THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Mikell Scarborough
Charleston County Master in Equity

Unpublished Opinion No. 2017-UP-344
Submitted April 3, 2017 – Filed August 9, 2017
Petition for Rehearing Denied November 17, 2017

Brent E. Bentrim ..... Appellant

v.

Wells Fargo Bank, N.A. ..... Respondent

Appellate Case Nos. 2014-002590 & 2015-000396

APPENDIX VOLUME II

Robert B. Varnado (S.C. Bar # 0007850)
Alexis Wimberly McCumber (S.C. Bar # 101611)
BROWN & VARNADO, LLC
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
DEFENDANT.	)	
	)	

FILED
2014 JUN 19 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF WELLS FARGO BANK N.A.'S MOTION FOR SUMMARY JUDGMENT

The Defendant, Wells Fargo Bank, N.A. ("**Defendant**" or "**Wells Fargo**"), submits this Supplemental Memorandum in Support of its Motion for Summary Judgment in response to the Court's request for additional briefing.

I. NEGLIGENCE/NEGLIGENT MISREPRESENTATION (FIRST AND SECOND CAUSES OF ACTION)

a. Duty of Care

Plaintiff relied on the recent decision in *Kerr v. Branch Banking & Trust Co.*, 2014 WL 1386873 (S.C. Sup. Ct., Apr. 9, 2014), to argue that banks owe a duty of care to their customers. In *Kerr*, the Supreme Court did state that "[i]t is well-established that banks owe a *limited* duty of care to their customers." *Kerr*, 2014 WL 1386873, *2 (emphasis added). In making that statement, however, the *Kerr* Court cites *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) (relied on by Wells Fargo in its original Memorandum in Support of Summary Judgment). These cases hold "that a bank-customer relationship is merely a lender-borrower relationship and is not fiduciary in nature *unless the bank undertakes to advise its customers as part of the services that the bank offers.*" *Kerr*, 2014 WL 1386873, *2 (emphasis added). Rather 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. 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, Bentrim 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, Bentrim 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, Bentrim 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.

Charles J. Baker, III (SC Bar # 486)
S. Sterling Laney, III (SC Bar # 6933)
John C. Hawk, IV (SC Bar # 74786)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29401
Telephone: (843) 722-3400

CHARLESTON, SC
June 19, 2014

2011-CP-10-2946

CERTIFICATE OF SERVICE

I do hereby certify that on June 19th, 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

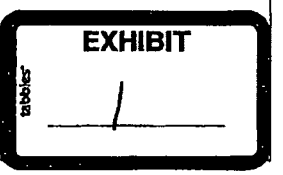
Carol Casey

FILED
2014 JUN 19 PM 4:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:)
COUNTY OF CHARLESTON) Case No. 2011-CP-10-2946

BRENT E. BENTRIM)
)
Plaintiff(s),)
) DEPOSITION OF:
-vs-)
) BRENT E. BENTRIM
)
WELLS FARGO BANK, NA,)
)
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.



A P P E A R A N C E S

For the Plaintiff(s): Brown & Varnado, LLC
By: Robert B. Varnado, Esquire
103 Church Street
Mount Pleasant, SC 29464

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

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

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

A. Yes.
Q. Okay. In writing?
A. Yes.
Q. Okay.
A. And he, they confirmed it in a letter.
Q. That it was?
A. Yeah.
Q. When did you realize that it wasn't applied?
A. 2008, when I got this (indicating).
Q. Okay. And what about in 2007?
A. That's also when I realized that it wasn't applied.
Q. How much did you pay in 2007 to resolve?
A. Seven thousand one hundred thirty-five fifty-one.
Q. Okay. And that was on 12/5/2007?
A. Yeah.
Q. Now, at this point, did you still contend that you were making the payments on time and properly?
A. Yes.
Q. And then, you went ahead and paid another seven grand?
A. Yeah.
Q. Okay. And you just paid it, even though you thought it was wrong to pay this amount?

A. Yeah.
Q. Okay. In 2007, did you say, look, we had the same issue in 2005?
A. I did.
Q. And did you say, did you look into whether the 2005 payment was properly applied?
A. Yeah.
Q. You did in 2007?
A. Yes.
Q. Okay. In --
A. No. You're asking if I asked them that or did I do it?
Q. My question is did you, you're contending that in 2005, you paid thirteen thousand dollars when you theoretically shouldn't have paid an extra thirteen thousand dollars, because your loan was current?
A. Yes.
Q. Okay. And then again, in 2007, you're --
A. Hold on. I think you're mischaracterizing this. What would happen -- and I think you're probably familiar with it -- is they'll say you're behind or the bank will say you're behind, quit accepting payments, and you've got a big lag until everything gets straightened out, gets to

the attorney, et cetera. So, some of those were, yeah, payments that were not accepted during that time. You know, it's not like they'll say, let's keep taking your payments. It's like, you either pay us what is demanded or we're foreclosing. It's not like, oh, let me keep paying. So, I don't want that to be mischaracterized.

Q. Okay. Understandable.

A. Yeah.

Q. But in 2007, the same thing happened?

A. Yeah.

Q. Okay. Did you say, look, there was an issue in 2005?

A. Yeah.

Q. What did you do to my thirteen thousand dollars then, like what happened with that? Did you ask?

A. I did.

Q. Okay. And what did the bank tell you or the bank's attorneys?

A. The bank's attorneys, you know, said this is what you have.

Q. Okay. Did you go ask about the previous thirteen thousand dollars?

A. Yeah.

Q. Okay. And then, you went ahead and paid them

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

A. Yeah.

MR. VARNADO: Off the record real quick.

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

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

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

Q. Was it the same attorneys or different attorneys?

A. The first one was a different attorney.

Q. '05 was different from '07?

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

Q. And '05 was a different law firm?

A. Yeah. Different law firm.

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

A. No.

Q. Okay.

MR. VARNADO: I can tell you right now.

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of May, 2013.

_____

Notary Public for South Carolina
My Commission Expires: April 4th, 2022

STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF CHARLESTON)

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of May, 2013.

John P. Crawford, Jr.

Notary Public for South Carolina

My Commission Expires: April 4th, 2022

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

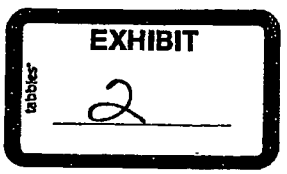
F. **Causes(s)** **13**

$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)



H.	Cause(s)	16
	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 4:4
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 face 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 Bentrim to require him to have filed suit before 2007. This argument is beyond specious.

During the 2005 and 2007 lawsuits, Bentrim 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 Bentrim 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 Bentrim 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). 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 <u>*separate*</u> 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 memoradum. 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, Bentrim 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 Contact 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), SCRCP. 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), SCRP. 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 Bentrim'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 Bentrim Loan to The Money Store was made after a foreclosure suit (2005) and at a time Wachovia Bank claimed Bentrim 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 Excepts, 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.

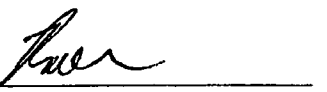
Plaintiff submits that the Order of the Court from 2006 is void because Defendant's predecessor obtained a judgment by default without submitting an affidavit, verified complaint or other sworn testimony. S.C. Code Ann. § 37-5-114 (2) provides that "[a] default judgment may not be entered in the action 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
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Paralegal to Robert B. Varnado, Esq.

June 23, 2014
Mount Pleasant, South Carolina

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2014 JUN 23 PM 4:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT A

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

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

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accounting.
Q. Okay.
A. Is that fair? Yeah.
Q. Right. But you contend you were making payments?
A. Yes.
Q. Okay. And going back, so, okay. Just you left, okay, when did you leave Wachovia Securities exactly?
A. March 2002.
Q. Okay.
A. So, right after --
Q. Right after the closing or the refinance? Yeah. And again, why did you leave Wachovia Securities?
A. To start my own firm.
Q. Okay. And did you have a problem with Wachovia? I mean, did you?
A. I mean --
Q. Why did you leave?
A. Oh, okay. That's fair.
Q. Yeah.
A. To start my own firm. They had recruited me to come over from Merrill Lynch.
Q. They is Wachovia?
A. First Union, Wachovia.
Q. Okay.

