12 it, and you're asking him a question what he  
13 thinks falsified, and he's telling you.  
14 Q. If you want to tell me what's false, let's  
15 continue that.  
16 A. The reason why, in October 2011, I received the  
17 motion, and it was filed with the court that said  
18 the defendant is the holder of the note. And  
19 then, in, I believe it was February 2012, a loss  
20 note affidavit was filed.  
21 Q. Continue.  
22 A. Those don't mesh.  
23 Q. So, you think this is intentional falsification?  
24 A. Yes.  
25 Q. Okay. You have, I believe, I think you produced

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1 this in discovery, well, we'll mark this. What  
2 are we at now, Thirty-eight now? Thirty-four.  
3 Okay. Here we go.  
4 (2003 MORTGAGE INTEREST STATEMENT MARKED AS  
5 DEFENDANT'S EXHIBIT NO. 34 FOR IDENTIFICATION.)  
6 Q. Okay. Exhibit Thirty-four, what is this  
7 document?  
8 A. It is the 2003 Form 1098 mortgage interest  
9 statement. What number are we on?  
10 Q. Exhibit Thirty-four. In discovery, you have  
11 requested the EINs of Wells Fargo, Wachovia, and  
12 First Union from us. What is the purpose of the  
13 request in the EINs?  
14 A. The 2003 Exhibit Thirty-four, the mortgage  
15 interest statement is showing that I am paying to  
16 somebody else, not First Union or Wachovia. That  
17 is not your client's tax ID number.  
18 Q. So, you have the tax ID numbers?  
19 A. We have Wachovia N.A.'s tax ID number and Wells  
20 Fargo's Bank N.A. tax ID numbers. That's public  
21 record.  
22 Q. Right. Okay. But you've requested EIN numbers,  
23 but you have these documents?  
24 A. I don't believe we've requested those, we've  
25 requested that you admit that it is your client's

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1 and, for this particular one, EIN five six one  
2 nine four eight nine two one, we have asked for  
3 the identity of this.  
4 Q. Now, when do you recall when the last 1098 was  
5 issued to you from Wells Fargo?  
6 A. Wells Fargo never issued one. The last one I got  
7 was from Wachovia Bank, their master services in  
8 2008.  
9 Q. And that was because you stopped paying it in  
10 2009?  
11 A. It's because, yeah, your client quit accepting  
12 payments.  
13 Q. Okay. Or excuse me. Exactly. Okay. However  
14 you want to describe it. Let's see here. In  
15 your office space, you don't own, you're renting,  
16 you testified earlier. Are you able to make your  
17 other, like you're able to make your rent  
18 payments per month with your landlord, with your  
19 company's landlord?  
20 A. Yes.  
21 Q. Okay. Are you able to make your car payments?  
22 A. I don't have a car payment.  
23 Q. Okay. Are you able to make any other payments  
24 that you may have?  
25 A. Yes.

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1 Q. Okay. Now, in the complaint, wait, you have a  
2 couple of, I think three or so allegations  
3 against Wells Fargo. One is mail fraud.  
4 A. Yes.  
5 Q. Are you still contending that Wells Fargo is  
6 liable for mail fraud?  
7 A. Yes.  
8 Q. Okay. Can you just tell me how exactly?  
9 A. I believe --  
10 MR. VARNADO: That's strange.  
11 MS. BAKER: It's because we had too much air  
12 on.  
13 MR. VARNADO: But earlier it was off. I  
14 haven't, I've been a good boy. I've been trying  
15 to keep you warm.  
16 COURT REPORTER: We're on batteries. Go  
17 ahead.  
18 A. I believe the definition of mail fraud is using  
19 the mail or, you know, telephone, et cetera to  
20 obtain possession of somebody's property under  
21 false pretenses. And the note, the copies of the  
22 note and the assertions that, you know, we have  
23 it when we know that hasn't been the case is the  
24 reason why the mail fraud is in there.  
25 Q. Well, how did Wells Fargo exactly use the mail to

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1 commit fraud?  
2 A. They mailed me copies of notes, they mailed me  
3 letters saying they owned the note. I got a  
4 letter mailed that said that we're the holder of  
5 the note. I'm trying to think what else.  
6 Q. When -- go ahead. I didn't mean to interrupt  
7 you.  
8 A. No. I was done.  
9 Q. When was it committed then, this mail fraud?  
10 A. The mail fraud started in October of, it looks  
11 like October 2010.  
12 Q. What damages are you seeking under this claim?  
13 A. We haven't determined those yet.  
14 Q. Have you determined or are you going to list what  
15 witness, I know you've listed witnesses in your  
16 answers to interrogatories, and I can, I'm just  
17 curious what witness -- let me give you a copy  
18 of, do you really need to make this, do you want,  
19 Rob, an exhibit?  
20 MR. VARNADO: We don't need to make it an  
21 exhibit, I mean, you know.  
22 MS. BAKER: It's just extra paper.  
23 MR. VARNADO: We told you what witnesses in  
24 your, so I guess you can, if he can use it to  
25 refresh his recollection.

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1 MS. BAKER: Okay. Exactly.  
2 Q. What witnesses are going to testify as to the  
3 mail fraud?  
4 A. I believe number ten will. And this is --  
5 MR. VARNADO: Isn't there a specific  
6 interrogatory that deals with that cause of  
7 action?  
8 THE WITNESS: I believe so.  
9 A. Geez, I would say almost all of them could.  
10 Q. Okay. That's fine. So, I mean, are there, is  
11 there anyone not named on here, I guess, is a  
12 better question that you may add as a witness to  
13 testify as to mail fraud?  
14 A. Not at this point, not that we know of.  
15 Q. Okay. Okay. You also allege unfair trade  
16 practices act.  
17 A. Yes.  
18 Q. Do you plan to call any other witnesses at this  
19 time, I mean, at this time to support this claim?  
20 A. At this time, we haven't.  
21 Q. Okay.  
22 A. Yeah.  
23 Q. Can you tell me what damages you're seeking under  
24 this?  
25 A. We haven't gotten, I mean, we're still in

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1 discovery, so.  
2 Q. How did Wells Fargo commit an unlawful trade  
3 practice?  
4 A. Asserting ownership of the note, not keeping  
5 accurate records, sending false documents, not  
6 responding.  
7 Q. So, that's the unlawful trade practice?  
8 A. Off the top of my head.  
9 Q. How did it, how does it affect the public? These  
10 items that you listed, does it affect the public?  
11 A. Oh, absolutely.  
12 Q. Okay. Tell me how.  
13 A. Wells Fargo has had a pattern of claiming to own  
14 notes that it does not, claiming to amounts owed  
15 on notes on mortgages and loans that are not the  
16 truth, adding and incorrectly amortizing loans.  
17 It's consented not to do it anymore with it's,  
18 with the attorney general of South Carolina with  
19 its regulator, the OCC. And it continues to do  
20 it.  
21 Q. Okay. And if you look on response to  
22 interrogatory fifteen A, we had some questions  
23 regarding the allegations in your complaint that  
24 said that Wells Fargo engaged in fraudulent,  
25 deceptive and dishonest trade practices, et

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1 cetera. Can you list a certain thing under  
2 fifteen A, so I'm looking at pretty much page  
3 fourteen.  
4 A. Uh-huh.  
5 Q. Okay. Are you there with me?  
6 A. Yes.  
7 Q. Okay. So, let's just go through, so defendant  
8 and its predecessors failed to timely and  
9 accurately apply payments made by you, Mr.  
10 Bentrin, and failed to maintain accurate account  
11 statements?  
12 A. Yes.  
13 Q. Okay. And is this based on the transaction  
14 statement and the consumer history?  
15 A. Yes. And the two other ones provided in  
16 discovery.  
17 Q. Which, and you said that we provided it?  
18 A. Yes.  
19 Q. But those two other, but you can, when this is  
20 over, we'll figure out the exact two that you're  
21 talking to.  
22 A. Yes.  
23 Q. Because I haven't asked you about those clearly  
24 today.  
25 A. Yes.

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1 Q. Right. Okay. And then, the issue with the  
2 forced place insurance, imposed forced placed  
3 insurance is another contention of yours?  
4 A. Yes.  
5 Q. And you're going to provide us the proof of the  
6 adequate coverage, or you can, correct?  
7 A. Yeah.  
8 Q. Yes. Okay.  
9 A. But I think the big part about the reason why  
10 it's unfair and deceptive is that before you can  
11 place that, you have to send a notice, and I  
12 never received a notice. So, I can provide that  
13 to you as well as that I didn't receive a notice  
14 until after your-client had put insurance on my  
15 house.  
16 Q. Okay. That's fine. And then, the false or  
17 misleading information in response to your  
18 complaints, the false, are those the payment  
19 histories that you were just talking about  
20 earlier and the two other documents?  
21 A. They're the payment history, the two other  
22 documents, claiming that they're the holder of  
23 the note, passing off, you know, copies of the  
24 note that weren't really copies of the note.  
25 Q. Okay. And you understand, though, that we have



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1 the original note in our vault somewhere here, in  
2 our vault in this building, the original note, we  
3 have?  
4 A. Yes. I understand.  
5 Q. And then, you say fail to maintain appropriate  
6 staffing, training, and quality control systems.  
7 Can you, what does that mean?  
8 A. There obviously is a problem when somebody asks  
9 for a payment history or a transaction statement  
10 and you get four of them off the same loan. When  
11 people are sending out statements saying that  
12 hey, this is a certified copy of your mortgage,  
13 it's not. When folks are saying, hey, we're the  
14 holder of the note when they don't have it. So,  
15 these are all, you know, servicing, training  
16 issues that a person would rely on their bank to  
17 keep accurate records and know what's going on at  
18 all times.  
19 Q. Okay. And then you say, furthermore, defendant  
20 and its predecessors act in the following manner,  
21 failing to properly identify the foreclosing  
22 party. When did that occur and what do you mean  
23 by that?  
24 A. It occurred in 2005, 2007, 2009, and now  
25 currently.

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1 Q. And how, just tell me how, what was improper  
2 about that in '05, '07, '09, and now?  
3 A. Wachovia, Wells Fargo were not the owner or  
4 holder of the note during that period.  
5 Q. 2005, '07, '09, and now?  
6 A. It appears from 2002 until you sent the e-mail in  
7 February that your client didn't have the note.  
8 Q. But you're saying, but the failing to properly  
9 identify the foreclosing property, that would  
10 have been in 2005, is that what you're talking  
11 about?  
12 A. 2005, 2007, 2009, and in the year, your  
13 counterclaim in 2011 or '12.  
14 Q. Okay. And why didn't you bring this up in 2005  
15 to Wells Fargo or to Wachovia?  
16 A. It wasn't known to me until October 2010.  
17 Q. Okay. And when you said going back to the,  
18 preparing and executing and notarizing and  
19 presenting false and misleading documents, that  
20 would be, it's just the consumer loan payment  
21 history, the transaction history, the two other  
22 documents, and then the note that you're talking  
23 about?  
24 A. And the loss note affidavit.  
25 Q. The loss note. Okay. And filing false and

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1 misleading documents with the courts and  
2 government agencies, what would that be?  
3 A. That would be motion in opposition to compel  
4 where it says defendant is the holder of the  
5 note. It would be the counterclaim in, the  
6 current counterclaim, and it would be the  
7 foreclosure prior.  
8 Q. How can you prove that Wells Fargo was not, or  
9 Wachovia was not the holder of the note.  
10 A. Your client has admitted.  
11 Q. But it admitted that it didn't have, thought it  
12 lost, didn't admit that it wasn't the holder,  
13 they thought that it lost the note, but then it  
14 found the note. They never admitted it wasn't  
15 the holder of the note.  
16 A. Well, you can't be both the person that lost it  
17 and the holder?  
18 Q. Regardless. How are you going to show that Wells  
19 Fargo's not the holder of the note in this law  
20 suit?  
21 A. Because I never paid them. This is the entity  
22 that's got the payment rights. Why would I pay  
23 somebody else?  
24 Q. You talk about repeated false attestation of  
25 information and affidavits. What affidavits are

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1 you, is this to the lost note affidavit or is  
2 there more than one affidavit?  
3 A. The lost note affidavit. I think that's, you  
4 know, declarations that this is a certified copy  
5 of the note.  
6 Q. Okay. And you're saying that documents weren't  
7 properly notified, notarized, excuse me. What  
8 document wasn't properly notified and what state  
9 law are we referring to, or are you referring to?  
10 A. Where are you?  
11 Q. Sorry. It's still the same. It goes, it's at  
12 the end of the, there's a robo signing, there's a  
13 period and end quote, and then it says executed,  
14 but it's not capitalized. So, executed, starting  
15 with that, on page fourteen, and it goes to page  
16 fifteen. Was executed and filing affidavits in  
17 foreclosure proceedings that were not properly  
18 notarized in accordance with applicable state  
19 law?  
20 A. Well, I don't believe we've gotten the discovery  
21 of the notary yet.  
22 Q. Okay.  
23 MR. VARNADO: Can I see this real quick?  
24 THE WITNESS: Yeah.  
25 MS. BAKER: If you need something, Rob, let

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1 me know.  
2 MR. VARNADO: No. I'll just say that this  
3 interrogatory response is not necessarily limited  
4 to what we allege Wachovia, Wells Fargo did in  
5 this case but also would, encompasses other  
6 activities because that's part of the UTPA.  
7 MS. BAKER: Oh, that's, I was just curious.  
8 What was not properly notarized?  
9 MR. VARNADO: Well, that probably, I can  
10 tell you since I drafted that, that was probably  
11 taken from the consumer orders that Wachovia,  
12 Wells Fargo entered into with the OOC and the  
13 attorneys general.  
14 MS. BAKER: OCC.  
15 MR. VARNADO: I'm sorry. Did I get that  
16 wrong? I mean, because I think that  
17 interrogatory talks about UTPA type allegations,  
18 and obviously UTPA allegations are not  
19 necessarily limited to this.  
20 MS. BAKER: I'm not, yeah, I mean, so. I'm  
21 just trying to get just the facts for all these,  
22 you know, because these are, you know, statements  
23 that are, just so I know, you know.  
24 Q. Anyway, this says misrepresenting the identity  
25 office or legal status of the affiant executing

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1 foreclosure related documents. What  
2 misrepresentation are you referring to?  
3 A. We haven't taken his or her deposition yet. I  
4 don't know if Tracy's a man or a woman. But it  
5 appears as though that she, he/she misrepresented  
6 most of what she swore to on that that affidavit.  
7 Q. Okay. Now, I believe your response to twelve,  
8 page twelve, on the same response to  
9 interrogatories as in twelve asks about the  
10 allegation, the RESPA violation that you allege.  
11 A. Okay.  
12 Q. What are the, what is the basis for your RESPA  
13 violation? How did Wells Fargo violate RESPA?  
14 A. They failed to fully respond in time to my  
15 request, qualified written request.  
16 Q. Okay. And when was this, like what year?  
17 A. July 21st, 2010.  
18 Q. Okay. And that was when you sent it to, the  
19 letter by e-mail to Brock and Scott?  
20 A. Yeah. Ronald Johnson.  
21 Q. Yeah. When the document was forwarded to Wells  
22 Fargo, Wells Fargo did respond, although Brock  
23 and Scott didn't respond?  
24 A. Wells Fargo partially responded. They still have  
25 not fully responded.

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1 Q. Right. And by fully is you want the evidence  
2 supporting the calculation of the payoff balance?  
3 A. Yes. And they deceptively responded by the copy  
4 of the, passing of saying this is a certified  
5 copy.  
6 Q. Okay. And deceptively, okay, with an intent,  
7 does that mean you think that they intended to  
8 act deceptively, too?  
9 A. Yes.  
10 Q. Okay. And why is that?  
11 A. I believe at that point it was, whoa, we don't  
12 have the note, we can't locate it, so let's stuff  
13 this because it looks official and he'll never  
14 know.  
15 Q. You believe, but you're not positive that it was  
16 deceptive, that it was intentionally meant to be  
17 deceptive?  
18 A. Well, I would think that it's intentionally meant  
19 to be deceptive because when I responded to Ms.  
20 Gardner and said, wait a minute, are you saying  
21 that the closing attorney has a copy of it, but  
22 let me clear, I'm asking if you've got it. And a  
23 few months later, I get a, from Wachovia Vault  
24 Services a copy of my other note that I didn't  
25 ask for that was certified with the, certified

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1 copy from Ms. Legare again tucked in behind it.  
2 Q. The other note, is that the --  
3 A. The modified line.  
4 Q. Oh, the modified line?  
5 A. Yeah.  
6 Q. Okay.  
7 A. So, even when I said, wait a minute, you know,  
8 hey, this isn't what I asked for, again it was,  
9 yeah. One time, okay. Twice, nah.  
10 Q. Okay. So, in your response twelve, you know, one  
11 question is going to list all the documents you  
12 contend support your RESPA allegations, and you  
13 list out on page twelve, twelve B, you know, I  
14 think it's Exhibit F, Q, R, S, T, U, V, W, X?  
15 A. Yes.  
16 Q. Which, and then that explains what those are on  
17 page five, I think. Yeah. What the letters  
18 mean, what the letters refer to.  
19 A. Uh-huh.  
20 Q. Is that a yes?  
21 A. Oh, that is a yes. I'm sorry.  
22 Q. So, the documents that support your RESPA claim  
23 would be Exhibit, what's marked as F, initial QWR  
24 and y'all have it labeled initial QWR incorrect  
25 calculation letter?



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1 A. Yes.  
2 Q. Okay. And that would be, I believe there was a  
3 December 22nd, 2008 document that we already  
4 marked as an Exhibit?  
5 A. Yes.  
6 Q. Okay. I just can't find it right now, but I can  
7 find it. Do you recall the December 22nd, 2008  
8 letter?  
9 A. I do.  
10 Q. Okay.  
11 COURT REPORTER: Twenty-six.  
12 MS. BAKER: Twenty-six. Okay. That's  
13 Exhibit Twenty-six. Okay.  
14 Q. So, that's, okay, so that's one document to  
15 support your claim. The next document to support  
16 your claim is, I've got to go back to this.  
17 Sorry about that. Okay. You said, and then  
18 there is a, what you all have labeled as Q. QWR  
19 2010 number one is how you have it labeled, and I  
20 believe, because I did pull this from your  
21 discovery, that would be the e-mails that we  
22 marked that you sent July 19th, 2010 to Ronald  
23 Johnson. I mean, I can show it to you, we don't  
24 have to mark it again, but we did mark it  
25 earlier. It was the --

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1 A. Yeah. It would be the attachment to that e-mail.  
2 Q. Yeah. Okay. And I'm just trying to find --  
3 COURT REPORTER: Exhibit Thirty.  
4 Q. Okay. And that would be Exhibit Thirty. I just  
5 want you to take a look at it, Brent, so we're on  
6 the same page, even though I think we are on the  
7 same sometimes on the same page. Exhibit Thirty.  
8 Okay. Where is this?  
9 A. I got it.  
10 Q. Okay.  
11 A. It would be the attachment to Exhibit Thirty.  
12 Q. It would be, which would be, I actually have  
13 copies of those, and if y'all want me to mark it,  
14 I can, but just take a look. You just sent that  
15 to us in discovery. But it would be, this is  
16 what I have. Actually the attachment would be  
17 the July 21st, 2010 letter?  
18 A. Yes.  
19 Q. Which is Bentrin Thirty-two?  
20 A. Yes.  
21 Q. Okay. And then, the next document you have is, I  
22 believe, Exhibit R that supports your claim which  
23 says credit dispute number one is how y'all have  
24 it labeled?  
25 A. Yes.

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1 Q. Which would be the, well, there's an August 1  
2 have this, and we can, why don't we go ahead and  
3 mark it? I don't think we've marked this yet.  
4 The August 24, 2010 letter from you to Wells  
5 Fargo. Maybe we have. Mark this. I believe we  
6 have marked this actually as an exhibit.  
7 COURT REPORTER: Twelve.  
8 MS. BAKER: Yeah. Exhibit Twelve.  
9 Q. Let me find Exhibit Twelve. I had this in order.  
10 It's probably right underneath me. Okay.  
11 Exhibit Twelve.  
12 A. That's correct.  
13 Q. Okay. So, that would be QWR, I mean, it's the  
14 credit dispute number one?  
15 A. Yes.  
16 Q. Okay. And then, the next, you also list in  
17 twelve A besides R, S, credit dispute number two.  
18 And that would be an August 30, 2010 letter sent  
19 from you to Wells Fargo that I don't think we  
20 marked as an exhibit.  
21 A. I don't know that we have it.  
22 Q. And a September 30th, 2010 letter that I think  
23 that we did, September 13th, 2010 was marked as  
24 an exhibit regarding the credit reporting.  
25 A. Number Seventeen. Yes.

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1 Q. Seventeen. Okay. And so, that's part of your  
2 claim and why don't we go ahead and just mark  
3 this August 30th, 2010 and take a look at that  
4 for a minute. Have you seen that document  
5 before?  
6 A. Yes.  
7 (LETTER OF 8/30/2010 MARKED AS DEFENDANT'S  
8 EXHIBIT NO. 35 FOR IDENTIFICATION.)  
9 Q. Okay. And you wrote that document, or is that  
10 your --  
11 A. Yes.  
12 Q. Okay. And the date is, just to be clear.  
13 A. August 30, 2010.  
14 Q. Okay. And that supports your QWR claim as well?  
15 A. Yes.  
16 Q. According to your interrogatory. Okay. And  
17 then, you say in your response, Exhibit T, which  
18 is the, what y'all call, I believe, a don't hire  
19 attorney scare letter?  
20 A. Yes.  
21 Q. Okay. And I did not mark this as an exhibit.  
22 Let's go ahead and do it. Take a look at this  
23 first, and then we'll mark it. I thought it was  
24 two pages, but it's just one page. It will be  
25 one page.



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1 A. No. It's two because I wanted to --  
2 Q. Okay. We'll mark that as the next one then which  
3 would be Thirty-six.  
4 (FORECLOSURE RESCUE SCAMS MAILING MARKED AS  
5 DEFENDANT'S EXHIBIT NO. 36 FOR IDENTIFICATION.)  
6 Q. Okay. So, Exhibit Thirty-six, you've seen this  
7 document before?  
8 A. Yes.  
9 Q. You received it?  
10 A. Yes.  
11 Q. You refer to it as a scare letter, I believe, and  
12 that's part of your QWR claim, part of your  
13 documents to support your claim?  
14 A. Yes.  
15 Q. Okay. The next one as a document you list, I  
16 believe, it says it's an exhibit, y'all call  
17 Exhibit U?  
18 A. Yes.  
19 Q. Okay. Which would be, let me just double check.  
20 You actually, y'all, it supports your claim as U,  
21 V, W, and X. And U, is that correct?  
22 A. Yes.  
23 Q. U is a 2010 number two is how y'all label it.  
24 And that would be an e-mail dated September 21st,  
25 2010 from you to Ronald Johnson, and this is not

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1 marked as an exhibit?  
2 (The deposition went off the record for a  
3 brief period of time.)  
4 (E-MAIL OF 9/21/10 MARKED AS DEFENDANT'S  
5 EXHIBIT NO. 37 FOR IDENTIFICATION.)  
6 Q. The documents you listed in your response to  
7 interrogatory that you list that support your QWR  
8 claim, and the last one we were looking at, I  
9 just marked as Exhibit Thirty-seven. If you  
10 could just take a look at that, and Exhibit  
11 Thirty-seven, what we have in this deposition  
12 marked as Bentrin Exhibit Thirty-seven, it's  
13 identified, I guess, as Exhibit U in the response  
14 to discovery.  
15 A. Yes.  
16 Q. And then, when I say listing documents, I believe  
17 it's in response to twelve, to interrogatory  
18 twelve.  
19 A. Oh, and this also, this brings me to, reminds me  
20 of something, Jana. When I --  
21 Q. When you're looking, when you're saying, just for  
22 the record, you're looking at Exhibit Thirty-  
23 seven.  
24 A. Oh, Exhibit Thirty-seven.  
25 Q. And can you just tell me please what, if you've

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1 seen the document before?  
2 A. Yes. I've seen the document before.  
3 Q. Is it an e-mail?  
4 A. It's an e-mail.  
5 Q. From? Is it from, is it, it's from --  
6 A. It's from me to Ronald Johnson at Brock and  
7 Scott.  
8 Q. Okay. We can go ahead, and the date of it is  
9 July?  
10 A. September 21st, 2010.  
11 Q. Okay.  
12 A. You asked earlier if anybody from Brock and Scott  
13 acknowledged receiving the QWR, and there was a  
14 letter from Suzanne Brown that said, we did  
15 receive, and like the formal little QWR response  
16 letter.  
17 Q. And Suzanne Brown works for Brock and Scott/  
18 A. Yes. Suzanne Brown. Yes.  
19 Q. And that's --  
20 A. And that just prompted me to remember that.  
21 Q. Okay. And that's part of your claim, part of  
22 your documents that support your RESPA claim?  
23 A. Yes.  
24 Q. Okay. And then, we said Exhibit V, W, and X,  
25 that's the exhibit that was, how you labeled it

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1 in responses to interrogatory. So, V is, it  
2 states QWR 2010 number three. W is QWR 2010  
3 number four. And X is QWR 2010 number five. And  
4 then, so that would be, so let me get this for  
5 you so we can speak, so we can be clear. Okay.  
6 Exhibit V is a September, here take this. Let me  
7 just look. September 23rd, 2010 e-mail from  
8 Ronald Johnson to you. And I'll let you look at  
9 it and tell me if you've seen that before.  
10 A. Yes. This is his response to Exhibit Thirty-  
11 seven.  
12 (E-MAIL OF 9/23/10 MARKED AS DEFENDANT'S  
13 EXHIBIT NO. 38 FOR IDENTIFICATION.)  
14 Q. Okay. And what is he telling you?  
15 A. He said that he had sent a follow up on the  
16 status of the QWR and that I'm pushing for a  
17 response, and that's all I can do.  
18 Q. Okay. And you recall receiving that e-mail?  
19 A. Yes.  
20 Q. Okay. And then the last one is, that you list is  
21 Exhibit W which I believe is many pages. It's  
22 probably, well, it's not the last one. Excuse  
23 me. There's also an X as well. But Exhibit W  
24 is, let's mark this as an exhibit, and this is  
25 altogether. This is Exhibit Thirty-nine.

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1 (E-MAIL OF 10/12/10 MARKED AS DEFENDANT'S  
2 EXHIBIT NO. 39 FOR IDENTIFICATION.)  
3 Q. Okay. Have you seen Exhibit Thirty-nine before?  
4 A. Yes.  
5 Q. Okay. And what is that, it's a stack of document  
6 -- let's see here. If you go through them very  
7 quickly, do you recall receiving the first, or do  
8 you recall, is that your, the first page, Bentrin  
9 to Ronald Johnson.  
10 A. Yes.  
11 Q. And what's the date of that e-mail?  
12 A. October 12, 2010.  
13 Q. Okay. And tell me the purpose of this e-mail.  
14 A. The follow up on the qualified written request  
15 because I had not gotten a response.  
16 Q. Yeah. But at this point you were sending these  
17 letters to Brock and Scott?  
18 A. Yes.  
19 Q. Okay. And then the next page of the letter?  
20 A. Was the attachment to the e-mail making sure  
21 everything was put properly.  
22 Q. Okay. But it was sent via, it was the attachment  
23 still sent to Brock and Scott?  
24 A. Yes.  
25 Q. Okay. And that was just another letter to Wells

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1 Fargo that was -- okay. And then, is there  
2 anything else?  
3 A. And then, he responded on the, later that evening  
4 and said, hey, I passed it along, and then I  
5 think shortly thereafter is when he said, call  
6 April O'Quinn.  
7 Q. Okay.  
8 A. Yeah.  
9 Q. Exactly. And then, you did so?  
10 A. Yeah.  
11 Q. Because your Exhibit X, we'll mark the whole  
12 thing as, this is the next document that you list  
13 in support of this claim, and let's just make it  
14 all Exhibit Thirty-eight. And I believe this is  
15 the entire -- excuse me. Forty.  
16 A. Forty.  
17 Q. I hope I didn't misstate the other one.  
18 (DOCUMENTS MARKED AS DEFENDANT'S EXHIBIT  
19 NO. 40 FOR IDENTIFICATION.)  
20 Q. Okay. Take a look at Forty. Have you seen this  
21 before, Mr. Bentrin?  
22 A. I have.  
23 Q. Okay. Is this, did you send this fax to Ms.  
24 O'Quinn at Wells Fargo?  
25 A. It was faxed to Ms. O'Quinn and attachment to

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1 Ronald Johnson.  
2 Q. Okay. Now, what, when was this faxed, do you  
3 recall at all?  
4 A. October 25th, 2010.  
5 Q. Okay. And we've seen this letter before?  
6 A. Yes.  
7 Q. Okay. But the whole package would be, let's go  
8 through, the first page was, the whole package  
9 was faxed to Ms. O'Quinn?  
10 A. Yes.  
11 Q. And that would be this October 25th, 2010 letter  
12 to Ms. O'Quinn, correct?  
13 A. Yes.  
14 Q. Okay. And then the attachments to that which  
15 we've seen, that was the Sherrie Caudill letter  
16 dated December 19, 2008?  
17 A. Yes.  
18 Q. To you where she enclosed what we've gone over as  
19 Rob would like for me to say, the consumer loan  
20 payment history?  
21 A. Yes.  
22 Q. As well as a statement, now this consumer loan  
23 billing statement and payment due notice that's  
24 attached here dated 12/25/08.  
25 A. Yes.

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1 Q. Did you circle the, there is a payoff amount  
2 there, and you have it, did you circle that one  
3 eighty, a hundred and eighty thousand seven  
4 twenty-seven eighty-nine?  
5 A. Yes. This, this actually jogs my memory. You  
6 know how we were talking about the twenty-seven  
7 percent. This is where I based it off of.  
8 Q. Okay. That's what I thought. Now, how did you  
9 base it off of that?  
10 A. Oh, sorry. Yeah. I was like where did I -- oh,  
11 how did I?  
12 Q. Yeah. How did you figure out that a twenty-seven  
13 percent interest rate was being applied? At the  
14 end we'll mark these just so we're clear.  
15 A. That's all right. I'm looking through. The  
16 difference between the payoff amount that I  
17 circled on what has Bentrin one o seven on it.  
18 Q. Okay.  
19 A. That one eighty seven twenty-seven to --  
20 Q. Okay.  
21 A. -- the payoff of one ninety-eight o nine six.  
22 Q. Where do you see that?  
23 A. Which is Bentrin one ten.  
24 Q. Okay. So, Bentrin one ten which is another  
25 payoff, is that a billing statement or what is



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1 that? I'm trying to --  
2 A. Yeah. It's --  
3 Q. I can't --  
4 A. -- a May 14th, 2010 billing statement.  
5 Q. Okay. You're looking, and I have that amount.  
6 So, you're comparing the one eighty-seven twenty-  
7 seven o nine on Bentrin one o seven with what  
8 number on Bentrin one hundred nine --  
9 A. The payoff amount of one ninety-eight o nine six  
10 twenty.  
11 Q. Okay. And one is dated 12/25/08, that would be  
12 Bentrin one o seven?  
13 A. Yes.  
14 Q. And the Bentrin one ten, is that dated 5/14/10;  
15 is that correct?  
16 A. Yes.  
17 Q. Okay. But that can't be. It looks like the due  
18 date, though, is -- okay. Well, go ahead and  
19 explain, explain yourself to me, please.  
20 A. Explain?  
21 Q. Explain the twenty-seven percent interest rate.  
22 A. It's the difference between one ninety-eight zero  
23 nine six twenty on 5/14/10 and one eighty seven  
24 twenty-seven eighty-nine on 12/25/08, amortized  
25 over the months.

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1 Q. So, tell me how you calculate that since you're  
2 the banker and I'm not the banker. You're taking  
3 the difference, you're subtracting. Okay. And  
4 then, what do you do?  
5 A. It's the difference divided by the one over the  
6 number of months minus one.  
7 Q. Okay. And if you get, and what number do you  
8 get?  
9 A. I believe it was the twenty-seven percent.  
10 Q. So, what you did is you took the difference  
11 between one eighty and one seventy-six, right?  
12 A. No. And one ninety-eight.  
13 Q. Excuse me. Okay. One eighty and one ninety-  
14 eight which is, I don't know, like --  
15 A. Eighteen thousand.  
16 Q. -- eighteen thousand and a little bit of change,  
17 though. Anyway, eighteen thousand dollars.  
18 Okay. So, you take eighteen thousand dollars and  
19 you multiply it by?  
20 A. You divide it.  
21 Q. Oh, you divide it.  
22 A. Divide the difference, and then you --  
23 Q. Divide it by -- okay.  
24 A. One minus the months minus, one divided by the  
25 months.

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1 Q. Write this down for me, what you're, just so I'm,  
2 can you write this down so I can figure it out.  
3 There you go. We'll make this whatever an  
4 exhibit number.  
5 (CALCULATION MARKED AS DEFENDANT'S EXHIBIT  
6 NO. 41 FOR IDENTIFICATION.)  
7 Q. And will you calculate it?  
8 A. Not with, can I use Excel?  
9 Q. Oh, yeah. Go ahead.  
10 MR. VARNADO: Do you want on my computer? I  
11 don't know if I've got Excel.  
12 THE WITNESS: Because I don't have a  
13 computer that can raise --  
14 Q. Okay. So, what you do is here, you can make this  
15 Exhibit Forty-one, is that what it is?  
16 MR. VARNADO: What are we trying to do  
17 again?  
18 MS. BAKER: We're trying to figure out this  
19 twenty-seven percent interest rate.  
20 MR. VARNADO: Can we supplement that?  
21 MS. BAKER: Oh, we can supplement that,  
22 yeah. But just for, just for, he, that's fine to  
23 supplement just so you can calculate it after,  
24 how about that? But you can at least show me,  
25 this won't take long, that will give me the

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1 number about how you, you can calculate it after  
2 and supplement it.  
3 A. Yeah. When you raise the exponential, that's  
4 where you've got to have a scientific calculator  
5 or Excel?  
6 Q. That's what it is. Okay.  
7 A. Yeah.  
8 Q. But on Exhibit Forty-one, what you do is you  
9 take, you took the one ninety-eight payoff amount  
10 from the --  
11 A. The April 14th, 2010 statement.  
12 Q. Okay. And you subtracted, you take the  
13 difference, you subtract from the payoff amount  
14 from the --  
15 A. The January or the December 28th, 2008 statement,  
16 December 25th, 2008 statement, I'm sorry.  
17 Q. And then, you divide it by the difference?  
18 A. By the difference. And then you raise it to one  
19 divided by the number of months.  
20 Q. Between these?  
21 A. Between these two. Yeah.  
22 Q. Right. Okay.  
23 A. Minus one.  
24 Q. Minus one. And that gave you the percentage  
25 interest rate?

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1 A. Yes.  
2 Q. Okay.  
3 A. And that's an annualized interest rate.  
4 Q. Okay. So, in regard back to your, I guess  
5 falsified documents and all the documents showing  
6 the twenty-seven percent staggering interest  
7 rates, what, and in addition as being part of  
8 your RESPA claim, as part of your, those other  
9 documents that you're referring, which is Bentrin  
10 one o seven and Bentrin one o -- shoot, one o  
11 seven and one ten, I believe.  
12 A. That is correct.  
13 Q. Okay. And those are the only, those are the two  
14 other, when we were discussing, you know, we were  
15 calling them, I think, two other payoff balances,  
16 we were referring to them as two other documents  
17 from Wells Fargo?  
18 A. There's two other payment ledgers that were  
19 included in discovery that you guys, that your  
20 client sent to us.  
21 Q. That I haven't asked you about that you're going  
22 to tell me which ones they are?  
23 A. Yes.  
24 Q. So, it's these two and two more?  
25 A. Yes.

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1 Q. Okay. So, back to this set, so this refreshed  
2 your memory as to how to calculate the, or where  
3 you got the interest rate number from?  
4 A. Yes.  
5 Q. And then one o nine, what's labeled Bentrin one o  
6 nine is another statement, and this is, tell me,  
7 you just tell me what this was, this was sent  
8 again to Ms. O'Quinn, the purpose of this  
9 document because you sent it to Ms., to April  
10 O'Quinn?  
11 A. Yeah. If you'll notice, the principal balance  
12 that's being shown on, like, there's a payoff  
13 balance --  
14 Q. You don't have to write on it.  
15 A. Oh.  
16 Q. You can write, if you want to write on that, I  
17 don't care.  
18 A. There's, I was just going to point out for both.  
19 There's a payoff balance and a principal balance  
20 on the statements.  
21 Q. I see a payoff balance, payoff amount and the  
22 current principal balance, yes.  
23 A. Yes. You'll see the current principal balance is  
24 one seventy-four five o four twenty.  
25 Q. Wait. Maybe I'm looking at, which Bentrin are

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1 you looking at? You're looking at one o seven.  
2 A. One o seven.  
3 Q. Okay. Go ahead. One seventy-four five o four  
4 twenty?  
5 A. Yes. When we take, when we go to that date on  
6 the consumer loan payment history.  
7 Q. Okay.  
8 A. It does not match up.  
9 Q. And it gives you a number of?  
10 A. Sixty-two.  
11 Q. One seventy-four seven twenty-seven sixty-two  
12 instead of eighty-nine?  
13 A. Yeah. Yes.  
14 Q. So, the cents is wrong. It's off by forty-one  
15 cents?  
16 A. Forty-one cents.  
17 Q. Forty-one cents.  
18 A. And that -- hold on one second -- is why I  
19 believe they doctored this so it would match.  
20 Q. When you say this, you're talking about the  
21 transaction statement?  
22 A. Oh, I'm sorry. Yes. The transaction statement.  
23 Q. Which is Bentrin Twenty-two.  
24 A. Twenty-two.  
25 Q. Okay. And you think this was doctored in the

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1 date, on September 2010 to match this consumer  
2 payment history?  
3 A. No. To match the statements that were being sent  
4 showing a principal balance of one seventy-four  
5 five o four twenty.  
6 Q. Okay. But, you're still not sure if it was  
7 doctored or not until you deposed, I guess, if  
8 you need to depose --  
9 A. Yes. But, one of the pieces you just provided in  
10 discovery is clearly altered.  
11 Q. Okay. So, which one was that? Did you already  
12 name it here? Did we talk about it today?  
13 A. Yes. That's the one that we keep saying there's  
14 two of them, that you provided.  
15 Q. And you're going to find it?  
16 A. Yeah.  
17 Q. Okay. So, that's Bentrin one o seven. Bentrin  
18 one o eight, you're also using it in your RESPA  
19 claim, which is, and just tell me again the  
20 reason this was sent to Ms. O'Quinn, Bentrin one  
21 o eight, which is part of Exhibit Forty?  
22 A. Yeah. It was just showing that the principal  
23 balance of one seventy-four five o four twenty.  
24 Q. You just wanted to show here that --  
25 A. There were several of those.