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

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to close, November 21st, 2003?
A. Yes.
Q. Okay. At this time, is this the time, November 21st, 2003 when you realized again, there's an issue with the application of twenty-seven hundred dollars?
A Yes.
Q. Okay. And how did you figure that out then?
A. Because I thought I was ahead, and your client's sending me a statement saying you owe us thirty-nine, thirty-eight ninety-one o five.
Q. Okay. And so -- Okay. And so, you, at that time you realized the twenty-seven hundred was booked incorrectly?
A Yes.
Q. Okay. Did you do anything November 21st, 2003 to try to correct it?
A. Yes.
Q. Okay. And what did you do?
A. I called your client.
Q. Okay. Do you know who you, I mean -- okay.
A. Yeah. No.
Q. That's fine.
A. Yeah. I know I made numerous calls.
Q. Okay.

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A. Yeah.
Q. Around this time frame in 2003?
A. Yes.
Q. Okay. Was anything ever done to correct?
A. No. They basically just ignored me.
Q. Okay. Did you, so you called and you contend that Wells Fargo, or Wachovia ignored you?
A. Yes.
Q. Okay. Did you ever try to file a law suit at this time?
A. No.
Q. Okay. Did you ever try to talk to your closing attorney around this time?
A. No.
Q. Okay. Now, I'm going to show you another document. This will be Exhibit Nine.
(NOTICE OF FORECLOSURE MARKED AS DEFENDANT'S EXHIBIT NO. 9 FOR IDENTIFICATION.)
MR. VARNADO: He's waiting for you.
Q. Okay. Mr. Bentrim, have you seen what's Defendant's Exhibit Number Nine before?
A. I have.
Q. Okay. This is a notice of intention to foreclose?
A. It is.

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

Page 60

A. Uh-huh.
Q. Okay.
A. If you take twenty-seven hundred dollars off of that.
Q. Right.
A. It doesn't add up to a missed payment.
Q. Okay.
A. And then when you take the ten dollars as well.
Q. Okay. So, that's the twenty-seven hundred dollars that we've been looking at in the settlement statement?
A. Right.
Q. Okay. So, did you do anything at this point in 2004?
A. Same stuff. Called, tried to get somebody to talk to me.
Q. Okay. Did you try to file a law suit?
A. Nope.
Q. Okay. Despite receiving the notice, were you still making your monthly payments that you were supposed to make?
A. Yes.
Q. Okay. Now, let's move forward to more recently. We'll mark this as Exhibit Ten, Bentrim's Number Ten. Thank you.

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A. Yeah.
Q. Okay. And then do you a March 20th, 2007?
A. I do.
Q. Okay. And for the record, for Exhibit Eleven, would you agree with me these are demand letters from Wachovia to you?
A. I would.
Q. Okay. Have you received all these demand letters?
A. Yes.
Q. Okay.
A. I believe.
Q. Yeah. Just take a look at it. Let's go through the first one. Have you received the one, and you might need to look at it, dated July 13th, 2005?
A. Yes.
Q. Okay. And have you received the one dated December 13th, 2006?
A. Yes.
Q. Okay. And then, have you received the one dated January 19th, 2007?
A. I have.
Q. Okay. And did you receive the one dated March 20th, 2007?

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A. I have.
Q. Okay. On January 13th, 2005, do you still contend that you were making the payments to Wachovia?
A. Yes.
Q. Okay. And with this one, are you contending that this demand letter is incorrect?
A. Again, yes.
Q. Because of the same reasons we discussed earlier, the twenty-seven hundred dollars?
A. Yes.
Q. Okay.
A. Yes.
Q. Okay.
A. I was checking the date on it.
Q. Okay. And look at December 13th, 2006 letter.
A. Yes.
Q. Okay. Was the past due payment incorrect there as well?
A. It was.
Q. Okay. And was it, what else was wrong with it besides the twenty-seven hundred dollar inaccuracy?
A. Late charges of ten dollars have been put on the account, and there's no provision for it.

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Q. There's no provision, oh, because you're contending that you are not late on any of the payments?
A. Well, even, what's even more bizarre than that, Jana, is it's not even a part of the note.
Q. There's not a condition for late charges?
A. It's not ten dollars.
Q. Okay. What was the late charge, do you recall or we can look it up?
A. It's five percent of the next payment.
Q. So, it could be, I guess, let's take a look at it. Okay. So, you're looking for the five percent is, you're looking at the note on page three of four of the note is --
A. I've got it over here.
Q. Okay. And that's Exhibit --
A. Two.
Q. -- Two. Exactly. And if you look on page three of four of the provisions, page three of four of the note.
A. Yes.
Q. Okay. And that's the five percent of the payment?
A. Yes.
Q And were any of your payments late?

Page 68

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

EXHIBIT B

EXHIBIT E

BROCK & SCOTT PLLC

COLUMBIA OFFICE
WESTPARK CENTER
3800 FERNANDINA ROAD
SUITE 110
COLUMBIA, SC 29210
PHONE 888-726-9953
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* Licensed in North Carolina
** Licensed in North Carolina and South Carolina

July 10, 2009

Brent E. Bentrim
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. Bentrim,

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 61st month (and every 61st 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:

EXHIBIT E

Payment Due Date	Payment Received and Applied
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
TOTAL						**$ 13,035.62**

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

WACHOVIA

EXHIBIT A

11/17/2008

VIA CERTIFIED AND REGULAR MAIL

41,430.55,045
Brent E Bentrim
49 Archdale St
Charleston, SC 29401

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
TOTAL DUE	**$4,920.09**

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.

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

WACHOVIA

EXHIBIT A

11/17/2008 VIA CERTIFIED AND REGULAR MAIL

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.

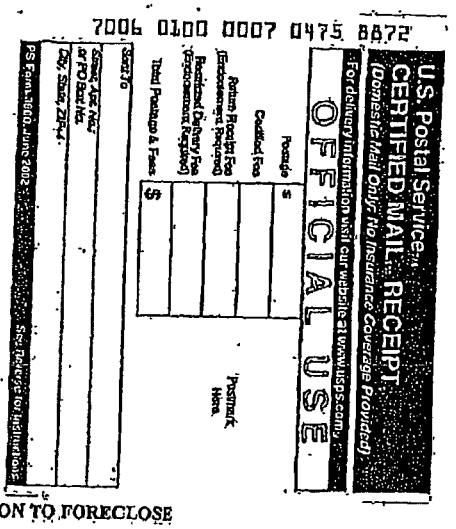
Please note:

- 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



WACHOVIA

Wachovia Bank N.A.
FL 0503
Collection Shared Services
PO Box 52117
Jacksonville, FL 32201-2117
Tel 866-509-7093

December 13, 2006.

Brent E Benbim
10 Nicholson Street
Charleston, SC 29407

NOTICE OF INTENTION TO FORECLOSE

RE: 0000412002 13089

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
Total due to reinstate and cure default:	$4,146.05

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

WF 59

EXHIBIT C

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

BRENT E. BENTRIM,)
)
Plaintiff,)
)
v.)
)
WELLS FARGO BANK, N.A.,)
)
Defendant)

VIDEOTAPED DEPOSITION OF

TRACY THOMAS

10:03 a.m.

August 6, 2013

1301 Riverplace Boulevard, Suite 1609
Jacksonville, Florida

Richetta R. Bright, Registered Professional Reporter

APPEARANCES OF COUNSEL

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

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

Also Present: Miriam Beckford, Videographer
Brent E. Bentrim

- - -

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(Exhibits attached to the original transcript.)

THE VIDEOGRAPHER: This is tape number 1 to the videotaped deposition of Tracy Thomas, in the matter of Brent Bentrim versus Wells Fargo Bank, being heard before the Court of Common Pleas, Ninth Judicial Circuit, Case No. 2011-CP10-2946.