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1 Q. Oh, okay. That each month --  
2 A. Yeah.  
3 Q. And then, Bentrим one o nine, tell me why Bentrим  
4 one o nine was sent, which is part of Exhibit  
5 Forty.  
6 A. That was the force placed insurance.  
7 Q. Okay. On 2/5/2010?  
8 A. Yeah.  
9 Q. Okay. Bentrим one hundred and ten?  
10 A. Again, a force placed insurance, but one allowed  
11 me to calculate the twenty-seven percent interest  
12 rate, as well.  
13 Q. Okay. Bentrим one eleven?  
14 A. I got no idea why I sent that one.  
15 Q. Okay.  
16 A. Ms. O'Quinn was saying, hey, just send this to us  
17 so I can get it up to them in the executive  
18 office.  
19 Q. And Bentrим one twelve? It's blank, so I don't  
20 know what that is. Okay. It might have been a  
21 space between twelve and thirteen. And Bentrим  
22 one thirteen?  
23 A. Again, saying I'm still disputing how you're  
24 calculating the payment.  
25 Q. And that was to Brock & Scott?

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1 A. Yes.  
2 Q. Okay. Got you. Okay. But, the documents that  
3 you've listed, I just want to make sure that  
4 those are the documents that you named in  
5 discovery and we've gone through, that these are  
6 the documents that you're going to rely on to  
7 support your RESPA claim?  
8 A. At this point, yes.  
9 Q. Okay. Are you also seeking to recover your  
10 attorney's fees?  
11 A. Yes.  
12 Q. Okay. And how much is that, to date?  
13 A. No clue.  
14 Q. How much do you think the real estate is worth  
15 today, on Nicholson Street, 10 Nicholson?  
16 A. You know, I haven't appraised it. Three hundred.  
17 Q. When was it appraised last?  
18 A. At refinancing.  
19 Q. But, back in 2002?  
20 A. 2002.  
21 Q. Okay. What do you think it's worth?  
22 A. Mine's a little larger. It's a three bedroom,  
23 two bath, which is unusual. I don't know if you  
24 know the area.  
25 Q. I don't know it.

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1 A. Yeah. Most of them are two bedroom, one bath.  
2 The two ones are selling at about two fifty right  
3 now. So, I would say maybe three. Yeah.  
4 Q. Okay. In regard to your credit rating damages,  
5 do you know, do you have a number for that?  
6 A. What do you mean, like --  
7 Q. What are your damages to your credit?  
8 A. No number on that.  
9 Q. Okay. I think I am done, I believe.  
10 MS. BAKER: Rob?  
11 MR. VARNADO: That's it.  
12  
13 (Deposition concluded at 3:19 o'clock, p.m.)  
14  
15 \* \* \*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 208

1 STATE OF SOUTH CAROLINA )  
2 : C-E-R-T-I-F-I-C-A-T-E  
3 COUNTY OF CHARLESTON )  
4  
5 I, John P. Crawford, Jr., Court Reporter and Notary  
6 Public, certify that I did have Brent E. Bentrим to  
7 appear before me at 10:10 o'clock, a.m. on Wednesday,  
8 May 8th, 2013, at Womble Carlyle Sandridge & Rice, LLP, 5  
9 Exchange Street, Charleston, South Carolina; that the  
10 witness was sworn and cautioned to tell the truth, the  
11 pages constitute a true and accurate transcript of the  
12 testimony given at that time and place.  
13 I further certify that I am not of counsel or kin to  
14 any of the parties to this cause of action, nor am I  
15 interested in any manner in its outcome.  
16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal this the 14th day of May, 2013.  
18  
19  
20  
21 \_\_\_\_\_  
22 Notary Public for South Carolina  
23 My Commission Expires: April 4th, 2022  
24  
25



Page 209

1 Reference No.: 394758.513286  
 2  
 3 Case: BRENT E. BENTRIM -vs- WELLS FARGO BANK  
 4  
 5 DECLARATION UNDER PENALTY OF PERJURY  
 6 I declare under penalty of perjury that  
 7 I have read the entire transcript of my Depo-  
 8 sition taken in the captioned matter or the  
 9 same has been read to me, and the same is  
 10 true and accurate, save and except for  
 11 changes and/or corrections, if any, as indi-  
 12 cated by me on the DEPOSITION ERRATA SHEET  
 13 hereof, with the understanding that I offer  
 14 these changes as if still under oath.  
 15  
 16 BRENT E. BENTRIM  
 17  
 18 NOTARIZATION OF CHANGES  
 19 (If Required)  
 20 Subscribed and sworn to on the \_\_\_\_\_ day of  
 21 \_\_\_\_\_, 20\_\_\_\_ before me,  
 22 (Notary Sign) \_\_\_\_\_  
 23 (Print Name) Notary Public,  
 24 \_\_\_\_\_  
 25 in and for the State of \_\_\_\_\_

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1 Reference No.: 394758.513286  
 2 Case: BRENT E. BENTRIM -vs- WELLS FARGO BANK  
 3 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
 4 Reason for change: \_\_\_\_\_  
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 21 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
 22 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 23 BRENT E. BENTRIM

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1 Reference No.: 394758.513286  
 2 Case: BRENT E. BENTRIM -vs- WELLS FARGO BANK  
 3 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
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 21 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
 22 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 23 BRENT E. BENTRIM

24  
25



Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
3 ) CASE NO. 2011-CP-10-2946

4 BRENT E. BENTRIM, )  
5 Plaintiff, )  
6 v. )  
7 WELLS FARGO BANK, N.A., )  
8 Defendant. )

11 VIDEOTAPED DEPOSITION OF  
12 TRACY THOMAS  
13 10:03 a.m.  
14 August 6, 2013  
15 1301 Riverplace Boulevard, Suite 1609  
16 Jacksonville, Florida  
17 Richetta R. Bright, Registered Professional Reporter

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1 INDEX OF EXAMINATION  
2 WITNESS: Tracy Thomas Page  
3 DIRECT EXAMINATION  
4 By Mr. Varnado 5

5 ---  
6 INDEX TO EXHIBITS

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13	Updated Payoff Figures	148
14	Itemization	149
15	\$10 Late Fee	150
16	SHAW Document	151

24 (Exhibits attached to the original transcript.)  
25

Page 2

1 APPEARANCES OF COUNSEL  
2  
3 On behalf of the Plaintiff:  
4 ROBERT B. VARNADO, ESQUIRE  
5 Brown & Varnado, LLC  
6 103 Church Street  
7 Mount Pleasant, South Carolina 29464  
8 (843) 737-7300  
9  
10 On behalf of the Defendant:  
11 JANA B. BAKER, ESQUIRE  
12 Womble, Carlyle, Sandridge & Rice, LLP  
13 5 Exchange Street  
14 Charleston, South Carolina 29401  
15 (843) 722-3400  
16  
17 Also Present: Miriam Beckford, Videographer  
18 Brent E. Bentrим  
19  
20  
21  
22  
23  
24  
25

Page 4

1 THE VIDEOGRAPHER: This is tape number 1  
2 to the videotaped deposition of Tracy Thomas, in  
3 the matter of Brent Bentrим versus Wells Fargo  
4 Bank, being heard before the Court of Common  
5 Pleas, Ninth Judicial Circuit, Case No.  
6 2011-CP10-2946.  
7 This deposition is being held at Esquire  
8 Deposition Solutions, located at 1301 Riverplace  
9 Boulevard, Jacksonville, Florida. Today's date  
10 is August the 6th, 2013. The time on the record  
11 is 10:03 a.m. My name is Miriam Beckford. I'm  
12 the videographer. The court reporter is  
13 Richetta Brown-[sic].  
14 Counsel, will you please introduce  
15 yourselves and affiliations, and the witness  
16 will be sworn.  
17 MR. VARNADO: My name is Rob Varnado, and  
18 I am counsel for the plaintiff.  
19 MS. BAKER: My name is Jana Baker, and I  
20 am counsel for Wells Fargo, and I'm with the  
21 firm Womble, Carlyle, Sandridge & Rice.  
22 THE COURT REPORTER: Would you raise your  
23 right hand? Do you swear or affirm that the  
24 testimony in this cause will be the truth, the  
25 whole truth, and nothing but the truth, so help



Page 5

1 you God?

2 THE WITNESS: Yes.

3 TRACY THOMAS, having been first duly

4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. VARNADO:

7 Q. Good morning, Ms. Thomas. My name is Rob

8 Varnado. I introduced myself to you before the

9 deposition began. I'm an attorney. I practice law

10 in Mount Pleasant, South Carolina. And I represent

11 the plaintiff in the lawsuit that brings us here

12 today. This is a deposition taken pursuant to a

13 notice of deposition which your attorneys and I

14 agreed to. This deposition is taken pursuant to the

15 South Carolina Rules of Civil Procedure.

16 Ms. Baker and I have agreed off the

17 record and will confirm now that all objections to my

18 questions, save to the form of the question, are

19 going to be reserved, and that she and I have agreed

20 also to waive all the technical rules for videotaped

21 depositions contained within the South Carolina Rules

22 of Civil Procedure. None of that really affects you

23 immediately, but that's our agreement.

24 MR. VARNADO: Is that correct, Ms. Baker?

25 MS. BAKER: That is correct.

Page 6

1 MR. VARNADO: All right.

2 BY MR. VARNADO:

3 Q. So we're here today to proceed with your

4 deposition. Just a few ground rules first, if you

5 don't mind. Under the South Carolina Rules, I'm

6 required to tell you that while I am asking you

7 questions, if you have any question yourself about

8 the deposition process or the procedure, that you

9 would direct that question to me, not your attorney,

10 Ms. Baker. Do you understand?

11 A. Yes.

12 Q. Great. Now that you've been sworn,

13 you're not permitted to speak with Ms. Baker about

14 the substance of your testimony or what you've

15 testified to or might testify to except in very, very

16 limited circumstances. Do you understand that?

17 A. Yes.

18 Q. Great. The deposition is not a marathon.

19 You can take a break at any time. I normally take

20 breaks every hour to 90 minutes. But if you need one

21 for any reason before that time, please let me know

22 and I'll be happy to accommodate you. Okay?

23 A. Yes.

24 Q. If for any reason you're uncomfortable

25 with the temperature, light or need any kind of

Page 7

1 refreshment, please let us know. We'll be happy to

2 assist you with that. Okay?

3 A. Okay.

4 Q. What's really important is that you and I

5 not to talk over each. Because the court reporter,

6 seated to your left, is going to take down a

7 transcription of everything that we say. So it needs

8 to be a very formal conversation in which I finish

9 asking my question before you answer, and

10 concomitantly, you -- I cannot start asking a new

11 question before you finish your answer. Do you

12 understand?

13 A. Yes.

14 Q. Okay. So from time to time, I might ask

15 you, please let me finish my question. If it comes

16 up even if I'm asking a question and I'm not doing a

17 good job of asking it or you know exactly where I'm

18 going and you're trying to help me out, please just

19 wait until I've completed the question before you

20 start to answer. Okay?

21 A. Okay.

22 Q. And by the same token, I may be thinking

23 that you finished an answer, and you've taken a pause

24 to consider adding to it, please raise your hand or

25 let me know, I'm sorry, I haven't finished my last

Page 8

1 answer. Is that fair?

2 A. Yes.

3 Q. Okay. For the same reason that we can't

4 talk over each other, we also need to make sure that

5 we avoid nonverbal gestures or responses to the best

6 we can. So a shake of the head or a uh-huh or a

7 huh-uh, she really can't take that down with any sort

8 of precision. So from time to time, me or Ms. Baker

9 might say, I'm sorry, you need to answer the

10 question. We're not trying to be rude. We're just

11 trying to make sure we have a good record. Do you

12 understand?

13 A. I understand.

14 Q. Okay. If for any reason you don't

15 understand my question -- and that could be I haven't

16 asked a really artful question or I've used phrases

17 or terms which you don't understand or for any reason

18 you're momentarily distracted by something or -- will

19 you please ask me to ask the question again?

20 A. Yes.

21 Q. Okay. From time to time, Ms. Baker may

22 object to my question. She may say, I object, or I

23 object to the form of the question. You can -- you

24 can go ahead and answer. She's merely preserving her

25 objection on the record. If that distracts you,



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1 though, you can ask me to repeat my question or we  
2 can even have the court reporter read it back. Do  
3 you understand?  
4 A. Yes.  
5 Q. Okay. So it's really important that if I  
6 ask you a question and you answer it, that means you  
7 heard it and you understood. Can we agree on that?  
8 A. Yes.  
9 Q. Okay. And that you're going to give a  
10 truthful answer, correct?  
11 A. Yes.  
12 Q. Okay. And I think that covers the  
13 initial ground rules. Again, if you have any  
14 question at all about it, let me know. If you need a  
15 break for any reason, let me know. Okay?  
16 A. Okay.  
17 Q. Are you ready to get started?  
18 A. I am.  
19 Q. My first general question is, are you  
20 under the influence of any medication or any sort of  
21 drug or alcohol or anything which would interfere  
22 with your ability to give a full and truthful answer  
23 to my questions, to hear them and understand them?  
24 A. No.  
25 Q. Is there anything going on in your life

Page 10

1 right now which is so distracting to you that as you  
2 sit here today it's really impossible for you to  
3 concentrate on my questions or to give truthful  
4 answers because of the distraction?  
5 A. No.  
6 Q. I didn't think so. Okay. Would you  
7 please go ahead and state your full name for the  
8 record, please, ma'am.  
9 A. Tracy Michelle Thomas.  
10 Q. And what's your business address if I  
11 needed to contact you?  
12 A. It's 3563 Philips Highway, Building D,  
13 Jacksonville, Florida 32607.  
14 Q. Okay. Is that in the downtown  
15 Jacksonville area? I see a big Wells Fargo Building  
16 across the railroad. Is that where you work?  
17 A. No.  
18 Q. Okay.  
19 A. It's south.  
20 Q. It's south of here?  
21 A. Uh-huh.  
22 Q. All right. What is your -- what's your  
23 age, ma'am?  
24 A. 28.  
25 Q. And what's your date of birth?

Page 11

1 A. September 1st, 1984.  
2 (Exhibit-1 marked for identification.)  
3 Q. Okay. We went ahead and marked as  
4 Exhibit No. 1 a copy of your Facebook page. Do you  
5 have that in front of you? I'm going to hand that to  
6 you.  
7 A. Thank you.  
8 Q. And we've agreed to redact certain  
9 personal photographs which are not germane to  
10 anything we're doing today. But is that a copy of  
11 your Facebook page or part of your Facebook page?  
12 A. It's general information on my Facebook  
13 page, yes.  
14 Q. All right. I'm going to ask you just a  
15 few questions about this and a few questions about  
16 your background so I better understand where you're  
17 from and who you are. So where were you born?  
18 A. Gainesville, Florida.  
19 Q. Okay. Did you grow up in Gainesville?  
20 A. For the most part, yes.  
21 Q. So you might have moved away here or  
22 there, but you attended high school in Gainesville;  
23 is that correct?  
24 A. Yes.  
25 Q. Okay. And you graduated in 2002; is that

Page 12

1 correct?  
2 A. Yes.  
3 Q. All right. And what additional education  
4 did you pursue?  
5 A. I went to Santa Fe College in Gainesville  
6 and obtained an associate's degree as a paralegal.  
7 Q. Is Santa Fe a two- or four-year program?  
8 A. Then, it was a two-year.  
9 Q. Did you obtain a two-year degree, an  
10 associate's degree?  
11 A. Yes.  
12 Q. And a paralegal certificate?  
13 A. Yes.  
14 Q. Do you still have the certificate with  
15 the State of Florida or some other governing body, or  
16 did you let it go? Let me start over again.  
17 Did you actually attain a certification  
18 or a license from the State of Florida?  
19 A. No.  
20 Q. Okay. You just graduated with an  
21 associate's degree in paralegal?  
22 A. Yes.  
23 Q. Okay. When you were at Santa Fe College,  
24 did you take any banking or finance courses?  
25 A. I don't recall.

Page 13

1 Q. Did you take any accounting courses?  
2 A. I don't recall.  
3 Q. Have you ever worked -- before you joined  
4 Wells Fargo Bank, did you work for a bank while you  
5 were in Santa Fe College, maybe as a teller or some  
6 sort of assistant?  
7 A. No.  
8 Q. Okay. Did you have any part-time  
9 employment while you were at Santa Fe College?  
10 A. Yes.  
11 Q. What did you do?  
12 A. I -- the first three years I was a  
13 manager at Pizza Hut. My final year, I went to  
14 school full time, worked full time as a receptionist  
15 at a spa, and then worked part time at Pizza Hut.  
16 Q. Okay. It was a two-year program, but you  
17 spread it out? In other words, you weren't a  
18 full-time student for the program?  
19 A. Correct.  
20 Q. Until the last semesters or so?  
21 A. Correct.  
22 Q. All right. Did you go straight from high  
23 school to Santa Fe College, or did you take a break  
24 between high school and enrolling there?  
25 A. I went straight to college.

Page 14

1 Q. And you said you obtained an associate's  
2 degree in paralegal, correct?  
3 A. Yes.  
4 Q. Okay. When did you join Wells Fargo  
5 Bank?  
6 A. July 3rd, 2006.  
7 Q. Was it Wachovia Bank at the time, or was  
8 it a different bank?  
9 A. It was Wachovia Bank.  
10 Q. Okay. What was the entity within  
11 Wachovia that you worked for? Did you work for big  
12 Wachovia Bank, N.A.?  
13 A. I initially started as a temp through  
14 their internal temp agency.  
15 Q. Okay. What was the name of the internal  
16 temp agency? How was it denoted, or what was it  
17 called?  
18 A. I believe it was First Place.  
19 Q. How did you find the job? Were you  
20 recruited? Did you go to a job fair? Did you send  
21 resumes out? Did you interview?  
22 A. My aunt worked for Wachovia, and she  
23 pointed me in the right direction.  
24 Q. Okay. So you applied for a temp agency  
25 job?

Page 15

1 A. Yes.  
2 Q. With -- within the bank?  
3 A. Yes.  
4 Q. Was that in Gainesville or here in the  
5 Jacksonville area?  
6 A. Jacksonville.  
7 Q. My understanding is y'all call this area  
8 the First Coast; is that right? Or what do you call  
9 this area of Florida?  
10 A. Some people do call it the First Coast.  
11 Q. Okay. What do you call it?  
12 A. Jacksonville.  
13 Q. The Jacksonville area. So you started  
14 working -- well, it might go all the way down to  
15 St. Augustine; that's including Jacksonville or  
16 Daytona.  
17 A. Yes.  
18 Q. Y'all laugh at me. So let me just  
19 repeat -- ask again.  
20 Did you start in Gainesville, or you  
21 started up here in the Jacksonville area?  
22 A. I started in Jacksonville.  
23 Q. Okay. And what were your duties when you  
24 first started in 2006?  
25 A. My first temp job, I was a receptionist.

Page 16

1 Q. Okay. And how long did you work as a  
2 receptionist?  
3 A. I believe it was -- it was only two  
4 weeks.  
5 Q. Okay. Then what did you do next?  
6 A. Then I was an executive administrative  
7 assistant.  
8 Q. And what division or branch was that?  
9 A. I don't remember. It was in this  
10 building. I don't remember.  
11 Q. In the building that we're in currently?  
12 A. Yeah.  
13 Q. Okay. Do you remember who you were  
14 working for or what they did?  
15 A. I don't remember her name.  
16 Q. That's fine.  
17 A. I'm sorry.  
18 Q. How many weeks or months did you do that?  
19 A. That one, I believe was either three or  
20 four weeks.  
21 Q. Okay. Why don't you run me through,  
22 then, what you did as a temp before you got a  
23 full-time position.  
24 A. After the executive administrative  
25 assistant, I went to -- worked as an appraisal ops

Page 17

1 representative for Wachovia.  
2 Q. What does an appraisal ops representative  
3 do?  
4 A. I was basically the go-between between  
5 loan officers who would order an appraisal for a loan  
6 that was being originated and our appraisal vendors.  
7 So I would initiate the work with the appraisers and  
8 follow up with them to make sure it's completed on a  
9 timely basis.  
10 Q. Okay. Then what next?  
11 A. Then I moved over to the post  
12 foreclosure -- pre/post foreclosure department for  
13 Wachovia Bank.  
14 Q. Were you still with the temp agency then,  
15 or were you now a full-time employee?  
16 A. I was still with the temp agency.  
17 Q. Okay.  
18 A. And then --  
19 Q. Was that your first experience with  
20 foreclosures?  
21 A. Yes.  
22 Q. Okay. How many weeks did you spend in  
23 that department as a temp?  
24 A. That was February of 2007 through end of  
25 March or early April, and then I was hired full time

Page 18

1 as a foreclosure specialist.  
2 Q. In April '07, roughly?  
3 A. Yeah. Either late March, early April of  
4 '07.  
5 Q. Sometime in that spring, you think?  
6 A. Yes.  
7 Q. What is a foreclosure specialist, or what  
8 did a foreclosure specialist do in 2007?  
9 A. I would receive a foreclosure file. I  
10 would review it for accuracy. I would then refer it  
11 to an attorney to begin the legal process of the  
12 foreclosure.  
13 Q. Did you receive files from certain states  
14 or a certain region, or it could be from all over?  
15 A. In the beginning, I handled nonjudicial  
16 states.  
17 Q. Okay. What's an example of a nonjudicial  
18 state?  
19 A. Georgia, Texas, Tennessee, North  
20 Carolina.  
21 Q. You might be reviewing files from all  
22 those states --  
23 A. Yes.  
24 Q. -- at your desk; is that correct?  
25 A. Yes.

Page 19

1 Q. At any time thereafter in '07 or '08, did  
2 you begin to review files from South Carolina?  
3 A. I started handling judicial files -- I  
4 believe it was late 2008.  
5 Q. While you were still a foreclosure  
6 specialist?  
7 A. At that point, I was a senior litigation  
8 foreclosure specialist.  
9 Q. Okay. What is your understanding of the  
10 difference between a judicial and a nonjudicial  
11 state?  
12 A. Basically, it's court process versus  
13 noncourt process.  
14 Q. Okay. And then take me through the --  
15 back in '07 and '08, the various, well, ranks and  
16 titles that you would have proceeded through as you  
17 went further and further into your job. So you  
18 started as a foreclosure specialist?  
19 A. Yes.  
20 Q. And then what would have been your next  
21 title?  
22 A. In either April or May of 2008, I was  
23 promoted to foreclosure specialist II.  
24 Q. What's the -- what's your understanding  
25 of a distinction or difference between a foreclosure

Page 20

1 specialist and a foreclosure specialist II?  
2 A. I took on a more active role in assisting  
3 the newer employees, training, more projects.  
4 Q. Would you consider it a quick promotion,  
5 or would you consider it sort of a standard promotion  
6 based on the time you had put in?  
7 A. It was a quick promotion.  
8 Q. Okay. What additional education did you  
9 get from Wachovia in order to be a foreclosure  
10 specialist or foreclosure specialist II?  
11 A. There were various online courses that we  
12 took through the bank. I mean, I don't recall the  
13 names of them.  
14 Q. Do you remember how many courses you  
15 would have taken in order to become a foreclosure  
16 specialist II? Was it one, two, three, four?  
17 A. I don't -- there wasn't any -- I didn't  
18 have to take classes to be promoted. So there wasn't  
19 any, I guess --  
20 Q. What were the classes for? Were they  
21 required to do the job, though? Or did you have to  
22 obtain them within a certain time frame in order to  
23 retain the job?  
24 A. There were, you know, federally regulated  
25 classes that we have to take, like the Fair Debt

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1 Collections Practices Act. Classes on elder abuse  
2 and how to spot that, fraud, all kinds of --  
3 Q. Would you take them at your desk in the  
4 office, or would you take them at home?  
5 A. At my desk at the office.  
6 Q. Okay. Would they generally last an hour  
7 or two hours? How long would, like, the Fair Debt  
8 Collection online class take back in '07 or '08?  
9 A. I don't recall.  
10 Q. Would it be about an hour or two, or it  
11 would be just like in the morning? Does that ring a  
12 bell?  
13 A. I would say -- I mean, not more than an  
14 hour. I don't recall any class taking an enormous  
15 amount of time. I just don't recall exactly how long  
16 they took.  
17 Q. Was there a written test? Was there any  
18 sort of follow-up with a live supervisor or a manager  
19 about what you learned?  
20 A. There was a test at the end of the  
21 course, through the course.  
22 Q. Was it a pass/fail, or was it a graded  
23 test?  
24 A. It would have been graded.  
25 Q. You don't remember any of the grades,

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1 though? Did you ace them all?  
2 A. Yeah. You have to score above -- for  
3 most of those type courses, you have to score above  
4 an 85 or 90 percent in order to pass them.  
5 Q. Fair enough. Okay. So you became a  
6 foreclosure specialist II, and then I think you told  
7 me that there was another title above that or maybe  
8 several. Can you just walk me through how you rose  
9 through the ranks?  
10 A. Late 2008, I was promoted to the senior  
11 litigation foreclosure specialist.  
12 Q. How old were you at that time?  
13 A. 2008, late in the year, I would have been  
14 24.  
15 Q. Okay. And you would have been a  
16 full-time employee with the bank since -- for about a  
17 year and a half at that point?  
18 A. Yes. Well, because I started as a temp,  
19 within --  
20 Q. Oh, they counted that?  
21 A. They count that, yes.  
22 Q. To your seniority?  
23 A. Yes.  
24 Q. Okay. And what does a senior litigation  
25 foreclosure specialist do in addition to the other

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1 jobs you had? Is it more management? Is it more  
2 training? Or did you have a greater responsibility?  
3 Can you elaborate on that for me?  
4 A. I handled the litigated foreclosure  
5 matters.  
6 Q. So you would be dealing directly with  
7 counsel in various states?  
8 A. Yes..  
9 Q. And you would be making decisions on --  
10 with the advice of counsel on whether to proceed or  
11 not proceed, things like that? Generally speaking.  
12 I'm not going to ask you about any specific matters.  
13 I just want to understand what your -- your broad  
14 kind of powers were, if that's fair.  
15 A. With the advice of counsel and, depending  
16 on the situation, management.  
17 Q. All right. You would make decisions on  
18 whether to settle or proceed based on the facts of  
19 the case?  
20 A. Yes.  
21 Q. Who would -- who were you working for at  
22 the time? Who was your direct supervisor?  
23 A. Ken Tew.  
24 Q. Okay. And how many senior litigation  
25 foreclosure specialists were there in the

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1 Jacksonville area working on the same kind of files  
2 you were?  
3 A. Just me.  
4 Q. Just you. Okay. How many people would  
5 have been in that department back in '08 working  
6 under Mr. Tew?  
7 A. Probably 12 to 15 people.  
8 Q. That would include temps and foreclosure  
9 specialists and admin assistants --  
10 A. Yes.  
11 Q. -- in addition -- were there any other  
12 managers?  
13 A. Yes.  
14 Q. Okay. Were you a manager as a senior  
15 litigation foreclosure specialist, or would you  
16 consider yourself one?  
17 A. I was not at that time, no.  
18 Q. Okay. And that was your only title at  
19 that time?  
20 A. Yes.  
21 Q. In -- what would the name of the  
22 department have been, the foreclosure department? Or  
23 what would -- did it have a special name at that  
24 time?  
25 A. It was the foreclosure department.

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1 Q. Okay. How many foreclosure departments  
2 were there in the Wachovia system that you're aware  
3 of at the time? I mean, there's one here in  
4 Jacksonville. Did that cover a particular region?  
5 Were there others in the southeast? Can you  
6 elaborate on that for me?  
7 A. Our division had two foreclosure  
8 departments, one in Jacksonville and one in Philly.  
9 Q. Okay. And you said your division. What  
10 was the name of your division?  
11 A. We handled home equity accounts.  
12 Q. But did it have a special name,  
13 foreclosure home equity division? What -- what did  
14 you call it?  
15 A. Foreclosure department.  
16 Q. Okay. Home equity division?  
17 A. We just fell under the home equity  
18 umbrella.  
19 Q. Okay. Did you do all your training  
20 online here in Jacksonville, or did you ever attend  
21 workshops or conferences in person put on by the bank  
22 back in '07, '08?  
23 A. It would have all been done online.  
24 Q. Okay. Were you able to make decisions  
25 independently, or did you need to run everything by

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1 Mr. Tew or other managers?  
2 A. It depended on the situation.  
3 Q. Okay. What was your next title or  
4 position with the bank?  
5 A. Foreclosure supervisor.  
6 Q. Okay. What does a foreclosure supervisor  
7 do? And when would you have obtained that position?  
8 A. That was -- I believe it was December of  
9 2009. And I managed a team of foreclosure  
10 specialists.  
11 Q. What would those duties entail in terms  
12 of management? Would you have any direct  
13 responsibility for working with lawyers, or were you  
14 just supervising the people directly under you and  
15 having them report to you?  
16 A. I still handled probably 80 percent of  
17 the litigated foreclosure matters, as well as oversaw  
18 the work of a team. I think there was 12 team  
19 members.  
20 Q. Why do you say 80 percent? Does that  
21 mean that 80 percent of the total that were in the  
22 department, you had some hand in, or 80 percent of  
23 your own work was devoted to that?  
24 A. 80 percent of the total litigation  
25 matters within the department, I handled.

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1 Q. Okay. And so '09 was right kind of the  
2 teeth of the economic downturn, so the department  
3 would have had hundreds, thousands of foreclosures?  
4 A. I -- I don't --  
5 Q. Any way to quantify it at all?  
6 A. I don't recall how many foreclosures we  
7 had at that time.  
8 Q. Were you handling foreclosures out of  
9 South Carolina at that time?  
10 A. Yes.  
11 Q. As a -- as a supervisor?  
12 A. Yes.  
13 Q. How long did you hold the rank of  
14 supervisor?  
15 A. May 31st, 2011.  
16 Q. Okay. What were you promoted to then?  
17 A. At the time, they called it research  
18 remediation analyst, I think.  
19 Q. What is a research remediation analyst?  
20 A. It's the same thing that I do now; we  
21 just had a title change. But I handle litigated  
22 foreclosure matters, attend personal appearances on  
23 behalf of the bank, review and execute legal  
24 documents and affidavits.  
25 Q. Did you ever execute legal documents and

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1 affidavits on behalf of Wachovia Bank before  
2 May 31st, 2011?  
3 A. Yes.  
4 Q. Okay. Walk me through some of the kinds  
5 of documents that you would have executed on behalf  
6 of the bank during the time that you were a senior  
7 litigation foreclosure specialist, foreclosure  
8 specialist II, all the way up through a research  
9 remediation analyst. For example, a lost note  
10 affidavit?  
11 A. Yes. I don't think I -- I don't recall  
12 executing anything when I was a foreclosure  
13 specialist II.  
14 Q. Okay.  
15 A. When I was a senior litigation  
16 foreclosure specialist, affidavits -- I think that  
17 was before we had to verify complaints in Florida.  
18 Judgment affidavits would have been the biggest,  
19 occasionally a lost note affidavit.  
20 Q. Okay. How much of your time would have  
21 been spent, on a percentage basis, as a senior  
22 litigation foreclosure specialist doing legal  
23 document review and execution?  
24 A. 15 to 20 percent, maybe.  
25 Q. Okay. Did that workload increase when

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1 you became a foreclosure supervisor?  
2 A. Yes.  
3 Q. Same question. On a percentage basis,  
4 how much of your time as a foreclosure supervisor  
5 would you have spent in reviewing and executing legal  
6 documents on behalf of the bank?  
7 A. Probably 40 percent.  
8 Q. Were you working basically a 40-hour  
9 workweek or more?  
10 A. More.  
11 Q. More?  
12 A. Yes.  
13 Q. Then when you became a research  
14 remediation -- I'm sorry, what was the last part of  
15 that term?  
16 A. Analyst.  
17 Q. -- analyst -- I apologize -- how much of  
18 your time would have been spent, on a percentage  
19 basis, reviewing and executing legal documents?  
20 A. It varied. We had -- initially, we had  
21 the foreclosure supervisors that were also reviewing  
22 and executing the documents. So in the beginning, I  
23 would say 30 to 40 percent. And then we completely  
24 took over that process, my group did, and it probably  
25 increased to 50 to 60 percent.

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1 Q. When you say your group, would that mean  
2 other research remediation analysts?  
3 A. Correct.  
4 Q. Okay. And did the research remediation  
5 analysts work in the same offices that you had  
6 previously worked in as you rose through the ranks,  
7 or did you have a new suite, new supervisor?. Tell me  
8 how that worked.  
9 A. We -- there was two in my Jacksonville  
10 office; one, two, three -- three in Des Moines; and  
11 we had two in Beaverton, Oregon. But now there's  
12 only one.  
13 Q. Okay. To your knowledge, were -- were  
14 those all the research remediation analysts for  
15 Wachovia at the time that you were one?  
16 A. Other departments had them. I don't know  
17 how many there were, who they are.  
18 Q. Same department name that we already went  
19 over, or did the department name change in 2011 when  
20 you became a research remediation analyst?  
21 A. The foreclosure department.  
22 Q. Foreclosure department. And who did you  
23 report to? Mr. Tew again or --  
24 A. No. Initially, I reported to Mark  
25 Caruso.

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1 Q. And what was his title?  
2 A. He was the loan administration manager.  
3 And then Laurie Saurensen.  
4 Q. Did -- did Ms. Saurensen hold the same  
5 title as Mr. Caruso?  
6 A. No. She was a step higher up on the  
7 ladder. I don't remember her title.  
8 Q. Okay.  
9 A. And then Ryan Hughes, and now Lisa  
10 Epperly.  
11 Q. Okay. I think you told me earlier that  
12 there was some change in the organization of what a  
13 research remediation analyst did, or maybe a change  
14 in title. Can you walk me through that? You said  
15 you became a research remediation analyst on May 31st  
16 of 2011.  
17 A. Yes.  
18 Q. And what you told me that you were doing  
19 at first, maybe 30 to 40 percent of your job was  
20 legal document review and execution, correct?  
21 A. Yes.  
22 Q. What would have been -- the balance of  
23 your work have been, just generally speaking?  
24 A. Litigation foreclosure matters.  
25 Q. Okay. And some supervisory role at that

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1 point or no supervisory role?  
2 A. No. I was the sole contributor.  
3 Q. Okay. And then what was your salary at  
4 that time; do you remember?  
5 A. Low 50s.  
6 Q. Okay. Then take me through what happened  
7 next in terms of your -- your job, your career path.  
8 A. They changed our title to bank officer at  
9 some point. I don't remember when. And then when it  
10 was -- late 2012, they changed our titles again to  
11 vice president loan documentation.  
12 Q. Your title was bank officer?  
13 A. Yes.  
14 Q. And then it became vice president of loan  
15 documentation?  
16 A. There's no of. It's just vice president  
17 loan documentation.  
18 Q. No hyphen in there, either?  
19 A. No.  
20 Q. Okay. Did your duties change from what  
21 you did as a research remediation analyst to a bank  
22 officer?  
23 A. No.  
24 Q. Did your salary increase when you became  
25 a bank officer?



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1 A. No.  
2 Q. Are you actually an officer of the bank  
3 as a bank officer?  
4 A. Yes.  
5 Q. What is your understanding of what a bank  
6 officer is compared to someone who is not a bank  
7 officer, but a full-time employee of the bank?  
8 A. You're held a little bit to higher  
9 standards. You have more signing authority when it  
10 relates to certain documentations and settlements,  
11 those sorts of things.  
12 Q. Can you give me an example?  
13 A. I handle a lot of equitable subrogation  
14 cases. And being a bank officer, I'm able to execute  
15 the actual subordination agreement at the end of the  
16 settlement negotiations if that's the course that  
17 we're taking.  
18 Q. But did your duties really change between  
19 what a research remediation analyst did and a bank  
20 officer did, or are they pretty much identical?  
21 A. For how it relates to me, nothing really  
22 changed.  
23 Q. Did you take any additional online  
24 courses when you became a bank officer in order to  
25 hold that title?

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1 A. I don't recall.  
2 Q. Okay. Did you do any -- travel to any  
3 outside workshops, either here in Jacksonville or  
4 anywhere, in order to get more hands-on training to  
5 be a bank officer?  
6 A. I don't think so, no.  
7 Q. And did your compensation change when you  
8 became a bank officer, or did it remain the same?  
9 A. It did not change.  
10 Q. All right. And then at what time and  
11 point did you become vice president loan  
12 documentation?  
13 A. It was late 2012.  
14 Q. Okay. Same questions. Did your duties  
15 really change?  
16 A. No.  
17 Q. Did your compensation change --  
18 A. No.  
19 Q. -- as a result of being given a new  
20 title?  
21 A. No.  
22 Q. Did your department change? Did you get  
23 additional duties, or same thing you had been doing  
24 before?  
25 A. Same thing.

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1 Q. You've walked me through maybe four  
2 supervisors. So the last person you named is your  
3 current supervisor?  
4 A. Lisa Epperly, yes.  
5 Q. Okay. Are you currently a vice president  
6 loan documentation?  
7 A. Yes.  
8 Q. Okay. What's your current salary, if I  
9 may ask?  
10 A. 54- or 55-.  
11 Q. Do you ever attend board meetings of the  
12 bank?  
13 A. No.  
14 Q. Do you speak with senior bank officers?  
15 President, chief operating officer, chief executive  
16 officer?  
17 A. No.  
18 Q. Do you know them?  
19 A. No.  
20 Q. Okay. Tell me about the merger between  
21 Wachovia Bank, N.A., and Wells Fargo Bank, N.A. What  
22 was your role in that merger?  
23 A. My role pretty much just consisted of the  
24 foreclosure department at that time. I assisted in  
25 transition of our foreclosure files from the Wachovia

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1 systems to the Wells Fargo system. You know, we made  
2 sure all of the information transferred over  
3 correctly and --  
4 Q. What was the effective date of the  
5 merger; do you remember?  
6 A. March 20th, 2010.  
7 Q. Okay. Who currently -- let me start over  
8 again.  
9 What corporate entity is your actual  
10 employer?  
11 A. Wells Fargo Bank.  
12 Q. Okay. So your checks -- when you get a  
13 direct deposit confirm, it says Wells Fargo Bank,  
14 N.A.?  
15 A. Yes.  
16 Q. Okay. You don't work for a subsidiary or  
17 related entity, to your knowledge?  
18 A. No.  
19 Q. Okay. Sitting here today, are you able  
20 to tell me the general corporate structure of Wells  
21 Fargo Bank, N.A., in terms of its major divisions and  
22 what they do?  
23 A. High level, yes.  
24 Q. Walk me through that, then. What do you  
25 know?

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1 A. So the Wells Fargo Bank, N.A., is kind  
2 of --  
3 Q. A holding company?  
4 A. No. It's -- it's like an umbrella --  
5 Q. Okay.  
6 A. -- over everything. And then there's  
7 different divisions. There's home equity, home  
8 mortgage, financial, reverse, credit card.  
9 Q. Is there a servicing loan?  
10 A. Each division has their own servicing.  
11 Q. Which division would you have fallen  
12 under at the time of the merger, to the best of your  
13 knowledge?  
14 A. Home Equity.  
15 Q. Okay. Do you still consider yourself  
16 part of that division?  
17 A. Yes.  
18 Q. Do you understand or do you have any  
19 knowledge, sitting here today, about whether or not  
20 any of those divisions have separate corporate  
21 identity from Wells Fargo Bank, N.A.?  
22 A. I don't know.  
23 Q. Okay. Have you ever testified in court  
24 before?  
25 A. Yes.

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1 Q. Okay. How many times have you testified  
2 in court? Roughly. You don't have to be -- say that  
3 with a hundred percent certainty.  
4 A. 75 to a hundred times.  
5 Q. Mostly here in Florida, or all over the  
6 southeast, the country?  
7 A. I handle essentially the entire East  
8 Coast.  
9 Q. Okay. Have you testified in a court in  
10 South Carolina before?  
11 A. No.  
12 Q. Have you ever given a deposition before?  
13 A. Yes.  
14 Q. Okay. Same question. Roughly how many  
15 depositions have you given before?  
16 A. 35 or 40, maybe more.  
17 Q. Okay. To the best of your knowledge,  
18 have any been arising out of a South Carolina case?  
19 A. Maybe a couple.  
20 Q. Same general question with respect to a  
21 lost note affidavit. Sitting here today, can you  
22 give me your best understanding of how many lost note  
23 affidavits you've executed on behalf of Wachovia  
24 and/or Wells Fargo Bank?  
25 A. I would say less than 15.

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1 Q. So it's not an everyday occurrence?  
2 A. No.  
3 Q. Okay. Do you recall what title you held  
4 when you executed your first lost note affidavit?  
5 A. No.  
6 Q. It might have been as a foreclosure  
7 manager or a foreclosure supervisor, or do you think  
8 you were already a research remediation analyst?  
9 A. I don't recall.  
10 Q. Okay. Would you consider a lost note  
11 affidavit to be a more complicated legal document  
12 than some of the other legal documents you do? How  
13 would you rank it in terms of time and complication  
14 put into it?  
15 A. Time, it -- it does take more time. So  
16 if you're basing it off of that, I would say out of a  
17 10-point scale, it's a 7 or an 8.  
18 Q. How important do you take your duties  
19 when you execute those? Are you very serious --  
20 A. It's --  
21 Q. -- about your work?  
22 A. It's extremely important.  
23 Q. To you, personally?  
24 A. Yes.  
25 Q. Not just to the fact that you're a bank

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1 officer, but you take it personally when you do it,  
2 correct?  
3 A. Yes.  
4 MR. VARNADO: Okay. Why don't we take a  
5 very short break and --  
6 THE WITNESS: Okay.  
7 MR. VARNADO: -- we'll continue in a  
8 moment.  
9 THE VIDEOGRAPHER: We're off the record  
10 at -- we're off the record at 10:42 a.m.  
11 (Break taken)  
12 THE VIDEOGRAPHER: We're back on the  
13 record at 10:50 a.m.  
14 BY MR. VARNADO:  
15 Q. Ms. Thomas, we took a short break, and  
16 now we're back on the record.  
17 And we're going to wrap up sort of  
18 your -- your background information. I'm going to  
19 take you back to May 31st, 2011, when you became a  
20 research remediation analyst. Had there been a  
21 shake-up in Wachovia? Had there been layoffs or  
22 firings around that time in your department, to  
23 your -- best of your recollection?  
24 A. Not to my recollection, no.  
25 Q. Do you recall having to apply for that

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1 position, or was it just a new title or a promotion  
2 given to you at that time?  
3 A. I did have to apply for it, but it was a  
4 promotion.  
5 Q. You consider it a promotion from your  
6 previous title?  
7 A. Yes.  
8 Q. Okay. Did you take additional coursework  
9 in accounting or bookkeeping in order to be eligible  
10 for or hold the research remediation analyst  
11 position?  
12 A. Not that I recall.  
13 Q. Would you consider yourself trained in  
14 accounting or bookkeeping?  
15 A. No, not officially.  
16 Q. How strong are your math skills, would  
17 you say, on a scale of 1 to 10 compared to your  
18 peers?  
19 A. Compared to my peers?  
20 Q. I mean, your peers generally.  
21 A. An 8 or a 9.  
22 Q. Okay. Did you take math classes at Santa  
23 Fe College?  
24 A. Yes.  
25 Q. Okay. What level of mathematics were you

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1 taking, including statistics?  
2 A. I did not take statistics.  
3 Q. Okay.  
4 A. Wow. Algebra II or III.  
5 Q. Okay. Sitting here today, do you know  
6 how to calculate interest payments on a note? For  
7 example, if I presented you with a note, would you be  
8 able to calculate the interest on it if I gave you a  
9 calculator?  
10 A. I could calculate the per diem.  
11 Q. Okay.  
12 A. As far as calculating what the actual  
13 payment would be, I don't think so.  
14 Q. What would you rely on in order to do  
15 that, what the payoff would be or the payments would  
16 be?  
17 A. I would rely on our system of record.  
18 Q. Okay. Is there some sort of system,  
19 proprietary or not, that you use in order to  
20 calculate interest rates, per diems, and payoffs?  
21 A. Our system of record, SHAW.  
22 Q. SHAW. Okay. What does SHAW stand for?  
23 A. I don't know.  
24 Q. Is it all caps, S-H-A-W?  
25 A. Yes.

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1 Q. Okay. Is it part of your desktop? When  
2 you log on in the morning, do you log into SHAW as a  
3 registered user?  
4 A. Yes.  
5 Q. Did you have training on SHAW, or is it  
6 something they just kind of threw you in the deep end  
7 of the pool and let you figure out for yourself?  
8 A. We did have training, yes.  
9 Q. Okay. And how much training would you  
10 have had on it? Would it have been a workshop?  
11 Would it have been a day? Would it have been online  
12 courses? Help me out with that.  
13 A. There was online courses as well as  
14 workshops.  
15 Q. Okay. Does SHAW have some sort of  
16 internal calculator that you plug information in, or  
17 does SHAW calculate based on individual account  
18 numbers; so that if you pulled up an individual  
19 account, SHAW would calculate what the per diem would  
20 be, what the interest rate would be, and what the  
21 payoff would be?  
22 A. You put in the account number, and it  
23 pulls up essentially all of the servicing information  
24 for that loan. So the current interest rate,  
25 transaction history, payoffs.

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1 Q. Who inputs into SHAW? Do you input into  
2 SHAW?  
3 A. I do not, no.  
4 Q. Take me through -- was SHAW online, for  
5 lack of a better term, when you became a foreclosure  
6 specialist in '06 or '08, whenever it was? I'm  
7 sorry, forgive me.  
8 A. SHAW is a Wells Fargo system.  
9 Q. Okay. Did Wachovia have a similar  
10 system?  
11 A. Yes.  
12 Q. What was its name?  
13 A. For loans, we used ACLS. For lines of  
14 credit, we used FDR.  
15 Q. Okay. When you were a foreclosure  
16 specialist, was part of your duties data entry into  
17 those Wachovia systems?  
18 A. No.  
19 Q. Okay. As you've moved up the ladder, you  
20 don't do data entry into the old Wachovia system or  
21 the Wells Fargo SHAW, correct?  
22 A. No.  
23 Q. Okay. Are SHAW and the old Wachovia  
24 systems fairly the same, or was it -- do they  
25 handshake together or a totally new kind of training

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1 situation?  
2 A. They are pretty similar.  
3 Q. Okay. Who handles the data input into  
4 those; do you know?  
5 A. Somebody in servicing.  
6 Q. Okay. Is that somebody in your  
7 department? Would you even -- if I asked you, Do you  
8 know anyone who does data input into SHAW or data  
9 input into the old Wachovia system, would you be able  
10 to say, I know Karen does it or Jim does it?  
11 A. No.  
12 Q. Okay. You don't talk to those people,  
13 correct?  
14 A. It's possible that I have talked to them.  
15 Q. Okay. But you don't intentionally have  
16 any sort of -- during your day-to-day job duties in  
17 any of those positions you've held, deal with the  
18 data entry people, correct?  
19 A. Correct.  
20 Q. Okay. ~~See~~ but you do agree with me  
21 that someone has to enter the data into SHAW?  
22 A. Yes.  
23 Q. Okay. We just don't know exactly who,  
24 and we know it's not you. Fair?  
25 A. Correct.

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1 Q. All right. So in terms of -- I asked you  
2 if you were able to calculate an interest payment.  
3 You said you think you could do -- or you feel pretty  
4 confident you could do a per diem. You would still  
5 allow SHAW to do that at this time; is that correct?  
6 A. Correct.  
7 Q. Okay. You wouldn't -- would you  
8 independently verify it or independently do the math,  
9 or would you go, This is what SHAW says; this is what  
10 it is?  
11 A. I have had no reason to independently  
12 verify it.  
13 MR. VARNADO: Okay. We're going to mark  
14 as Exhibit No. 2 a lost note affidavit.  
15 (Exhibit-2 marked for identification.)  
16 MS. BAKER: Mr. Varnado, do you have an  
17 extra copy for me?  
18 MR. VARNADO: I do.  
19 MS. BAKER: I know I've seen it, but just  
20 so I can --  
21 BY MR. VARNADO:  
22 Q. Ms. Thomas, I'm going to hand you what  
23 we've marked for identification as Exhibit No. 2.  
24 And I'm going to represent to you that is a lost note  
25 affidavit. And it's my understanding that this is

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1 the lost note affidavit which was executed by you,  
2 and I'm going to ask you about it. And appended to  
3 it is a negotiable promissory note, which I  
4 understand was supposed to be part of it.  
5 And I'm going to draw your attention  
6 along the bottom right-hand corner to some little  
7 numbers and letters at the bottom, WF 219. And I'm  
8 going to represent to you that those are what lawyers  
9 call Bates stamps so that we can keep track of  
10 documents -- who has produced what document. And  
11 then I'm going to further represent to you that this  
12 is a document which I received from counsel for Wells  
13 Fargo.  
14 Have you had an opportunity to look it  
15 over, or do you need some time to look it over, or  
16 are you ready to answer some questions about this  
17 document, Exhibit No. 2?  
18 A. I have reviewed it.  
19 Q. Okay. Great. And did you review it  
20 before the deposition today?  
21 A. Yes.  
22 Q. Okay. So let me ask you just a few  
23 things just generally right off the bat. Is this a  
24 lost note affidavit, this Exhibit No. 2, a document  
25 which you signed?

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1 A. Yes.  
2 Q. Okay. On the bottom of Page WF 222 --  
3 I'm sorry, or at the top, rather -- is that your  
4 signature, Tracy M. Thomas?  
5 A. Yes.  
6 Q. Is that your understanding of the date,  
7 February 7th, 2012, that you executed this document?  
8 A. Yes.  
9 Q. Okay. Who is Sarah Taylor?  
10 A. She works in the foreclosure department.  
11 Q. Okay. Did -- what was her title at that  
12 time, 2012?  
13 A. I don't recall.  
14 Q. Was she an admin assistant? Was she a  
15 foreclosure specialist?  
16 A. I think she was in our property  
17 preservation area.  
18 Q. Notary public?  
19 A. Yes.  
20 Q. Okay. Did you sign this in front of her?  
21 A. Yes.  
22 Q. Okay. I notice that you didn't initial  
23 the pages, which is fine. But is this still, to the  
24 best of your knowledge, a true and accurate copy of  
25 the lost note affidavit you executed on February the

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1 7th, 2012?  
2 A. It does appear to be.  
3 Q. Okay. And for any reason you see  
4 something that's wrong with it, will you please let  
5 me know?  
6 A. Yes.  
7 Q. Okay. Is that your handwriting, too, on  
8 the first page, WF 219?  
9 A. Yes.  
10 Q. Personally appeared before me Tracy M.  
11 Thomas, that's your handwriting, correct?  
12 A. Yes.  
13 Q. And then in numbered Paragraph 1, the  
14 words bank officer, is that your handwriting?  
15 A. Yes.  
16 Q. Okay. Now, would you agree with me that  
17 this is a form document?  
18 MS. BAKER: Object to form.  
19 Q. You can go ahead and answer.  
20 A. What do you mean by form?  
21 Q. Is it a form that you would keep on your  
22 computer or be able to access to -- in a bank of  
23 forms that Wells Fargo would have had available to  
24 someone of your rank at this time, a bank officer?  
25 A. Yes.

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1 Q. Okay. Great. I'm going to also ask you  
2 to draw your attention to the other sort of small  
3 numbers on the bottom left of the page. Do you know  
4 what those numbers mean? They read double 06, dash,  
5 all caps, NTL, dash V1?  
6 A. Yes.  
7 Q. What does that stand for, Ms. Thomas, to  
8 the best of your knowledge?  
9 A. That's the -- the version of the form.  
10 Q. So does NTL mean national?  
11 A. Yes.  
12 Q. So this is national form, number double  
13 06, version one?  
14 A. Yes.  
15 Q. Okay. All right. If you were going to  
16 do a lost note affidavit in another matter -- so I'm  
17 just asking you hypothetically now -- around the same  
18 time -- January, February, March of 2012 -- what  
19 would be the first thing you -- you would do? Would  
20 you pull up this form, double 06 NTL-V1 on your  
21 computer?  
22 A. Yes.  
23 Q. Okay. With the blanks already in there?  
24 A. Yes.  
25 Q. Okay. Who would put the caption at the

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1 top of the document? Obviously, this is -- this  
2 particular Exhibit No. 2 has a caption for Charleston  
3 County. Every state has a little different caption  
4 sort of way of doing things. Do you do that, or does  
5 an assistant do that for you?  
6 A. I believe our attorney would do that.  
7 Q. Okay. And would this be, to the best of  
8 your knowledge, an internal Wells Fargo attorney or  
9 your outside counsel?  
10 A. Outside counsel.  
11 Q. Okay. Would outside counsel have a copy  
12 of this form, or would you send the form to outside  
13 counsel?  
14 MS. BAKER: I'm going to object in -- in  
15 terms of, you know, privileged communications --  
16 MR. VARNADO: Well, I mean --  
17 MS. BAKER: -- with attorney-client --  
18 MR. VARNADO: -- this is nothing about  
19 communication. I want to know where did the  
20 document originate and who sent it to who. So  
21 that's all I'm asking.  
22 BY MR. VARNADO:  
23 Q. Did you originate the document?  
24 MS. BAKER: If she knows, she can answer,  
25 yeah.

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1 MR. VARNADO: Okay.  
2 Q. And we can be specific to Exhibit No. 2,  
3 as well. Did you pull this up and send it to your  
4 outside counsel?  
5 A. Yes.  
6 Q. Okay. And to your understanding -- and  
7 I'm only limiting this question to the caption --  
8 outside counsel would have put the caption in; is  
9 that correct?  
10 A. Yes.  
11 Q. Someone in their office. Okay.  
12 All right. I'm going to ask you just  
13 quickly to look over the numbered paragraph -- I  
14 mean, numbered Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9.  
15 Which of those are standard to the form, double 0  
16 zero -- double 06, rather, NTL-V1. And we can just  
17 go through them one at a time. Is No. 1 standard to  
18 the form?  
19 A. Yes.  
20 Q. Okay. Is No. 2 standard to the form?  
21 A. Yes.  
22 Q. Is No. 3 standard to the form?  
23 A. Yes.  
24 Q. Okay. And I'm not trying to ask a trick  
25 question. Obviously, there's -- there's

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1 account-specific information in there, but the format  
2 is standard. And then you would input -- someone  
3 would input the numbers; is that correct?  
4 A. Yes.  
5 Q. All right. Let's continue. Is  
6 Paragraph 4 standard to the form?  
7 A. Yes.  
8 Q. Okay. Again, it has account-specific  
9 information or information specific to a recorded  
10 instrument. But that would be inputted on a standard  
11 form, correct?  
12 A. Yes.  
13 Q. Is 5 standard?  
14 A. Yes.  
15 Q. What is standard about 6, if anything?  
16 Or do you have -- are there different options, and  
17 you choose which one is applicable? Or is it always  
18 the same?  
19 A. Always the same.  
20 Q. Always the same, okay.  
21 7, that references the South Carolina  
22 code. Is that a standard form? I mean, a  
23 standard -- is that a standard paragraph of this lost  
24 note affidavit form?  
25 A. I don't recall.

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1 Q. Okay. Fair enough. 8, same question?  
2 A. Yes.  
3 Q. 9?  
4 A. Yes.  
5 Q. Let me ask you about 9. As a bank  
6 officer in 2012, are you authorized to indemnify and  
7 hold the bank harmless, as you've attested to in this  
8 affidavit?  
9 A. Yes.  
10 Q. You have that authority?  
11 A. Yes.  
12 Q. Okay.  
13 THE VIDEOGRAPHER: Five minutes on the  
14 tape.  
15 MR. VARNADO: Okay.  
16 BY MR. VARNADO:  
17 Q. With respect to numbered Paragraph No. 1,  
18 why -- in the personally appeared before me line, why  
19 is that left blank? Why don't you just write -- type  
20 your name in?  
21 A. It's my personal preference. I like to  
22 write my name.  
23 Q. Okay. Is that -- I mean, were you the  
24 only one handling the Bentrin v. Wells Fargo matter  
25 as a bank officer in February 2012, or was anyone

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1 else working on it in the department?  
2 A. I don't know.  
3 Q. How many people in your department in  
4 February 2012 would have been authorized to sign this  
5 lost note affidavit?  
6 A. If I remember correctly, it would have  
7 been just the people in my specific group. So the --  
8 Q. The three people --  
9 A. There was seven, I believe.  
10 Q. Seven who were -- held the title bank  
11 officer?  
12 A. Yes.  
13 Q. Okay. And who were y'all working under  
14 in February of 2012, again?  
15 A. I don't remember.  
16 Q. Okay. If you had been out of town, busy  
17 on another matter, or on vacation, could somebody  
18 else have signed this as the bank officer in your  
19 group, one or the other seven people?  
20 A. Yes.  
21 Q. Okay. So you -- the way y'all handle  
22 files is not specific to one person. In other words,  
23 if you were on a family vacation or you were ill or  
24 you were away on other duties, it wouldn't be waiting  
25 for you on your desk; somebody else could have pick

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1 it up?  
2 A. It depends on how urgent.  
3 Q. Okay. Is that one of the reasons why it  
4 was left blank in terms of name and office that you  
5 held or title that you held in Paragraph No. 1?  
6 A. No.  
7 Q. Okay. That's just your personal  
8 preference?  
9 A. Yes.  
10 Q. Do other people do it differently, or do  
11 they all do it the same?  
12 A. I don't know if -- I don't look at other  
13 people's work.  
14 Q. Do you remember the names of the other  
15 bank officers in your group in 2012? Can you run  
16 down their names? And then we'll take a break for  
17 the tape.  
18 A. Jodie Hawkins --  
19 Q. Okay.  
20 A. -- Ann Christman, Ryan Janke, Eric  
21 Hawbacker, Katie Abney. And I think Stephanie  
22 Bradford was with us at that point.  
23 Q. Were you all equal --  
24 A. Yes.  
25 Q. -- or were some of you more senior than

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1 others in terms of duties, responsibilities,  
2 administrative oversight?  
3 A. We were equal.  
4 MR. VARNADO: Okay. Why don't we go  
5 ahead and take that break for the videographer  
6 to change the tape.  
7 THE WITNESS: Okay.  
8 THE VIDEOGRAPHER: We're off the record  
9 at 11:08 a.m.  
10 (Break taken)  
11 THE VIDEOGRAPHER: We're back on the  
12 record at 11:10 a.m.  
13 BY MR. VARNADO:  
14 Q. We took another short break to change the  
15 videotape. Are you ready to continue, Ms. Thomas?  
16 A. Yes.  
17 Q. Okay. Do you have a copy of the lost  
18 note affidavit in front of you, Exhibit 2?  
19 A. I do.  
20 Q. Okay. Can you read into the record, at a  
21 relatively slow pace so our reporter can take it  
22 down, Paragraph No. 2 of the lost note affidavit?  
23 A. I am authorized to make this affidavit on  
24 behalf of Wells Fargo. In the regular performance of  
25 my job functions, I am familiar with business records

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1 maintained by Wells Fargo for the purpose of  
2 servicing mortgage loans, and I have personal  
3 knowledge of the operation of and the circumstances  
4 surrounding the preparation, maintenance and  
5 retrieval of records in Wells Fargo's recordkeeping  
6 system. These records, which include data  
7 compilations, electronically imaged documents and  
8 others are made at or near the time by or from  
9 information provided by persons with knowledge of the  
10 activity and transactions reflected in such records,  
11 and are kept in the course of business activity  
12 conducted regularly by Wells Fargo. It is the  
13 regular practice of Wells Fargo's mortgage servicing  
14 business to make these records. In connection with  
15 making this affidavit, I have acquired personal  
16 knowledge of the matters stated herein by personally  
17 examining these business records.  
18 Q. Ms. Thomas, having just read Paragraph  
19 No. 2 into the record and having had an opportunity  
20 to review the lost note affidavit in preparation for  
21 today, do you still consider what you've averred to  
22 in Paragraph No. 2 to be correct and true to your  
23 knowledge?  
24 A. Yes.  
25 Q. Okay. You told me earlier that Paragraph

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1 2 was a standard part of the lost note affidavit of  
2 this national form. Do you make any additions or  
3 edits or amendments to it, to Paragraph No. 2?  
4 A. No.  
5 Q. Okay. Have you ever made any amendments,  
6 edits, or additions to Paragraph No. 2 when you've  
7 signed other lost note affidavits?  
8 A. Not that I recall.  
9 Q. And did you do it in this case, to the  
10 best of your knowledge?  
11 A. No.  
12 Q. Okay. All right. You said you're  
13 authorized to make this affidavit on behalf of Wells  
14 Fargo; is that -- who authorized you? Or is that  
15 just part of your job duties?  
16 A. That is part of my job duties.  
17 Q. In other words, did somebody actually  
18 hand this to you and say, I need you to do this,  
19 Tracy?  
20 A. Not to my recollection.  
21 Q. Okay. And you say you're familiar with  
22 the business records maintained by Wells Fargo for  
23 the purpose of servicing mortgage loans; is that  
24 correct?  
25 A. Yes.

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1 Q. Okay. Generally, what kind of records  
2 are you looking at? SHAW? We've already discussed  
3 that. That's an --  
4 A. Yes.  
5 Q. -- online recordkeeping system, correct?  
6 A. Yes.  
7 Q. Okay. And what other records would you  
8 look at, in addition to SHAW, that you reference  
9 here, the business records maintained by Wells Fargo  
10 for the purpose of servicing mortgage loans?  
11 A. CLIPR.  
12 Q. Okay. What is CLIPR?  
13 A. CLIPR would be our document imaging  
14 system.  
15 Q. Okay. What would be in CLIPR?  
16 A. Any -- you know, a copy of the note, a  
17 copy of the mortgage, correspondence to and from the  
18 customer, copies of default letters, origination  
19 documents like the HUD-1. A variety of -- of  
20 documents.  
21 Q. Somebody scans all the stuff in?  
22 A. Yes.  
23 Q. Okay. And, again, that's not your task  
24 or responsibility?  
25 A. No.

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1 Q. Or is it your office's responsibility or  
2 your department's responsibility to feed documents  
3 into CLIPR?  
4 A. It is not.  
5 Q. And they are -- they are scanned images,  
6 like a PDF or similar? In other words, you can bring  
7 them up, they're not illegible, this can view them  
8 and print them if you need to; is that correct?  
9 A. Correct.  
10 Q. Okay. Later on in the affidavit, you  
11 talk about the foreclosure file and the origination  
12 file. Are those documents which we -- would be  
13 maintained on CLIPR?  
14 A. Some, yes.  
15 Q. Some would and some would be paper?  
16 A. Some would be in --  
17 Q. Or paper only? I'm sorry.  
18 A. Some would be in other systems.  
19 Q. Okay. What other systems besides SHAW  
20 and CLIPR are we talking about in terms of computer  
21 electronic data management?  
22 A. Mobius would hold origination records.  
23 Q. Are there others besides CLIPR, Mobius  
24 and SHAW?  
25 A. ECaR.

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1 Q. Ecard or ECaR?  
2 A. ECaR, E-C-a-R.  
3 Q. Okay. What is that?  
4 A. The collection system.  
5 Q. Any others, ma'am?  
6 A. I think that's it.  
7 Q. Would there be paper files only that you  
8 would review in addition -- as part of the documents  
9 that you're familiar with and that you reference here  
10 in Paragraph No. 2?  
11 A. No.  
12 Q. Okay. Does Wells Fargo try to be  
13 paperless or try to put as much on the computer  
14 system as possible?  
15 A. Yes.  
16 Q. Okay. In terms of these kinds of  
17 documents that you've talked -- talked to me about?  
18 A. Yes.  
19 Q. Okay. All right. I'm going to hand you  
20 some documents we're going to mark as exhibits, and  
21 I'm going to ask you if these are part of the  
22 documents or systems which you've just testified  
23 about. If you'll bear with me one second, we'll put  
24 stickers on them. I'm going to hand to you what's  
25 marked -- been marked as Exhibit No. 3, which I

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1 believe is called a transaction statement. I'm going  
2 to hand you also what I'm going to mark as Exhibit  
3 No. 4. If you'll bear with me; it's a little loose.  
4 (Exhibit-3 and Exhibit-4 marked for  
5 identification.)  
6 MR. VARNADO: We'll need to make a copy  
7 of this at the break.  
8 Ms. Baker, I'm going to hand it to you  
9 first so you can see it.  
10 MS. BAKER: Okay.  
11 MR. VARNADO: All right. Now, I'm going  
12 to hand the witness Exhibit No. 4.  
13 BY MR. VARNADO:  
14 Q. And I'm going to represent to you that I  
15 think it's just called a History Card Report; is that  
16 correct?  
17 A. Yes.  
18 Q. Okay. And, finally, Exhibit No. 5.  
19 That's 5. Have you had an opportunity to look over  
20 Exhibits 3, 4 and 5?  
21 (Exhibit-5 marked for identification.)  
22 A. Yes.  
23 Q. Do you recognize these documents or types  
24 of documents?  
25 A. Yes.

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1 Q. Okay. Exhibit No. 3, what is that again?  
2 What would you call that?  
3 A. The payment history.  
4 Q. Okay. Where would that be located in  
5 terms of electronically?  
6 A. The transaction record, it is within  
7 SHAW, and then CRIS pulls that into this document.  
8 Q. CRIS, is that different from CLIPR? Did  
9 I --  
10 A. Yes.  
11 Q. What is CRIS? I'm sorry if I didn't  
12 write that down. What is that?  
13 A. That's the system that generates this  
14 payment history.  
15 Q. Okay. So CRISPT talks to SHAW; you can  
16 go back and forth between SHAW and CRISPT?  
17 A. CRIS, C-R-I-S.  
18 Q. C-R-I-S. Okay. Does CRIS only handle  
19 transaction histories --  
20 A. That's --  
21 Q. -- or does it handle other things, too?  
22 A. That's all that I've used it for.  
23 Q. Okay. That's all you would use it for in  
24 terms of the lost note affidavit?  
25 A. Yes.

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1 Q. Okay. What is Exhibit No. 4? What would  
2 you call that?  
3 A. This looks like a rough transaction  
4 record from ACLS.  
5 Q. What's ACLS, ma'am?  
6 A. It was the Wachovia servicing system for  
7 loans.  
8 Q. Okay. Can you still access that?  
9 A. I cannot, no.  
10 Q. Could you have accessed it back in  
11 February of 2012 when you did a lost note affidavit?  
12 A. No.  
13 Q. Okay. I'm going to show you -- I'm also  
14 going to point out to you that it bears the Bates  
15 stamps which show that it was provided by your  
16 attorney. Okay. Tell me -- Exhibit No. 5, what is  
17 that?  
18 A. This appears to be the -- a SHAW screen  
19 print for Mr. Bentrims loan.  
20 Q. Okay. Would that be the typical screen  
21 shot that would come up when you pulled up  
22 Mr. Bentrims loan on SHAW? Would that be the front  
23 page, or is that like an internal page you have to  
24 navigate to get to?  
25 A. This would be Page No. 1.

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1 Q. Okay. And how many pages would be behind  
2 it in SHAW, not counting CRIS?  
3 A. I don't know. There's many pages in  
4 SHAW.  
5 Q. Do you usually use Page No. 1 when you do  
6 a lost note affidavit?  
7 A. Yes.  
8 Q. Okay. Do you only use Page No. 1, or do  
9 you delve further into SHAW?  
10 A. For this loan, there was two pages that I  
11 used.  
12 Q. What was the other SHAW page that you  
13 would have used?  
14 A. It was either the third or fourth page in  
15 SHAW.  
16 Q. What would you call that third or fourth  
17 page, or what information would be on it that you  
18 would have accessed in order to do this lost note  
19 affidavit?  
20 A. It would have showed the -- what the  
21 payment amount was at the time that I was executing  
22 the affidavit.  
23 Q. You would have looked at it solely for  
24 that purpose?  
25 A. Yes.

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1 Q. Okay. There appears to be handwritten  
2 notes on there. Just by quickly looking at it, it  
3 appears to be in a woman's handwriting. Do you know  
4 whose handwriting that is? Is it yours, to the best  
5 of your recollection? Or can you tell one way or the  
6 other?  
7 A. It's not my handwriting.  
8 Q. Do you see the numbers at the top of the  
9 page? Is that your handwriting?  
10 A. No.  
11 Q. Okay. Would it have been a common  
12 practice and habit in the foreclosure department to  
13 print off a screen shot of SHAW and then maybe make  
14 some handwritten notes on it?  
15 A. It's possible. But I didn't do this, so  
16 I don't know what the reasoning for.  
17 Q. You didn't do those -- those notes, you  
18 mean?  
19 A. Exactly.  
20 Q. Okay. Do you believe that to be an  
21 accurate screen shot of SHAW as of the date, which I  
22 believe is sometime in 2011?  
23 A. It appears to be April 20th, 2011.  
24 Q. So we know that your lost note affidavit  
25 was executed in 2012, correct?

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1 A. Yes.  
2 Q. And you would have pulled up SHAW in  
3 order to do the lost note affidavit, correct?  
4 A. Correct.  
5 Q. You would not have relied on a 2011 SHAW  
6 screen?  
7 A. No.  
8 Q. Okay. Would you have -- would -- in the  
9 course of doing a normal lost note affidavit, your  
10 habit and custom, would you have printed the SHAW  
11 screen, or would you have just looked at it as part  
12 of doing a lost note affidavit?  
13 A. We didn't used to print. Now, we do.  
14 Q. Okay. When did the printing and hard  
15 copy retention start? Was that after February 2012?  
16 A. Yes.  
17 Q. Was it in 2013? Was it late 2012? Do  
18 you remember when that happened --  
19 A. I believe it was --  
20 Q. -- custom started?  
21 A. I believe it was mid 2012, mid to late  
22 2012.  
23 Q. Do you believe that somewhere in your  
24 office or somewhere in the foreclosure department  
25 there is a little paper file on the Bentrims lost note

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1 affidavit?  
2 A. Not to my knowledge.  
3 Q. Okay. If you did a lost note affidavit  
4 now, in your current capacity, would you keep a  
5 little paper file on it?  
6 A. No.  
7 Q. Where would -- you said you would do  
8 printouts. Where would the printouts go? Would you  
9 throw them away when you were done, or would you save  
10 them someplace? I'm just curious.  
11 A. Now, they would all be -- the screen  
12 shots would be scanned into CLIPR along with the  
13 executed lost note affidavit.  
14 Q. Okay. But you don't believe CLIPR would  
15 have a screen shot scanned into it from February of  
16 2012?  
17 A. It does not.  
18 Q. Okay. And would you have any reason --  
19 can you -- sitting here today, can you think of a --  
20 a reason within the realm of possibility or  
21 rationality why there would be a screen shot from  
22 February 20, 2011, saved and produced by your  
23 attorneys in this case?  
24 A. Like I said, I -- I didn't do that screen  
25 shot, so I -- I don't know. I don't want to

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1 speculate.  
2 Q. That's fine. Did you know anything about  
3 Mr. Bentrims account specifically before you did  
4 this lost note affidavit?  
5 A. Excuse me. I believe the first time I  
6 was brought into this account was when I was asked to  
7 do the lost note affidavit.  
8 Q. Okay. It's not a very super common name.  
9 You don't recall Bentrims before? I know you do a lot  
10 of foreclosures, but I'm just asking you what you  
11 remember.  
12 A. I -- I -- I don't recall.  
13 Q. So you think the first time you dealt  
14 with it was to do this lost note affidavit?  
15 A. Correct.  
16 Q. Okay. Are you aware that there had been  
17 prior litigation between Wachovia and Mr. Bentrims  
18 even before this lawsuit? Did you have any knowledge  
19 of that?  
20 A. Then, I was aware that there was a  
21 lawsuit. I -- I don't believe I was aware of the  
22 specifics.  
23 Q. Okay. Before we go on a break, Paragraph  
24 No. 3 contains --  
25 A. Are we back to the --

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1 Q. We're on the back of the lost note  
2 affidavit, which is Exhibit No. 2. Paragraph No. 3  
3 goes from WF 219 to WF 220. Okay. It starts with  
4 certain things which are specific to this particular  
5 account, the first one being maker of the note, payee  
6 of the note. Then it goes on to the next page,  
7 original principal amount, and so on, all the way  
8 down to late fees. Do you see that?  
9 A. Yes.  
10 Q. On the -- all the information is in bold.  
11 A. Yes.  
12 Q. Okay. Who would have actually typed that  
13 into the form?  
14 A. Me.  
15 Q. Okay. How long would it take you to do a  
16 lost note affidavit? You said it was -- in terms of  
17 time, it was pretty time intensive compared to some  
18 of your other legal documents?  
19 A. Yes.  
20 Q. Generally, how long would it take to do a  
21 lost note affidavit, start to finish, in 2012?  
22 A. It just depends on how much research is  
23 involved. I don't recall how long it took me to do  
24 this one. I know that I would have reached out to  
25 several people within different departments of the

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1 bank.  
2 Q. For what reason, if you had all -- access  
3 to all those different programs, software systems?  
4 A. To attempt to track down the original  
5 note.  
6 Q. Okay. Well, we're going to come back to  
7 that in a little bit. In terms of the documentation  
8 in Paragraph No. 3 of Exhibit 2, would all of that  
9 have come from the software platforms that you had  
10 access to as a bank officer?  
11 A. Yes. It would have come from a copy of  
12 the note as well as SHAW.  
13 Q. Would it have come from the other  
14 exhibits that I showed you, Exhibits 3 and 4?  
15 A. No.  
16 Q. You wouldn't have used those?  
17 A. No.  
18 Q. Wouldn't have accessed those?  
19 A. No.  
20 Q. Same question I asked you earlier about  
21 your job, but with respect to an LNA, a lost note  
22 affidavit, how important is it to you personally to  
23 make sure it's accurate and correct?  
24 A. Very important.  
25 Q. Okay. Is there any sort of procedure or

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1 protocols written down in the bank of, This is how we  
2 do lost note affidavits at Wells Fargo?  
3 A. There is a high level procedure, I  
4 believe.  
5 Q. That you have access to?  
6 A. Yes.  
7 Q. That you can draw up online?  
8 A. Yes.  
9 Q. When I mean draw up, I mean, in other  
10 words, you can access online?  
11 A. Yes.  
12 Q. Okay. Was that part of your training, or  
13 do they give you manuals, and go, Tracy, we want you  
14 to take to these manuals home and make sure you  
15 familiarize yourself with them or read them at work?  
16 How did that work?  
17 A. We had high level training on the  
18 documents and where to find the documents and the  
19 procedures.  
20 Q. Was that online, or was that done face to  
21 face in terms of the department?  
22 A. Both.  
23 Q. The department head would bring you in  
24 and go, Okay. We're going have a working lunch.  
25 We're going to deal with how we do lost note

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1 affidavits?  
2 A. No.  
3 Q. How would -- or how would you do it?  
4 Would it be a workshop? Would it be -- how would it  
5 do face to face?  
6 A. There was a workshop.  
7 Q. Okay. It would be held in the office?  
8 A. Yes.  
9 Q. Everyone would attend?  
10 A. Yes.  
11 Q. Was there a written test on it, or was it  
12 just, Learn this information and follow it?  
13 A. I don't remember.  
14 Q. When you bring up the internal high level  
15 procedure to do a lost note affidavit, does it  
16 contain a checklist?  
17 A. I don't remember.  
18 Q. Do you do -- do you have your own  
19 checklist? Do you have like Tracy Thomas's own  
20 internal checklist of, When I do a lost note  
21 affidavit, I'm going to hit all these steps?  
22 A. No.  
23 MR. VARNADO: Okay. Let's take that  
24 break.  
25 THE WITNESS: Okay.