This deposition is being held at Esquire Deposition Solutions, located at 1301 Riverplace Boulevard, Jacksonville, Florida. Today's date is August the 6th, 2013. The time on the record is 10:03 a.m. My name is Miriam Beckford. I'm the videographer. The court reporter is Richetta Brown [sic].

Counsel, will you please introduce yourselves and affiliations, and the witness will be sworn.

MR. VARNADO: My name is Rob Varnado, and I am counsel for the plaintiff.

MS. BAKER: My name is Jana Baker, and I am counsel for Wells Fargo, and I'm with the firm Womble, Carlyle, Sandridge & Rice.

THE COURT REPORTER: Would you raise your right hand? Do you swear or affirm that the testimony in this cause will be the truth, the whole truth, and nothing but the truth, so help

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Q. You don't change that?
A. The only thing would have been adding Mr. Bentrim's name.
Q. Okay. Did you -- were you part of -- were you ever asked to help locate where the note was found when it was found?
A. Can you rephrase that?
Q. Yeah. I mean, we've already established that it was checked out in 2009. And it was rechecked into the vault 20 days after your lost note affidavit in 2012.
A. Yes.
Q. Okay. Did you know that it had been rechecked in?
A. When?
Q. In February 27 of 2012.
A. No.
Q. Why would you not know that information?
A. I was -- I had no dealings with this account until I was made aware by counsel that you wanted to take my deposition.
Q. Okay. So you wouldn't have followed up on it?
A. No.
Q. Okay. And who checked it back in?

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A. It was received from an attorney.
Q. Okay. And then who checked it out next, based on ECaR?
A. Sheila Sowers.
Q. Okay. And when – that was in 2013?
A. I believe it was -- it was either late 2012 or early 2013. It would have been around the time you had discussions with counsel about taking my deposition.
Q. How do you know that? Just out of curiosity.
A. Because --
Q. Don't say anything they told you. Just how would you know it?
A. Because I was -- I was brought back into it.
Q. Okay. I don't want to know anything more that you talked about with Ms. Baker or Mr. Laney or anyone at their firm or anyone with your counsel group. Fair?
A Fair.
MR. VARNADO: I want to take another break.
THE VIDEOGRAPHER: Okay. We're off the record at 1.19 p.m.

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(Break taken)
THE VIDEOGRAPHER: We're back on the record at 1:26 p.m.
BY MR. VARNADO:
Q. Did you bring a copy of SHAW with you today or a SHAW print screen?
A. I brought copies of the two screens that I would have looked at.
Q. Do you have them with you?
A. Yes.
Q. May I see them, please?
MR VARNADO: Let's go back off the record, then –
THE VIDEOGRAPHER: Okay.
MR. VARNADO: -- save video space.
THE VIDEOGRAPHER: We're off the record at 1:26 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at one 1:37 p.m.
BY MR. VARNADO:
Q. Ms. Thomas, we stepped out of the room to look at the documents that you brought with you today in response to the deposition notice, I assume. Can you describe for me, generally speaking, what the

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documents are and why you selected them to bring with you?
A. Well, you didn't -- I mean, you filed a notice of duces tecum --
Q. Uh-huh.
A. -- but you didn't attach anything on what to bring.
Q. Okay.
A. So I brought a payment history, note and mortgage, some of the closing documents, updated payoff figures good through today, and screen shots – two screen shots of SHAW that I would have used in my review and execution of the lost note affidavit.
Q. You didn't bring the ECaR stuff, though?
A. No.
Q. Why not? You just didn't feel it was germane?
A. Well, you – I mean, you didn't really give us anything --
Q. But you studied it pretty hard. You knew the dates and names of people, right?
A. Yes.
Q. So we could still get an ECaR printoff –
A. Sure. If you --

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

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Q. The pages that you would use for SHAW? You told me earlier you would use two pages. These are the pages you would have used?
A. Yes.
Q. Okay. Which is the first page?
A. This.
Q. Exhibit 7?
A. Yes, the page --
Q. Okay.
A. Page 1 at the top.
Q. Okay. And then, this is Page 2?
A. This is Page 2 of them, but Page 3 of SHAW.
Q. Okay. Just for our -- the sake of clarity, we're going to make the second page, which is Page 3 of SHAW – we're going to make that Exhibit No. 8; is that fair?
A. Yes.
(Exhibit-8 marked for identification.)
Q. All right. So you -- you would have looked at 7 and 8?
A. Yes.
Q. Does 7 and 8 contain a date on them now?
A. Yes.
Q. What date does it show?

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A. I pulled these August 1st of 2013.
Q. Do you believe that anything substantive changed in SHAW between August 1st, 2013, and February 2012?
A. No.
Q. Okay. Where is the original loan amount?
A. Original amount, 182,7-.
Q. Okay. Where is the actual loan, the loan balance?
A. Current loan balance, 176- -- or $176,879.20.
Q. What is this $180,000 proceeds amount?
A. It's the amount financed.
Q. How can the amount financed be less than the original amount?
A. The original amount is including the $2700 loan origination fee.
Q. Don't you think that the 2700 origination fee was actually part of the 180- and not separate from?
A. It should not have been part of the 180-.
Q. But it -- okay. Now, you also brought the HUD, which back in those days only had two pages, right?
A. Yes.

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

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Q. Okay. So you've learned how to read them?
A. Yes.
Q. Where is the -- whose column is whose?
A. So this would be the borrower's column, and this would be the seller's.
Q. What's the loan amount?
A. $180,000.
Q. And you're referring to Page 2, right?
A. Yes.
Q. Then it has -- where is the 2700?
A. Paid from borrower's funds at settlement.
Q. So that means it was part of the one hundred -- the 180-, correct?
A. Yes.
Q. Okay. So right here, SHAW is wrong on Exhibit 7?
A. No.
Q. Why is SHAW not wrong? Why doesn't the HUD trump SHAW?
A. The HUD appears to be incorrect.
Q. The HUD was signed and accepted by everybody. It's the closing document. SHAW is incorrect, don't you agree?
MS. BAKER: Object to the form.

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MR. VARNADO: Thanks.
BY MR. VARNADO:
Q. You can answer.
A. We believe a mistake was made by the closing attorney and including the $2700 in -- for loan origination fee.
Q. How do you know that?
A. Because it shouldn't have been included.
Q. I know. But how do -- how do you know that? The first time you picked up this file was when you were asked to do the loan -- the lost note affidavit. Then the next time you picked the file up was when you were notified that I was seeking to take your deposition. How do you know that the closing attorney messed up?
A. We -- I discussed the account with our research group.
Q. Okay. Who did you discuss it with at research?
A. Darlene Lella.
Q. Okay. And who was Ms. Lella? What did she do at the research group?
A. I don't know what her exact title is, but she works in the servicing research group.
Q. So even though the HUD shows that the 2700 on Page 2 of the HUD was paid out of the borrower's share of the 180-, y'all just consider that incorrect, and, therefore, you're going with what you put in SHAW; is that fair?
A. I go by what is in SHAW, correct.
Q. Okay. Even when SHAW disagrees with the HUD-1, that doesn't matter?
MS. BAKER: Same objection.
Q. You can answer.
A. I did not see the HUD when I executed the lost note affidavit.
Q. I thought it was part of CLIPR?
A. It is.
Q. And you said you looked at the CLIPR stuff as part of that.
A. Yes.
Q. But you didn't look at the HUD --
A. I --
Q. -- you didn't study it?
A. No, I did not study the HUD.
Q. Okay. I'm going to mark Exhibit No. 10, the First Union adjustable rate loan information statement.
(Exhibit-10 marked for identification.)
A. Yes.

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

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stamp on the bottom --
A. Yes.
Q. -- right?
So you really didn't download that one from CLIPR, because that one doesn't have a Page 5, does it?
A. It -- I did not personally pull this one, no.
Q. So that's not -- that's not the real CLIPR version of the promissory note?
A. I don't -- I don't know.
Q. Okay. When you were getting ready for today and you looked at CLIPR, did you see Page 5 on the CLIPR version?
A. I don't recall if I did or not?
Q. Wouldn't that be important to you? Because you know that that's something that's supposed to be there?
MS. BAKER: Asked -- objection. Asked and answered.
MR. VARNADO: You know you're not supposed to coach the witness, so --
MS. BAKER: I'm not coaching.
MR. VARNADO: -- just object to the form of the question, please.