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1 THE VIDEOGRAPHER: We're off the record  
2 at 11:30 a.m.  
3 (Break taken)  
4 THE VIDEOGRAPHER: We're back on the  
5 record at 12:08 p.m.  
6 BY MR. VARNADO:  
7 Q. Ms. Thomas, we're back after our lunch  
8 break. And are you ready to proceed?  
9 A. I am.  
10 Q. Okay. Great. We were on Exhibit No. 2,  
11 and I had a couple of questions I just wanted to  
12 cover before we sort of kind of get back into the --  
13 the heart of the document.  
14 But in Paragraph No. 2, the lost note  
15 affidavit, in -- four sentences down or four lines  
16 down, I think it commences, quote, I have personal  
17 knowledge of the operation and the circumstances  
18 surrounding the preparation, maintenance and  
19 retrieval of records in Wells Fargo's recordkeeping  
20 system.  
21 Can you tell me or elaborate on what that  
22 means?  
23 A. That means that I have knowledge about  
24 how the systems are updated. Meaning they are input  
25 by the person with most knowledge of that specific

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1 transaction, record at the time or at about the time  
2 that the transaction or record occurred.  
3 Q. When you say input, what is that? I  
4 thought there would be just technical people who  
5 would just feed documents into the system. Is that  
6 not -- is that in -- is that an incorrect  
7 understanding?  
8 A. Yes. You know, when it comes to the  
9 transaction records, somebody has to, you know, key  
10 that that payment was received and how much it was  
11 for and that sort of thing.  
12 Q. They do that into SHAW?  
13 A. Yes.  
14 Q. Who is allowed to access SHAW in February  
15 2012?  
16 A. A bunch of people.  
17 Q. Okay. If you were a foreclosure  
18 specialist first grade, junior level, in Wells Fargo  
19 in 2012 working under you, would you have been able  
20 to -- or someone of your rank now, would you have  
21 been able to access SHAW?  
22 A. Yes.  
23 Q. Okay. Can people change things on SHAW?  
24 A. Not everybody.  
25 Q. Who has the ability to edit SHAW and make

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1 corrections or change datapoints of an entry and  
2 things like that?  
3 A. I don't -- I don't know anybody specific.  
4 Q. Well, you -- you were, quote/unquote,  
5 bank officer, which was the title that came after --  
6 I lost my note. Forgive me. What was the first  
7 title? It was like --  
8 A. Research remediation analyst.  
9 Q. Yes, research remediation analyst.  
10 A. Yes.  
11 Q. What was -- is a research remediation  
12 analyst or a bank officer or vice president -- vice  
13 president documentation -- loan documentation  
14 entitled and able to make changes to the SHAW system?  
15 A. No.  
16 Q. Okay. Who -- who would be -- in your  
17 table of organization, in your chain of authority,  
18 would be able to do that?  
19 A. I don't know.  
20 Q. Okay. If you saw something wrong with  
21 SHAW, Wait a second. There's something -- somebody  
22 inputted something wrong, this is incorrect. This  
23 cannot be correct, what would be the procedure?  
24 A. I would contact the servicing research  
25 group.

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1 Q. Okay. Who was the servicing research  
2 group? What is their role and capacity in your  
3 professional life here at Wells Fargo?  
4 A. They perform research on accounts to  
5 ensure accuracy if something is brought to their  
6 attention.  
7 Q. Is that -- is accuracy your job? Or your  
8 job is merely if you notice that something is wrong,  
9 you'll tell them, but you're not looking for things  
10 to be wrong?  
11 A. Correct.  
12 Q. Okay. So that when you pull up a SHAW  
13 screen, you're not going to go double-check the  
14 numbers unless something immediately jumps out at you  
15 as incorrect?  
16 A. Correct.  
17 Q. Okay. When you do a lost note affidavit,  
18 you're not going to go double-check the primary  
19 source documents?  
20 A. Correct.  
21 Q. You're going to look at SHAW?  
22 A. Correct.  
23 Q. Okay. So has it ever come to pass where  
24 you saw something wrong in SHAW, and be like, Hey,  
25 this isn't right? This interest rate isn't right or

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1 this payoff isn't right; this isn't -- something is  
2 wrong?  
3 A. Yes.  
4 Q. How many times has that happened, to the  
5 best of your knowledge, since you've been senior  
6 enough to be able to understand and deal with that?  
7 A. Less than ten.  
8 Q. Did anything jump out at you in the  
9 screen shot of SHAW for Bentrims?  
10 A. No.  
11 Q. Okay. You said you've done around -- I  
12 think I'm saying this accurately -- about 14 or 15  
13 lost note affidavits during the course of your time  
14 with Wachovia and Wells Fargo?  
15 A. I believe I said less than 15.  
16 Q. Okay. That's fine. Would you say less  
17 than 15, more than 10? I'm not trying to trap you or  
18 anything. I just want to know generally how many you  
19 think you've done.  
20 A. I don't know.  
21 Q. Okay.  
22 A. I know it hasn't been -- it -- very few  
23 and far between.  
24 Q. Okay. In terms of where Mr. Bentrims  
25 lost note affidavit has fallen on that range, is it

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1 towards the back side? Is it in the middle? Is it  
2 one of the first ones you did?  
3 A. Back side.  
4 Q. Okay. How many have you done, do you  
5 think, since February of 2012, just sitting here  
6 today?  
7 A. Maybe one.  
8 Q. Okay. You said it's time intensive. How  
9 much of the time is spent looking for the lost note  
10 and how much of the time is actually spent in  
11 preparing the document?  
12 A. The majority of the time would be spent  
13 looking for the lost note.  
14 Q. Okay. With respect to the Bentrims lost  
15 note, Exhibit 2, or any lost note that you would do,  
16 say if one was asked to be done tomorrow, how much  
17 time do you think it would take? Let me ask this  
18 question this way. If a relatively new supervisor  
19 came and said, Ms. Thomas, I want you to do a lost  
20 note affidavit, can you ballpark for me how long you  
21 think it's going to take to look for the note and  
22 then do the document, because we need it to be done  
23 expeditiously, what would you tell that person?  
24 A. It could take anywhere from a couple of  
25 hours to a couple of days.

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1 Q. Okay. Do you remember for Mr. Bentrims  
2 lost note affidavit, whether it took a couple of  
3 days, a day, less than a day?  
4 A. I don't recall.  
5 Q. Okay. Maybe as we go through the note,  
6 we can maybe refresh your recollection a little bit  
7 about what you did.  
8 MR. VARNADO: Thank you so much.  
9 THE WITNESS: This is the original.  
10 MR. VARNADO: Yeah. Jana, that's Exhibit  
11 No. 4. Thank you.  
12 BY MR. VARNADO:  
13 Q. About CRIS, the C-R-I-S system, do you  
14 have the authority as a bank officer to access CRIS?  
15 A. Yes.  
16 Q. Do you have the authority to make changes  
17 in CRIS?  
18 A. I don't know.  
19 Q. Do you think that you could go in and go,  
20 I know something is right -- or something is wrong,  
21 rather, I'm going to change it?  
22 A. I don't think so. I've never tried.  
23 Q. If you saw something wrong in CRIS, would  
24 you change it yourself, or would you go to a  
25 supervisor?

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1 A. I would escalate it.  
2 Q. In other words, you would kick it up to a  
3 more senior level supervisor to ask permission to do  
4 it?  
5 A. To get guidance on how to proceed with  
6 it.  
7 Q. Have you ever done any edits on CRIS  
8 before?  
9 A. No.  
10 Q. Okay. Same thing with ACLS. That was --  
11 ACLS was what Wells Fargo uses SHAW for. That was  
12 what Wachovia used; is that correct?  
13 A. Yes.  
14 Q. Okay. You were probably more familiar  
15 with ACLS than SHAW, at least during the transition  
16 time; is that fair?  
17 A. Yes.  
18 Q. When did you stop using ACLS?  
19 A. I don't recall the exact date. It would  
20 have been shortly after -- somewhere in June of 2010.  
21 Q. Okay.  
22 A. Shortly thereafter.  
23 Q. By the end of the summer of 2010, you're  
24 not using ACLS anymore?  
25 A. That sounds about right.

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1 Q. Any of the Wachovia people?  
2 A. I don't know. All I can testify is to me  
3 personally.  
4 Q. Okay. I'm going to ask you, do you have  
5 any knowledge of you or anyone else in your  
6 department continuing to use ACLS after June of 2010?  
7 A. After June of 2010, yes. It was --  
8 Q. And I mean inputting data, reviewing it,  
9 using it for things. Go ahead and finish, please.  
10 A. It was, I believe, decommissioned a  
11 couple of months after June of 2010.  
12 Q. Do you use it -- I think I asked you  
13 earlier, would you have accessed ACLS for  
14 Mr. Bentrims lost note affidavit?  
15 A. No.  
16 Q. Do you know what the employee [sic]  
17 identification number is of Wells Fargo Bank, N.A.?  
18 A. Not off the top of my head.  
19 Q. Do you know any associated employer  
20 identification numbers or EINs?  
21 A. Not off the top of my head.  
22 Q. Do you think you have it somewhere back  
23 at your office?  
24 A. It's possible.  
25 Q. Okay. All right. Let's look again at

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1 the lost note affidavit, Exhibit No. 2. And look at  
2 Paragraph No. 3. The maker of the note, first thing.  
3 Do you know what a maker is?  
4 A. The originator.  
5 Q. Okay. Not the -- not the person making  
6 the promise, but you think it's the -- the bank that  
7 created the note?  
8 A. Yes.  
9 Q. Okay. The payee of the note, First Union  
10 National Bank?  
11 A. Yes.  
12 Q. Okay. Where would the original principal  
13 amount have come from?  
14 A. The note.  
15 Q. Would you have double-checked that  
16 against SHAW?  
17 A. No.  
18 Q. Okay. So when you do the -- when you're  
19 doing the lost note affidavit, the affidavit  
20 itself -- not the search process, but the data  
21 input -- for those first three things we've just gone  
22 over, you would have looked at the note that would  
23 have been captured in the CLIPR?  
24 A. Yes.  
25 Q. Okay. So you have a copy in CLIPR that

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1 you're looking at signed, correct?  
2 A. Yes.  
3 Q. And is that what has been attached to  
4 Exhibit No. 2?  
5 A. Yes.  
6 Q. Okay. Let me ask you a question about  
7 Exhibit No. 2 and the -- your -- the exhibit. I  
8 think it was supposed to be numbered, but the  
9 numbering didn't get on it. It's supposed to be  
10 Exhibit A, but I don't think an exhibit sticker was  
11 put on it. If you look in Paragraph No. 8 of the  
12 lost note affidavit, it references it will be an  
13 Exhibit A. Is that supposed to be Exhibit A?  
14 A. Yes.  
15 Q. That's your intention to have it been  
16 Exhibit A?  
17 A. Yes.  
18 Q. That's okay. I don't label exhibits.  
19 Sometimes too. Everyone does.  
20 All right. Tell me what -- I'm going to  
21 point to the document. What are this row of numbers  
22 that almost looks like a supermarket checkout thing?  
23 What's going on there?  
24 A. That is the visit number.  
25 Q. What is a visit number?

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1 A. It's the number associated to the loan at  
2 origination. So it's basically before a loan number  
3 is assigned.  
4 Q. Okay. And what's a reference number? Is  
5 that the same thing as a visit number?  
6 A. Yes.  
7 Q. Okay. So they really -- they're the  
8 identical numbers, but just with the bar code,  
9 correct?  
10 A. Correct.  
11 Q. Okay. And then -- what about account  
12 number, why is that blank?  
13 A. I don't know.  
14 Q. Okay. And then for the book and page  
15 number of where it would be recorded in a deeds  
16 office, that's in the upper left-hand corner of the  
17 note?  
18 A. No.  
19 Q. What is that? Book 41, Location LN TP  
20 39, what do those numbers mean?  
21 A. I don't know.  
22 Q. You don't create this document?  
23 A. No.  
24 Q. You just look at it. Fair enough?  
25 A. Yes.

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1 Q. Okay. Do you know what it means to --  
2 promise to pay -- and this is -- in this section,  
3 First Union -- First Union National Bank, an order.  
4 Do you know what the order means?  
5 A. No.  
6 Q. Do you know whether or not this document  
7 is considered a security or not?  
8 A. It's a security instrument.  
9 Q. Okay. You do know that from your  
10 training?  
11 A. Yes.  
12 Q. Okay. And what is the -- what is the  
13 initial interest rate on this document, which is  
14 supposed to be Exhibit A to your lost note affidavit,  
15 which is Exhibit 2?  
16 A. 4.99 percent.  
17 Q. Okay. Go back to -- please, ma'am, to  
18 the -- Page WF 220 of the lost note affidavit. Okay.  
19 So as we continue to go down this list, which you  
20 testified earlier you inputted, how much of this  
21 comes directly from the note that would have been  
22 scanned to CLIPR? Term of Note, 30 years?  
23 A. Yes.  
24 Q. First Payment, date of note, May 11,  
25 2002?

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1 A. Yes.  
2 Q. Date of default of the note?  
3 A. No.  
4 Q. That would come from SHAW?  
5 A. Yes.  
6 Q. Would you look any other place than SHAW  
7 to get that information?  
8 A. No.  
9 Q. Original interest rate, we just covered  
10 that, correct?  
11 A. Yes.  
12 Q. Original monthly payment, does that come  
13 from the note?  
14 A. I believe so. Yes.  
15 Q. Current interest rate, does that come  
16 from SHAW?  
17 A. Yes.  
18 Q. Would you look any other place in SHAW  
19 for that?  
20 A. No.  
21 Q. Would there be any need to go back and  
22 recalculate it or double-check it?  
23 A. No.  
24 Q. Why do you put so much reliance on SHAW?  
25 A. It's the system of record.

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1 Q. Are there errors in SHAW ever?  
2 A. Very few.  
3 Q. Do you trust SHAW that the information is  
4 absolutely correct?  
5 A. Yes.  
6 Q. Why do you have that trust in a -- in the  
7 recordkeeping system? You don't input it and you  
8 rarely see errors and you don't -- you don't have the  
9 authority to change it. Tell me why you put so much  
10 trust and confidence in SHAW.  
11 A. Because we have many checks and balances  
12 within the bank to ensure that errors are few and far  
13 between.  
14 Q. Tell me what checks and balances that you  
15 are personally aware of that are in the bank to keep  
16 errors few and far between.  
17 A. So with a legal document --  
18 Q. Right.  
19 A. -- I receive it. I review it. If it's  
20 true and correct and accurate, I'll execute it. It's  
21 then sent to a second level review process, who then  
22 also does a complete review and ensures everything  
23 that is within the document as well as the  
24 information that I've input in the document is true  
25 and accurate.

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1 Q. This is within the bank?  
2 A. This is within the bank.  
3 Q. So it's your testimony that -- it's your  
4 understanding and it's the custom of the bank and  
5 habit and recordkeeping that your lost note affidavit  
6 would have been reviewed by somebody else --  
7 A. Yes.  
8 Q. -- over you?  
9 A. Yes.  
10 Q. Do you know who that person would have  
11 been, him or her?  
12 A. It was Deborah Fortunato.  
13 Q. And who is Ms. Fortunato?  
14 A. I don't know her exact title.  
15 Q. Okay. And does she work in the  
16 department with you?  
17 A. She works in the foreclosure department,  
18 but she's separate from my group.  
19 Q. So she's independently directed, in other  
20 words? I think you used the term earlier about --  
21 A. Sole contributor.  
22 Q. -- a sole contributor. Is she a sole  
23 contributor, to your knowledge?  
24 A. To my knowledge, yes.  
25 Q. Who does she report to, to your

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1 knowledge? Or who would she have reported to back in  
2 February 2012, to your knowledge?  
3 A. I believe she reported to Mark Caruso.  
4 Q. Okay. And he was at one time a direct  
5 supervisor over you?  
6 A. Yes.  
7 Q. Okay. So have you talked to  
8 Ms. Fortunato about your testimony today?  
9 A. No.  
10 Q. Have you, at any time between the making  
11 of Mr. Bentrim's note -- lost note affidavit, rather,  
12 and today, have you talked to her about this lost  
13 note affidavit?  
14 A. No.  
15 Q. How do you know that she was the one who  
16 did the additional review?  
17 A. She was the one that reviewed my  
18 documents at the time, and there's a note in the ECar  
19 collection system showing that she reviewed it.  
20 Q. Okay. When you were getting ready for  
21 today -- I don't want to know anything that you and  
22 Ms. Baker talked about or you and anyone at the  
23 Womble, Carlyle firm, nor do I want to know anything  
24 about what you talked to with any internal counsel  
25 for Wells Fargo. I'm interested in what documents

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1 you looked at and what you did. So I know you would  
2 have looked at the lost note affidavit, certainly,  
3 correct?  
4 A. Yes.  
5 Q. All right. Would you have looked at  
6 CRIS?  
7 A. Yes.  
8 Q. Would have you looked at ECar?  
9 A. Yes.  
10 Q. Would you have looked at -- and I  
11 guess -- if I could take a quick break. Why would  
12 you have looked at CRIS if you didn't look at it to  
13 do the lost note affidavit?  
14 A. It's just a habit at this point to pull a  
15 payment history.  
16 Q. Okay. Did you notice any errors or  
17 discrepancies between CRIS and SHAW?  
18 A. No.  
19 Q. And then you said you looked at ECar?  
20 A. Yes.  
21 Q. And ECar would have shown that  
22 Ms. Fortunato did an examination of it?  
23 A. Yes.  
24 Q. Did -- did it say like what day -- was it  
25 within a couple of days of your doing the lost note

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1 affidavit?  
2 A. I believe it was either the same day or  
3 the day after.  
4 Q. What other checks and balances, to use  
5 your phrase, do you know about being in the bank to  
6 make sure that you are able to depend on SHAW?  
7 A. When judgment figures are calculated or  
8 payoff quotes by our demand team within foreclosure,  
9 in order to ensure that the late charges listed  
10 within SHAW are correct, they go back and review the  
11 transaction history to ensure that the late charges  
12 listed in the payoff quote in SHAW are correct.  
13 Q. Would that be ACLS or CRIS that they  
14 would go back to look at or both?  
15 A. SHAW. And sometimes CRIS, depending on  
16 how far default the loan is.  
17 Q. And who within that team would be the one  
18 doing late charges?  
19 A. Whoever is preparing the quote.  
20 Q. Can we agree that the note establishes  
21 the relationship between the bank and the customer as  
22 a general proposition?  
23 MS. BAKER: I object to form.  
24 Q. You can answer.  
25 A. The note is the actual binding document

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1 financially for -- between the customer and the bank.  
2 Q. Do you agree with me that the customer is  
3 not responsible for fees, charges, interests that are  
4 not contained within the four corners of the note?  
5 Do you agree with that?  
6 A. Yes.  
7 Q. Okay. Do you agree that SHAW and CRIS  
8 should -- let me start over again.  
9 Do you agree that the SHAW software  
10 platform and the CRIS software platform should be in  
11 harmony and agree on important matters such as  
12 current interest rate, initial interest rate, initial  
13 amount of loan, balance, default date, things of that  
14 nature?  
15 A. Yes.  
16 Q. Okay. Do you believe that if they do not  
17 agree, then there's a major issue?  
18 A. Yes.  
19 Q. Do you agree that if you describe a  
20 note -- if you describe a customer amount and it is  
21 not consistent with the original note, then you are  
22 not describing the original note, but a different  
23 product?  
24 A. Can you -- I don't understand what the  
25 question was.

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1 Q. That's fine.  
2 A. I'm sorry.  
3 Q. Hypothetically, if you're describing a  
4 series of amounts due, default date, interest, all  
5 the things that go into preparing, for example, a  
6 lost note affidavit, and the information is not  
7 consistent with the note, then that means that the  
8 customer has a product which is not the note?  
9 MS. BAKER: I'm going to object to form.  
10 Q. You can answer.  
11 A. I still -- I'm -- I'm sorry, I don't -- I  
12 don't get what you're saying.  
13 Q. Let me come at it this way. Is it your  
14 responsibility to accurately describe all the terms  
15 of the note when you do a lost note affidavit?  
16 A. Yes.  
17 Q. Okay. So that if you do a lost note  
18 affidavit and it does not correlate to the original  
19 promissory note, that means you're not describing the  
20 original promissory note?  
21 MS. BAKER: Object to form.  
22 A. That would mean I would put incorrect  
23 information in the lost note affidavit.  
24 Q. Do you believe that that's happened in  
25 this case?

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1 A. No.  
2 Q. Okay. Let's just finish in Paragraph  
3 No. 3 on Wells Fargo, Page 220. The current interest  
4 rate from SHAW, correct?  
5 A. Yes.  
6 Q. Current monthly payment from SHAW,  
7 correct?  
8 A. Yes.  
9 Q. You did not independently calculate that  
10 on your desktop or using a calculator; you took it  
11 directly from SHAW?  
12 A. Yes.  
13 Q. Okay. Maturity date, from the note or  
14 from SHAW?  
15 A. From the note.  
16 Q. Principal balance at default?  
17 A. SHAW.  
18 Q. Late fees?  
19 A. SHAW.  
20 Q. Did you go back and determine whether or  
21 not late fees were part of the promissory note?  
22 A. I don't recall if I did that or not.  
23 Q. You would have taken it from SHAW,  
24 though?  
25 A. I would have taken the amount from SHAW,

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1 yes.  
2 Q. Okay. How did you know the recording  
3 date and the -- in Paragraph 4, and the book and page  
4 number in Charleston County, South Carolina, for the  
5 recordation of the lien instrument?  
6 A. I would have reviewed a copy of the  
7 recorded mortgage held in CLIPR.  
8 MR. VARNADO: Okay. We're going to go  
9 ahead and mark as an exhibit, Exhibit 6. I've  
10 got to find an empty place to put the sticker.  
11 (Exhibit-6 marked for identification.)  
12 BY MR. VARNADO:  
13 Q. I'm going to hand you Exhibit No. 6.  
14 That's another copy of the --  
15 MR. VARNADO: Sorry, Jana.  
16 MS. BAKER: That's all right.  
17 BY MR. VARNADO:  
18 Q. -- promissory note. And I'm going to  
19 point out to you this signature which is next to the  
20 exhibit sticker. The exhibit sticker is the only  
21 place I could find that was empty enough to put one  
22 on.  
23 A. Yes.  
24 Q. And it says, Bridget Legare. That's a  
25 South Carolina name. Do you know who Bridget Legare

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1 is?  
2 A. No.  
3 Q. Is this certification -- if you don't  
4 mind, if I could take the exhibit real quick, I'll  
5 read it into the record.  
6 I certify this to be a true copy. Can  
7 you read that?  
8 A. Yes.  
9 Q. Okay. Is that a Wachovia or First Union  
10 way of doing things, to your knowledge? Do you know  
11 who Bridget Legare is?  
12 A. I have no idea. I've never done that  
13 process.  
14 Q. Have you ever seen this sort of stamp  
15 before?  
16 A. Yes.  
17 Q. Where would you see -- where would you  
18 run across a stamp like that? In CLIPR?  
19 A. In CLIPR, yes.  
20 Q. Would it be part of the closing package?  
21 A. I have no idea.  
22 Q. If I represented to you that Ms. Legare  
23 was an assistant who worked in the office of the  
24 closing attorney, Rob Donaldson, would that help you  
25 to determine kind of where you -- where this document

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1 would have come from scanned into CLIPR?  
2 A. Like I said, I -- I -- I don't know.  
3 Q. Okay. When you prepared for the  
4 deposition today, do you recall seeing that  
5 particular version of the promissory note, Exhibit 6,  
6 with this Bridget Legare signature?  
7 A. Yes.  
8 Q. You did see that?  
9 A. Yes.  
10 Q. Okay. Have you asked anybody who it is,  
11 other than your attorneys?  
12 A. No.  
13 Q. Okay. Do you think it's germane or  
14 relevant?  
15 A. No.  
16 Q. Is that anything having to do with Wells  
17 Fargo or Wachovia, the Bridget Legare signature?  
18 A. I have no idea.  
19 Q. No idea. Would you rely on this document  
20 at all to be a true copy?  
21 A. I don't know. I've never had to.  
22 Q. Okay. That's not a version that you  
23 attached to the lost note affidavit, Exhibit 2,  
24 correct?  
25 A. That's correct.

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1 Q. Okay. Fair enough. Let's move on to --  
2 quickly to Paragraph 5 of the lost note affidavit,  
3 which is Exhibit 2, Wells Fargo 220. All right. Can  
4 you -- again, in a measured voice, please read  
5 Paragraph 5 into the record.  
6 A. The subject note has been inadvertently  
7 lost, misplaced or destroyed. Affiant states that  
8 Wells Fargo Bank, N.A., a successor by merger to  
9 Wachovia Bank, N.A., successor by merger to First  
10 Union National Bank, hereinafter Wells Fargo, has not  
11 pledged, assigned, transferred, hypothecated or  
12 otherwise disposed of the note. Wells Fargo has not  
13 lost or destroyed the original note in bad faith.  
14 Q. All right. Earlier I think I asked you  
15 whether or not this was part of the standard double  
16 06 NTL-V1 form.  
17 A. Yes.  
18 Q. Do you believe that Paragraph 5 was  
19 correct and true at the time you executed the lost  
20 note affidavit?  
21 A. Yes, I do.  
22 Q. Do you believe it to be true and correct,  
23 sitting here today, having just reread it?  
24 A. Yes.  
25 Q. Okay. Did you make any amendment or

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1 change to Paragraph No. 5?  
2 A. No.  
3 Q. Okay. Paragraph No. 5 came to you as is,  
4 and you agreed with it?  
5 A. Yes.  
6 Q. Okay. Is there a different form if the  
7 note came from Wachovia, but not from First Union?  
8 A. Let me back up.  
9 I would have added this language right  
10 here, Wells Fargo Bank, as successor by merger to  
11 Wachovia Bank, successor by merger to First Union  
12 National Bank.  
13 Q. So is that when -- if I was going to see  
14 a blank copy of double 06 NTL-V1, would there be a  
15 blank there or a space to add?  
16 A. There would be a blank line there, yes.  
17 Q. Okay. So you did put -- you did input  
18 that?  
19 A. Yes.  
20 Q. Okay.  
21 A. I apologize.  
22 Q. That's okay. No other -- you didn't  
23 change any other or make any other edits to it,  
24 though, to your knowledge?  
25 A. No.

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1 Q. All right. And you wouldn't typically,  
2 right?  
3 A. No.  
4 Q. All right. Let me make sure I  
5 understand. Are you stating that when you signed  
6 this affidavit and -- that means you know this and  
7 you're agreeing with it of your own personal  
8 knowledge; we agree on that, right?  
9 A. Yes.  
10 Q. That the reason why Wells Fargo is  
11 entitled to enforce the note is that it is the  
12 successor to First Union National Bank, which was the  
13 original payee of the note, correct?  
14 A. Yes.  
15 Q. All right. Earlier in the affidavit --  
16 I've asked you this a couple of times -- you said  
17 you're familiar with the process of how documents are  
18 prepared and kept. Walk me through what would have  
19 happened with a First Union note from Charleston,  
20 South Carolina, executed in 2001, 2002. Where would  
21 it have gone and been stored?  
22 A. It would have gone to, I believe, the  
23 vault in Roanoke, Virginia.  
24 Q. Okay. What is the name of the facility  
25 in Roanoke, Virginia? I'm generally aware that there

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1 was a big Wachovia center in Roanoke.  
2 A. Yes.  
3 Q. Okay. Your understanding, was that a  
4 First -- do you know what would happen with a First  
5 Union note, originally?  
6 A. First Union essentially acquired  
7 Wachovia, but took the name of Wachovia. So the  
8 First --  
9 Q. Right. They merged into Wachovia?  
10 A. Yes.  
11 Q. First Union was the bigger bank?  
12 A. Yes. So First Union sites would have  
13 stayed.  
14 Q. Okay. Is it your understanding that  
15 First Union had the Roanoke, Virginia, site?  
16 A. Yes.  
17 Q. Okay. So is that where the vault is?  
18 A. Yes.  
19 Q. Describe for me the vault.  
20 A. I've never seen it.  
21 Q. Never been in it?  
22 A. No.  
23 Q. Never been to it?  
24 A. No.  
25 Q. Never took you on a tour when you were

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1 up -- have you ever been to Roanoke?  
2 A. No.  
3 Q. Not for any -- no -- no training, no  
4 nothing?  
5 A. No.  
6 Q. Okay. Do you know what the procedure is  
7 to log in a document into the vault in Roanoke?  
8 A. Yes.  
9 Q. What is the procedure to log in a  
10 document into the vault in Roanoke?  
11 A. They receive the document. It's then  
12 bar-coded along with the loan number on the bar code.  
13 It's scanned -- the bar code is scanned into their --  
14 I don't know what it's called. They have some  
15 tracking system. A copy is then scanned into the  
16 imaging system --  
17 Q. Which has become CLIPR?  
18 A. Which has -- correct. And it's placed in  
19 a folder. That folder is bar coded, as well and  
20 scanned, and then placed in the vault.  
21 Q. How do you know this without having been  
22 to Roanoke or seen the vault? Was it part of  
23 training?  
24 A. Yes.  
25 Q. Okay. So part of the training might

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1 actually have been a video showing this or text, This  
2 is what we do. Is that how you know that?  
3 A. It would have been through conversations  
4 with managers in the area.  
5 Q. On the phone?  
6 A. Yes.  
7 Q. Okay. Was it just out of curiosity, or  
8 is it part of your training?  
9 A. Both.  
10 Q. Okay. So you think a 2002 note would  
11 have gone to Roanoke?  
12 A. Yes.  
13 Q. It would have been logged in in a system  
14 that you told me?  
15 A. Yes.  
16 Q. Were there any -- is there a vault in  
17 Jacksonville?  
18 A. No.  
19 Q. Is there a vault in a little town in  
20 South Carolina called Fort Mill? Or as we say in  
21 South Carolina, Fort Mill.  
22 A. I have no idea.  
23 Q. Okay. Are you aware of any other vaults  
24 on the East Coast where Wells Fargo documents from  
25 predecessor banks would be kept?

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1 A. No.  
2 Q. Is Roanoke it? Is there -- how about the  
3 whole country? I'm just -- how many vaults are there  
4 that Wells Fargo maintains? I know originally there  
5 were California banks, one in -- out west somewhere.  
6 A. Home Equity now has two vaults for the  
7 original Wachovia and predecessors to Wachovia, is  
8 held in Roanoke, and all original Wells Fargo and  
9 Wells Fargo predecessors is held somewhere else.  
10 Minnesota, maybe.  
11 Q. Okay.  
12 THE VIDEOGRAPHER: You have five minutes  
13 on your tape.  
14 BY MR. VARNADO:  
15 Q. All right. Let me ask you this. Turn to  
16 your Exhibit A to the lost note affidavit. Now,  
17 you're certifying in the lost note affidavit that  
18 Exhibit A is a true and accurate copy of the note,  
19 correct?  
20 A. Yes.  
21 Q. Okay. Where is the bar code for the  
22 vault?  
23 A. It's usually the fifth page. I don't  
24 know what happened to the fifth page.  
25 Q. What's the fifth page?

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1 A. There would be a -- a bar code with --  
2 the loan number on the bottom with a bar code on it.  
3 Q. Okay. Tell me what it would look like.  
4 A. Just a blank page with a bar code on it.  
5 Q. How big would the bar code be? Would it  
6 take up the whole bottom of the page?  
7 A. It's normally at the top.  
8 Q. Is it at the top of the first page, or is  
9 it at the top of the fifth page?  
10 A. Fifth page.  
11 Q. Okay. Do you know from your own training  
12 or own intellectual curiosity being satisfied, how  
13 they would -- would it be on the back of the fifth  
14 page? In other words, they would keep the document  
15 upside down so the bar code -- the physical bar code  
16 would be on the back? Or would it be -- if you  
17 opened the document up like a book, it would be on  
18 the top behind the next page bar code?  
19 A. It would be at the top of the front of  
20 the fifth page or the -- the last page of the  
21 document.  
22 Q. Do you believe that you included a fifth  
23 page with your lost note affidavit?  
24 A. I don't know.  
25 Q. Sitting here today, do you have any

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1 recollection of that?  
2 A. I don't recall.  
3 Q. Would you have intentionally omitted a  
4 fifth page if you had a fifth page?  
5 A. No.  
6 Q. When you looked at CLIPR, did you see a  
7 fifth page on the -- when you were getting ready for  
8 today, a fifth page to the promissory note?  
9 A. I don't recall.  
10 Q. Isn't that something that you would be  
11 interested in?  
12 A. No.  
13 Q. Is the document an accurate copy for  
14 purposes of a lost note affidavit, if it does not  
15 contain the fifth page?  
16 A. I believe so.  
17 Q. Why?  
18 A. Because the fifth page has nothing to do  
19 with the note; it's for our tracking purposes only.  
20 Q. Okay. Don't you think it's important,  
21 though, if it's a lost note, that you would want to  
22 see the fifth page, which would say where the  
23 tracking was in order to determine whether or not you  
24 had tracked it down?  
25 A. The fifth -- I mean, it would not tell me

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1 anything.

2 Q. It wouldn't?

3 A. No.

4 Q. Okay. So you -- but you -- when you

5 prepared the lost note affidavit, obviously you

6 didn't travel to Roanoke; you've never been there

7 before --

8 A. Yes.

9 Q. -- right?

10 You didn't look at the vault log, did

11 you?

12 A. I personally did not, no.

13 MR. VARNADO: Okay. All right. We're

14 going to come back to that after we change the

15 tape. We're going to take two minutes, if

16 that's okay.

17 THE VIDEOGRAPHER: We're off the record

18 at 12:45 p.m.

19 (Break taken)

20 THE VIDEOGRAPHER: We're back on the

21 record at 12:53 p.m.

22 BY MR. VARNADO:

23 Q. Ms. Thomas, we're back after a short

24 break. And we are on Exhibit 2, numbered paragraph

25 5, Page WF 220. I want to make sure I understand a

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1 couple of things. As Paragraph 5 is written, it's my

2 understanding that what you are saying is -- and

3 correct me if I'm wrong -- that Wells Fargo is

4 entitled to enforce the Bentrin promissory note

5 because it is the successor in interest by merger to

6 First Union National Bank; is that correct?

7 A. Yes.

8 Q. And that it is entitled to enforce the

9 note because First Union would have transferred the

10 note to Wachovia and Wachovia would have transferred

11 the note to Wells Fargo; is that correct?

12 A. The ownership would have transferred,

13 yes.

14 Q. Okay. And that actually dovetails into

15 my next question, which is, Wells Fargo Bank owns the

16 note by virtue of those transfers, not because it

17 obtained it through an independent source, correct?

18 A. Correct.

19 Q. And when you mean that, quote, has not

20 pledged, assigned, transferred, hypothecated or

21 otherwise disposed of the note, unquote, that means

22 that Wells Fargo has always owned it; is that

23 correct?

24 A. Yes.

25 Q. All right. You're aware that in the

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1 banking industry it was not uncommon or unusual

2 notes to be sold to outside trusts or purchasers,

3 sometimes called a REMIC? Are you familiar with

4 those terms?

5 A. Yes.

6 Q. Okay. Did that happen to this note?

7 A. No.

8 Q. How are you sure of that?

9 A. It would have -- it would not have been

10 in SHAW if that was the case.

11 Q. Okay. It would not have been in the SHAW

12 system?

13 A. Correct.

14 Q. The SHAW system would have said it was

15 sold?

16 A. Yes.

17 Q. Would the ACLS system had done the same

18 thing?

19 A. Yes.

20 Q. Okay. And if this note ever existed, it

21 would have been in the vault in Roanoke, correct?

22 A. At one time, yes.

23 Q. The original -- the actual original note,

24 correct?

25 A. Yes.

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1 Q. And no one can just waltz into Roanoke

2 and check it out?

3 A. No.

4 Q. There's all sorts of safety procedures

5 and logging and all that sort of thing?

6 A. Yes.

7 Q. The whole -- do you know the name of the

8 team that does that?

9 A. Somebody in servicing.

10 Q. You could not drive to Roanoke, fly to

11 Roanoke, walk into the unit there, flash your

12 credentials, and get that original note?

13 A. No.

14 Q. It would have been impossible?

15 A. Yes.

16 Q. Okay. Only they are allowed to check it

17 in and out, that document team?

18 A. From my knowledge, that's correct.

19 Q. Okay. Are you aware that the original

20 note has been found?

21 A. Yes.

22 Q. Okay. Do you have any knowledge of how

23 the original note was found?

24 A. The comment in the system just says that

25 it was received in the vault from an attorney.

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1 Q. Okay. What system are you referring to?  
2 ECaR --  
3 A. Yes.  
4 Q. -- or SHAW?  
5 A. ECaR.  
6 Q. And remind me again, what is ECaR?  
7 A. The collections system.  
8 Q. And that it was received from an  
9 attorney?  
10 A. Yes.  
11 Q. Does it say which attorney?  
12 A. No.  
13 Q. Does it say when -- what date?  
14 A. February 27th, 2012.  
15 Q. Are you -- I know you don't have ECaR in  
16 front of you, but I'm asking you to testify, is that  
17 the date that you remember on the ECaR system?  
18 Because I've never seen ECaR before.  
19 A. Yes.  
20 Q. February 27, 2012?  
21 A. Yes.  
22 Q. Which is the -- 20 days after you signed  
23 the lost note affidavit?  
24 A. Yes.  
25 Q. Which -- how would an attorney have the

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1 original note ten years after it was executed?  
2 A. I -- it may have been sent to the  
3 foreclosure attorney. I mean, I don't know. I  
4 didn't send it to the foreclosure attorney.  
5 Q. You've already told me you didn't really  
6 have any recollection of this loan or any litigation  
7 associated thereto until you were asked -- tasked  
8 with doing the lost note affidavit, correct?  
9 A. Correct.  
10 Q. Wouldn't it have been logged out of the  
11 Roanoke vault if it went to the -- whatever attorney?  
12 A. It was logged out of the vault on  
13 February 26, 2009, by Brandie Hunt.  
14 Q. Okay. Who is Brandie Hunt?  
15 A. She was a foreclosure specialist.  
16 Q. Did she work with you?  
17 A. Not directly.  
18 Q. Okay. Brandy Hunt. Do you know Brandie  
19 Hunt?  
20 A. Yes.  
21 Q. I mean, did she work down here in  
22 Jacksonville?  
23 A. Yes.  
24 Q. Is she still employed with the bank?  
25 A. As far as I know, yes.

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1 Q. Okay. Do you have any kind of connection  
2 with her professionally, socially, work in the same  
3 department now?  
4 A. We worked in foreclosure together. There  
5 is no outside social relationship.  
6 Q. Okay. That's fine. Do you know what her  
7 current title is?  
8 A. No.  
9 Q. She was a foreclosure specialist in 2009,  
10 right?  
11 A. Yes.  
12 Q. Do they still use the same nomenclature,  
13 a foreclosure specialist, foreclosure specialist II,  
14 senior litigation foreclosure specialist?  
15 A. No.  
16 Q. Is foreclosure specialist entry level, or  
17 is it -- you've been around for a while now, in 2009  
18 at least?  
19 A. That was an entry level.  
20 Q. Okay. I remember you told me when you  
21 broke into full-time employ- -- employment with the  
22 bank, even though they gave you credit for the temp,  
23 that was actually your first job as foreclosure  
24 specialist. You were pretty green at that time,  
25 fair?

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1 A. Yes.  
2 Q. Okay. So Ms. Hunt, she's an entry level,  
3 right? She's not even the next level up, right?  
4 A. Correct.  
5 Q. How did she sign it out? You told me  
6 that you couldn't go to Roanoke -- and you're a bank  
7 officer, you're a vice president. How did she get it  
8 out of the bank -- out of the vault?  
9 A. She made a request.  
10 Q. Okay. And maybe I asked the question  
11 wrong. I said could you waltz up there and get it,  
12 and you said no. Can you -- but could you actually  
13 send a request through channels and have it --  
14 theoretically have gotten it?  
15 A. Yes, if there's a business reason.  
16 Q. Let me just ask you hypothetically.  
17 Tracy, we're asking you to do a lost note affidavit.  
18 As part of your process, Well, it's in the vault.  
19 They found it.  
20 Okay. Well, the lawyers want to see it.  
21 Okay. Well, I can send a request through  
22 channels to get it.  
23 A. Yes.  
24 Q. Do -- have you ever done that before?  
25 A. Sent a request --

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1 Q. Yes, ma'am.  
2 A. -- for the original note?  
3 Q. Yes, ma'am.  
4 A. Yes.  
5 Q. Okay. Is it -- is that -- would you  
6 consider that fairly routine, not routine, pretty  
7 extraordinary?  
8 A. Fairly routine.  
9 Q. Okay. Does it have to be approved by  
10 someone of your level now?  
11 A. For me, it doesn't. I don't know about  
12 the foreclosure specialists.  
13 Q. Do any foreclosure specialists work under  
14 you, still?  
15 A. No.  
16 Q. Okay. But when you were a foreclosure  
17 supervisor, if one of your foreclosure specialists  
18 had come and said, Tracy, I would like to get a copy  
19 of the note, would you have been the one to tell them  
20 to -- they could do it or not to do it? Or would you  
21 have kicked it up to Mr. Caruso or somebody like  
22 that?  
23 A. I don't recall the exact process. In  
24 2009, it was different than it is now. I don't  
25 recall having to approve requests for original

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1 documents.  
2 Q. Why did Tracy -- I'm sorry, why did --  
3 who is the lady? We were just talking about her.  
4 A. Brandie Hunt.  
5 Q. Ms. Hunt. Why did Ms. Hunt sign the  
6 document out?  
7 A. I don't know. I -- I didn't -- I wasn't  
8 there when she made the request. I wasn't involved  
9 in the account at that time. I can tell you that for  
10 judicial states, a lot of the judicial states do  
11 require the original note and mortgage --  
12 Q. So it doesn't --  
13 A. -- at the foreclosure hearing.  
14 Q. I'm sorry. Have you finished? I'm  
15 sorry, I cut you off by accident.  
16 A. The judicial states, most of them require  
17 the original note and mortgage at the foreclosure  
18 hearing.  
19 Q. Okay.  
20 A. That may have been why. But like I said,  
21 I wasn't there. So I don't know.  
22 Q. So when you see Ms. Hunt as been noted to  
23 have logged it out, that doesn't necessarily make you  
24 go, My gosh, this is strange or unusual?  
25 A. No.

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1 Q. It doesn't?  
2 A. No.  
3 Q. Okay. So it might have gone to a  
4 lawyer's office and then it was relogged back in?  
5 A. Correct.  
6 Q. Okay. Now, I need to make sure I  
7 understand this. My understanding is that the  
8 original at some point was at the Womble, Carlyle  
9 firm in Charleston, the actual original. Okay? When  
10 was it relogged into the vault, this note, that  
11 Ms. Hunt was the one who took it out?  
12 A. February -- I'm sorry.  
13 Q. Yeah, go ahead and finish.  
14 A. February 27th, 2012.  
15 Q. Okay. So was it relogged out again at  
16 the vault?  
17 A. Yes.  
18 Q. When was it relogged out of the vault  
19 following February 27, 2012?  
20 A. I don't recall the exact date. I believe  
21 it was early 2013.  
22 Q. Okay. And this -- all these records are  
23 on ECaR, right?  
24 A. Yes.  
25 Q. So if I could get screen shots of ECaR, I

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1 could see all this, right?  
2 A. Yes.  
3 Q. And who was the one who checked it out in  
4 2013?  
5 A. Sheila Sowers.  
6 Q. And who is Sheila Sowers? And can you  
7 please spell her last name?  
8 A. S-o-w-e-r-s.  
9 Q. Okay. Who is -- who is she?  
10 A. She is -- works for the executive office.  
11 I believe she was involved in this matter.  
12 Q. What's her title?  
13 A. I don't know.  
14 Q. Why was she involved? Is she a lawyer,  
15 to your knowledge?  
16 A. No.  
17 Q. Is she an officer?  
18 A. I don't know.  
19 Q. Do you believe she's an admin or a --  
20 A. She's not an admin. Similar to my -- to  
21 what I do.  
22 Q. But she works in -- for the executive?  
23 A. Executive office.  
24 Q. What is the executive office? I know  
25 it's -- I know the bank is big. Just help me --

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1 what's the difference between an executive office and  
2 the foreclosure department?  
3 A. They handle litigation, as well. It  
4 doesn't have to be foreclosure litigation,  
5 counterclaims --  
6 Q. Is legal in the executive office?  
7 A. No.  
8 Q. Legal exists by itself --  
9 A. Yes.  
10 Q. -- to the best of your knowledge?  
11 A. Yes.  
12 Q. Okay. So Ms. Sowers works for the  
13 executive office, which means the office of the chief  
14 executive officer and all the other senior officers;  
15 is that fair?  
16 A. No.  
17 Q. Okay. Then why am I -- what is the  
18 executive office if it's not the head honcho's  
19 office?  
20 A. They handle customer complaints --  
21 Q. I gotcha. Okay.  
22 A. -- that sort of thing, too.  
23 Q. So it's not super high up?  
24 A. No.  
25 Q. Why would they be involved, when you were

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1 the one who did the lost note affidavit?  
2 A. They were involved prior to my lost note  
3 affidavit.  
4 Q. Then how did it land on your desk?  
5 A. They don't execute documents.  
6 Q. Okay. You execute documents?  
7 A. Yes.  
8 Q. Are you upset that this note actually  
9 wasn't lost, it was in a lawyer's office?  
10 A. I'm happy that it was found.  
11 Q. Okay. But does it upset you that you  
12 actually did a sworn statement and did all this work  
13 that it was lost, when it really wasn't lost?  
14 A. It was lost at the time that I completed  
15 the affidavit.  
16 Q. Okay. Well, let me ask you this. If you  
17 know that Ms. Hunt checked it out in '09, right?  
18 A. Yes.  
19 Q. And that's on ECar?  
20 A. Yes.  
21 Q. That means that you would have known that  
22 when you did the lost note affidavit in February  
23 2012?  
24 MS. BAKER: I'm going to object to form.  
25 Q. You can answer.

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1 A. Yes, I would have known that Brandy --  
2 Q. Yeah. You told me that you checked ECar  
3 as part of doing the lost note affidavit. You would  
4 have -- you would have known that Brandie Hunt  
5 checked it out, right?  
6 A. Yes.  
7 Q. Why is it not in your lost note  
8 affidavit?  
9 A. It doesn't ask who was the last person  
10 that had it.  
11 Q. Do you have faith in the accuracy of the  
12 logs?  
13 A. Yes.  
14 Q. Okay. And you know that -- from ECar  
15 that she logged it out, correct, Ms. Hunt --  
16 A. Yes.  
17 Q. -- in 2009?  
18 Did you -- as part of doing the lost note  
19 affidavit, did you contact Ms. Hunt?  
20 A. Yes.  
21 Q. And what did she say?  
22 A. She didn't have it.  
23 Q. But who did she give it to? Did you ask  
24 her?  
25 A. She said she didn't recall.

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1 Q. And that was good enough for you?  
2 A. Yeah, it was.  
3 Q. And this is sworn -- this is sworn  
4 testimony that -- so that -- you were comfortable  
5 with that?  
6 A. Yes.  
7 Q. Did you investigate who were the  
8 attorneys working for Wachovia Bank in 2009 on this  
9 matter?  
10 A. I don't recall if I did or not.  
11 Q. Okay. Did you attempt to track down who  
12 counsel was at the time? We know South Carolina is a  
13 judicial state, correct?  
14 A. Yes.  
15 Q. We know -- you know from your own  
16 experience that in judicial states, sometimes the  
17 bank needs to transfer the original document from the  
18 vault through the bank to their attorneys to be held  
19 in trust on behalf of the bank for purposes of using  
20 it in court. Fair?  
21 A. Yes.  
22 Q. Okay. So did you call that -- did you  
23 try to find out who the attorneys were?  
24 A. I -- I don't recall if I did or not.  
25 Q. Brandy is a low level -- she's entry

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1 level. I mean, did you ask her, I want you to go  
2 back through your e-mails? Or I want to go to, you  
3 know, whoever central IT is and find out what e-mails  
4 Brandie Hunt sent in February of '09. Did you do  
5 that?  
6 A. No.  
7 Q. Okay. So this note really wasn't lost;  
8 it was with a lawyer for Wells Fargo?  
9 MS. BAKER: I'm going to object to form.  
10 Q. You can answer.  
11 A. It was lost. The bank did not know where  
12 it was. I did not know where it was. I did a  
13 reasonable search and could not find it.  
14 Q. Here in Paragraph 6, you say, in  
15 Subparagraph A, quote, Affiant -- that's you -- has  
16 personal knowledge that the original note has been  
17 lost and a good faith effort to search for it has  
18 been made in all files and records relating to this  
19 matter, close quote.  
20 So we never looked for it in the lawyer's  
21 office?  
22 A. Not that I recall, no.  
23 Q. And if you were looking for one now,  
24 would you want to look in the lawyer's office?  
25 A. Probably, yes.

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1 Q. Okay. If a new lost note affidavit  
2 request hit your desk now and you saw that a  
3 foreclosure specialist, entry level, had checked it  
4 out three years before, what would you do different?  
5 A. It all depends on the circumstances. It  
6 really does.  
7 Q. Okay. The following area -- this is  
8 Subparagraph B of Paragraph 6 of your lost note  
9 affidavit. The following areas were searched for the  
10 lost documents: Reviewed origination file. That's  
11 got to be CLIPR, right?  
12 A. CLIPR and Mobius. Some would consider  
13 the -- the vault file part of the origination file,  
14 as well.  
15 Q. Okay. Checked the vault?  
16 A. Yes.  
17 Q. You didn't check the vault; you had  
18 someone check the vault for you, right?  
19 A. Correct.  
20 Q. So you were -- that's not of your own  
21 firsthand personal knowledge?  
22 A. I caused that to happen. So essentially,  
23 yes.  
24 Q. But you were relying on someone to say,  
25 We checked, and it's not there?

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1 A. Yes.  
2 Q. Okay. And you knew from ECaR that it had  
3 been checked out? You say you -- For the purposes of  
4 executing this affidavit on the 7th day of February  
5 2012, I personally searched the foreclosure file.  
6 The original note was not in the foreclosure file.  
7 That's in Subparagraph B(III), or B(3) of Paragraph  
8 6.  
9 A. Yes.  
10 Q. Why would you search the foreclosure file  
11 if you knew that Ms. Hunt had checked it out? Why  
12 would it be in the foreclosure file?  
13 A. At this point, we no longer had paper  
14 foreclosure files.  
15 Q. Uh-huh.  
16 A. So the -- I mean, the only foreclosure  
17 file would be CLIPR or ECaR. And there's no way for  
18 an original note to be in either of those, so...  
19 Q. Did you save any e-mails to CLIPR or ECaR  
20 from -- between you and Ms. Hunt saying, Hey, what  
21 happened? Where is this note?  
22 A. I don't believe there were any e-mails.  
23 Q. Did you go talk to her? Did you go,  
24 like, show up in her cubicle and say, Hey, I'm doing  
25 a lost note affidavit. You're the last one who

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1 signed it out three years ago. What happened to it?  
2 A. Yeah. I mean, we worked on the same  
3 floor, so I would have just walked up to her and  
4 asked for her help.  
5 Q. Was she -- was she still a foreclosure  
6 specialist, or she had been promoted?  
7 A. I believe she was still in the  
8 foreclosure department.  
9 Q. You think she had been promoted from an  
10 entry level to a more senior role?  
11 A. I don't know what her title was at the  
12 time.  
13 Q. I mean, you don't know what she does even  
14 now?  
15 A. Now, I believe she's a supervisor in our  
16 recovery department.  
17 Q. I see. Is this -- and I'm pointing to WF  
18 221, Paragraph 6(b), Roman numeral III and IV, 3 and  
19 4. Are those part of the form, or did you add those  
20 in yourself?  
21 A. Those were part of the form, with the  
22 exception of the date. I would have filled that  
23 information in.  
24 Q. Continue looking down on Subparagraphs  
25 and D and E. With particular reference to E, how can

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1 you say that; quote, Affiant has personal knowledge  
2 of the time and manner of the loss at some unknown  
3 time from the date of the receipt thereof to the date  
4 of this affidavit, if you knew that Ms. Hunt had  
5 checked it out?  
6 A. I still didn't know at what point she  
7 didn't have possession of it.  
8 Q. Why would she have checked it out? To  
9 give to counsel in a judicial state?  
10 A. Probably.  
11 Q. Okay. Is there any other legitimate  
12 reason why a foreclosure specialist in 2009 would  
13 send a request through channels to check out the  
14 original note?  
15 A. No.  
16 Q. That's the only legitimate reason?  
17 A. Yes.  
18 Q. F, quote, Affiant has personal knowledge  
19 of the mortgage filed with the Court is a true and  
20 accurate copy of that lost or destroyed document.  
21 Well, it's not a mortgage, right? It's a  
22 note. See on Subparagraph F?  
23 A. Yes.  
24 Q. When Ms. Hunt asked for a document to be  
25 checked out, or anyone in the former department that

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1 you were a supervisor in or, you know, as an  
2 independent agent -- I forget the term you used.  
3 A. Sole contributor.  
4 Q. Sole contributor. I need to get more  
5 understanding of the lingo -- don't you have to say  
6 what the reason is why you're checking it out? Don't  
7 you have to give them a reason, I want this for X  
8 purpose?  
9 A. Depending on the state. You know, if I  
10 were to go ask for the original note and mortgage for  
11 a nonjudicial --  
12 Q. Uh-huh.  
13 A. -- yes, I would need to give a pretty  
14 good reason of why I needed it. Because it's not  
15 something that happens in the normal course of  
16 business.  
17 Q. Uh-huh.  
18 A. For judicial states, no.  
19 Q. Why did you not include anything in this  
20 affidavit about the fact that the last person to  
21 check it out was Ms. Hunt, and that the only  
22 legitimate reason she would have checked it out,  
23 considering the fact South Carolina is a judicial  
24 state, is to send to counsel?  
25 MS. BAKER: I think I'm going to object.

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1 I think it's been asked and answered.  
2 Q. You can go ahead and answer.  
3 A. There's no spot within the affidavit to  
4 put that information.  
5 Q. So you follow the form? You don't  
6 deviate from the form, correct?  
7 A. Yes.  
8 Q. All right. Paragraph 7, that's a lot of  
9 legalese. We know you're not a lawyer.  
10 A. Correct.  
11 Q. Right. So you just -- because that's the  
12 form, that's the -- that's what you signed, right?  
13 MS. BAKER: I'm going to object to form  
14 of the question --  
15 Q. You can answer.  
16 MS. BAKER: -- if there's a question.  
17 Q. You can answer.  
18 A. Yes.  
19 Q. Okay. I mean, you didn't -- were you the  
20 one who found the S.C. Code, Section 36-3-309?  
21 A. No.  
22 Q. Do you know who added that?  
23 A. No.  
24 Q. Do you know where it came from?  
25 A. No.

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1 Q. Do you know -- are you familiar with the  
2 South Carolina version of the Uniform Commercial  
3 Code?  
4 A. No.  
5 Q. Okay. Are you familiar with what the  
6 universal -- the Uniform Commercial Code is? If I  
7 told you about that, or which articles might apply,  
8 would you know?  
9 A. No.  
10 Q. I'm not trying to patronize you. I'm  
11 just trying to ask.  
12 A. No.  
13 Q. Okay. Paragraph 8, we already covered.  
14 Paragraph 9, Wells Fargo agrees to  
15 indemnify and hold harmless Bentrin and his heirs,  
16 successors, and/or assigns, from and against any and  
17 all demands, actions, causes of actions, suits,  
18 controversies, claims, losses, liabilities, costs and  
19 expenses, parenthesis, including, comma, without  
20 limitation, comma, reasonable attorneys' fees and  
21 costs which may be suffered or incurred as a result  
22 of such breach or failure to deliver the original  
23 note.  
24 Is that part of the form?  
25 A. Yes.

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1 Q. You don't change that?  
2 A. The only thing would have been adding  
3 Mr. Bentrim's name.  
4 Q. Okay. Did you -- were you part of --  
5 were you ever asked to help locate where the note was  
6 found when it was found?  
7 A. Can you rephrase that?  
8 Q. Yeah. I mean, we've already established  
9 that it was checked out in 2009. And it was  
10 rechecked into the vault 20 days after your lost note  
11 affidavit in 2012.  
12 A. Yes.  
13 Q. Okay. Did you know that it had been  
14 rechecked in?  
15 A. When?  
16 Q. In February 27 of 2012.  
17 A. No.  
18 Q. Why would you not know that information?  
19 A. I was -- I had no dealings with this  
20 account until I was made aware by counsel that you  
21 wanted to take my deposition.  
22 Q. Okay. So you wouldn't have followed up  
23 on it?  
24 A. No.  
25 Q. Okay. And who checked it back in?

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1 A. It was received from an attorney.  
2 Q. Okay. And then who checked it out next,  
3 based on ECaR?  
4 A. Sheila Sowers.  
5 Q. Okay. And when -- that was in 2013?  
6 A. I believe it was -- it was either late  
7 2012 or early 2013. It would have been around the  
8 time you had discussions with counsel about taking my  
9 deposition.  
10 Q. How do you know that? Just out of  
11 curiosity.  
12 A. Because --  
13 Q. Don't say anything they told you. Just  
14 how would you know it?  
15 A. Because I was -- I was brought back into  
16 it.  
17 Q. Okay. I don't want to know anything more  
18 that you talked about with Ms. Baker or Mr. Laney or  
19 anyone at their firm or anyone with your counsel  
20 group. Fair?  
21 A. Fair.  
22 MR. VARNADO: I want to take another  
23 break.  
24 THE VIDEOGRAPHER: Okay. We're off the  
25 record at 1:19 p.m.

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1 (Break taken)  
2 THE VIDEOGRAPHER: We're back on the  
3 record at 1:26 p.m.  
4 BY MR. VARNADO:  
5 Q. Did you bring a copy of SHAW with you  
6 today or a SHAW print screen?  
7 A. I brought copies of the two screens that  
8 I would have looked at.  
9 Q. Do you have them with you?  
10 A. Yes.  
11 Q. May I see them, please?  
12 MR. VARNADO: Let's go back off the  
13 record, then --  
14 THE VIDEOGRAPHER: Okay.  
15 MR. VARNADO: -- save video space.  
16 THE VIDEOGRAPHER: We're off the record  
17 at 1:26 p.m.  
18 (Break taken)  
19 THE VIDEOGRAPHER: We're back on the  
20 record at one 1:37 p.m.  
21 BY MR. VARNADO:  
22 Q. Ms. Thomas, we stepped out of the room to  
23 look at the documents that you brought with you today  
24 in response to the deposition notice, I assume. Can  
25 you describe for me, generally speaking, what the

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1 documents are and why you selected them to bring with  
2 you?  
3 A. Well, you didn't -- I mean, you filed a  
4 notice of duces tecum --  
5 Q. Uh-huh.  
6 A. -- but you didn't attach anything on what  
7 to bring.  
8 Q. Okay.  
9 A. So I brought a payment history, note and  
10 mortgage, some of the closing documents, updated  
11 payoff figures good through today, and screen  
12 shots -- two screen shots of SHAW that I would have  
13 used in my review and execution of the lost note  
14 affidavit.  
15 Q. You didn't bring the ECaR stuff, though?  
16 A. No.  
17 Q. Why not? You just didn't feel it was  
18 germane?  
19 A. Well, you -- I mean, you didn't really  
20 give us anything --  
21 Q. But you studied it pretty hard. You knew  
22 the dates and names of people, right?  
23 A. Yes.  
24 Q. So we could still get an ECaR printoff --  
25 A. Sure. If you --

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1 Q. -- through you, right?  
2 A. -- request it, we --  
3 Q. Right.  
4 A. -- we could --  
5 Q. Okay. I'm going to go ahead and request  
6 it. If you could get that to Ms. Baker, I'd sure  
7 appreciate it.  
8 A. Okay.  
9 Q. Okay. I am going to -- I think it breaks  
10 down into four sections, I guess. Or maybe not. Is  
11 there any particular order that it was in? We looked  
12 at it. I don't think we scrambled it. I'm going to  
13 mark as Exhibit No. 7 the screen shots. Are these  
14 that I'm handing to you in Exhibit 7?  
15 (Exhibit-7 marked for identification.)  
16 A. This is separate.  
17 Q. Okay. Thank you. Exhibit -- what -- can  
18 you describe Exhibit 7, what it is?  
19 A. This is the STLN, Page 1 and STLN, Page 3  
20 from SHAW.  
21 Q. Okay. What does STLN stand for, to your  
22 knowledge?  
23 A. I don't know.  
24 Q. What do you --  
25 A. It's just the page.

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1 Q. The pages that you would use for SHAW?  
2 You told me earlier you would use two pages. These  
3 are the pages you would have used?  
4 A. Yes.  
5 Q. Okay. Which is the first page?  
6 A. This.  
7 Q. Exhibit 7?  
8 A. Yes, the page --  
9 Q. Okay.  
10 A. Page 1 at the top.  
11 Q. Okay. And then, this is Page 2?  
12 A. This is Page 2 of them, but Page 3 of  
13 SHAW.  
14 Q. Okay. Just for our -- the sake of  
15 clarity, we're going to make the second page, which  
16 is Page 3 of SHAW -- we're going to make that Exhibit  
17 No. 8; is that fair?  
18 A. Yes.  
19 (Exhibit-8 marked for identification.)  
20 Q. All right. So you -- you would have  
21 looked at 7 and 8?  
22 A. Yes.  
23 Q. Does 7 and 8 contain a date on them now?  
24 A. Yes.  
25 Q. What date does it show?

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1 A. I pulled these August 1st of 2013.  
2 Q. Do you believe that anything substantive  
3 changed in SHAW between August 1st, 2013, and  
4 February 2012?  
5 A. No.  
6 Q. Okay. Where is the original loan amount?  
7 A. Original amount, 182,7-.  
8 Q. Okay. Where is the actual loan, the loan  
9 balance?  
10 A. Current loan balance, 176- -- or  
11 \$176,879.20.  
12 Q. What is this \$180,000 proceeds amount?  
13 A. It's the amount financed.  
14 Q. How can the amount financed be less than  
15 the original amount?  
16 A. The original amount is including the  
17 \$2700 loan origination fee.  
18 Q. Don't you think that the 2700 origination  
19 fee was actually part of the 180- and not separate  
20 from?  
21 A. It should not have been part of the 180-.  
22 Q. But it -- okay. Now, you also brought  
23 the HUD, which back in those days only had two pages,  
24 right?  
25 A. Yes.

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1 Q. We're going to mark the HUD as Exhibit 9.  
2 And we know this was documents that your attorneys  
3 have already handed over, because it's Wells Fargo 19  
4 and Wells Fargo 20.  
5 (Exhibit-9 marked for identification.)  
6 A. Yes.  
7 Q. I'm going to hand you the HUD. Do you  
8 know how to read HUD?  
9 A. Yes.  
10 Q. Did you take a closing or residential  
11 real estate course at Santa Fe --  
12 A. Residential --  
13 Q. -- as part of your paralegal training?  
14 A. Residential real estate, yes.  
15 Q. Did you do HUD as part of that?  
16 A. I don't remember.  
17 Q. Were you taught to do HUDs? When did you  
18 learn to do HUDs?  
19 A. It would have been through the bank, I  
20 believe.  
21 Q. When I say HUD, I mean U.S. Department of  
22 Housing and Urban Development settlement statements.  
23 They're a standard government form that's to be used  
24 in all transactions, correct?  
25 A. Yes.

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1 Q. Okay. So you've learned how to read  
2 them?  
3 A. Yes.  
4 Q. Where is the -- whose column is whose?  
5 A. So this would be the borrower's column,  
6 and this would be the seller's.  
7 Q. What's the loan amount?  
8 A. \$180,000.  
9 Q. And you're referring to Page 2, right?  
10 A. Yes.  
11 Q. Then it has -- where is the 2700?  
12 A. Paid from borrower's funds at settlement.  
13 Q. So that means it was part of the one  
14 hundred -- the 180-, correct?  
15 A. Yes.  
16 Q. Okay. So right here, SHAW is wrong on  
17 Exhibit 7?  
18 A. No.  
19 Q. Why is SHAW not wrong? Why doesn't the  
20 HUD trump SHAW?  
21 A. The HUD appears to be incorrect.  
22 Q. The HUD was signed and accepted by  
23 everybody. It's the closing document. SHAW is  
24 incorrect, don't you agree?  
25 MS. BAKER: Object to the form.

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1 MR. VARNADO: Thanks.  
2 BY MR. VARNADO:  
3 Q. You can answer.  
4 A. We believe a mistake was made by the  
5 closing attorney and including the \$2700 in -- for  
6 loan origination fee.  
7 Q. How do you know that?  
8 A. Because it shouldn't have been included.  
9 Q. I know. But how do -- how do you know  
10 that? The first time you picked up this file was  
11 when you were asked to do the loan -- the lost note  
12 affidavit. Then the next time you picked the file up  
13 was when you were notified that I was seeking to take  
14 your deposition. How do you know that the closing  
15 attorney messed up?  
16 A. We -- I discussed the account with our  
17 research group.  
18 Q. Okay. Who did you discuss it with at  
19 research?  
20 A. Darlene Lella.  
21 Q. Okay. And who was Ms. Lella? What did  
22 she do at the research group?  
23 A. I don't know what her exact title is, but  
24 she works in the servicing research group.  
25 Q. So even though the HUD shows that the

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1 2700 on Page 2 of the HUD was paid out of the  
2 borrower's share of the 180-, y'all just consider  
3 that incorrect, and, therefore, you're going with  
4 what you put in SHAW; is that fair?  
5 A. I go by what is in SHAW, correct.  
6 Q. Okay. Even when SHAW disagrees with the  
7 HUD-1, that doesn't matter?  
8 MS. BAKER: Same objection.  
9 Q. You can answer.  
10 A. I did not see the HUD when I executed the  
11 lost note affidavit.  
12 Q. I thought it was part of CLIPR?  
13 A. It is.  
14 Q. And you said you looked at the CLIPR  
15 stuff as part of that.  
16 A. Yes.  
17 Q. But you didn't look at the HUD --  
18 A. I --  
19 Q. -- you didn't study it?  
20 A. No, I did not study the HUD.  
21 Q. Okay. I'm going to mark Exhibit No. 10,  
22 the First Union adjustable rate loan information  
23 statement.  
24 (Exhibit-10 marked for identification.)  
25 A. Yes.

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1 Q. Is that part of CLIPR, too?  
2 A. Yes.  
3 Q. Would that have been a document you would  
4 have studied as you did the lost note affidavit in  
5 order to confirm whether the information was correct?  
6 A. I would not have studied it, no.  
7 Q. Because you had SHAW, right?  
8 A. Correct.  
9 MR. VARNADO: Madam Court Reporter, do  
10 you mind if I do the stickers? Thank you.  
11 Exhibit No. 11.  
12 (Exhibit-11 marked for identification.)  
13 BY MR. VARNADO:  
14 Q. These documents that you brought with you  
15 today are documents you downloaded -- let me start  
16 over again.  
17 You actually -- I'm going to show you  
18 what's been marked as Exhibit No. 11. And it is a  
19 copy of the negotiable promissory note, right?  
20 A. This is a copy of, yes.  
21 Q. That's not a document you downloaded from  
22 CLIPR; that's a document that you received from your  
23 attorney, right?  
24 A. Yes.  
25 Q. Because it's got the Wells Fargo Bates

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1 stamp on the bottom --  
2 A. Yes.  
3 Q. -- right?  
4 So you really didn't download that one  
5 from CLIPR, because that one doesn't have a Page 5,  
6 does it?  
7 A. It -- I did not personally pull this one,  
8 no.  
9 Q. So that's not -- that's not the real  
10 CLIPR version of the promissory note?  
11 A. I don't -- I don't know.  
12 Q. Okay. When you were getting ready for  
13 today and you looked at CLIPR, did you see Page 5 on  
14 the CLIPR version?  
15 A. I don't recall if I did or not?  
16 Q. Wouldn't that be important to you?  
17 Because you know that that's something that's  
18 supposed to be there?  
19 MS. BAKER: Asked -- objection. Asked  
20 and answered.  
21 MR. VARNADO: You know you're not  
22 supposed to coach the witness, so --  
23 MS. BAKER: I'm not coaching.  
24 MR. VARNADO: -- just object to the form  
25 of the question, please.

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1 BY MR. VARNADO:  
2 Q. Isn't that something that you would have  
3 looked at or looked for or wanted to know about?  
4 A. I would have looked at the note. I don't  
5 recall if there was a Page 5 or not. Sometimes the  
6 sticker is on the front page of the note. I don't  
7 know. I don't recall.  
8 Q. Okay. That's not the -- the real note  
9 that was found, either, is it?  
10 A. This is a copy. So, no, it's not the  
11 original note.  
12 (Exhibit-12 marked for identification.)  
13 Q. Okay. Exhibit 12 is the mortgage. Here  
14 we go. Before we get to this, is this the mortgage?  
15 A. This is an unrecorded copy of the  
16 mortgage. Or no, here's the recording.  
17 Q. It's the recordation on it.  
18 A. Yeah, here it is.  
19 Q. Again, this is something that you got  
20 from your lawyers, not from CLIPR?  
21 A. Correct.  
22 Q. Because the Wells Fargo Bates stamp is on  
23 the bottom?  
24 A. Yes.  
25 Q. Okay. This is part of your file. This

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1 is -- that you brought today. Again, it came from  
2 your attorneys, because it's got a Wells Fargo  
3 sticker on it -- I mean, a Wells Fargo Bates stamp.  
4 I'm naming it Exhibit No. 13. What is this?  
5 MS. BAKER: Just for the record, can you  
6 name the Bates number there, please?  
7 MR. VARNADO: WF 16.  
8 BY MR. VARNADO:  
9 Q. We've marked this as Exhibit 13 to your  
10 deposition. It's Bates-stamped WF 16. Does it go  
11 with any of the exhibits that we previously  
12 discussed?  
13 A. I believe it goes to the mortgage.  
14 Q. Okay. Is it --  
15 A. 8 --  
16 Q. Oh, because it's got --  
17 A. 1 of 8.  
18 Q. -- Page 1 of 8?  
19 Okay. I'm going to take the exhibit --  
20 MR. VARNADO: Counsel, with your  
21 permission, I'm going to not have this be  
22 Exhibit 13.  
23 MS. BAKER: That's fine, yeah.  
24 BY MR. VARNADO:  
25 Q. Okay. So we're going to append WF 16 to

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1 Exhibit No. 12, again WF 9.  
2 Okay. More screen shots. Or do these go  
3 together? Do they go with the previous exhibit?  
4 There's three documents I'm handing to you.  
5 A. This --  
6 Q. Now, these look like you --  
7 A. -- goes with those two right there.  
8 Q. These two on top?  
9 A. On the bottom.  
10 Q. What about this?  
11 A. That is --  
12 Q. Goes here?  
13 A. Goes here.  
14 Q. All right. We'll make this Exhibit 13  
15 that's in your hand. Can you describe for me, ma'am,  
16 what is in Exhibit 13, what it is?  
17 (Exhibit-13 marked for identification.)  
18 A. These are updated payoff figures good  
19 through the day of today, as well as screen shots  
20 showing where these figures came from.  
21 Q. Let me see that, please. While I look  
22 these over, can you tell me where these go?  
23 A. This one is First Union itemization of  
24 amount financed. This is -- shows that the late  
25 charge maximum set to the account was \$10 per

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1 charge --  
2 Q. Okay.  
3 A. -- 120 per year.  
4 Q. All right. Which one should we make 14,  
5 the First Union document?  
6 A. Sure.  
7 (Exhibit-14 marked for identification.)  
8 Q. What's this?  
9 A. That's the itemization of amount  
10 financed.  
11 Q. Now, on Exhibit No. 14, I'm going to  
12 again point out to you that it says the amount  
13 financed is \$180,000. That's -- and that is a bank  
14 document prepared by First Union for 180,000. But  
15 that is inconsistent with SHAW. Would you agree  
16 with --  
17 A. No. It's a total of items 1 through 4,  
18 182,700.  
19 Q. But the amount financed at the bottom,  
20 the last, is \$180,000?  
21 A. Correct. SHAW says amount financed,  
22 180,000.  
23 Q. Okay. Where did 13 get off to?  
24 A. You took it off.  
25 Q. There it is.

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1 A. Sorry.  
2 (Exhibit-15 marked for identification.)  
3 Q. You described that as a \$10 late fee?  
4 A. Yes. This shows that the late charge --  
5 the maximum amount per charge for the late charge was  
6 \$10 per charge, \$120 per year.  
7 Q. Where is that in the note that allows you  
8 to do that?  
9 A. The note gives us the authority to charge  
10 a late charge up to 5 percent.  
11 Q. Show me where that is in the note.  
12 A. If you receive any payment 15 days or  
13 more after the due date, I agree to pay you a late  
14 charge of 5 percent of my payment.  
15 Q. Not less than 5 percent or up to 5  
16 percent, correct?  
17 A. It's a benefit to your customer or to  
18 your client that it was only \$10.  
19 Q. Do you know if other late fees were --  
20 were charged and assessed? Do you know if other late  
21 fees were charged and assessed?  
22 A. There were multiple late fees charged to  
23 this account throughout the life of the loan.  
24 Q. More than \$10?  
25 A. It was \$10 per charge.

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1 Q. What about -- do you think the 5 percent  
2 was charged, too?  
3 A. No.  
4 Q. You're sure?  
5 A. Not that I've seen, it was not.  
6 Q. Because it's not on SHAW?  
7 A. Correct.  
8 Q. Because SHAW controls, right?  
9 MS. BAKER: Asked and answered.  
10 A. SHAW is the system of record.  
11 Q. Right. So it's the one that you rely  
12 on --  
13 A. Yes.  
14 Q. -- to do the lost note affidavit in your  
15 testimony today, correct?  
16 A. Yes.  
17 Q. Okay. All right. Now, we have the SHAW  
18 transaction history. And it is a 14-page document.  
19 And we're going to make that Exhibit No. 16. All  
20 right.  
21 (Exhibit-16 marked for identification.)  
22 MS. BAKER: For the record, what was  
23 Exhibit 15, please?  
24 MR. VARNADO: Exhibit 15 is this  
25 document.

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1 MS. BAKER: Okay.  
2 MR. VARNADO: We're going to lay them out  
3 here because they're going to get all messed up  
4 otherwise.  
5 BY MR. VARNADO:  
6 Q. All right. Let me ask you this, I'm  
7 going to hand you this 14-page exhibit. I assume you  
8 reviewed this before this morning, correct?  
9 A. Yes.  
10 Q. Okay. This is from SHAW, right, this  
11 14-page document?  
12 A. It's from CRIS.  
13 Q. I'm sorry. It is from CRIS, but it shows  
14 SHAW transactions, correct?  
15 A. Yes.  
16 Q. Do you consider it to be authoritative in  
17 the same manner that SHAW information is  
18 authoritative?  
19 A. The information contained in this payment  
20 history is pulled from SHAW. So, yes.  
21 Q. And you would consider it to be  
22 correct --  
23 A. Yes.  
24 Q. -- right?  
25 Okay. I'm going to ask you to explain

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1 some things that I just don't understand. If you can  
2 help explain them for me as a bank officer, someone  
3 who has prepared for this and understands how this  
4 information is generated. This would have been very  
5 similar to the information you looked at when you did  
6 the lost note affidavit in 2012, correct?  
7 A. I didn't look at the payment history in  
8 2012 --  
9 Q. Okay.  
10 A. -- for the lost note affidavit.  
11 Q. Fair enough. So you didn't look at the  
12 CRIS information 2012. But you did look at it in  
13 preparation for today, right?  
14 A. Yes.  
15 Q. Does anything in here give you pause or  
16 say this can't be accurate or correct?  
17 A. No.  
18 Q. You know how to read it. You've already  
19 told me that you understood how these bank documents  
20 work and how they go together, correct?  
21 A. Yes.  
22 Q. And that was part of the lost note  
23 affidavit, right?  
24 Okay. What is the loan -- the actual  
25 loan amount? Not the original, but what's been

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1 loaned.  
2 A. The current balance is \$176,879.20.  
3 Q. Do you mind if I take this back real  
4 quick?  
5 A. Yes.  
6 Q. All right. And then what was the -- this  
7 column over here on the far right in the column  
8 section. It says Prim Balance. That means primary  
9 balance, correct?  
10 A. Principal balance.  
11 Q. Principal balance, rather. I'm sorry,  
12 Prin. What is that, principal balance?  
13 A. As of this date, October 6th, 2010, that  
14 was the amount of the principal balance.  
15 Q. Okay. And then this document is the  
16 first page, right, the statement summary? And then  
17 the next page of it, Page 2 of 14, goes back to  
18 3/12/2002, correct?  
19 A. Yes.  
20 Q. And what is its principal balance?  
21 A. That says 179,576.34.  
22 Q. So that was the principal balance?  
23 A. No.  
24 Q. Well, why is that wrong?  
25 A. It's not wrong. When First Union and

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1 Wachovia merged, I don't know why, but for whatever  
2 reason, the tallying of the principal balance didn't  
3 convert over to the -- whatever the converted systems  
4 were. If you add all payments up until the time of  
5 the merger and the first time of the principal  
6 balance -- again, if you add all the principal paid,  
7 you'll get this 179,576.34 from the 182,7-.  
8 Q. But this is a -- this is a -- this is a  
9 CRIS document, right? It's a Wells Fargo document.  
10 It says the principal balance at the time of the  
11 first payment was 179-, which is not the amount  
12 loaned, nor the amount of the -- that was on the  
13 note, however you describe it, correct?  
14 A. Yes.  
15 Q. And then it has zeros. What's this zero  
16 balance? How can it be a zero balance?  
17 A. I just explained that to you.  
18 Q. Okay. I didn't understand it. I'm  
19 asking you a new question, the zero balance. Can you  
20 explain it one more time, then?  
21 A. When Wachovia and First Union merged, for  
22 some reason, the tallying of the principal balance  
23 after these payments were made --  
24 Q. Uh-huh.  
25 A. -- did not come through.