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

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

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

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charge --
Q. Okay.
A. -- 120 per year.
Q. All right. Which one should we make 14, the First Union document?
A. Sure.
(Exhibit-14 marked for identification.)
Q. What's this?
A. That's the itemization of amount financed.
Q. Now, on Exhibit No. 14, I'm going to again point out to you that it says the amount financed is $180,000. That's -- and that is a bank document prepared by First Union for 180,000. But that is inconsistent with SHAW. Would you agree with --
A. No. It's a total of Items 1 through 4, 182,700.
Q. But the amount financed at the bottom, the last, is $180,000?
A. Correct. SHAW says amount financed, 180,000.
Q. Okay. Where did 13 get off to?
A. You took it off.
Q. There it is.

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

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

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MS. BAKER: Okay.
MR. VARNADO: We're going to lay them out here because they're going to get all messed up otherwise.
BY MR. VARNADO:
Q. All right. Let me ask you this, I'm going to hand you this 14-page exhibit. I assume you reviewed this before this morning, correct?
A. Yes.
Q. Okay. This is from SHAW, right, this 14-page document?
A. It's from CRIS.
Q. I'm sorry. It is from CRIS, but it shows SHAW transactions, correct?
A. Yes.
Q. Do you consider it to be authoritative in the same manner that SHAW information is authoritative?
A. The information contained in this payment history is pulled from SHAW. So, yes.
Q. And you would consider it to be correct –
A. Yes.
Q. -- right?
Okay. I'm going to ask you to explain

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some things that I just don't understand. If you can help explain them for me as a bank officer, someone who has prepared for this and understands how this information is generated. This would have been very similar to the information you looked at when you did the lost note affidavit in 2012, correct?
A. I didn't look at the payment history in 2012 –
Q. Okay.
A. – for the lost note affidavit.
Q. Fair enough. So you didn't look at the CRIS information 2012. But you did look at it in preparation for today, right?
A. Yes.
Q. Does anything in here give you pause or say this can't be accurate or correct?
A. No.
Q. You know how to read it. You've already told me that you understood how these bank documents work and how they go together, correct?
A. Yes.
Q. And that was part of the lost note affidavit, right?
Okay. What is the loan – the actual loan amount? Not the original, but what's been

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

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

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Q. Okay. Do you believe this to be an accurate document?
A. Yes.
Q. Subject to what you've just described –
A. Yes.
Q. – do you believe this to be an accurate document? Do you believe this document is in any way tampered with?
A. Not to my knowledge.
Q. Okay. And who – who would be able to even go into CRIS to make changes like that; do you even know?
A. I believe our servicing department has that capability.
Q. Okay. Well, let me ask you this – we're going to go back to Exhibit No. 3, if you don't mind me giving it to you. This is sort of the same thing, isn't it? This is a CRIS document –
A. Yes.
Q. – Exhibit No. 3, produced by your attorneys here. Okay? Does it sort of have the same information that's here on this SHAW transaction, Exhibit No. 16?
A. Essentially, yes.
Q. Essentially. Okay. But – and doesn't

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

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

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

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

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

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tape.
MR. VARNADO: Let's take a break.
THE VIDEOGRAPHER: We're off the record at 2:04 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 2:11 p.m.
BY MR. VARNADO:
Q. Back to Exhibit No. 3. This is a CRIS document, correct?
A. Yes.
Q. So it's supposed to be accurate, correct?
A. Yes.
Q. By the same token, it's not supposed to be inaccurate, right?
A. Correct.
Q. You're supposed to be able to rely on it, correct?
A. Yes.
Q. Okay. I'm going to draw your attention down to the bottom third of the page, Loan amount. Can you read what number that is?
A. $179,576.34.
Q. So that is the correct loan amount, correct?

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A. No.
Q. Why is that incorrect?
A. I don't know.
Q. Why are you sure that it's wrong?
A. Because the note says that the original balance was $182,700.
Q. These transaction reports, 3 and 14, are not describing the note, are they?
A. Yes, they are.
Q. They are not accurate to the note, are they?
A. Yes, they are.
Q. When I asked you about the zero balances through September of 2003, your testimony is that that was a computing error?
A. No.
Q. What is -- what explains the zero balances again?
A. When First Union and Wachovia merged, for some reason, the principal balance tallying in the system of record did not come through.
Q. Okay. Then how did it come through in Exhibit No. 3?
A. Again, I did not pull that document. I did not alter that document. I don't know how it got

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

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

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

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

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

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A. Okay.
Q. 11/29/06, Trans Code 35995174504.20, Loan sold to pool.
A. I don't know. I can tell you that it -- it wasn't. I don't know why this line item is there, but it was never sold.
Q. How do you know it wasn't sold, other than SHAW doesn't -- you told me earlier you know it's not sold because it's still in SHAW.
A. Correct. So it wasn't in -- if it was sold, we wouldn't still have it in our -- in our records.
Q. Is this ACLS wrong?
A. I don't know why that line item is there.
Q. Other than it actually got sold?
A. It was not sold.
Q. The only way you know it's not sold is that it's still in SHAW, correct?
A. Correct.
Q. All right.
A. It's still in SHAW, and we still had the original loan documents in the vault at that time.
Q. How do you know? Did you look back at the vault records in '06, the vault log on ECaR?
A. From my understanding, the loan documents

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

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loan if we've sold it already?
Q. If you don't know the answer to that question, that means you don't -- you're not familiar with that -- that process, that that happens.
MS. BAKER: Objection. Is there a question?
MR. VARNADO: Yeah. And you're again trying to interfere with my questions.
MS. BAKER: I'm not --
MR. VARNADO: I'd please ask you not to do that.
MS. BAKER: I'm objecting --
MR. VARNADO: I did ask a question.
MS. BAKER: -- just for the video.
MR. VARNADO: Thank you. Your objection for the video is irrelevant since you're trying to interfere with my deposition.
MS. BAKER: I think that should be --
BY MR. VARNADO:
Q. I'm going to ask you that question --
MS. BAKER: -- that comment should be struck, because I'm not trying to interfere with your deposition.
Q. I'm asking you again, do you know that banks have bought back allegedly nonperforming

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

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MS. BAKER: I have no questions.
MR. VARNADO: And that concludes the deposition, then.
THE VIDEOGRAPHER: This concludes the deposition of Ms. Tracy Thomas on August the 6th, 2013, at 2:29 p.m.
(Deposition concluded at 2:29 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, the undersigned authority, certify that TRACY THOMAS personally appeared before me and was duly sworn on August 6, 2013.

WITNESS my hand and official seal this 16th day of August 2013.

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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REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Richetta R. Bright, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of TRACY THOMAS, that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 16th day of August 2013.

Richetta R. Bright
Richetta R. Bright, RPR

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DEPOSITION ERRATA SHEET

Our Assignment No. 384624
Case Caption: Bentrim vs. Wells Fargo

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath

Signed on the _____ day of _____, 20___.

_____
Tracy Thomas

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DEPOSITION ERRATA SHEET

Page No.____Line No.____Change to:_____
Reason for change:_____
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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND MOTION**
v.	)	**TO RECONSIDER SECTION 4**
	)	**OF THE ORDER OF OCTOBER 28,**
WELLS FARGO BANK, N.A.,	)	**2014**
	)	
Defendant.	)	
	)	
	)	

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JULIE J. ARMSTRONG
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 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, Bentrim 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 Bentrim 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.

Bentrim, by contrast, had a right to possess all sums he paid to Wells Fargo's predecessors after November 29, 2006, because Bentrim 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 Bentrim 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), SCRP ("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), SCRCP; *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 SCRCP]." *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), SCRCP; *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 Bentrim to require him to have filed suit before 2007. This new argument be rejected procedurally under Rule 7(b), SCRCP, 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, Bentrim was led to believe that any issue between him and Wachovia was entirely related to the accounting for the origination fee. (Refer to Bentrim 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 Bentrim 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 Bentrim 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, 725 501, 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 Bentrim 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 UPTA 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 it 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, 9th 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 (4th 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, Bentrim 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 equitiable 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 Bentrim 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 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.

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. Capp. 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 Bentrim 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 uinndorsed;
- 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 Bentrim 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 noteis 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 robosigner 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 Bentrim a thirty (30) day right to cure letter. (Amended Counterclaim ¶ 183). Wells Fargo then avers Bentrim 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 Bentrim 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 refilling 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 SCRCP40(c)(3) and later voluntarily dismissed it under SCRCP 41(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, SCRCP, 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, SCRCP.

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 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 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 Excepts, 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 it 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 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 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: _____

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Attorney for Plaintiff

November 13, 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 ***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

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

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 J. ARMSTRONG
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. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrim 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 Lahey 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

EXHIBIT E

BROCK & SCOTT PLLC

THOMAS E. BROCK *
GREGORY A. SCOTT *
JAMES P. BONNER *
MARK A. PEARSON **
BRIAN L. CAMPBELL **
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WINSTON-SALEM, NC

COLUMBIA, SC

FRANKLIN, TN

July 10, 2009

Brent E. Bentrim
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. Bentrim,

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 61st month (and every 61st 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:

EXHIBIT E

Payment Due Date	Payment Received and Applied
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
TOTAL					$ 13,035.62

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

VIA CERTIFIED AND REGULAR MAIL

41,430.55,045
Brent E Bentrim
49 Archdale St
Charleston, SC 29401

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
TOTAL DUE	**$4,920.09**

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.

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

WACHOVIA

EXHIBIT A

11/17/2008 VIA CERTIFIED AND REGULAR MAIL

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.

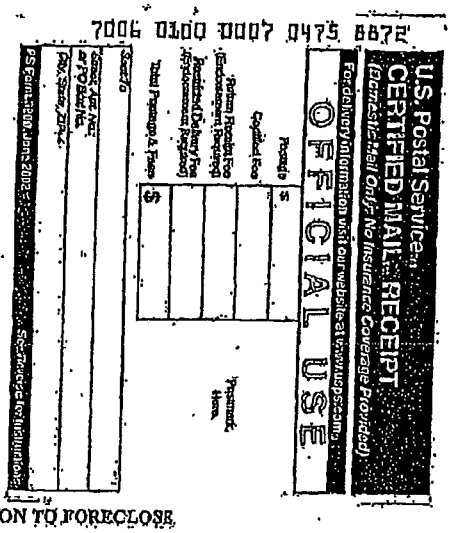
Please note:

- 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



WACHOVIA

Wachovia Bank N.A.
FL 0503
Collection Shared Services
PO Box 52117
Jacksonville, FL 32201-2117
Tel 866-509-7093

December 19, 2006

Brent R Bertrim
10 Nicholson Street
Charleston, SC 29407

NOTICE OF INTENTION TO FORECLOSE

RE: 0000412002139089

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
Total due to reinstate and cure default:	$4,146.05

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

WF 59

EXHIBIT C

Page 1

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

BRENT E. BENTRIM,)
)
Plaintiff,)
)
v.)
)
WELLS FARGO BANK, N.A.,)
)
Defendant.)

VIDEOTAPED DEPOSITION OF

TRACY THOMAS

10:03 a.m.

August 6, 2013

1301 Riverplace Boulevard, Suite 1609
Jacksonville, Florida

Richetta R. Bright, Registered Professional Reporter

Page 2

APPEARANCES OF COUNSEL

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

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

Also Present: Miriam Beckford, Videographer
Brent E. Bentrim

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WITNESS: Tracy Thomas

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(Exhibits attached to the original transcript.)

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THE VIDEOGRAPHER: This is tape number 1 to the videotaped deposition of Tracy Thomas, in the matter of Brent Bentrim versus Wells Fargo Bank, being heard before the Court of Common Pleas, Ninth Judicial Circuit, Case No. 2011-CP10-2946.

This deposition is being held at Esquire Deposition Solutions, located at 1301 Riverplace Boulevard, Jacksonville, Florida. Today's date is August the 6th, 2013. The time on the record is 10:03 a.m. My name is Miriam Beckford. I'm the videographer. The court reporter is Richetta Brown [sic].

Counsel, will you please introduce yourselves and affiliations, and the witness will be sworn.

MR. VARNADO: My name is Rob Varnado, and I am counsel for the plaintiff.

MS. BAKER: My name is Jana Baker, and I am counsel for Wells Fargo, and I'm with the firm Womble, Carlyle, Sandridge & Rice.

THE COURT REPORTER: Would you raise your right hand? Do you swear or affirm that the testimony in this cause will be the truth, the whole truth, and nothing but the truth, so help

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Q. You don't change that?
A. The only thing would have been adding Mr. Bentrim's name.
Q. Okay. Did you -- were you part of -- were you ever asked to help locate where the note was found when it was found?
A. Can you rephrase that?
Q. Yeah. I mean, we've already established that it was checked out in 2009. And it was rechecked into the vault 20 days after your lost note affidavit in 2012.
A. Yes.
Q. Okay. Did you know that it had been rechecked in?
A. When?
Q. In February 27 of 2012.
A. No.
Q. Why would you not know that information?
A. I was -- I had no dealings with this account until I was made aware by counsel that you wanted to take my deposition.
Q. Okay. So you wouldn't have followed up on it?
A. No.
Q. Okay. And who checked it back in?

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

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(Break taken)
THE VIDEOGRAPHER: We're back on the record at 1:26 p.m.
BY MR. VARNADO:
Q. Did you bring a copy of SHAW with you today or a SHAW print screen?
A. I brought copies of the two screens that I would have looked at.
Q. Do you have them with you?
A. Yes.
Q. May I see them, please?
MR. VARNADO: Let's go back off the record, then --
THE VIDEOGRAPHER: Okay.
MR. VARNADO: -- save video space.
THE VIDEOGRAPHER: We're off the record at 1:26 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at one 1:37 p.m.
BY MR. VARNADO:
Q. Ms. Thomas, we stepped out of the room to look at the documents that you brought with you today in response to the deposition notice, I assume. Can you describe for me, generally speaking, what the

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documents are and why you selected them to bring with you?
A. Well, you didn't -- I mean, you filed a notice of duces tecum --
Q. Uh-huh.
A. -- but you didn't attach anything on what to bring.
Q. Okay.
A. So I brought a payment history, note and mortgage, some of the closing documents, updated payoff figures good through today, and screen shots -- two screen shots of SHAW that I would have used in my review and execution of the lost note affidavit.
Q. You didn't bring the ECaR stuff, though?
A. No.
Q. Why not? You just didn't feel it was germane?
A. Well, you -- I mean, you didn't really give us anything --
Q. But you studied it pretty hard. You knew the dates and names of people, right?
A. Yes.
Q. So we could still get an ECaR printoff --
A. Sure. If you --

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

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

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A. I pulled these August 1st of 2013.
Q. Do you believe that anything substantive changed in SHAW between August 1st, 2013, and February 2012?
A. No.
Q. Okay. Where is the original loan amount?
A. Original amount, 182,7-.
Q. Okay. Where is the actual loan, the loan balance?
A. Current loan balance, 176- -- or $176,879.20.
Q. What is this $180,000 proceeds amount?
A. It's the amount financed.
Q. How can the amount financed be less than the original amount?
A. The original amount is including the $2700 loan origination fee.
Q. Don't you think that the 2700 origination fee was actually part of the 180- and not separate from?
A. It should not have been part of the 180-.
Q. But it -- okay. Now, you also brought the HUD, which back in those days only had two pages, right?
A. Yes.