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1 Q. Okay. Do you believe this to be an  
2 accurate document?  
3 A. Yes.  
4 Q. Subject to what you've just described --  
5 A. Yes.  
6 Q. -- do you believe this to be an accurate  
7 document? Do you believe this document is in any way  
8 tampered with?  
9 A. Not to my knowledge.  
10 Q. Okay. And who -- who would be able to  
11 even go into CRIS to make changes like that; do you  
12 even know?  
13 A. I believe our servicing department has  
14 that capability.  
15 Q. Okay. Well, let me ask you this -- we're  
16 going to go back to Exhibit No. 3, if you don't mind  
17 me giving it to you. This is sort of the same thing,  
18 isn't it? This is a CRIS document --  
19 A. Yes.  
20 Q. -- Exhibit No. 3, produced by your  
21 attorneys here. Okay? Does it sort of have the same  
22 information that's here on this SHAW transaction,  
23 Exhibit No. 16?  
24 A. Essentially, yes.  
25 Q. Essentially. Okay. But -- and doesn't

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1 it, down here at the bottom, say -- what's that first  
2 date? Can you read that for me? My eyesight is  
3 poor.  
4 A. May 26th, 2002.  
5 Q. Now, did that correspond to Exhibit 16,  
6 Page 2 of 14?  
7 A. May 26th, 2002, right here.  
8 Q. Okay. Now, this has principal balances  
9 on it.  
10 A. Yes.  
11 Q. How does that -- how did that happen?  
12 A. I don't know.  
13 Q. Did you change it?  
14 A. I did not pull that document, so I have  
15 no idea.  
16 Q. This is a document produced by your  
17 counsel. Have you ever seen this document before?  
18 This is a CRIS statement.  
19 A. I have seen it before. I did not pull  
20 this document. I did not alter this document.  
21 Q. How do you explain the discrepancy  
22 between this document and Exhibit 14?  
23 A. I don't know.  
24 Q. You're a bank officer, and you can't tell  
25 me, sitting here today, why Exhibit 3 is different

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1 than Exhibit 14, even though they describe the same  
2 loan?  
3 A. I don't want to speculate.  
4 Q. I'm asking you to tell me why they're  
5 different.  
6 MS. BAKER: I believe this question is  
7 asked twice and she answered.  
8 MR. VARNADO: That's all right. I can  
9 ask it again. And you cannot coach her.  
10 MS. BAKER: I'm not coaching. And I  
11 think I'm objecting to that comment on the  
12 video, as well.  
13 BY MR. VARNADO:  
14 Q. What was the interest rate on the loan,  
15 the original interest rate that would have been  
16 charged at the get-go?  
17 A. 4.99 percent.  
18 Q. I'm going to show you Exhibit No. 3.  
19 Does that have an interest rate at the beginning of  
20 the loan of 4.99 percent?  
21 A. No. It says 4.49 percent.  
22 Q. That's incorrect, isn't it?  
23 A. It appears to be.  
24 Q. Why is there a 4.49 percent there?  
25 A. Actually, the note was signed in March of

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1 2002. The interest rate can change every month, so  
2 the interest rate could very well have been 4.49  
3 percent at that time.  
4 Q. It's your contention that the interest  
5 rate is variable monthly on this note?  
6 A. Yes, it is.  
7 Q. And you think that it changed?  
8 A. It's possible.  
9 Q. Is that what happened, though? You're  
10 the one who has been studying this. You're the one  
11 who prepared the lost note affidavit. These are bank  
12 records. Is that what happened?  
13 A. I don't know. I didn't look at that.  
14 Q. Who prepared -- when you did your  
15 research, who created this document, Exhibit No. 3?  
16 A. I don't know.  
17 Q. Doesn't it usually have the name of the  
18 creator on it?  
19 A. No.  
20 Q. Do you know a woman named Helen Arnold?  
21 A. The name sounds familiar, yes.  
22 Q. Do you know -- if the name is familiar,  
23 how would -- where would you place it?  
24 A. Servicing in Roanoke.  
25 Q. So the -- so you think the interest rate

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1 might have changed, but it stayed static for -- until  
2 July 14th of 2003, and the principal balance is  
3 different than what you have here in the history of  
4 Exhibit 14?  
5 A. The interest rate changed August 1st of  
6 2003. Again, though, if you subtract the amount that  
7 went towards principal through each of these payments  
8 from 182,7-, you will get this 179,576.34.  
9 Q. That's not describing, though, the loan  
10 that Mr. Bentrin signed, is it?  
11 A. Yes, it is.  
12 Q. Y'all have changed the numbers different  
13 than the promissory note, correct?  
14 A. No.  
15 Q. Then how is there a difference between  
16 Exhibits 3 and 14, other than someone went in and  
17 manually changed CRIS?  
18 A. Again, I did not pull Exhibit 3. I  
19 pulled Exhibit 16.  
20 Q. I'm asking you, do you have any knowledge  
21 of why Exhibit 3 is different than Exhibit 14?  
22 A. No.  
23 Q. Can you explain how it could have  
24 happened?  
25 A. I don't know. I was not there. I don't

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1 want to speculate.  
2 Q. You have averred in your lost note  
3 affidavit and you've testified consistently that --  
4 today that you understand how all the documents of  
5 the bank work together. I'm asking you point blank,  
6 how is it possible for Exhibit 3 and Exhibit 14 to be  
7 at such discrepancy when they're purportedly showing  
8 the same loan?  
9 MS. BAKER: Again, asked and answered.  
10 Q. I've asked it a different way.  
11 A. You can ask it five times a different  
12 way, and each time my answer will be I don't know. I  
13 did not pull that document. I do not want to  
14 conclude something that may not be correct.  
15 Q. Did someone in another office change  
16 CRIS?  
17 A. I don't know.  
18 Q. Okay. Did anyone in your office change  
19 CRIS?  
20 A. I don't know.  
21 Q. Did you change CRIS?  
22 A. No.  
23 Q. Someone changed CRIS, though, correct?  
24 A. I don't know.  
25 THE VIDEOGRAPHER: Five minutes on the

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1 tape.  
2 MR. VARNADO: Let's take a break.  
3 THE VIDEOGRAPHER: We're off the record  
4 at 2:04 p.m.  
5 (Break taken)  
6 THE VIDEOGRAPHER: We're back on the  
7 record at 2:11 p.m.  
8 BY MR. VARNADO:  
9 Q. Back to Exhibit No. 3. This is a CRIS  
10 document, correct?  
11 A. Yes.  
12 Q. So it's supposed to be accurate, correct?  
13 A. Yes.  
14 Q. By the same token, it's not supposed to  
15 be inaccurate, right?  
16 A. Correct.  
17 Q. You're supposed to be able to rely on it,  
18 correct?  
19 A. Yes.  
20 Q. Okay. I'm going to draw your attention  
21 down to the bottom third of the page, Loan amount.  
22 Can you read what number that is?  
23 A. \$179,576.34.  
24 Q. So that is the correct loan amount,  
25 correct?

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1 A. No.  
2 Q. Why is that incorrect?  
3 A. I don't know.  
4 Q. Why are you sure that it's wrong?  
5 A. Because the note says that the original  
6 balance was \$182,700.  
7 Q. These transaction reports, 3 and 14, are  
8 not describing the note, are they?  
9 A. Yes, they are.  
10 Q. They are not accurate to the note, are  
11 they?  
12 A. Yes, they are.  
13 Q. When I asked you about the zero balances  
14 through September of 2003, your testimony is that  
15 that was a computing error?  
16 A. No.  
17 Q. What is -- what explains the zero  
18 balances again?  
19 A. When First Union and Wachovia merged, for  
20 some reason, the principal balance tallying in the  
21 system of record did not come through.  
22 Q. Okay. Then how did it come through in  
23 Exhibit No. 3?  
24 A. Again, I did not pull that document. I  
25 did not alter that document. I don't know how it got

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1 there, and I don't want to speculate as to how it  
2 could have been done.  
3 Q. Who pulled the document?  
4 A. I don't know.  
5 Q. Is it speculation to ask you what  
6 business practices would be legitimate business  
7 practices that would result in being interest  
8 calculations and -- and balance amounts being  
9 included which are different between 3 and 4 -- I  
10 mean, 3 and 14?  
11 A. Can you say that again?  
12 Q. Sure. Isn't there some legitimate  
13 explanation for why 3 and 14 are different?  
14 A. I'm sure there is.  
15 Q. Okay. Are you aware of any legitimate  
16 explanation for why 3 and 14 are different that is  
17 not speculation, but based on your experience as a  
18 bank officer and somebody who's familiar with these  
19 documents and aver that she was familiar with these  
20 documents in the lost note affidavit?  
21 MS. BAKER: I'm going to object to form.  
22 A. Again, I don't want to speculate.  
23 Q. I'm not asking you to speculate. I'm  
24 asking you what are the legitimate business reasons  
25 which would explain the discrepancy between 3 and 14.

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1 A. Probably to make it more customer  
2 friendly to edit this column instead of showing zero  
3 balances.  
4 Q. Then how would it be customer friendly to  
5 look at Page 2 of 14 of Exhibit 16 and the interest  
6 payments are different in these columns between 3 and  
7 14?  
8 A. I don't know.  
9 Q. Which one is right, 3 or 14?  
10 A. I don't know.  
11 Q. I'm asking you under oath which one  
12 accurately reflects the Bentrin loan more correctly,  
13 3 or 14?  
14 A. The original interest rate was 4.99  
15 percent. The interest rate can change on a monthly  
16 basis, based on the Wall Street Journal index.  
17 Q. What are those documents? Are those part  
18 of Exhibit --  
19 A. Those are a part of --  
20 Q. -- 16?  
21 A. -- 16, yes.  
22 Q. All right.  
23 A. It appears, based on the interest rate  
24 change history, the interest rate did not change  
25 until, I believe, August 1st, 2004.

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1 Q. Well, you have -- your attorneys have  
2 given me Exhibit 3 and you have brought me Exhibit  
3 16, and they are both supposed to show the same loan.  
4 Is that correct, yes or no?  
5 A. Yes.  
6 Q. And they differ not only on primary  
7 balance, but they diff- -- back in 2002, but they  
8 also differ on the interest rate amount, correct?  
9 Because you can see the interest rate amount here is  
10 4.99, which is consistent with the note; yet Exhibit  
11 3 has 4.49, which is almost half a point --  
12 A. Yes.  
13 Q. -- which I assume for a bank is a big  
14 deal, correct?  
15 MS. BAKER: Object to form.  
16 Q. Isn't it a big deal to get -- be off .5?  
17 A. Yes.  
18 Q. Okay. So of these documents, which one  
19 is more accurate, 3, 16 or neither?  
20 A. I would say that they're -- they're both  
21 accurate. They're just a little different. I  
22 don't -- I don't know. All I can tell you is I  
23 pulled this document, this document pulled from the  
24 transaction records in SHAW.  
25 Q. You pulled SHAW, right?

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1 A. I pulled CRIS.  
2 Q. You pulled CRIS, right. I got it.  
3 All right. Back to 16 with the 0.00  
4 principal balances. Whatever problem there was was  
5 rectified when? What -- from looking at CRIS, can  
6 you tell me which -- what month? Was it September of  
7 '03?  
8 A. September 2nd, 2003, the principal  
9 balance is listed as 179,576.34.  
10 Q. Okay. So that -- whatever that error was  
11 is now no longer rectified; is that correct?  
12 A. There wasn't an error. It just -- it  
13 didn't -- for whatever reason, it didn't come over.  
14 Q. Okay. Whatever -- no editorial. It  
15 didn't come over, and now it's over; is that --  
16 A. Yes.  
17 Q. Okay. Now, that would have been back  
18 during the ACLS days, right?  
19 A. ACLS was a Wachovia loan system, yes.  
20 Q. So that would have been -- ACLS would  
21 have described the same thing, correct?  
22 A. Yes.  
23 Q. Okay. We have ACLS back here, don't we,  
24 which is Exhibit No. 4?  
25 A. Yes.

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1 Q. The first thing is loan established,  
2 179,576.34, correct?  
3 A. Yes.  
4 Q. So that's the loan amount, right,  
5 according to ACLS?  
6 A. That, again, is the loan amount at the  
7 conversion from First Union to Wachovia.  
8 Q. Okay. We were looking back at Exhibit  
9 No. 16, and I was curious about a charge on  
10 12/18/2006 -- December 18th, 2006. This is on Page 6  
11 of 14 of Exhibit 16, \$225. Do you know what that is  
12 in reference to? Can you -- sitting here today, can  
13 you tell me what that's about?  
14 A. No, I don't know what that is.  
15 Q. Does that look like a penalty, a late  
16 fee?  
17 A. I don't know what it is.  
18 Q. This loan was never sold, right?  
19 A. Correct.  
20 Q. Except it was sold?  
21 A. No, it wasn't.  
22 Q. Okay. I'm looking at the ALCS [sic]  
23 printout, Exhibit 4, provided by your counsel. The  
24 document begins WF 159. I'm looking at Page WF 1  
25 I'm going to draw your attention to November of 2006.

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1 A. Okay.  
2 Q. 11/29/06, Trans Code 35995174504.20, Loan  
3 sold to pool.  
4 A. I don't know. I can tell you that it --  
5 it wasn't. I don't know why this line item is there,  
6 but it was never sold.  
7 Q. How do you know it wasn't sold, other  
8 than SHAW doesn't -- you told me earlier you know  
9 it's not sold because it's still in SHAW.  
10 A. Correct. So it wasn't in -- if it was  
11 sold, we wouldn't still have it in our -- in our  
12 records.  
13 Q. Is this ACLS wrong?  
14 A. I don't know why that line item is there.  
15 Q. Other than it actually got sold?  
16 A. It was not sold.  
17 Q. The only way you know it's not sold is  
18 that it's still in SHAW, correct?  
19 A. Correct.  
20 Q. All right.  
21 A. It's still in SHAW, and we still had the  
22 original loan documents in the vault at that time.  
23 Q. How do you know? Did you look back at  
24 the vault records in '06, the vault log on ECaR?  
25 A. From my understanding, the loan documents

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1 were not checked out until Randy checked them out in  
2 February of 2009.  
3 Q. What if he sold the paper without  
4 transferring the note? How would you know? It's  
5 before -- it's right around the time you started.  
6 You were a -- you were a temp.  
7 A. The note follows the mortgage.  
8 Q. You say it like it's a fact, but how do  
9 you know that that's not what happened in this case?  
10 Because you have ACLS saying it sold for \$174,000.  
11 MS. BAKER: I'm going to object again to  
12 form.  
13 MR. VARNADO: Thank you.  
14 A. It was not sold.  
15 BY MR. VARNADO:  
16 Q. What if it was sold to a REMIC and then  
17 came back, is that possible? And that's why it's in  
18 SHAW and that's why you know about it?  
19 A. I've not seen that happen. That would be  
20 a first.  
21 Q. But -- so you're not aware that banks  
22 have bought back nonperforming or allegedly  
23 nonperforming instruments from -- sold to REMIC  
24 trustees? You don't know that?  
25 A. Why would we buy back a nonperforming

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1 loan if we've sold it already?  
2 Q. If you don't know the answer to that  
3 question, that means you don't -- you're not familiar  
4 with that -- that process, that that happens.  
5 MS. BAKER: Objection. Is there a  
6 question?  
7 MR. VARNADO: Yeah. And you're again  
8 trying to interfere with my questions.  
9 MS. BAKER: I'm not --  
10 MR. VARNADO: I'd please ask you not to  
11 do that.  
12 MS. BAKER: I'm objecting --  
13 MR. VARNADO: I did ask a question.  
14 MS. BAKER: -- just for the video.  
15 MR. VARNADO: Thank you. Your objection  
16 for the video is irrelevant since you're trying  
17 to interfere with my deposition.  
18 MS. BAKER: I think that should be --  
19 BY MR. VARNADO:  
20 Q. I'm going to ask you that question --  
21 MS. BAKER: -- that comment should be  
22 struck, because I'm not trying to interfere with  
23 your deposition.  
24 Q. I'm asking you again, do you know that  
25 banks have bought back allegedly nonperforming

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1 instruments from REMICs or trustees who are holding  
2 them in securitized bundles?  
3 A. No.  
4 Q. Again, you're relying on SHAW? SHAW  
5 controls your testimony, correct?  
6 A. Yes, I'm relying on our system of record.  
7 Q. Okay. And you have no explanation for  
8 the 11/29/06 sale for \$174,000?  
9 A. I have no information regarding that line  
10 item.  
11 Q. Which is part of your system of records?  
12 A. Yes. It was part of the ACLS system.  
13 Q. Okay. Which was -- after September 2003  
14 was accurate, correct?  
15 A. It's supposed to be, yes.  
16 MR. VARNADO: Okay. All right. We are  
17 going to do this. We'll go off the record.  
18 THE VIDEOGRAPHER: We're off the record  
19 at 2:25 p.m.  
20 (Break taken)  
21 THE VIDEOGRAPHER: We're back on the  
22 record at 2:29 p.m.  
23 MR. VARNADO: Ms. Thomas, thank you for  
24 your time and attention today. I appreciate it.  
25 I have no further questions at this time.

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1 MS. BAKER: I have no questions.  
 2 MR. VARNADO: And that concludes the  
 3 deposition, then.  
 4 THE VIDEOGRAPHER: This concludes the  
 5 deposition of Ms. Tracy Thomas on August the  
 6 6th, 2013, at 2:29 p.m.  
 7 (Deposition concluded at 2:29 p.m.)  
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1 REPORTER'S DEPOSITION CERTIFICATE  
 2  
 3 STATE OF FLORIDA)  
 4 COUNTY OF DUVAL )  
 5  
 6 I, Richetta R. Bright, Registered  
 7 Professional Reporter, certify that I was authorized  
 8 to and did stenographically report the deposition of  
 9 TRACY THOMAS; that a review of the transcript was  
 10 requested; and that the transcript is a true and  
 11 complete record of my stenographic notes.  
 12  
 13 I further certify that I am not a relative,  
 14 employee, attorney, or counsel of any of the parties,  
 15 nor am I a relative or employee of any of the  
 16 parties' attorney or counsel connected with the  
 17 action, nor am I financially interested in the  
 18 action.  
 19  
 20 DATED this 16th day of August 2013.  
 21  
 22 *Richetta R. Bright*  
 23 Richetta R. Bright, RPR  
 24  
 25

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1 CERTIFICATE OF OATH  
 2  
 3 STATE OF FLORIDA)  
 4 COUNTY OF DUVAL )  
 5  
 6 I, the undersigned authority, certify  
 7 that TRACY THOMAS personally appeared before me and  
 8 was duly sworn on August 6, 2013.  
 9  
 10 WITNESS my hand and official seal this 16th  
 11 day of August 2013.  
 12  
 13  
 14  
 15 *Richetta R. Bright*  
 16 Richetta R. Bright, RPR  
 17 Notary Public, State of Florida  
 18 My Commission No: EE 020293  
 19 My Commission Expires: September 9, 2014  
 20  
 21  
 22  
 23  
 24  
 25

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1 DEPOSITION ERRATA SHEET  
 2 Our Assignment No. 384624  
 3 Case Caption: Bentrin vs. Wells Fargo  
 4  
 5 DECLARATION UNDER PENALTY OF PERJURY  
 6 I declare under penalty of perjury  
 7 that I have read the entire transcript of  
 8 my Deposition taken in the captioned matter  
 9 or the same has been read to me, and  
 10 the same is true and accurate, save and  
 11 except for changes and/or corrections, if  
 12 any, as indicated by me on the DEPOSITION  
 13 ERRATA SHEET hereof, with the understanding  
 14 that I offer these changes as if still under  
 15 oath.  
 16 Signed on the \_\_\_\_\_ day of  
 17 \_\_\_\_\_, 20\_\_\_\_.  
 18  
 19 Tracy Thomas  
 20  
 21  
 22  
 23  
 24  
 25





1 (Hearing commenced.)

2 MR. VARNADO: Yes, Your Honor?

3 THE COURT: Pretrial hearing for discovery.

4 MS. BAKER: Your Honor, if I may, today we're  
5 here, I believe, for Mr. Bentrin's Motion to  
6 Compel. It was my understanding that today the  
7 only issue to go forward was with discovery. I'm  
8 looking at Mr. Varnado's Motion to Compel filed in  
9 March, March 18, 2013.

10 The only issue that we did not have  
11 resolved was the issue regarding an EIN request  
12 to Wells Fargo. It was my understanding that  
13 we had no other issues.

14 I tried to meet many times with  
15 Mr. Varnado before today. We were able to meet  
16 yesterday at 3:30 -- excuse me, 2:30. At 2:30  
17 I get a list of ten items that Mr. Varnado is  
18 seeking.

19 I have not had time to discuss whether my  
20 client's willing to produce these ten items,  
21 whether I can get the ten items, whether we  
22 have objections to the ten items, and whether  
23 even these ten items were even requested  
24 formally in discovery.

25 So I just wanted to point that out to the

1 Court's attention.

2 THE COURT: According to my Order discovery  
3 is still outstanding. So, Mr. Varnado, let's  
4 address the one, then tell me about the others.

5 MR. VARNADO: Your Honor, I'm sorry, I didn't  
6 quite follow you. I apologize. The one, the  
7 EIN --

8 THE COURT: Yes. You have a request for  
9 something?

10 MR. VARNADO: Judge, I just disagree with my  
11 colleague about what's before you. My Motion to  
12 Compel actually encapsulated a previous Motion to  
13 Compel filed by my predecessor counsel, Mr. Sloan.  
14 And that was filed in January of '11 and it  
15 resulted in an agreement with Wells Fargo's  
16 counsel that there would be a confidentiality  
17 order, and it was the Plaintiff's understanding  
18 the entry of that confidentiality order drafted by  
19 Wells Fargo counsel would open up a flow of  
20 documents, so to speak.

21 MS. BAKER: If I may, that Motion to Compel  
22 that was filed in January by Mr. Sloan, I have an  
23 email it was resolved in April of '2012. So that's  
24 why it's my understanding we only have the EIN  
25 number that's an issue before the court today.

1 Plus Mr. Varnado and I have been in  
2 contact on the phone with Mr. Laney. The issue  
3 we've been going over and over is the EIN  
4 issue. I have the email here with Carolyn  
5 Leonard --

6 THE COURT: Let me stop you right there.  
7 Let's talk about the EIN. Do we have a response  
8 to that, Mr. Varnado?

9 MR. VARNADO: No, I don't.

10 THE COURT: Ms. Baker, can you get a  
11 response? I will order a response.

12 MS. BAKER: I believe that we adequately  
13 responded to the Request To Admit. And --

14 THE COURT: I'm ordering you to produce the  
15 name of whoever the EIN is. That's my order.

16 MS. BAKER: Okay.

17 THE COURT: That's what's been asked for.  
18 That's what I'm ordering. Whoever it is, I don't  
19 know, I don't care. IRS form 1098 prepared by  
20 Wells Fargo with an EIN of 56-1948921. You-all  
21 will produce that within 15 days. Okay?

22 MS. BAKER: Okay.

23 THE COURT: And next is to admit or deny or  
24 fully answer Request For Admission, special  
25 interrogatories served December 12, 2012. Do you

1 have an issue with that, as well, Mr. Varnado?

2 MR. VARNADO: I would like Request For  
3 Admission number five was objected to, Judge.

4 MS. BAKER: We did answer it. We denied it.  
5 We objected to it. We denied it. We have the  
6 original Note in hand.

7 MR. VARNADO: Your Honor --

8 THE COURT: That was what the request was  
9 for?

10 MR. VARNADO: Yes. We all know a request for  
11 admission, denial is a denial. The remedy is  
12 later on if there is a ruling and if you see fit  
13 to.

14 THE COURT: Is there a question about the  
15 existence or validity? She says she's got it.

16 MS. BAKER: I brought it here. The original  
17 Note is with me. He looked at it yesterday. If  
18 you want to see it, Judge?

19 THE COURT: I don't need to see it.

20 MS. BAKER: It's here with me.

21 MR. VARNADO: Your Honor, then if those are  
22 the two things in my motion -- my motion also  
23 encapsulates Mr. Sloan's prior motion. And if  
24 we're going to have a discovery conference on  
25 this, Judge, I really feel like this would be a

1 good opportunity for me to explain to you what I  
2 think that Wells Fargo has not produced and what  
3 they should have produced. And I thought that I  
4 had done a yeoman's job trying to encapsulate it  
5 into ten things so that I wasn't asking my  
6 colleague to go on a wild goose chase. But we  
7 have a situation where, bluntly, I cannot proceed  
8 with either the prosecution of my case or the  
9 defense of her counterclaim without some of these  
10 documents. I can't even walk into a 30(b)(6)  
11 deposition of her client without some of these  
12 documents, and I think that they are the exact  
13 kind of thing where I'm shocked that we hadn't  
14 gotten them and I'm shocked at -- I think they are  
15 pretty simple. So I don't see that -- there is  
16 not a situation here where there has been a blind  
17 side or anything. We've got to have these  
18 documents to go forward, and with the Court's  
19 permission I would just like to take about ten  
20 minutes and explain what's going on, and if we'll  
21 have a discovery status conference then I would  
22 like that opportunity, Your Honor. I think it's  
23 fairly before you and you need to know exactly  
24 where we're coming from, I think, in order to see  
25 what we need. It's pretty simple.

1 THE COURT: One second. I'm looking at your  
2 motion of March 18 and I have ruled on the two  
3 specific matters.

4 One, I've ordered them to produce within  
5 15 days the identity, name, address and  
6 relationship with Wells of the EIN number.

7 And, two, I'm going to find that they have  
8 denied the Request To Admit. That's  
9 actually -- that's plural. Requests For  
10 Admissions and Special Interrogatories. So we  
11 hadn't got any specific items. I guess if  
12 there was something specific you were referring  
13 to, which you do -- respond completely  
14 discovery request propounded January 2, 2012.  
15 Do you have those in front of you? I'll give  
16 you ten minutes.

17 MS. BAKER: Again, it was -- that motion was  
18 closed out. It was resolved.

19 THE COURT: You have an order to that effect?

20 MS. BAKER: There is not an order but I can  
21 show you the email and the email from Mr. Sloan  
22 saying that it's -- I wrote, thanks, I will.  
23 Here's an email. Mr. Sloan informed me and  
24 authorized me to inform the Court he is  
25 withdrawing Motion to Compel. Thanks, Jana.

1 Carolyn Leonard. Thanks. I have now closed both  
2 motions within the system.

3 I have a printout from the system. It  
4 doesn't say closed. So that's why I was only  
5 prepared for EIN number. Also pursuant to Rule  
6 7(b) a motion shall state with particularity  
7 the grounds therefor.

8 This was just a general notice of motion.  
9 I get this list of ten at 2:30 yesterday?  
10 Never -- Mr. Varnado never ever discussed these  
11 with me. I haven't had time --

12 THE COURT: The list of ten you got  
13 yesterday, was that previously propounded or not?  
14 If it was not you got 30 days to respond.

15 MS. BAKER: I don't believe it was.

16 MR. VARNADO: I believe these are specific  
17 documents which we think are out there, based on  
18 other discovery we've done, Your Honor, which were  
19 encapsulated in Mr. Sloan's discovery. Our  
20 understanding was that once the confidentiality  
21 order was in place a lot of these objections would  
22 disappear and they just haven't. So, Your  
23 Honor --

24 THE COURT: Let me restate my question to  
25 Mr. Varnado. Then I need to get an answer to that

1 question, and then I'll get a reply from  
2 Ms. Baker.

3 So the ten items that you gave to her  
4 yesterday that you're specifically requesting,  
5 have those been specifically requested before  
6 in your discovery requests from 2012?

7 MR. VARNADO: To answer your question, Your  
8 Honor --

9 THE COURT: That should be a yes or no.

10 MR. VARNADO: I believe that, yes, but I will  
11 caveat by saying that I didn't send a discovery  
12 request saying I want this, this, this, this and  
13 this by name, because some of these, for instance,  
14 I didn't even know their names until I took a  
15 deposition. For instance, our discovery,  
16 Mr. Sloan asked --

17 THE COURT: All right. All right. Okay.  
18 You don't have to explain. I understand what  
19 you're saying. Now, you just got these yesterday.  
20 You're not required to respond to them today. But  
21 you are required to respond to them if they've  
22 been properly put forward. Have you looked at the  
23 list? Is that something you can produce?

24 MS. BAKER: I looked at the list yesterday.  
25 I believe some of these weren't formally

1 requested. Some of these items came up as a  
2 result of a deposition that was taken in August.  
3 So I believe if he formally sends a request to me,  
4 I can go over these with my client, see if we're  
5 objecting to them and look at it that way within  
6 the 30 days.

7 THE COURT: I will ask that you re-propound  
8 those specifically, formally; ask that you take a  
9 look at those formally. If you have objection or  
10 if you seek a protective order I'm going to grant  
11 you that now. If you-all need a protective order  
12 as it relates to this case I'll grant it now, so  
13 you don't have to come back and seek that. It  
14 will be between the two of you-all; cover you on  
15 that one. Sounds like you already got a  
16 protective order in place but I'm going to  
17 re-order that as to these specific requests.

18 Mr. Varnado, anything else that you're  
19 seeking or requesting?

20 (Interruption)

21 THE COURT: Anything else you seek? My  
22 question to you, Mr. Varnado, anything else you  
23 seek other than those specific ten items and  
24 whatever -- this is a pretrial discovery  
25 conference.

1 MR. VARNADO: Yes, Your Honor. I conferred  
2 with my client. We want to, obviously, be mindful  
3 of the Court's time on this. I would reiterate  
4 that everything I put in these ten items -- if I  
5 can hand them up?

6 (Hands up document.)

7 MR. VARNADO: -- go hand in glove with my  
8 issue visa vis this EIN number. And I don't know  
9 if this is the time where you want to hear why we  
10 think we need this stuff or do you want to defer  
11 all that argument until she comes -- I propound it  
12 formally today as supplemental rule 34.

13 THE COURT: I much prefer you-all trying to  
14 work this out. If you can't I'll be glad to work  
15 it out for you.

16 MS. BAKER: I think -- I would agree with  
17 that. If he could supplement -- formally propound  
18 supplemental interrogatories, request for  
19 production, send it to me so I can have chance to  
20 review it and discuss it with my client.

21 THE COURT: I think that's the proper way to  
22 do that.

23 You-all have still got three months of  
24 discovery to do. Mediation, also head  
25 towards -- sometime this month. You-all have

1 experts.

2 I do see looks like a renewed motion for  
3 summary judgment was filed in October, but  
4 those aren't coming up until February.

5 MR. VARNADO: That's true. Just wanted to go  
6 ahead and get that out of the way.

7 I'd just like to say one thing for the  
8 record. When we come back -- Wells Fargo  
9 entered into a consent agreement with the  
10 attorney general of South Carolina and 49 other  
11 attorneys general saying they would produce  
12 records, they would have -- ready to have their  
13 foreclosure cases ready before they were filed.  
14 I think that's absolutely germane here.

15 If we can take a minute, if I could just,  
16 Your Honor, just explain kind of globally where  
17 we are in discovery. Mindful of your ruling,  
18 these need to be propounded as supplemental  
19 rule 34's with the caveat being when we come  
20 back, if they were -- rightfully should have  
21 been part of the original request for  
22 production I would like to bring that to Your  
23 Honor's attention, too, at that time depending  
24 on whether they agree or not agree.

25 The biggest questions that have been faced

1 in this case for the Plaintiff is who is the  
2 servicer of this mortgage. So Wells Fargo,  
3 Wachovia, never got mortgage interest. They  
4 paid mortgage interest to that EIN for six  
5 years. Or seven years, actually; these 1098's.

6 We appreciate and thank Your Honor for  
7 ordering that. That will be a great break up  
8 in the log jam.

9 That also begs the question of who was  
10 servicing it? It also begs the question of why  
11 there are discrepancies in the accounting,  
12 default records and things like that. So, Your  
13 Honor, if we're doing this just for discovery  
14 conference I'm just kind of giving -- I  
15 understand your ruling but want to say these  
16 are the kinds of things that are going to be  
17 cropping up again. I'll be happy to work, but  
18 just -- year after year there has been -- Wells  
19 Fargo, even though they told Attorney General  
20 they would produce without objection, they  
21 moved this thing along, kind of just getting a  
22 lot of problems with it.

23 That's all I wanted to say, Judge. I'll  
24 sit down.

25 MS. BAKER: I just want to say this is an old

1 case. I've been available. I've been trying to  
2 contact Rob with email, Mr. Varnado, let's talk.  
3 I keep getting a push back. We finally meet  
4 yesterday and get a list of ten. It's not slow on  
5 my end whatsoever. Once I get the amended,  
6 whatever, the new discovery request, be happy to  
7 take a look at it and respond as quick as I can  
8 within the 35 days.

9 THE COURT: All right. Let's just do that.  
10 You may find that the servicer has moved through  
11 the period of the time the loan's been in  
12 existence. I see that all the time. You may get  
13 one document that shows the whole status of the  
14 loan or you may have to go to five or ten  
15 different servicers. I don't know. Servicers  
16 change, lenders change. These things are very  
17 fluid is what I've discovered. I'm just telling  
18 you that. I understand you may be chasing a  
19 rabbit, but that's what you need to do to properly  
20 represent your client and go at it.

21 MR. VARNADO: The other rabbit we're chasing,  
22 just generally speaking, since this is a status  
23 conference, is the record shows that the Note was  
24 sold in '06. The debt was sold to a pool, which  
25 would be shorthand code for agreement. Yet we had

1 two lawsuits filed in this court in '07 and '09  
2 claiming successor by merger rights. In fact, the  
3 counterclaim says Wells Fargo assumes succession  
4 by merger. Even in their own records shows the  
5 Note was sold.

6 So that's going to be another thrust of  
7 discovery, Your Honor, just to inform the bench  
8 and my colleague about where we're going to be  
9 going with this.

10 May end up having to, Your Honor, since  
11 I'm going to serve these Rule 34's,  
12 Supplemental Rule 34's today with the caveat  
13 that I would like to at least have a chance to  
14 come back at a later time and argue that they  
15 should have been fairly part of the original  
16 request for production, but not withstanding  
17 that, it may impact the schedule a little bit,  
18 because I don't feel I'm doing my client a  
19 service taking a rule 30(b)(6) deposition if a  
20 bank like Wells Fargo, major banking  
21 corporation, without the documents. So we'll  
22 push along and try to get it done but --

23 MS. BAKER: If you need more time for  
24 30(b)(6) that's fine. I'm hard pressed to find  
25 some of these ten were in the original

1 interrogatories and request to production when  
2 some of these items didn't even come up until the  
3 August deposition of the (inaudible.)

4 THE COURT: I've got you-all coming back in  
5 here on the 17th of February for whatever motions  
6 and dispositive motions, pretrial whatever,  
7 whatever. If discovery is not complete I probably  
8 won't be entertaining the dispositive motions.  
9 We'll go from there. I'm setting cases into mid  
10 January right now, so I'm not sure I can get you  
11 in much sooner than that anyway. You-all just  
12 need to work together to try to get discovery done  
13 and do what you-all need to do.

14 MS. BAKER: Just to be clear. Since we're  
15 coming back February 17, if I -- I'll refile  
16 summary judgment motion, just as long as I file it  
17 ten days before that date or --

18 THE COURT: You've already filed it but  
19 February 7.

20 MS. BAKER: I think he filed one. I need to  
21 refile one.

22 THE COURT: It looks like Judge Dennis  
23 ordered in November of last year, granted some  
24 summary judgment.

25 MS. BAKER: He did.

1 THE COURT: As to some matters. So we have  
2 those to deal with, too.

3 MS. BAKER: Thank you very much.

4 THE COURT: All right. Ms. Baker, are you  
5 going to be at the sale today?

6 MS. BAKER: Yes, I will.

7 THE COURT: Mr. Varnado, you want to do me a  
8 short little order? Do you want this back?

9 MR. VARNADO: I'll take that back.

10 (Hearing concluded.)

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23 STATE OF SOUTH CAROLINA )

24

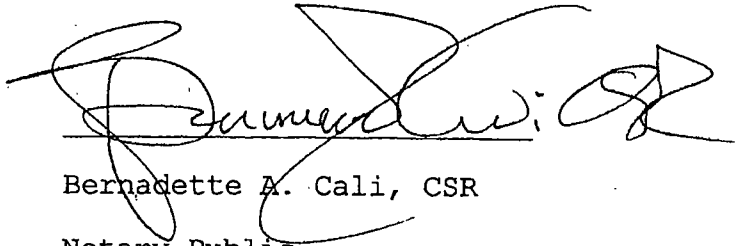
C E R T I F I C A T E

25 COUNTY OF CHARLESTON )

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this April 14, 2014.