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

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Q. Okay. So you've learned how to read them?
A. Yes.
Q. Where is the -- whose column is whose?
A. So this would be the borrower's column, and this would be the seller's.
Q. What's the loan amount?
A. $180,000.
Q. And you're referring to Page 2, right?
A. Yes.
Q. Then it has -- where is the 2700?
A. Paid from borrower's funds at settlement.
Q. So that means it was part of the one hundred -- the 180-, correct?
A. Yes.
Q. Okay. So right here, SHAW is wrong on Exhibit 7?
A. No.
Q. Why is SHAW not wrong? Why doesn't the HUD trump SHAW?
A. The HUD appears to be incorrect.
Q. The HUD was signed and accepted by everybody. It's the closing document. SHAW is incorrect, don't you agree?
MS. BAKER: Object to the form.

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MR. VARNADO: Thanks.
BY MR. VARNADO:
Q. You can answer.
A. We believe a mistake was made by the closing attorney and including the $2700 in -- for loan origination fee.
Q. How do you know that?
A. Because it shouldn't have been included.
Q. I know. But how do -- how do you know that? The first time you picked up this file was when you were asked to do the loan -- the lost note affidavit. Then the next time you picked the file up was when you were notified that I was seeking to take your deposition. How do you know that the closing attorney messed up?
A. We -- I discussed the account with our research group.
Q. Okay. Who did you discuss it with at research?
A. Darlene Lella.
Q. Okay. And who was Ms. Lella? What did she do at the research group?
A. I don't know what her exact title is, but she works in the servicing research group.
Q. So even though the HUD shows that the

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

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

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stamp on the bottom --
A. Yes.
Q. -- right?
So you really didn't download that one from CLIPR, because that one doesn't have a Page 5, does it?
A. It -- I did not personally pull this one, no.
Q. So that's not -- that's not the real CLIPR version of the promissory note?
A. I don't -- I don't know.
Q. Okay. When you were getting ready for today and you looked at CLIPR, did you see Page 5 on the CLIPR version?
A. I don't recall if I did or not?
Q. Wouldn't that be important to you? Because you know that that's something that's supposed to be there?
MS. BAKER: Asked -- objection. Asked and answered.
MR. VARNADO: You know you're not supposed to coach the witness, so --
MS. BAKER: I'm not coaching.
MR. VARNADO: -- just object to the form of the question, please.

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

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

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

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

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

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

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MS. BAKER: Okay.
MR. VARNADO: We're going to lay them out here because they're going to get all messed up otherwise.
BY MR. VARNADO:
Q. All right. Let me ask you this, I'm going to hand you this 14-page exhibit. I assume you reviewed this before this morning, correct?
A. Yes.
Q. Okay. This is from SHAW, right, this 14-page document?
A. It's from CRIS.
Q. I'm sorry. It is from CRIS, but it shows SHAW transactions, correct?
A. Yes.
Q. Do you consider it to be authoritative in the same manner that SHAW information is authoritative?
A. The information contained in this payment history is pulled from SHAW. So, yes.
Q. And you would consider it to be correct --
A. Yes.
Q. -- right?
Okay. I'm going to ask you to explain

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

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

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

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

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

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

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

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

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

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tape.
MR. VARNADO: Let's take a break.
THE VIDEOGRAPHER: We're off the record at 2:04 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 2:11 p.m.
BY MR. VARNADO:
Q. Back to Exhibit No. 3. This is a CRIS document, correct?
A. Yes.
Q. So it's supposed to be accurate, correct?
A. Yes.
Q. By the same token, it's not supposed to be inaccurate, right?
A. Correct.
Q. You're supposed to be able to rely on it, correct?
A. Yes.
Q. Okay. I'm going to draw your attention down to the bottom third of the page, Loan amount. Can you read what number that is?
A. $179,576.34.
Q. So that is the correct loan amount, correct?

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A. No.
Q. Why is that incorrect?
A. I don't know.
Q. Why are you sure that it's wrong?
A. Because the note says that the original balance was $182,700.
Q. These transaction reports, 3 and 14, are not describing the note, are they?
A. Yes, they are.
Q. They are not accurate to the note, are they?
A. Yes, they are.
Q. When I asked you about the zero balances through September of 2003, your testimony is that that was a computing error?
A. No.
Q. What is -- what explains the zero balances again?
A. When First Union and Wachovia merged, for some reason, the principal balance tallying in the system of record did not come through.
Q. Okay. Then how did it come through in Exhibit No. 3?
A. Again, I did not pull that document. I did not alter that document. I don't know how it got

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

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

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

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

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

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A. Okay.
Q. 11/29/06, Trans Code 35995174504.20, Loan sold to pool.
A. I don't know. I can tell you that it -- it wasn't. I don't know why this line item is there, but it was never sold.
Q. How do you know it wasn't sold, other than SHAW doesn't -- you told me earlier you know it's not sold because it's still in SHAW.
A. Correct. So it wasn't in -- if it was sold, we wouldn't still have it in our -- in our records.
Q. Is this ACLS wrong?
A. I don't know why that line item is there.
Q. Other than it actually got sold?
A. It was not sold.
Q. The only way you know it's not sold is that it's still in SHAW, correct?
A. Correct.
Q. All right.
A. It's still in SHAW, and we still had the original loan documents in the vault at that time.
Q. How do you know? Did you look back at the vault records in '06, the vault log on ECaR?
A. From my understanding, the loan documents

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

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loan if we've sold it already?
Q. If you don't know the answer to that question, that means you don't -- you're not familiar with that -- that process, that that happens.
MS. BAKER: Objection. Is there a question?
MR. VARNADO: Yeah. And you're again trying to interfere with my questions.
MS. BAKER: I'm not --
MR. VARNADO: I'd please ask you not to do that.
MS. BAKER: I'm objecting --
MR. VARNADO: I did ask a question.
MS. BAKER: -- just for the video.
MR. VARNADO: Thank you. Your objection for the video is irrelevant since you're trying to interfere with my deposition.
MS. BAKER: I think that should be --
BY MR. VARNADO:
Q. I'm going to ask you that question --
MS. BAKER: -- that comment should be struck, because I'm not trying to interfere with your deposition.
Q. I'm asking you again, do you know that banks have bought back allegedly nonperforming

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

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MS. BAKER: I have no questions.
MR. VARNADO: And that concludes the deposition, then.
THE VIDEOGRAPHER: This concludes the deposition of Ms. Tracy Thomas on August the 6th, 2013, at 2:29 p.m.
(Deposition concluded at 2:29 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, the undersigned authority, certify that TRACY THOMAS personally appeared before me and was duly sworn on August 6, 2013.

WITNESS my hand and official seal this 16th day of August 2013.

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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REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Richetta R. Bright, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of TRACY THOMAS; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 16th day of August 2013.

Richetta R. Bright
Richetta R. Bright, RPR

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DEPOSITION ERRATA SHEET

Our Assignment No. 384624
Case Caption: Bentrim vs. Wells Fargo

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20___.

_____
Tracy Thomas

DEPOSITION ERRATA SHEET

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SIGNATURE:_____ DATE:_____
Tracy Thomas

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND MOTION**
v.	)	**TO RECONSIDER SECTION 1**
	)	**OF THE ORDER OF OCTOBER 28, 2014**
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2014 NOV 14 PM 2:34
JULIE J. ARMSTRONG
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 declatory judgment which impacts all causes of actions Bentrim brings forth in his complaint, and, taken to its logical extreme, determines that Bentrim 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 Bentrim'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 Bentrim and Bentrim'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.[1]

The next central conflict presented is making a determination of the 'person entitled to enforce' the Note that Bentrim, 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

[1] 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.[2]

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

[2] 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 robosigner 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. Bentrim 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.[3] 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 and 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.

[3] 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 compliant, 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 Bentrim 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 Bentrim has no defenses) ***and*** that Bentrim'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, Bentrim 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

T 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

FILED
2014 OCT 28 AM 9:40
JULIE J. ARMSTRONG
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. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrim 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
13th day of November, 2014

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

Casimira Kita



WACHOVIA BANK, N.A.

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

#A7SC0601

DATE: 05/30/2009

INVESTOR	BANK	APP	LOAN NUMBER	ACCT STAT	PURCHASE DATE	CURRENT INT RTE	CURRENT LOAN BALANCE	INTEREST DUE	INTEREST ACCR MTD	NSF FEES MTD	LATE CHARGE MTD	INTEREST PAID YTD	D C
794	28	3	3228010000572300	0	11/01/2006	6.940	69,300.10	1,447.57	402.57				
794	28	3	3228010000572318	0	10/27/2006	7.690	53,476.33	157.73	349.42				
794	28	3	3228010000572326	0	10/27/2006	8.190	50,634.31	159.06	392.25				
794	28	3	3228010000572649	0	11/02/2006	7.340	149,913.43	5,059.45	934.56		52.28		
794	28	3	3228010000572672	0	10/30/2006	1.500	447,091.22	9,464.51	569.58				
794	28	3	3228010000572789	0	11/03/2006	8.440	80,650.98	249.23	578.12				
794	28	3	3228010000573290	0	11/02/2006	7.040	44,130.21	36.05	264.91				
794	28	3	3228010000573308	0	11/02/2006	6.250	281,434.84	674.67	1,497.01				
794	28	3	3228010000573340	0	11/02/2006	6.250	207,068.25	496.39	1,101.54				
794	28	3	3228010000573530	0	10/27/2006	8.440	30,383.50	175.64	217.08				
794	28	3	3228010000573696	0	11/01/2006	7.190	5,357.22	17.94	33.17				
794	30	3	0309010240004192	0	03/15/2000	9.250	28,473.79	129.88	224.50				
794	30	3	3230010000001694	0	12/08/2005	8.190	20,180.45	58.86	141.31				
794	30	3	3230010000001793	0	12/21/2005	6.500	44,319.97	96.71	244.76				
794	30	3	3230010000003088	0	04/19/2006	7.840	29,980.77	167.43	200.11				
794	30	3	3230010000003278	0	05/04/2006	6.790	132,466.43	517.49	765.13				
794	30	3	3230010000004003	0	06/19/2006	6.390	129,493.16	408.06	703.07				
794	30	3	3230010000004029	0	06/24/2006	7.840	191,374.78	422.69	1,012.81				
794	30	3	3230010000004367	0	07/19/2006	9.740	17,302.80	55.41	143.81				
794	30	3	3230010000004458	0	07/22/2006	7.940	3,586.47	12.48	24.93				
794	30	3	3230010000004524	0	07/14/2006	8.840	84,259.74	632.61	632.61				
794	30	3	3230010000004532	0	07/24/2006	6.790	26,387.09	83.73	153.78				
794	30	3	3230010000004821	0	08/04/2006	8.590	12,408.40	84.68	90.53				
794	30	3	3230010000004946	0	08/08/2006	8.690	11,614.05	74.66	85.76				
794	30	3	3230010000005117	0	08/18/2006	7.990	41,789.83	283.58	283.58				
794	30	3	3230010000005125	0	08/25/2006	9.440	69,772.96	505.27	659.43				
794	30	3	3230010000005265	0	08/30/2006	7.590	29,008.55	102.55	187.63				
794	30	3	3230010000005604	0	10/04/2006	8.790	9,137.58	61.62	68.35				
794	30	3	3230010000005612	0	09/28/2006	9.100	33,635.55	190.70	259.96				
794	30	3	3230010000005679	0	09/27/2006	7.790	6,277.04	5.36	41.09				
794	30	3	3230010000005778	0	10/13/2006	8.190	78,008.48	455.11	542.93				
794	30	3	3230010000005885	0	10/16/2006	7.840	43,010.47	323.34	286.39				
794	30	3	3230010000005893	0	10/12/2006	9.190			31.95			1,593.57 05/04/2009	
794	30	3	3230010000005919	0	10/13/2006	9.190	20,938.53	105.44	163.55				
794	41	3	0000411001986&0	0	05/19/1999	5.000	7,431.88	6.10	32.47		5.61		
794	41	3	0000411002156&5	0	01/28/2003	7.240	9,832.51	16.20	36.25				
794	41	3	0000411002161&2	0	03/20/2003	6.490	91,094.84	194.37	502.43				
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794	41	3	0000413002075&6	0	11/22/2000	3.090	41,739.49	49.47	109.77				

WF002294

WACHOVIA BANK, N.A.

ADVANCED CONSUMER LOAN SYSTEM
DELINQUENCY TRIAL BALANCE
AS OF DATE: 11/30/2006

SA72C060L2

PAGE: 5,075
DATE: 12/01/2006

DIVISION	BANK	APP	LOAN NUMBER	ACCT PURCHASE STAT DATE	CURRENT INT RTE	CURRENT LOAN BALANCE	INTEREST DUE	INTEREST ACCR NTD	RSV FEES NTD	LATE CHARGE NTD	INTEREST PAID YTD	D C
734	84	3	3254010400191877	0 10/20/2006	11.624	6,854.96	21.88	60.72				
734	84	3	3254010900191185	0 10/23/2006	8.830	115,961.39	127.03	623.37				
734	84	3	3254010900191202	0 10/25/2006	10.830	75,510.86	765.39	873.35				
734	84	3	3254010900191363	0 10/25/2006	10.690	31,907.45	3,615.07	801.37				
734	84	3	3254010901351426	0 10/27/2006	9.060	49,559.90	321.67	948.02				
734	84	3	3254010900181472	0 10/27/2006	9.060	35,589.86	241.80	852.91				
74	84	3	3254010400181507	0 10/30/2006	6.820	68,810.25	387.36	394.88				
4	84	3	3254010901351553	0 10/27/2006	6.820	54,734.20	257.51	257.76				
74	84	3	3254010401181871	0 10/30/2006	6.780	83,184.38	189.93	118.64				
734	84	3	3254010401181864	0 10/23/2006	8.440	20,400.00	146.93	236.98				
734	84	3	3254010900181864	0 10/16/2006	6.820	30,958.75	248.91	168.84				
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734	84	3	3254010900180999	0 10/19/2006	6.820	0,232.00	34.38	34.38				
734	84	3	3251010001320067	0. 10/20/2006	6.780	37,907.98	178.04	132.63				
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734	84	3	3254010001327943	0 11/01/2006	7.790	84,909.44	324.11	221.34				
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734	84	3	3254010001328395	0 11/01/2006	6.820	101,317.60	537.37	920.43				
734	84	3	3254010001328397	0 11/01/2006	7.328	17,222.87	213.69	386.83				
DIVISION TOTALS						1,589,211,683.90	7,721,621.13	9,020,321.49	567.00	33,191.86	386,264.78	
TOTAL OF ACTIVE DOLD LOANS				21,758								
TOTAL OF CLOSE/CHARGED OFF				80								
TOTAL NUMBER OF LOANS				21,838								

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10 BUS-EX-NUM-INV	3/PS	0
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10 FILLER	50/AN	
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Page 1

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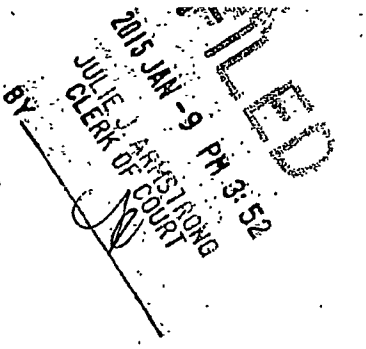
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STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	) CASE NO. 2011-CP-10-2946
BRENT E. BENTRIM,	)
Plaintiff,	) **DEFENDANT WELLS FARGO BANK N.A.'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER**
v.	)
WELLS FARGO BANK, 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. Bentrim ("**Plaintiff**" or "**Bentrim**"), 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), SCRCP & 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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S. Sterling Laney, III
John C. Hawk IV
Five Exchange Street, P.O. Box 999
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ATTORNEYS FOR WELLS FARGO BANK, N.A.