A handwritten signature in black ink, appearing to read "Bernadette A. Cali", written over a horizontal line.

Bernadette A. Cali, CSR  
Notary Public

My Commission Expires

April 5, 2020

1 STATE OF SOUTH CAROLINA)  
 2 COUNTY OF CHARLESTON) ; IN THE COURT OF COMMON PLEAS  
 3 BRENT BENTRIM, ) CASE NO. 2011-CP-10-2946  
 4 Plaintiff(s), )  
 5 -vs ) HEARING  
 6 WELLS FARGO BANK, )  
 7 Defendant(s), )  
 8 -----)  
 9  
 10  
 11

12 Given before The Honorable Judge Mikell Scarborough in  
 13 the Charleston County Courthouse, 100 Broad Street, Suite  
 14 266, Charleston, South Carolina on Monday, February the 10,  
 15 2014, commencing at 11:15 o'clock a.m.  
 16  
 17  
 18  
 19

20 -----  
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A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff	:	Brown & Varnado By: Robert Varnado, Esq., 103 Church Street Mt. Pleasant, SC 29464
For the Defendant	:	Womble Carlyle Sandridge & Rice By: Sterling Laney, Esq., By: John Hawk, Esq., 550 S. Main St. - Ste. 400 Greenville, SC 29601
Also Present	:	Brent Bentrin, Mrs. Bentrin

INDEX TO EXHIBITS

(None were marked.)

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1 THE COURT: This case is captioned Brent Bentrim,  
2 the plaintiff, versus Wells Fargo Bank, the defendant, case  
3 number 2011-CP-10-2946. Present for the plaintiff is  
4 Mr. Rob Varnado.

5 MR. VARNADO: Your Honor, may it please the Court,  
6 I'm Rob Varnado. I'm an attorney for Brent Bentrim, the  
7 plaintiff.

8 THE COURT: And for the defendant, Mr. Sterling  
9 Laney.

10 MR. LANEY: Your Honor, Sterling Laney and John  
11 Hawk of Womble Carlyle Sandridge & Rice on behalf of the  
12 defendant, Wells Fargo Bank. And Judge Scarborough, just so  
13 I didn't upset the Court with the rules, Mr. Hawk was going  
14 to handle a couple of the items that we're here today. And  
15 we're going to divide that with the Court's permission.

16 THE COURT: I understand. That would be fine. It  
17 looks like we've got lots of motions out here and lots of  
18 motions for status conference. I think we set this one  
19 today pursuant to an amended scheduling order, which I just  
20 issued last month setting today for 11:15. So y'all have to  
21 bring me up to speed on all the motions. Looks like there's  
22 plenty of them.

23 MR. VARNADO: We're here today for discovery  
24 motions, Your Honor, and things related to discovery. And  
25 to the extent the Court would entertain us we have a few

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1 extra status matters. But I think by the Court's, the last  
2 time we were together and by agreement of counsel we're not  
3 advancing any of our substantiative motions of summary  
4 judgment or cross summary judgment motions, and dismiss  
5 motions, and things of that nature which will be heard by  
6 the Court at later time.

7 MR. LANEY: We agree, Your Honor.

8 THE COURT: You agree with that, Mr. Hawk?

9 MR. HAWK: Yes, Your Honor.

10 THE COURT: Last order I issued looks like,  
11 besides the scheduling order, was an order --

12 MR. VARNADO: Both sides have motions to compel,  
13 Your Honor.

14 THE COURT: Motions to compel and another order in  
15 November ordering defendant to answer the amended complaint,  
16 which looks like it's been done. There's a summary  
17 judgment, but we won't get to that today. So that's fine  
18 with me.

19 MR. LANEY: Your Honor, at the last hearing just  
20 as a point of clarification you did grant our motion, I  
21 believe to take Mr. Bentrin's deposition again since there  
22 had been an amended complaint. I don't think there's been a  
23 formal order or anything, but I did want -- that motion is  
24 no longer pending. All the others are.

25 THE COURT: All right. And y'all have identified

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1 experts or not?

2 MR. VARNADO: Yes, sir.

3 MR. HAWK: Both sides have identified experts.

4 Yes, Your Honor.

5 THE COURT: Mr. Hawk, you want to start?

6 MR. LANEY: Yes, Your Honor. We'll start with the  
7 easy one today. We have, Wells Fargo filed a motion to  
8 compel in January relating back to some discovery we served  
9 on Mr. Bentrim in December. We never got a response on  
10 that, but fortunately we just met beforehand. And the  
11 parties have agreed that Mr. Bentrim will produced responses  
12 to us within 15 days, so by February 25th. And Your Honor,  
13 we just ask the Court to leave this motion open in case we  
14 find that those responses aren't responsive enough.

15 THE COURT: Okay. And that's to a motion compel  
16 filed what date and as to what action?

17 MR. HAWK: Your Honor, that's Wells Fargo's motion  
18 to compel filed on January 27th. That's related to  
19 discovery that was served on December the 12th. And I'm  
20 going to hand it over to Mr. Varnado now to argue his motion  
21 to compel.

22 THE COURT: All right. So that's been agreed to  
23 subject to whatever may come up later?

24 MR. HAWK: Yes, Your Honor.

25 THE COURT: All right. Mr. Varnado?

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1 MR. VARNADO: Judge, I have two motions before the  
2 court.

3 THE COURT: Let me stop you. I'm not going to  
4 hear the motion to dismiss, the motion on the pleadings, or  
5 summary judgment. All those are beside.

6 MR. VARNADO: The one that I think Your Honor had  
7 said we would go forward on was two motions. One is a  
8 motion that I captioned a rule to show cause. And the basis  
9 of that motion is to challenge the sufficiency and veracity  
10 of the response to your order granting a motion to compel  
11 last October.

12 THE COURT: All right. I'm looking at two  
13 motions. One's a motion about responses to discovery  
14 questions filed January 14th?

15 MR. VARNADO: Correct.

16 THE COURT: And I got another one filed January  
17 22nd, which is a motion on a rule?

18 MR. VARNADO: Yes, sir. And Your Honor, if I may  
19 I'd like to start with the motion on the rule and then roll  
20 into the discovery, because I think it's all interrelated.

21 THE COURT: All right.

22 MR. VARNADO: And I would like to preface it,  
23 Judge, by saying that we've had multiple meetings, in person  
24 and by telephone. And we have not been able to come to an  
25 agreement on these two motions. Except right today

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1 Mr. Laney and I did try to hash out something that we'll  
2 tell you about when it gets time for the motion to compel.

3 Your Honor, you may recall last late fall there was a  
4 motion to compel hearing on this case. Ms. Baker appeared  
5 for Wells Fargo. I appeared for Mr. Bentrin. The purpose  
6 of that motion was a motion had been filed in March to get  
7 the bank to give the name, and address, and relationship to  
8 Wells Fargo National Bank of EIN 561948921. And I remember  
9 Your Honor came out and you read the motion. And I think  
10 one of the first things you said you're going to go ahead,  
11 I'll order that.

12 So we submitted an order. And the first response came  
13 back by way of a letter, which is appended, Judge, to the  
14 motion. It should be in front of you. I can hand you up  
15 another copy. So Mr. Laney's response to your order was by  
16 way of a letter, which again, I don't challenge the fact  
17 it's in a letter. That was the response. And it's an  
18 Exhibit. On Friday that response has been amended. Your  
19 Honor, I'm going to contend and I think you're going to see  
20 that the amended response raises more questions than the  
21 first response. And we need to get to the bottom of it.

22 The other thing that you'll see, Your Honor, is that  
23 appended to my motion there is an affidavit from a CPA in  
24 Columbia named Cliff Bodiford. He's got more than 40 years  
25 experience. And he's represented banks and handled banks.

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1 He knows about the banking industry. All right?

2 And the first I need to bring to the Court's attention  
3 is that we think it's axiomatic, and beyond dispute, and  
4 beyond argument that if one EIN for one entity. One EIN for  
5 one entity. I know the EIN for Wells Fargo Bank, NA,  
6 because I asked it in discovery and they told me. And I  
7 know the EIN for the predecessor banks, First Union National  
8 Bank and Wachovia Bank, NA. It's the same one. And I know  
9 that. They confirmed that in discovery, too.

10 Your Honor, as we argued the last time, as you saw  
11 attached to that motion there were 1098 mortgage interest  
12 statements that came from something called Wachovia Bank  
13 Retail Credit Service to EIN 561948921. The first thing is  
14 that 561948921 cannot be First Union National Bank, cannot  
15 be Wachovia Bank, NA, cannot be Wells Fargo Bank, NA. It  
16 has to be something else. If you're going to go with the  
17 one EIN, one entity rule. And that comes directly from the  
18 SS4 document.

19 So you know when you apply for an EIN, I'm sure you did  
20 it when you were practicing law just like we all do, you  
21 just send it in to the IRS. You send in an SS4, you're  
22 supposed to keep a copy. People lose those all the time.  
23 Okay? And maybe the bank's lost theirs. I don't know. But  
24 then the IRS sends back a letter of authorization. You've  
25 seen these. You can see them in your mind's eye probably,

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1 just the way they look. Okay. This entity is assigned this  
2 EIN.

3 All right. Mr. Botiford, the CPA, who's affidavit is  
4 undisputed from the other side has said that he cannot see a  
5 situation where this bank can be running more than one EIN.  
6 So if you do the one EIN, one entity rule it applies to a  
7 bank. It applies to a mom and pop store. The only  
8 exception would be a single member LLC and that's because of  
9 Patriot Act stuff and privacy. But this bank, mom and pop,  
10 anybody, trust, general partnership, you name it, one  
11 entity, one EIN. Now, a lot of times I think people get a  
12 little loosey goosey.

13 THE COURT: Let me stop you, because I hear what  
14 you're saying. All I need to know is what the problem is.  
15 The problem is you've gotten two different entities for EIN  
16 number?

17 MR. VARNADO: Yes, sir. That's exactly right.

18 THE COURT: Well, let me ask this question. Have  
19 you gotten a copy of the letter from the IRS assigning that  
20 EIN number to somebody?

21 MR. VARNADO: No, sir.

22 THE COURT: Well, why don't we get that?

23 MR. VARNADO: We would like you to order that,  
24 Judge.

25 THE COURT: Can you do that?

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1 MR. LANEY: Are you talking about the SS4, Your  
2 Honor? I believe that's --

3 THE COURT: Whatever the letter is they call it  
4 from the IRS. The IRS sends a letter confirmed that this  
5 EIN number has been attached to so and so entity.

6 MR. LANEY: This EIN was requested by First Union.  
7 We're not sure of the exact date. So it's maybe decades ago  
8 when it was requested. We have looked for the SS4, Your  
9 Honor. We have been unable to locate it at this time. We  
10 do have the verified response, which we gave to Mr. Varnado  
11 on Friday, which states that the First Union number that was  
12 transferred through the merger to Wachovia and was used by  
13 the servicing division of Wachovia, which is Wachovia Retail  
14 Credit Services, which is the name that shows up on the  
15 1098, Your Honor. And it was used for purposes of reporting  
16 mortgage interest to certain borrowers, such as Mr. Bentrin  
17 for that.

18 So we have answered the Court's question there. And I  
19 think it's significant that the original note is in the  
20 courtroom today, Your Honor. We have it. We also, there is  
21 no record of payments being made to anyone else other than  
22 First Union or Wachovia. So I think we have answered the  
23 Court's direction in October certainly. We answered the  
24 question.

25 I'm happy to continue to look and see what I can find

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1 from the IRS, but you know, we produced a verified  
2 statement. And with us holding the note and with all  
3 payments there is absolutely no dispute. We took Mr.  
4 Bentrin's deposition earlier before he amended his  
5 complaint. There has been no dispute that payments were  
6 only made to First Union or Wachovia.

7 So I'm a little bit at a loss to where this would go in  
8 discovery as far as being relevant to something because we  
9 say we never sold the note. We were the owner and holder  
10 through First Union, Wachovia, and Wells Fargo. I know they  
11 disagree with that, but that's our position. But even if we  
12 had sold the note and payments were only made to us we would  
13 be a servicer and thereby have standing to be in front of  
14 Your Honor. What he's complaining about is previous  
15 foreclosure actions that were filed in 2007 and 2009 which  
16 were dismissed and were, they never resulted in an order and  
17 decree of foreclosure. So I give that up.

18 MR. VARNADO: Your Honor, may I continue on this?

19 THE COURT: Yeah. I think the problem that you've  
20 got is you got one answer the one time and a different  
21 answer a different time; is that correct? Is that what you  
22 told me?

23 MR. VARNADO: Yeah. I'm telling you that the  
24 answer they gave me on Friday is materially different than  
25 the answer they gave back in October. I mean, on huge

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1 material points, which, I think bear on the Court's reason  
2 and rational to order comprehensive discovery on this.  
3 Because Your Honor, I've asked for the tax returns for this  
4 entity too, 561948921. I asked that that they submit a  
5 document called a form 4605T. I might be transponding the  
6 numbers.

7 But basically I'm stuck, Judge, because the only people  
8 under privacy law and IRS regulations who can cough up this  
9 document and this documentation is Wells Fargo. They're the  
10 ones that hold the keys to it. And I think that because  
11 they hold the keys to it it's in their control and subject  
12 to this Court's enforcement power to have them do it. And  
13 I'm going to draw Your Honor's attention to the difference  
14 between the verified request and the original answer.

15 May I approach, Your Honor, and just show you?

16 THE COURT: Sure.

17 MR. VARNADO: This is the original answer. You  
18 see, Judge. And this is my copy of their verified  
19 statement.

20 The first thing that jumps off, Judge, is the  
21 difference in the February thing. It talks about a special  
22 purpose EIN, and there's no such thing. You can Google  
23 special purpose EIN and you're going to get a gobbledygook,  
24 which there's thing called special purpose entities that  
25 banks use to hold assets off their records. As long as

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1 there up front about it it's no illegals. But then their's  
2 EINs. And like I said earlier, an EIN is assigned by the  
3 IRS. And people can't internally assign EINs between  
4 themselves. You got to go to the IRS and get that blessed  
5 by them.

6 Perfect example would be, Judge, that when First Union  
7 National Bank bought Wachovia Bank in North Carolina and  
8 changed it's name to Wachovia Bank, NA. They tell the IRS  
9 same EIN. Begins with a 22. It's like 221147003. And  
10 that's interesting, Judge, because Mr. Bentrin signed two  
11 notes on the date of closing. And one note the mortgage  
12 interest is paid to, guess what, 221177003. I might be  
13 getting the numbers a little off, but the 22 number. And  
14 the other one goes to 56.

15 So 56 is not Wachovia Bank, NA, and it's not First  
16 Union National Bank, because those have a different EIN. It  
17 has a different small c corporate form. It must, because  
18 the SS4 form says it must. And Mr. Botiford says it has to  
19 be. There has to be a different corporate formation. And  
20 what we're seeing here, Judge, and I think this is  
21 intentional, is that the bank is trying to use different  
22 entities to assume the identity of different entities for  
23 the purpose of needs at any given time. And I think it's  
24 completely germane, Judge, because Mr. Laney might have the  
25 note --

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1 THE COURT: Let me stop and let's go back to the  
2 origination of the loan. He took out two mortgages, both  
3 Wells Fargo or First Union at the time he took out the  
4 mortgage?

5 MR. VARNADO: Two notes, one mortgage.

6 THE COURT: Two notes, one mortgage?

7 MR. VARNADO: Yes, sir. Two mortgages. I'm  
8 sorry. Two notes, two mortgages.

9 THE COURT: So was it 80/20; is that what they  
10 were? They both purchase money?

11 MR. VARNADO: One was a modification of an  
12 existing line to roll into the one that's in dispute.

13 THE COURT: Is there a track history of payments  
14 being properly credited to one and not to the other; is that  
15 where we're going?

16 MR. VARNADO: We contend that there's a huge  
17 problem with the big one, the one that they're foreclosing  
18 on today, because the credit are not properly noted. He's  
19 not in default. They're not following the terms of the  
20 transaction of the note. All that we're going to show you  
21 in the trial of the case, Judge. We're going to come in,  
22 we're going to establish to you that they're not following  
23 the terms of the note. We're going to show you that  
24 Mr. Bentrin is not in default. We're going to show you that  
25 this note was sold and repurchased, but during the time it

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1 was sold and repurchased that there were two foreclosure  
2 actions brought.

3 We concede Mr. Laney's point that a servicer can bring  
4 a claim. We've seen that case. I think Your Honor alluded  
5 to it or authority kind of from it before, but in that case  
6 it's totally distinguishable because that bank, Bank of  
7 America said, hey, we're the servicer. And here's our  
8 service and pooling agreement, whereas in this case from the  
9 getgo and still to this day, no, we never sold this note.  
10 We have the rights by success or by merger. Ignore what's  
11 in our documents. Doesn't mean what you think it means,  
12 which we find really hard to swallow, really disingenuous.

13 But here we have a situation where we have the bank is  
14 basically advancing the argument that they can run multiple  
15 EINS off of one entity. That 571948921 is Wachovia Bank, NA  
16 and is Wells Fargo Bank, NA. Look at the other major  
17 difference between the two documents, Judge. In the first,  
18 the letter in October it says this is currently assigned to  
19 Wells Fargo Bank, NA. In the Friday verified statement it  
20 says it's no longer being used and we don't know who has it.  
21 We don't know what happened to it.

22 So we've got to get to the bottom of it. I think the  
23 easiest way to get to the bottom of it would be to get the  
24 authorization letter and get the tax returns for this  
25 entity. I don't know why -- and I want to tell Your Honor,

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1 we have signed a consent confidentiality agreement. So it's  
2 not like they should be worried that this stuff's going to  
3 be floating out there. We need to see it. We need to test  
4 this.

5 And the reason why, Judge, to kind of square the circle  
6 is that Your Honor said, listen, and I think you were pretty  
7 clear about this. If they have the note that's a big  
8 presumption right there because of the 2002 changes to UCC  
9 talked about transfer. But if there's a question about the  
10 transfer being accurate that would drive a big wedge into  
11 the Court's normal understanding of that. Because we  
12 understand that. It's really about securitization and  
13 whether or not it's okay, so you can transfer them back and  
14 forth. The UCC allows that. That's fine. If there's proof  
15 of transfer, and if the transfer was followed correctly.

16 So all these things are prerequisites in order to make  
17 the normal filing. And here we have, you know, the bank's  
18 own system of record, Wachovia Bank's own system of record  
19 specifically uses the word "sold to pool." And pool in this  
20 realm means a ream of trust. And it specifically uses the  
21 word "repurchased."

22 Now, we've asked for the codes. I'm going to get to  
23 that later, and all the rubiks and codes. And we haven't  
24 gotten those. So we have no idea if we're going to get the  
25 straight turkey on that. But the words mean what they say.

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1 They were sold, and we think that will blow up. It has  
2 impact on defending the counter claim under -- it has impact  
3 on defending the counter claim under holder theory, under  
4 truth and lending. I've launched truth and lending as a  
5 offensive cause of action, but I reserve it as a defense.  
6 And it's on fraud, good faith and fair dealing. All those  
7 things are impacted by that, and my fraud case.

8 So Mr. Laney says, I have the note. I don't anything  
9 more. And maybe he does and maybe he doesn't. Maybe Your  
10 Honor will go with him with that on the trial and maybe You  
11 won't. But here today for rule 26 with a presumption  
12 towards discovery, and we have something that's so clearly  
13 different. I mean, we're still on the realm of --

14 THE COURT: Let me ask you another question and  
15 see if you can help me here. Is your client getting  
16 multiple 1098s from Wachovia or Wells Fargo or --

17 MR. VARNADO: He's getting them once a year from  
18 2002 to 2008.

19 MR. LANEY: It's important to note 2008 was the  
20 end of the 1098s. There hadn't been any because no payments  
21 have been made since that time.

22 MR. VARNADO: And as we've already established  
23 that's because they told them don't send me anymore. You've  
24 heard that before.

25 THE COURT: I know about that one. But they were

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1 two separate ones, correct?

2 MR. VARNADO: Yes, sir.

3 THE COURT: Was one in the nature of an equity  
4 line or something, or what?

5 MR. VARNADO: That's exactly right.

6 THE COURT: Well, that makes sense to me that they  
7 come from two different sources. That's what's going on.

8 MR. VARNADO: There may be an innocent  
9 explanation, but there's just huge holes. Why is there a  
10 difference between the October and the February answers,  
11 Judge? Why do they say it's really assigned to us and it's  
12 not now. They don't give me the address.

13 And I think what's happening here is that if you follow  
14 the rule of one EIN, one entity then they haven't given me  
15 the real name of the entity. It's a third party. 561948921  
16 is a third party to Wachovia Bank, NA. And I've sued the  
17 depository bank. I sued Wells Fargo Bank, NA and I sued  
18 Wachovia Bank. I haven't sued their holding company. And I  
19 haven't sued any other entities which may be connected there  
20 to. I've sued that bank, and that's a different entity.  
21 And that will be critical for discovery and for finding out  
22 and tracking what happened to this note.

23 And I think we're getting kind of a gobbledygook  
24 answer. I don't know why they would say in October that  
25 it's currently at 561948921 currently assigned and now it's

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1 not. And it's for 1098 purposes, and yet it was originally  
2 with First Union National Bank. There's so many holes. I  
3 think they got to say what is the actual corporate name of  
4 561948921. And I use corporate with a small c, because they  
5 might be a limited liability company. They might be a  
6 corporation. And we've also asked for other documents kind  
7 of associated with that. And you know, we get objected on  
8 that.

9 So I think the best thing is to give a straight answer.  
10 What is the true and accurate corporate name? Not who it's  
11 assigned to or how it flowed through assignments but  
12 actually the true corporate name and the documents that back  
13 it up. That's the only way to break through this, because  
14 this is really holding us up on being able to get to the  
15 bottom of it. Because if in fact it turns out to be a  
16 third, complete third party that, I mean, then the bank's  
17 whole defense is really called into question. The whole  
18 factual predication of their defense is really called into  
19 question.

20 THE COURT: All right. So back to my question.  
21 Mr. Bentrin was making two payments on two notes and  
22 receiving two separate 1098s from 2002 to 2008; is that  
23 right?

24 MR. VARNADO: Yes, sir.

25 THE COURT: And there was no question that the 22

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1 number, the one that starts 22 is the Wachovia?

2 MR. VARNADO: No doubt. They've already admitted  
3 that.

4 THE COURT: What you're trying to figure out is  
5 who was the entity that had the 56 number?

6 MR. VARNADO: Right, because it can't be Wachovia  
7 Bank, NA. It can't be First Union National Bank. It has to  
8 be some other entity.

9 THE COURT: All right. Mr. Laney, that's the  
10 question.

11 MR. LANEY: Thank you. Your Honor, under his own  
12 affidavit that he submitted in support in paragraph four he  
13 said Mr. Botiford states that there are instances in which  
14 multiple numbers can be issued. And if you go and look  
15 about whether or not you need a new EIN on the IRS website  
16 it's pretty clear when there's a merger that there's now  
17 becomes a division of the remaining, that you can use -- the  
18 old EIN can stay in existence.

19 And that's exactly what our answer says. This was a  
20 First Union EIN. Then after the merger it stayed within the  
21 corporate family and was used by the servicing division of  
22 Wachovia, which is Wachovia Credit -- excuse me -- Wachovia  
23 Bank Credit Retail Servicing. And that's who issued the  
24 1098s which we produced in discovery to Mr. Bentrin and  
25 that's who he was receiving them from. And that's the loan

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1 that's the subject of this lawsuit.

2 The home equity loan is not subject to this lawsuit  
3 that he was receiving, like you have astutely picked up on.  
4 That was recorded under a different EIN because it's a  
5 different loan. It's a different type of loan. And so this  
6 number was used to report mortgage interest on certain types  
7 of loans like Mr. Bentrim.

8 But we've answered the Court's question, and we've told  
9 them that. He's certainly welcome to, you know, I'm sure  
10 he'll go and do a deposition and learn more about that.

11 THE COURT: Is there consistency in those reports  
12 for that time period that we're talking about?

13 MR. LANEY: All of them are annual.

14 THE COURT: They're annual reports that are  
15 consist with the payments.

16 MR. LANEY: I do want to point out though that  
17 actually there were two home equity lines. So it's not a  
18 classic loan. It's two home equity lines foreclosed that  
19 day under different notes, very, very different kind of  
20 loans, Your Honor.

21 MR. VARNADO: And that's a good point --

22 THE COURT: So we got no issue with the 22 one.  
23 We got the issue with the 56 one, right?

24 MR. VARNADO: Right. But the 22 one is good  
25 evidence that that mortgage interest is being paid to the

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1 bank. And yet the 1098 form itself on it's face says that  
2 if you're collecting for a lender you can't use your own EIN  
3 as a servicer. You have to use the lender's EIN. That's  
4 just in the 1098 form itself. That's just a matter of  
5 public record.

6 Mr. Laney says -- and this is even more. It's part of  
7 the First Union family. That means it would have a separate  
8 small c corporate existence, because we know that First  
9 Union, the merger between First Union National Bank and  
10 Wachovia Bank of North Carolina was one where First Union  
11 was the survivor. And then it changed it's name. We all  
12 remember that.

13 And Judge, so it has a separate corporate existence.  
14 So we should be able to see the SS4 if it still exists. We  
15 should be able to see the IRS authorization form. And we  
16 should be able to see tax returns which would prove or  
17 disprove this theory. Because if you read Mr. Botiford's --

18 THE COURT: Let me stop you there. Can y'all get  
19 the SS4, the letter from the --

20 MR. LANEY: We're looking for it, Your Honor. We  
21 haven't been able to locate it because I believe it was a 54  
22 so many -- I've been told they only keep tax returns for  
23 seven years. This was probably decades ago, but we've  
24 tried. If we find that we'll certainly produce that.

25 THE COURT: What about inquire with the IRS; can

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1 y'all do that?

2 MR. LANEY: Certainly we'll do that.

3 THE COURT: I think that'd be a way to answer that  
4 question. I mean, I understand the merger and the transfer,  
5 the acquisition. First Union actually acquired Wachovia but  
6 adopted Wachovia's name. And then Wells Fargo took a hold  
7 of that company. And now it's Wells Fargo. I'm with you on  
8 that. So I think that can answer that question.

9 MR. LANEY: We certainly can make inquiry to the  
10 IRS and see what we can find out.

11 THE COURT: Yeah, I think that would be the simple  
12 way to do that. I'm not going to make them get the tax  
13 returns at this point in time. I don't see any need for  
14 that, but I'd like to see the letter. I think that would  
15 explain it.

16 MR. VARNADO: My understanding, Your Honor, is you  
17 can apply for that online and can have it in 48 hours.

18 THE COURT: Just see what you can do. Just ask  
19 them at the IRS and see if they've got it. If they don't  
20 then they'll take forever and say no, they don't have it.

21 MR. VARNADO: Can we get a time frame on that,  
22 Your Honor?

23 THE COURT: Yeah. Go ask for it this week.

24 MR. LANEY: We will ask for it, sir. I have no  
25 idea how long the IRS will take to get it back to us, but we

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1 will certainly make the inquiry this week.

2 THE COURT: But it should be something they've got  
3 in their corporate system.

4 MR. VARNADO: So the SS4 if they have it. If  
5 they've lost it that they will ask for the IRS authorization  
6 form?

7 THE COURT: Yeah.

8 MR. VARNADO: And the only reason I asked for tax  
9 returns, Judge, is because since there has been changes, you  
10 know. I mean, Mr. Laney's like me, he noticed there's been  
11 mergers and stuff. And they might have changed it's name  
12 along the way. They might have gone to the IRS and changed  
13 it's name. Only the IRS can assign an EIN. And I don't  
14 know why the corporate tax returns would be privileged or  
15 stay secret.

16 THE COURT: I want to go back to that point. So  
17 what I'm trying to do is establish who the original EIN  
18 number was assigned to. That's the first point of inquiry.  
19 Second point of inquiry then, Mr. Varnado, is that you take  
20 issue with what is being reported; is that what you're  
21 telling me? You take issue with what's being reported, or  
22 you take issue with whom is reporting it? That's what I'm  
23 trying to figure out.

24 MR. VARNADO: I think the whom.

25 THE COURT: Then I think that inquiry is going to

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1 answer it.

2 MR. VARNADO: I'm looking forward to it, because I  
3 think it will be interesting.

4 THE COURT: Let's see if we can't get that  
5 information from the IRS.

6 MR. LANEY: Yes, sir, Your Honor.

7 THE COURT: It may open up some more can of worms,  
8 but we'll see. Okay. Let's just see where it goes.

9 What's our other issue?

10 MR. VARNADO: I think that pretty much exhausts  
11 the one EIN, one entity thing. Now, we're going to the  
12 motion to compel.

13 THE COURT: That's the one filed January 14th?

14 MR. VARNADO: I'm looking at it right now, Your  
15 Honor. That's correct. Now, we're at complete loggerheads,  
16 because the first -- this case was filed pro se first. Then  
17 an attorney from Summerville, Mr. Sloan, became counsel of  
18 record. And then I became counsel of record. Mr. Sloan  
19 served a set of discovery. And I served discovery. They've  
20 answered, but every request comes with a big boilerplate  
21 objection right off the rip. And they've given about 233  
22 documents.

23 And Mr. Laney's telling me when we met -- and I have no  
24 reason to doubt my colleague's veracity. I don't like his  
25 client, but I have no reason to doubt his veracity -- is

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1 telling me, I've given you everything. I've given you  
2 everything, Varnado. And I'm worried that I haven't gotten  
3 everything, which I know for a fact some stuff I should  
4 still get.

5 And so there's kind of four major areas of documents  
6 that I think we ought to get. And if we want we can go  
7 through blow by blow, but I think maybe we can come to some  
8 resolution of it now. On the first set would be I want  
9 every servicing record from this bank for Mr. Bentrim's  
10 file, all the servicing files. Now, I've gotten -- you  
11 heard me before talk about the ACLS report, the report that  
12 says this loan was bought, was sold, and repurchased. I got  
13 that from them. You've heard me talk about these things  
14 called Chris (ph) statements.

15 And I've told Your Honor I'm going to come up and I'm  
16 going to show you that there have been records that have  
17 been tampered with by Wells Fargo Bank. I've also argued  
18 the last time I was in front of you when Ms. Baker was here  
19 and I think the last time at a status conference, and I'm  
20 still waiting on certain servicing records that I've learned  
21 about in this lady named Tracy Thomas's deposition. She's  
22 what we consider to be a robo-signer down in Jacksonville.

23 And we learned from her that there were additional  
24 servicing records from Mobius and E-card. Mr. Laney said,  
25 I'll get those to you, but I don't have it. I don't know

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1 when I'm going to get them, hopefully soon.

2 And then I know that I submitted a kind of a  
3 correspondence file for lack of a better word, you know,  
4 from all Mr. Bentrin's correspondence to and from Wells  
5 Fargo. But I haven't seen their correspondence file. And  
6 Mr. Hawk to me said we're not so sure you asked for that,  
7 even though I think that's subsumed in the servicing  
8 records. They said, I think we ought to get every servicing  
9 record.

10 Now, I will caviat. There is one thing where it's  
11 important, and it's part of the servicing records. This  
12 bank with other counsel entered into agreements with their  
13 regulator, the Office of the Comptroller of the Currency,  
14 the OCC, and they entered into a consent agreement with all  
15 the 50 attorney general saying that they were going to redo  
16 all their servicing. They were going to get to the bottom  
17 of what's going on. They were going to make sure. They  
18 were going to create records. They were going to do all  
19 this stuff. Now, I've asked for all that.

20 Now, Mr. Laney says, no, no way. You can't have that.  
21 The OCC order says that this doesn't create a private right  
22 or cause of action. Well, I'm not seeking to create a  
23 private right or cause of action. Nothing in that OCC order  
24 says that these discovery records are -- these records are  
25 immune from discovery. Nothing in that OCC order says that

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1 those are state secrets. Nothing in the AG's order even  
2 says anything like that. They don't want to give me  
3 records.

4 They told their regulators and they told the attorney  
5 general we're going to create additional records and  
6 documents, but they haven't given those up. And I need  
7 them, because I'm going to tell you why I need them, Judge.  
8 I'm not seeking to create a new cause of action or a new  
9 right. If this bank has told their regulators that we're  
10 creating new sets of documents, servicing records and that  
11 order doesn't say that they're omitted from discovery then  
12 they're fair game for discovery in your Court.

13 Because if we weren't allowed discovery what I'm  
14 fearful -- and I think this is what's happening -- is that  
15 there's one set of books and protocols for their national  
16 regulators and attorneys general, and then there's another  
17 set of books and protocols that deal with cases in state  
18 court for plaintiffs like Bentrim for this Court, two sets  
19 of records.

20 I believe that those need to be harmonized. I believe  
21 that the rule of 26 is broad enough to allow it. And if  
22 they've done -- they've told the regulators we're going to  
23 create new documents. And if those regulators hadn't said  
24 these are immune from discovery then they're fair game.

25 And we all know there's things that are immune from

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1 discovery. For example, if the bank did a check-kiting  
2 thing. That's --

3 THE COURT: I want to stay on focus with  
4 discovery. So what you're looking for is the servicing  
5 files and communication?

6 MR. VARNADO: The complete servicing file with all  
7 the electronic documents, with all the communications, and  
8 with everything that would have been done pursuant to the  
9 OCC and AG's order, Your Honor. That would all be the  
10 servicing record. And I want Mr. Laney to tell me, you  
11 know, maybe Mr. Sloan didn't ask these right, maybe you  
12 didn't ask them right, but I've given you everything. And  
13 if they don't exist then that's fine too. But I need to  
14 know.

15 THE COURT: Mr. Laney, I want to hear about that.

16 MR. LANEY: Your Honor, as far as the -- before I  
17 get started if I could just ask my counterpart, we try to be  
18 civil here, but to refer to my witness, Ms. Thomas, as a  
19 robo-signer in this Court really, I think is improper. And  
20 I'd just like to note that for the record. I would prefer  
21 us to keep things a little bit civil. I do take some  
22 umbrage with that.

23 We will produce the servicing record. That's what I've  
24 told Mr. Varnado. And we do have some that we are in the  
25 process of reviewing to make sure we don't produce work

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1 product or attorney/client information there. If there is  
2 such we will create a privilege leg label where we'll redact  
3 it or retain and we'll produce those to him.

4 With regards to the OCC consent order and the attorney  
5 general orders, Your Honor, they're very clear. I'm reading  
6 from the consent judgment, and it says the servicer, who's  
7 Wells Fargo's obligation shall be enforceable solely in the  
8 US District Court for the District of Columbia. An  
9 enforcement action may be brought by a party to the consent  
10 judgment or the monitoring committee. They've set up a  
11 monitoring committee to make sure that the banks, those JP  
12 Morgan, Bank of America, Wells Fargo, are complying with it.  
13 And any action to enforce the consent judgment must be  
14 brought before the District of Columbia.

15 Now, Mr. Bentrin, along with me, along with you, and  
16 anybody else who may hold a Wells Fargo mortgage is  
17 represented by Alan Wilson, the State Attorney General for  
18 South Carolina in this matter. And they can certainly seek  
19 to enforce compliance with this order. However, I have a  
20 dozen cases from around the country I'm happy to hand up. I  
21 don't know if you want to read these, but that hold that  
22 private borrowers simply lack standing and cannot create a  
23 right to enforce the enforcement of these terms as a third  
24 party beneficiary or otherwise, because only the parties to  
25 government orders have the standing to seek compliance with

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1 those.

2 And I think Mr. Varnado's going to say, well, I'm not  
3 seeking compliance with it. I just want discovery. I want  
4 to see if you're doing it. That can amount to the exact  
5 same thing, Your Honor. If you allow discovery on it then  
6 you're allowing private borrowers all over the country to  
7 say to see whether or not the parties to this are complying  
8 with the order. His redress is simply to go through the  
9 attorney general or through the regulator with regards to  
10 the consent order not through this Court. Jurisdiction for  
11 these orders is exclusively reserved in both of them to the  
12 District Court for the District of Columbia, Your Honor.  
13 And I have the orders. I'm happy to hand up and show you  
14 the sections where that is.

15 THE COURT: You've got no problem with getting  
16 what's in the files, right, the servicing files?

17 MR. LANEY: No, sir. No, sir. We've told  
18 Mr. Varnado that. And we do not want to waive our  
19 objections because he didn't want to redraw his questions,  
20 but we certainly are going to provide the servicing material  
21 with regards to this subject. There's no question about it.

22 THE COURT: And then there's something that's  
23 attorney/client privilege you can assert that, redact that.  
24 We'll cover that another day.

25 MR. LANEY: Exactly.

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1           MR. VARNADO: May I briefly be heard, Judge? This  
2 is critical I think, because the purpose of these orders is  
3 this bank telling it's regulators that we are going to  
4 confirm everything that we're doing in a foreclosure action.  
5 We're going to confirm our right to foreclose. We're going  
6 to confirm whether we've had the documents at the time we  
7 said we need to have them. We're going to confirm that all  
8 affidavits are done with truth and knowledge. We're going  
9 to do all sorts of programs and principals to make sure that  
10 this thing is accurate. This is the duty that they've  
11 undertaken. They have changed the landscape.

12           Now, Mr. Laney says, he doesn't deny that they've done  
13 these consent orders. He doesn't deny that these programs  
14 and things are in existence. They have happened. They  
15 certainly have happened. But he's not showing Your Honor  
16 that they're immune from discovery. And we are not here  
17 today in a merits hearing where Your Honor in the future  
18 might say, you know what, that argument might carry the day.  
19 I don't know. I'm going to have to hear from experts on  
20 that. I'm going to have to study these orders. We're going  
21 to have a full blown trial on that. All right. It's  
22 critical, I think.

23           But if his client has created a new set of documents  
24 for compliance purposes then how am I a third party  
25 beneficiary to that when I just want to see the documents?

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1 I just want to see the discovery. Mr. Laney is setting up a  
2 strongman argument that by just the force of giving the  
3 documents over means that I'm somehow able to enforce or  
4 compel anything. That's not the case. The rule 26 is broad  
5 enough to cover this. These are not privileged documents.  
6 These are not work product documents. I am not seeking to  
7 create a new cause of action based on these consent orders.  
8 I merely want the documents that they've created. I think  
9 they're fair game, Judge.

10 And I think the main reason they're fighting this hard  
11 not to give them up is because maybe they don't say the same  
12 thing that the other ones say. And then that would be  
13 grounds for me to come in and challenge them there. I don't  
14 know why I can't see them, Judge. I don't think that they  
15 are -- I'm not trying to enforce anything. I just want to  
16 see discovery. The only thing I'm trying to enforce is the  
17 discovery.

18 And also, the final thing is I would like a date from  
19 Mr. Laney when we're going to get Mobius and E-card. I  
20 asked for them back in the fall. I thought that they were  
21 fairly covered in Mr. Sloan's initial discovery request  
22 where he asked for all programs and everything having to do  
23 with the servicing file. And I'm a little, I take umbrage  
24 in the fact that I had to go down to Jacksonville to find  
25 out they exist and then still haven't gotten them yet. I've

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1 been asking for them.

2 THE COURT: I don't know what they mean, so what  
3 are they?

4 MR. VARNADO: Sir?

5 THE COURT: Mobius and E-card, I don't know what  
6 they mean.

7 MR. VARNADO: They are proprietary programs.  
8 There's Mobius, E-card, Dots, and I forget the name right  
9 off the top of my head.

10 MR. LANEY: They're different servicing --

11 THE COURT: Programs?

12 MR. LANEY: Yes, sir. They pretty much do similar  
13 items. One may be an underwriting, I believe. I'm not sure  
14 which one, but E-card is a servicing, holds into the  
15 servicing notes in a computer program. And that's what  
16 we're going through right now. And we certainly will get  
17 that in a timely -- I would hope in the next two weeks we'll  
18 have that done. Just about the same time as his response to  
19 us.

20 MR. VARNADO: And a correspondence file too if it  
21 exists. I think it's fair game.

22 MR. LANEY: I do not have a correspondence file.  
23 I'll have to go to my client and see that. That was not --  
24 as Mr. Hawk had told Mr. Varnado previously, that was not  
25 subject to one of the -- I understand if the Court's going

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1 to want us to get it we'll go to our client and get it, get  
2 what we have.

3 THE COURT: My experience has been that there's a  
4 whole litany of stuff. One's numbers, they show when the  
5 money comes in and the money goes out. That's clearly one  
6 thing they're looking for and they're entitled to. The  
7 other one would be Mr. Bentrin called in on such and such a  
8 date wanting to know whether or not his payment was promptly  
9 applied. That's the correspondence file we're talking  
10 about.

11 MR. LANEY: Okay. We'll look for any  
12 communication between the parties.

13 THE COURT: We called Mr. Bentrin 28 times on  
14 January, 2012 because he hadn't made his payment. Okay?  
15 That's the kind of stuff that I would think would be in a  
16 correspondence file. So I think you're entitled to that.  
17 I'm not going to grant you the relief you seek as to  
18 compliance with the OCC order. If you want to get that I  
19 think the proper method is the through AG's office. So I'm  
20 going to deny you on that basis.

21 MR. VARNADO: Thank you, Your Honor. The next  
22 major area of discovery -- and I'm trying to do this rather  
23 than go through blow by blow, number one, number two --

24 THE COURT: That suits me.

25 MR. VARNADO: I want to see all the records which

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1 prove or disprove that there was a sale of this note. I  
2 have the ACLS document right here. And Mr. Laney has a copy  
3 and Mr. Hawk have copies of this.

4 Your Honor, may I approach? Your Honor, I have just  
5 handed Mr. Laney an exact copy of what I'm handing to you.  
6 This is documents which were received from Womble Carlyle.  
7 They bear the Bate's stamp at the bottom WF. So this is  
8 WF159 to 217. I showed you that page, Judge. 11-29-06,  
9 note, loan sold to pool, loan sold to pool with a  
10 transaction amount associated with it, 174,504.20. That's  
11 on WF187.

12 And then if you turn to the last page of this Exhibit,  
13 217, right at the bottom, Judge, 5-13-10, 176,879.20,  
14 repurchase principal. Now, Mr. Sloan's discovery asked for  
15 all the codes and rubiks which would explain this objection.  
16 I think I'm entitled to that. I asked for all the codes and  
17 rubiks after the last hearing that I had when Ms. Baker and  
18 I were here and you had said go ahead and re-ask those, Rob,  
19 which I did. And those were objected to too saying, well,  
20 we might let you look at them only, Varnado. As if that  
21 would do any good. I'm not that strong with the numbers. I  
22 just show them to my client. I'd just show them to my  
23 experts.

24 This is the system of record of this case. This is a  
25 document produced by them. It's inconsistent with other

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1 documents they produced, but it absolutely establishes that  
2 the note was sold and the note was repurchased. And the  
3 only way I contest that, Mr. Laney said, well, obviously you  
4 can take somebody's deposition that's not going to say what  
5 it says it says. I just want to know, not get every  
6 document which shows the sale and the repurchase, because I  
7 don't think I am. Because why would you repurchase  
8 something you didn't sell? Why would you sell something you  
9 didn't own? So that's the next kind of broad group. And  
10 that would kind of encompass, in order to make sense of it  
11 for right now it'll encompass the codes the rubiks which  
12 explain the whole thing.

13 THE COURT: Mr. Laney?

14 MR. LANEY: Your Honor, as I've told Mr. Varnado,  
15 I can't prove a negative. He has this document. It says  
16 what it says. We will produce an affiant and a deponent to  
17 explain it to Mr. Varnado. We have produced -- and you made  
18 a point a little while ago, you said, you know, you don't  
19 have to show everything. The transaction history, all the  
20 pavements that were made, that's what this is. We've also  
21 produced a re-keyed payment history that is another form to  
22 show all the payments made by Mr. Bentrin. And that's where  
23 we're having our biggest dispute. He says it says one  
24 thing. We say it says another. That's why we'll be there  
25 in front of you.

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1 But we have produced all the documents. The only  
2 document remaining that he wants to see is the general  
3 ledger, meaning -- I don't even know what it is to be honest  
4 with you, but the general ledger for the bank, when we have  
5 produced these documents specific to this loan. And I  
6 cannot imagine if there is such a thing as a general ledger  
7 it takes in millions of transactions, First Union and  
8 Wachovia were doing on a day by day basis in these time  
9 periods, you know. The time, the amount of burden and cost  
10 and everything to go through and pick out just Mr. Bentrin's  
11 entries on that and we've already produced this.

12 I mean, we're not hiding anything. It says what it  
13 says, and we'll have to explain it to the Court's  
14 satisfaction. And I think under the oncology and hematology  
15 associates case which recently came out Mr. Varnado keeps  
16 saying discovery for all, discovery for all, but you do have  
17 to show that there's a reasonable expectation of obtaining  
18 informational that will aid in the dispute's resolution.

19 Your Honor, we have the original note. There is no  
20 malange to it. There is no assignment of the mortgage. We  
21 have the public record. We've seen, you know, so there is  
22 no other evidence of a sale. And he's like, I want to see  
23 all the documents evidencing the sale because this says  
24 there's a sale. I have to have somebody explain what that  
25 is, but there are no other documents that I have relating to

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1 a sale because our position is there was not a sale. We  
2 were always the owner and holder of the note.

3 THE COURT: Have you had somebody explain or  
4 provide for those codes and whatever the codes mean? Are  
5 they self-explanatory? If you punch in one code it kicks  
6 out this statement or such thing as that?

7 MR. LANEY: We have not, Your Honor. And those  
8 are proprietary, which we have objected to producing up to  
9 this point.

10 THE COURT: The codes themselves?

11 MR. LANEY: The codes, yes, sir.

12 THE COURT: You got a body that's going to testify  
13 as to that issue?

14 MR. LANEY: Yes, sir.

15 THE COURT: And that name's been released and  
16 y'all --

17 MR. LANEY: We'll have to --

18 THE COURT: You're saying yes. You're saying no.

19 MR. LANEY: We'll have to produce somebody, sure,  
20 to walk through this history card and be able to explain it.  
21 I imagine it would not be to Mr. Varnado's satisfaction, but  
22 we'll have to let the Court decide if it's satisfactory or  
23 not.

24 MR. VARNADO: If I may briefly be heard. I'm  
25 flabbergasted because the codes may be proprietary, but this

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1 impacts their counter claim and my claim. I should see  
2 these codes. I should understand what the rubiks are.  
3 Whoever is going to come explain this is going to probably  
4 talk to me about codes. I need to see them in advance.

5 The general ledger, I'm really, I don't understand.  
6 They are by law required to have a general ledger for  
7 Mr. Bentrim's account. Mr. Laney's talking about opening up  
8 the whole books of the bank. I don't want to see every book  
9 of the bank. At this point all I want to see is the general  
10 ledger for Mr. Bentrim's account. Now, here's something  
11 very interesting, Judge.

12 THE COURT: Isn't that what this is?

13 MR. VARNADO: No, sir. That's a servicing record.  
14 That's an incomplete servicing record. There's something  
15 very important about that record, it doesn't contain the  
16 first 18 months of records for this loan. It's incomplete.

17 MR. LANEY: It does, Your Honor. He's just  
18 misreading, but it does.

19 MR. VARNADO: You know, that's the kind of thing  
20 where we can duke it out later, but I think it's pretty  
21 clear on it's face it doesn't. If you look at it it says  
22 that there is a loan established nine days before it was  
23 funded. And there's an immediate like interest and  
24 principal fine levied on the same first day. And there's  
25 just no records for the first 18 months. It's just on the

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1 first page, it's not there.

2 But Judge, I'd like to talk about the general ledger.  
3 Mr. Laney says I don't even know what he's asking for.  
4 Well, Womble Carlyle produced one page, if I may approach,  
5 Your Honor, of a general ledger. They produced one page of  
6 a general ledger. You will see the odd thing about that one  
7 page of the general ledger that they produced is that on  
8 that one page it just says an amount was moved from the  
9 credit side to the debit side. It doesn't tell me where the  
10 money came from. It doesn't tell me where the money went.

11 If there is a general ledger for Mr. Bentrim's loan,  
12 which there has to be by law, then it needs to be  
13 discovered. And here's a bank. What does a bank do? It  
14 keeps records. And a general ledger, there's a general  
15 ledger. I'd like to see everything associated with those  
16 general ledger numbers. This is what they do. This is the  
17 bank. This is what they do.

18 Now, why is it important? It establishes truth and  
19 lending, holder, and you know what, in my new complaint I  
20 say that they didn't fund the note. And I think it's  
21 important. They say in response to that we lack information  
22 sufficient to admit or deny. But in their counter claim  
23 they say that they gave consideration, for valuable  
24 consideration given. All of that would impact the general  
25 ledger. So there's the general ledger.

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1           The other area that I didn't mention earlier I'm sure  
2 we have a fight on would also establish sale would be vault  
3 records. The vault records associated with Bentrin notes,  
4 those would establish where they were and when they went  
5 out. We know that they came out of some vault. We don't  
6 know whose vault. They came out of some vault. And they  
7 got down to Jacksonville maybe or maybe not. We need to see  
8 the vault records.

9           THE COURT: Are you talking about the money that  
10 funded the loan?

11           MR. VARNADO: Sir?

12           THE COURT: Is that what you're talking about, the  
13 money that funded the loan?

14           MR. VARNADO: Just on the vault records which  
15 would be where the note was and who was in custodian of it.  
16 But yeah, who funded the loan would be very important.  
17 Yeah, exactly. Who funded the loan, whose books the loan  
18 value came off of. We'll have expert testimony to go into  
19 that. It's just an area of inquiry. It's an area of  
20 inquiry. They say that they gave consideration, so I'd like  
21 to see evidence of the consideration they gave. Mr. Laney's  
22 like I've got a note.

23           THE COURT: You're not disputing he got a loan,  
24 are you?

25           MR. VARNADO: I am disputing that the transaction

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1 took place that they say took place. There's some money  
2 went into a closing attorney's file, but I don't know where  
3 it came from. I don't know whose money it was. And they're  
4 saying they gave consideration. It would be a very easy  
5 thing for a bank who keeps records to say, this is where the  
6 money came from, this is -- for Mr. Bentrim's file.

7 I don't want to see the, you know, 80 billion page  
8 general ledger for the whole bank. I want to see it for  
9 Mr. Bentrim's file. Right now I think they need to give  
10 that.

11 THE COURT: Mr. Laney?

12 MR. LANEY: Your Honor, the document you're  
13 holding shows the funding. That's the money, the wire money  
14 that's going from the bank to the closing attorney.

15 THE COURT: Base line of the debt was 180,000,  
16 right?

17 MR. LANEY: Yes, sir. The note says 182,700 but  
18 there was an origination fee. That's part of our dispute.  
19 But we also -- he has the note that he signed that shows the  
20 lender, creditor as First Union. There's a HUD which shows  
21 that the previous mortgage was paid off through these funds  
22 which match up \$180,000. And we have the itemization of  
23 finance which shows creditor First Union National Bank. The  
24 disclosure says creditor, First Union National Bank. I have  
25 copies of all those here, which we have produced to

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1 Mr. Varnado in this case. I'm happy to show the Court.

2 And when I was pointing that out to Mr. Varnado that  
3 here's the actual funding going to the closing attorney he  
4 told me again -- he used his word, he was flabbergasted  
5 because I didn't show that it was really First Union's money  
6 that went to the closing attorney. I'm not sure what I can  
7 do there.

8 THE COURT: I'm going to overcome that one. We  
9 have no case or controversy if it didn't exist, so I won't  
10 throw the case out on that basis. What I think I heard him  
11 driving at when he was referring to the vaults was where the  
12 documents were stored. Do we have that record?

13 MR. LANEY: We do. It was stored. He took Tracy  
14 Thomas' deposition. And the E-card notes, she was looking  
15 through the E-card notes says she can see where it was taken  
16 out of the vault, I believe in Roanoke, Virginia is where it  
17 was held. It was checked out at a certain time and checked  
18 back in. It's now, this question goes who is the custodian.  
19 We are. We have it right here. Currently Mr. Hawk, I don't  
20 trust myself with it. So we have the original note. Like I  
21 said, there's no long malange. There's no assignment of  
22 mortgage assigned.

23 THE COURT: And on the face of it no assignment's  
24 been recorded and there's no malange on the note?

25 MR. LANEY: That's right.

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1 MR. VARNADO: And that's really important because  
2 it's a blank endorsed document in their possession right  
3 now. And there's another document said it went to a pool.  
4 And most pools are governed by New York or Delaware trust  
5 law. You got -- you can't have them be blank endorsed.

6 THE COURT: Well, y'all got to take that gal's  
7 deposition or whoever that person is and explain that.

8 MR. VARNADO: Your Honor, I just respectfully --

9 THE COURT: Bring them in here if you want, but  
10 back to my story we we're talking about last time if they're  
11 holding the note and the note came out of, what, First  
12 Union. Does it say First Union on there?

13 MR. LANEY: Yes, sir, Your Honor.

14 THE COURT: So there'll be somebody who'll have to  
15 explain that sale of the note. I'm okay with you on that.  
16 I got that. You're going to have to explain that. Where  
17 the documents have been held, note, mortgage, all that kind  
18 of stuff, you're entitled to that.

19 MR. VARNADO: Can I see the general ledger for his  
20 file?

21 THE COURT: How it got funded out, What kind of  
22 general ledger do you have separate apart from what we  
23 looked at?

24 MR. LANEY: I don't think I have anything other  
25 than this, Your Honor. I'll make inquiry to make sure

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1 there's not anything else, but my understanding is this  
2 would constitute the general ledger.

3 THE COURT: For the funding of the loan, right?

4 MR. LANEY: Yes, sir. All the documents we have  
5 produced are what we would be able to rely on to say we  
6 funded it and these are the payments that were made.

7 MR. VARNADO: Judge, if I could just briefly,  
8 briefly be heard. This document has a number on it. If he  
9 would confirm that I've given you every document associated  
10 with the general ledger number then I've see the general  
11 ledger. I just feel I've seen this one little snapshot of  
12 it.

13 THE COURT: All right. Get you to confirm that.

14 MR. LANEY: Yes, sir.

15 MR. VARNADO: We're making headway, Judge.

16 THE COURT: I've got three. That means we've only  
17 got one more issue to deal with, right?

18 MR. VARNADO: I think we kind of subsumed two and  
19 three, because I was talking about accounting ledgers and  
20 books. So Mr. Laney's going to make an inquiry to see if  
21 there's more general ledger.

22 THE COURT: Right.

23 MR. VARNADO: Records that would show or disprove  
24 the sale, so they'll produce a witness.

25 THE COURT: Right.

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1 MR. VARNADO: And they will produce these E-card  
2 documents. We have a real dispute over what Ms. Thomas said  
3 or didn't say, but it'll come out in the wash. I think that  
4 the one thing that I didn't hear you say, Judge, and I would  
5 respectfully request that it be innumeraled in the order is  
6 that we would get the codes and rubiks for the ACLS report  
7 so that we can understand what it means before we show up  
8 and take this guy's deposition or this lady's deposition,  
9 whoever it is. And I don't think it would should be my eyes  
10 only, you know, it's non-discovery.

11 THE COURT: You indicated that was proprietary.  
12 How about providing them something in particular ahead of  
13 time that explains those two codes, the sale and the  
14 purchase?

15 MR. LANEY: I have no problem with that.

16 THE COURT: And then to the extent y'all want to  
17 go somewhere, isn't that the biggest issue here from that?  
18 Isn't that where we're really going with this thing?

19 MR. LANEY: I think it is, Your Honor.

20 THE COURT: If from's some misapplication I'm  
21 going to anticipate that whoever y'all produce for the  
22 deposition is going to know those or at least have a cheat  
23 sheet that allows that person to know those, because there  
24 are lots of numbers on there.

25 MR. LANEY: I certainly hope so.

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1 THE COURT: But I think ahead of time y'all need  
2 to be able to make sure those, it's conceivable that there  
3 was a mistake, but that's just me. Okay.

4 MR. VARNADO: Your Honor, I'm just going to just  
5 ask you to please reconsider. If I can only for those two  
6 and I don't have the whole cheat sheet then I am totally --

7 THE COURT: They're going to produce you a witness  
8 with a cheat sheet and/or not cheat sheet knowledge. Okay?  
9 If you randomly pick some other entry in there you want to  
10 make a verification that that is what it says it is that  
11 person is going to have to be able to answer that question.  
12 Okay?

13 MR. VARNADO: And can they show me the document,  
14 too or not?

15 THE COURT: They don't have to. They don't have  
16 to. If you find it used in different ways in different  
17 places, I saw lots of numbers on that thing.

18 MR. VARNADO: That's true, Judge. Then I'll have  
19 to come back and then ask to see more of these.

20 THE COURT: Yeah. They may have some code, what  
21 was that code breaker thing in World War II, where you had a  
22 random number every time you go through there. I mean, that  
23 might be what's going on there.

24 MR. VARNADO: There's missing First Union National  
25 Bank records that have never been produced, payout

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1 information, loans, just gone. That needs to be produced.  
2 They've objected to it. I don't know why they've objected  
3 to it. Either it exists or it doesn't exist.

4 THE COURT: So missing First Union data; is that  
5 what you're telling me?

6 MR. VARNADO: Yes, sir.

7 MR. LANEY: Your Honor, this loan was originated  
8 2002, March of 2002. The lawsuit was brought in 2011. We  
9 have produced what we have. I'll certainly make sure so I  
10 can stand in front of this Court and say there's been no  
11 stone unturned. I mean, if there's something from First  
12 Union, the old First Union days that would relate, but the  
13 systems were converged. And again, when we produce our  
14 deponent he'll be able to explain those to him. There is  
15 entries that show from the inception of this loan and  
16 accounts for all the payments and activity for the first 18  
17 months as well. But as far as other records we have  
18 produced everything that was retained in our file during  
19 those nine years, Your Honor.

20 MR. VARNADO: They got to have them, Judge. I  
21 mean, they got to have them. They got to have them. They  
22 can't not have them. That's a big problem.

23 THE COURT: I don't know where they went. They  
24 would be somewhere, so you can explain. I think that's  
25 explicable too. Here's my first point of inquiry. You made

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1 reference that there was previous foreclosure actions  
2 brought too, I think you said. When were those brought and  
3 what records were provided at that time, if any?

4 MR. VARNADO: You know, what happened was was we  
5 got some --

6 THE COURT: Let me stop you there and get an  
7 answer to the question. So whatever time the first action  
8 was brought they would have had to --

9 MR. LANEY: 2007 was the first foreclosure action,  
10 Your Honor. And then 2009 there was a second one.  
11 Mr. Bentrin represented himself in both of those actions.  
12 They were not handled by our law firm, so I do not have  
13 personal knowledge of those lawsuits other than what I've  
14 looked in the records. And it appears that there was a  
15 resolution that resulted in dismissal of the first one. The  
16 second one I believe actually came in front of Your Honor  
17 and a witness was not produced. And so you dismissed it  
18 without prejudice. I believe that's what the record shows.  
19 It was handled by different law firm. And then this lawsuit  
20 was brought in 2011. As far as the discovery or documents  
21 or anything between those that has not been, --

22 THE COURT: Both of them would have been captioned  
23 Wachovia versus Bentrin though, correct?

24 MR. LANEY: That's correct.

25 THE COURT: That was the time period was Wachovia

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1 was holding it?

2 MR. LANEY: That's correct, Your Honor.

3 THE COURT: So y'all should be able to get ahold  
4 of that stuff.

5 MR. LANEY: Yes, sir.

6 MR. VARNADO: You know, Judge, in response to that  
7 this is another critical thing is they had produced -- in  
8 the 2009 case they produced this Chris statement. This is  
9 called a Chris statement. Tracy Thomas testified about  
10 this. It doesn't match the Chris statement that they  
11 produced in this case.

12 THE COURT: That's good fodder for cross  
13 examination I would say. I can't fix that today, but that  
14 sounds pretty powerful on cross examination. I will look  
15 forward to that.

16 MR. VARNADO: I agree, Your Honor. I would agree.  
17 I just think that they need to say that they have produced  
18 everything, that they're not holding back based on  
19 objections or sort of wiggle room stuff that if they got it  
20 they're going to produce it, just like you have on the other  
21 things.

22 I did ask some specific questions about the kind of  
23 dovetails in the vault records dealing with this --  
24 Ms. Tracy Thomas testified that there was a lady down in  
25 Jacksonville named Brandy Vine (ph) who was subordinate to

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1 her who got the note out of the vault. And I asked them to  
2 tell me about how Brandy got it, tell me about how Brandy  
3 asked for it, tell me about what Brandy did with it.

4 Objection, objection, objection. I think it -- that's  
5 exactly why I'm asking you, and I think you've ordered them  
6 to turn over the records which show when it came in and out  
7 of the vault.

8 And I would really ask, Judge, as part of that, it's  
9 not that there be some E-card thing. Remember, I've asked  
10 for E-card. I'm asking Ms. Thomas, show me what you're  
11 looking at. Well, it's in E-card. Well, we haven't given  
12 it to you yet. So I came to court I need E-card, Judge.  
13 You know, well, Mr. Varnado, you didn't ask for it since  
14 Ms. Baker. You need to re-ask for it, re-ask for it. Then  
15 I'm supposed to get it. Then I move to compel and I haven't  
16 gotten it yet.

17 And they're saying, Mr. Laney's saying well, E-card  
18 shows where all the vault stuff was. Well, I think I should  
19 be able to see the vault records from Roanoke, because  
20 Ms. Thomas didn't testify about Roanoke. She didn't. I  
21 might have asked her if it was Roanoke. I don't think she  
22 knew. Whoever, it doesn't matter. I'd like to see the  
23 vault records in Roanoke, if they are in Roanoke, whoever  
24 vault it was. And I'd like to see the stuff with Ms. Hunt,  
25 and that's been objected to. I think that's bound up in it,

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1 Your Honor, also.

2 THE COURT: I think I did touch on that. That's  
3 just in the nature of the vault records, right? Where's the  
4 note being kept during the period of time, right?

5 MR. LANEY: My understanding is you said  
6 somebody's going to need to explain those records to  
7 Mr. Varnado to explain where the note was kept during the  
8 time period since we had it. We can do that, Your Honor.

9 MR. VARNADO: And Your Honor, all I'm asking for  
10 is the records from Virginia if it's in Virginia and the  
11 records in Jacksonville if they're in Jacksonville. It's  
12 just as simple as that. I'm not asking for anything other  
13 than Mr. Bentrin's notes. And that would establish a lot of  
14 things.

15 THE COURT: Y'all got a witness that says it was  
16 locked up tight as a drum after you got it?

17 MR. LANEY: We'll produce a witness --

18 THE COURT: Stayed there or bounced around the  
19 country for a while?

20 MR. LANEY: Yes.

21 MR. VARNADO: That will be interesting. Thank  
22 you, Your Honor. And then there was an issue of force  
23 placed insurance. And we haven't seen any force placed  
24 insurance documents, you know. We got one, I got one force  
25 placed insurance document that says that notice went to the

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1 bank. The bank's insurance company notified itself that  
2 they were putting force placed insurance on it. Well, I  
3 need to see the force placed file, and I haven't gotten  
4 that. And I think that's relevant. I mean, you put force  
5 placed insurance on, those force placed insurance cases are  
6 coming down the pipe.

7 MR. LANEY: We'll look for that part of the  
8 complaint that came in if we have anything on that.

9 THE COURT: What time frame would that have been,  
10 do you know?

11 MR. BENTRIM: It was 2009, 2010.

12 THE COURT: Did it proceed that 2009 action or  
13 post that 2009?

14 MR. BENTRIM: What was going on during the 2009  
15 action was they were having statements mailed to them, so  
16 they mailed, hey, we need evidence of insurance to  
17 themselves, and then put the maximum amount on my house.

18 THE COURT: And did you keep insurance in place  
19 the whole time?

20 MR. BENTRIM: Yes.

21 THE COURT: Provide that to them?

22 MR. BENTRIM: I was never given an opportunity  
23 because they never gave me the notice. They mailed it to  
24 themselves.

25 THE COURT: At least you got a time frame.

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1           MR. LANEY: And one of the things we've asked for  
2 as part of the evidence that he had insurance. I figured  
3 that would help us as well. I think that's part of what  
4 Mr. Varnado has produced.

5           THE COURT: That would definitely lead to an  
6 accounting problem. If force placed insurance is being put  
7 in, I've had that plenty of times. It's getting put into  
8 effect it's going to drive up your principal balance. And  
9 if you've got your own insurance there's no need for that.  
10 And they probably have a priority interest in that insurance  
11 company anyway, they can probably take that hit.

12           MR. VARNADO: The last small clean up but also  
13 could be a big deal is we see this in all sorts of cases.  
14 There's compliance manuals that are internal that are not  
15 attorney/client privilege. They're compliance manuals for  
16 how people like Tracy Thomas, and I called her a  
17 robo-signer, but I won't. Mr. Laney asked me not to, but  
18 for people of her level and sophistication how they handled  
19 things. And there's compliance manuals for vault security.  
20 And I think I should see those too. I've asked for those  
21 fairly too in the motion that's scheduled before you.

22           Your Honor, and then the other thing I would ask is  
23 after we handle this compliance manual issue if you would  
24 indulge me. I know we've been going on for a little bit,  
25 but just a minute or two to talk to my client to make sure I

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1 haven't forgotten anything or that we can concede something  
2 else.

3 THE COURT: All right. Mr. Laney?

4 MR. LANEY: The compliance manual is completely a  
5 proprietary document, internal. We would object to  
6 producing that. We certainly will produce to the, where the  
7 note was, somebody who can testify where the note physically  
8 was and the custodian of that during the relevant time  
9 period for this lawsuit, Your Honor.

10 But again, I would say under the oncology it doesn't,  
11 the compliance manual for that does not help us prove any  
12 relevant issue in this case, Your Honor. We have the  
13 original note here. He wants to make sure that somehow it  
14 didn't go out of our -- we were in possession of it. I  
15 still don't think that's going to prove anything, but still,  
16 I can see where that can lead to -- so we certainly will  
17 comply with that, but the compliance manual, I think that's  
18 getting beyond the scope here, Your Honor.

19 MR. VARNADO: You know, Judge, just in rebuttal to  
20 that it goes directly to the point of establishing the  
21 standard and duty for the bank. It goes directly to whether  
22 or not the employees correctly handled this. Three, as you  
23 recall there was a lost note affidavit. That was submitted  
24 when -- then miraculously the note appeared again, so that  
25 impacts that. It impacts the vault records.

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1           One thing I've done is I've handled some security cases  
2 before. And I've seen something happen where the defendant  
3 will give the index of compliance manuals. And then you  
4 say, well, I need to see these, this section, this section,  
5 this section. And you're not asking to see, you know, what  
6 the employee benefits are, you know, what their salary  
7 structure is. I could care less about that. What I want to  
8 see is compliance manuals that cover the staff who are at  
9 the level of Tracy Thomas and the people who handled the  
10 note, what compliance manuals covered them and what  
11 compliance manuals cover the vault.

12           They're proprietary. Well, you know, every day all  
13 across the country corporations have to give proprietary  
14 documents under confidentiality orders in discovery. And  
15 that's all I'm asking for here. Womble Carlyle produced and  
16 resigned a confidentiality agreement. So I think it's  
17 subject to that, Judge. It's fair. I mean, I don't know  
18 how -- I don't know why it wouldn't be relevant in discovery  
19 other than they just don't want to give it.

20           MR. LANEY: There's no issue here whether or not  
21 we were negligent in holding the note or not. He said it,  
22 the question is whether the note was sold or not,  
23 and being able to see where the note was during these time  
24 periods answers that question. Seeing a compliance manual  
25 doesn't go to that.

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1 THE COURT: I'm not going to grant that. Okay.  
2 I'm going to deny you on that one.

3 MR. VARNADO: Can I have that minute then to  
4 confer, Judge?

5 THE COURT: Sure.

6 MR. VARNADO: Your Honor, I do not need to  
7 confirm.

8 MR. LANEY: Your Honor, we had talked earlier but  
9 we're sort of operating now on the vacuum of, because we  
10 don't have a current scheduling order and there's obviously  
11 a lot of discovery still to be done. Mr. Varnado has named  
12 four expert witnesses in this case who we do not yet have  
13 expert opinion reports, so those people are going to be  
14 deposed. We've identified four rebuttal expert witnesses  
15 depending on what his experts may say. We've just talked  
16 about a lot of paper getting swapped in the next, you know,  
17 15 or so days. So I just want to make sure the Court was  
18 aware where we were so we didn't try the Court's patience by  
19 you thinking we needed to come up for trial and we were not  
20 prepared.

21 THE COURT: Well, usually what I do is I have sort  
22 of a pretrial hearing, take up any dispositive motions, any  
23 last minute discovery problems that may exist, and then set  
24 you for trial at that time. And trial is usually 30 to 60  
25 days out. So that's probably what I would like to do is set

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1 y'all up with another pretrial hearing.

2 MR. VARNADO: We can just keep doing discovery  
3 through that?

4 THE COURT: Yeah. Some time 60 days out,  
5 something like that.

6 MR. VARNADO: That's perfectly acceptable.

7 THE COURT: Does that give y'all time? If I set  
8 something for late April? I got some time in late April.

9 MR. VARNADO: Yes, sir.

10 THE COURT: And then I won't have any time until  
11 basically June for trial.

12 MR. VARNADO: I'm sorry. What I understand His  
13 Honor to be saying is that the Court will establish the  
14 pretrial. At the pretrial then you would determine what  
15 discovery remaining needed to be done; did I --

16 THE COURT: My goal is to have y'all have  
17 discovery done by then and I be taking up these dispositive  
18 motions at that time.

19 MR. LANEY: If he's truly going to go forward with  
20 four experts and we have to depose them and get their  
21 opinions and then allow time for our four experts to form  
22 their opinions in rebuttal of him, I don't see how in the  
23 world we can get that done in 60 days, Your Honor, even if  
24 we were really hustling hard.

25 MR. VARNADO: We'd like to try it in June. And

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1 Judge, maybe we need to come back for another status  
2 conference. I mean, I want to get the thing done, but you  
3 know, we need to get these documents. We need to look at  
4 the documents. The experts need to look at the documents.  
5 We're running into potential, you know, late spring and  
6 early summer is vacation time. Maybe I'm getting too ahead  
7 of myself.

8 MR. LANEY: We don't want to delay it, Your Honor.  
9 I do want to do it in an orderly fashion without imposing on  
10 your schedule more than we need to.

11 THE COURT: So why don't I bring y'all in here in  
12 late April for a status, 28th April at 11:00 a.m. All  
13 right? And then I'm going to be heading towards June 9th on  
14 a pretrial. At that point in time we should be, y'all are  
15 ready to go and there's a case left after June the 9th then  
16 I'll be looking to set the trial date some time probably  
17 July, August time frame.

18 MR. LANEY: Your Honor, the final issue, we've  
19 conferred, the Court appointed Capers Barr to be the  
20 mediator in this case. We believe that Dawes Cooke may be  
21 very well situated for this particular one, given the issues.  
22 We just want to make sure that was fine with Your Honor.

23 THE COURT: Yeah. Y'all want to go see Dawes?  
24 You want me to put Dawes in here?

25 MR. LANEY: Please.

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1 THE COURT: When would y'all like to see him,  
2 before we come back here in June?

3 MR. VARNADO: I think we need to discuss it at the  
4 status conference. That would make sense, the status  
5 conference and pretrial.

6 MR. LANEY: I definitely want to see him before we  
7 come back here pretrial.

8 THE COURT: I'm going to go ahead and pencil both  
9 of those days in, status on the 28th and the pretrial I'm  
10 going to set that up on the 9th of June. I put Dawes in  
11 here. We'll get back for a status on April 28th and do a  
12 pretrial on June the 9th. And then just some deadlines,  
13 Dawes Cooke by the 6th of June. Y'all go ahead and notify  
14 him though so y'all can get some time in there.

15 MR. VARNADO: You want me to do an order judge  
16 or --

17 THE COURT: I got a 'status, but I do need y'all to  
18 come up with an order on our discovery stuff. I think you  
19 had made reference, I don't think you had one from the last  
20 time. So I want to make sure we're clear and we cover all  
21 these issues that we've got. So let me run this by y'all,  
22 make sure we know what we've done here. I've got, y'all  
23 correct me if I'm wrong, but y'all are going to make an  
24 inquiry of the IRS for the EIN number and who it was  
25 assigned to. Okay?

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1 MR. LANEY: Yes, sir.

2 THE COURT: The servicing files on the plaintiff  
3 will be produced, and that's to include the correspondence  
4 file, the payment, application of payment file, anything  
5 having to do with the sale and repurchase of the note, and  
6 whatever general ledger exists. Okay?

7 MR. VARNADO: Yes, sir.

8 THE COURT: They're not required to show  
9 compliance with the OCC order, or the AG's agreement, or  
10 produce the codes and rubiks, but you are required to  
11 produce somebody who can explain what those codes and rubiks  
12 are, and especially prior to their deposition as to the sale  
13 and repurchase.

14 And then the vault records and explanation of the force  
15 placed insurance, done the scheduling order. Compliance  
16 manuals are not required to be produced. Okay? And then  
17 what was the other thing? There was one thing one of y'all  
18 brought up on a prior hearing.

19 MR. LANEY: He was going to provide us with  
20 answers to our motion to compel on the 15th.

21 THE COURT: That's right. And those will be  
22 looked at. If there's a problem with that y'all file a  
23 motion and we'll take a look.

24 MR. LANEY: Your Honor, just for clarification  
25 what are we doing with the vault records, producing a

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1 deponent who can testify as to where it was --

2 THE COURT: Yeah, yeah.

3 MR. LANEY: Just making sure I understand.

4 THE COURT: If there's some list that would  
5 suffice, but if there's a person and they look at it that's  
6 fine. It may be in those codes. I don't know.

7 MR. VARNADO: And he'll produce the back up  
8 documentation too? Did I mishear you, Judge? I thought  
9 that you had said --

10 THE COURT: When you say back up documentation --

11 MR. VARNADO: The actual, the records themselves.  
12 So I'm not going to hear somebody that's going to say,  
13 Mr. Varnado, my name's Joe Blow, and I've looked at records  
14 that you've never seen. And I'm here to testify about  
15 records that you've never seen.

16 THE COURT: I'm assuming there's a list somewhere  
17 as to where it's been.

18 MR. VARNADO: Right. You told me no to the  
19 compliance manuals but yes to the vault records and yes to  
20 the force placed insurance file?

21 THE COURT: Right.

22 MR. VARNADO: And Your Honor, did we have the same  
23 time, is it a mutual time frame, 15 days?

24 MR. LANEY: Your Honor, I'll just be candid. I  
25 don't think I can produce everything that you ordered from

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1 my side in 15 days. This is for the first time I'm going  
2 and asking my client to do, and I will not -- we'll get it  
3 as quickly as we can.

4 MR. VARNADO: Just, you know, this is some stuff  
5 that's been out there since Mr. Sloan asked for it back in  
6 '11.

7 THE COURT: I'll give him 30 days. See if you can  
8 get yours in 15 and get theirs in 30.

9 MR. VARNADO: The one thing you did say was they  
10 would make the inquiry to the IRS by the end of the week,  
11 Judge?

12 THE COURT: Yeah. That would be good. All right.

13 MR. VARNADO: Thank you, Judge.

14 MR. LANEY: Thank you, Your Honor.

15 (Hearing concluded at 12:45 o'clock p.m.)  
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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,  
5 certify that I did have The Honorable Judge Mikell  
6 Scarborough to appear before me at 11:15 o'clock a.m. on  
7 Monday, February 10, 2014, at the Charleston County  
8 Courthouse, 100 Broad Street, Suite 266, Charleston, South  
9 Carolina; that the witness was sworn and cautioned to tell  
10 the truth, the pages constitute a true and accurate  
11 transcript of the testimony given at that time and place.

12 I further certify that I am not of counsel or kin to  
13 any of the parties to this cause of action, nor am I  
14 interested in any manner in its outcome.


15 IN WITNESS WHEREOF, I have hereunto set my hand and  
16 seal this the 21st day of February, 2014.

17

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\_\_\_\_\_  
Stacey L. Scoggan

21

Notary Public for South Carolina

22

My Commission Expires: February 23, 2021

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