Charleston, South Carolina
January 9, 2015

WCSR 31600642v3

2011-CP-10-2946

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:

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WCSR 31600642v3

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**REPLY TO DEFENDANT'S**
v.	)	**MEMORANDUM IN OPPOSITION TO**
	)	**PLAINTIFF'S MOTION TO**
WELLS FARGO BANK, N.A.,	)	**RECONSIDER**
	)	
Defendant.	)	
	)	
	)	

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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 Bentrim 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 Bentrim 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 Bentrim has failed to make the very payments that they refused to take from him. Defendant also falsely claim that Bentrim'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 Bentrim 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 "robosigning.";
- 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 Bentrim 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.2nd 1076, 1081 (4th 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 and 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 Bentrim's 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 tail 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.2nd 1076, 1081 (4th 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 Bentrim'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 perdens 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.

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By: _____

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January 12, 2015
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE 11-CP-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:

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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[1] 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

[1] 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,[2] 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[3] by the South Carolina

[2] 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).

[3] *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.[4] 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-

[4] 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."[5] 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.

[5] 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"[6] 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,[7] United States District Court for the District of

[6] 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).

[7] 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.[8]

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

[8] "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.

Joseph F. Anderson, Jr.

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,[1] in the mortgage settlement, we did so on behalf of the *public* citizenry (S.C. Code Ann. § 39-5-50).[2] 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).

[1] *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.")

[2] *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.")

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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)

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**NOTICE OF MOTION AND PLAINTIFF"S MOTION FOR RELIEF FROM OCTOBER 28, 2014 ORDER**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2015 FEB 20 PM 12:15
JULIE J. ARMSTRONG
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 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 Bentrim 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. Bentrim 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 Bentrim'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 Bentrim 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 Bentrim 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 Bentrim. 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 Bentrim 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 perdens 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 Bentrim 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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February 20, 2015
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	**THIRD AFFIDAVIT OF**
Plaintiff,	)	**CLIFTON D. BODIFORD, CPA**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	
	)	

PERSONALLY APPEARED BEFORE me, the undersigned Clifton D. Bodiford, CPA, who after being duly sworn would depose and state as follows:

1. I am an adult over the age of 18 and competent to make this affidavit.

2. I am a Certified Public Accountant practicing in Columbia, South Carolina. I have over 40 years of experience in accounting; there has been no lapse in my CPA status since I began my practice. My C.V. is attached. I have given two (2) prior affidavits in this matter.

3. Within my practice, I specialize in providing consulting and audit services to the financial services industry including nationally chartered banks. As such I am familiar with the accounting for loan and the accounting for the sales of loans, including participant interests in loans as they relate to corporate subsidiaries.

4. I have expertise related to Financial Accounting Standards Board (FASB) Statement Number 140 (the identification number before the codification) as it applies to the accounting of loan owned and loans sold on or about December 1, 2006.

5. I have reviewed the following documents produced by the Defendant: WF 2341-5 "Consent Agreement," WF 2346-59 "Participation Agreement," and WF 2355-70 "Servicing Agreement." I have also reviewed the documents identified as WF 2294 2299-2305, and 2371-2572

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, CPA

SWORN TO AND SUBSCRIBED BY ME
This 19 day of February, 2015.

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	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND**
v.	)	**PLAINTIFF'S MOTION TO COMPEL**
	)	**AND FOR PROTECTIVE ORDER**
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	

FILED
2015 FEB 27 PM 4:23
JULIE J. ARMSTRONG
CLERK OF COURT

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 Bentrim loan was attached. The 6.4.14 Affidavit of Matthew Wakefield, Wells Fargo VP, establishes there was a 100% sale of the Bentrim 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 establishe by expert testimony that the Bentrim 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 Bentrim'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. Bentrim in the 2007 and 2009 suits claiming to be the owner and holder of the Bentrim 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 absuse. 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, SCRCP, consultation has been made with opposing counsel and/or would serve no useful purpose.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
Alexis M. Wimberly
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

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 06-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

FILED
2006 NOV 28 PM 1:19
JULIE ARMSTRONG
CLERK OF COURT
BY

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.

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:

> 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. Bentrim 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:

> 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.

P3 Cutt

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 Bentrim 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 Mtg Per Ln Fee	$_____
• Check Fee	$3.00	• Document Stamps	$_____
• Title Insurance	$_____	• Misc.	$12.50
• Recording Fees	$11.00	• Misc.	$_____
• Appraisal Fees	$_____	TOTAL	$~~250.00~~ 263.00
• Flood Certification Fee	$11.50		

FIRST UNION FEES PAID $0.00 **CUSTOMER FEES PAID** $~~250.00~~ 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 04/24/25 (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;
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 y 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 decison 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

_____(SEAL)
Signature

_____(SEAL)
Signature

_____(SEAL)
Signature

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 Procaccini
(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 seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower 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.

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 Lenders'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' 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 misrepresent 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;
(h) The only liens or encumbrances on the Property in addition to the lien created by this Deed of Trust are as follows:

BK 0 373PG234

Davidson Bennett & Wigger ATTORNEYS AT LAW

11-00A

(i) 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

(j) 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.

Witness _____ (SEAL)

Witness _____ (SEAL)

Witness _____ (SEAL)

Witness _____ (SEAL)

Signature Brent E. Bentrim (SEAL)

Signature _____ (SEAL)

Signature _____ (SEAL)

Signature _____ (SEAL)

FILED
0373-230
2001 JUN -6 PM 3:40
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

STATE OF SOUTH CAROLINA)
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

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/22/02

_____

EXHIBIT "A"

BK 0 373 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 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)

0205200092

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, 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

_X_ 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.

_X_ 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.

_X_ MAXIMUM RATE. If indicated, the maximum interest rate will not exceed: ~~15.99~~ 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. _X_ 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.

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.

_____ (SEAL)
Guarantor – Co-Signer

_____ (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.

_____ (SEAL)
Owner or Co-Owner

_____ (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)
Borrower
BRENT E. BENTRIM

_____ (SEAL)
Borrower

BKC 402PG182

Return To:
First Union National Bank
Consumer Loan Operations
P.O. Box 50010
Roanoke, VA 24022
Parcel No:

Prepared By:

MORTGAGE

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrim

(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.

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 disbursal, 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

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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.

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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:

Witness

Robert J. Donaldson, III
Witness Name Typed or Printed

Witness

Bridget G. Legare
Witness Name Typed or Printed

X _____ [SEAL]
Borrower Brent E. Bentrim

_____ [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. Bentrim

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.

Witness

_____ [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 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

Davidson
Bennett
& Wigger
ATTORNEYS AT LAW

BK C 402PG 188

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C402-182
2002 APR -3 PM 3:15
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

12.00
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SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A NO.: 2007-CP-10-3753
	)	
Wachovia Bank, National Association, successor by merger to First Union National Bank,	)	
	)	**SUMMONS AND NOTICES**
Plaintiff,	)	
	)	(Non-Jury)
vs.	)	
	)	FORECLOSURE OF REAL ESTATE MORTGAGE
Brent E. Bentrim; Citibank South Dakota N.A.; and the County of Charleston;	)	
	)	
Defendants.	)	

FILED
2007 SEP -5 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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 10th 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	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A NO.: 2007-CP-10-3933
	)	
Wachovia Bank, National Association, successor by merger to First Union National Bank,	)	**COMPLAINT**
	)	
Plaintiff,	)	(Non-Jury)
	)	
vs.	)	FORECLOSURE OF TWO REAL ESTATE MORTGAGES
	)	
Brent E. Bentrim; Citibank South Dakota N.A.; and the County of Charleston;	)	
	)	(Deficiency Judgment Demanded)
Defendants.	)	

FILED
2007 SEP -5 PM 1:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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. Bentrim 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. Bentrim made, executed, and delivered to First Union National Bank a certain Mortgage Note in writing, wherein and whereby Brent E. Bentrim promised to pay to First Union National Bank, the principal sum of $49,000.00,

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. Bentrim, 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. Bentrim 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. Bentrim made, executed, and delivered to First Union National Bank a certain second Mortgage Note in writing, wherein and whereby Brent E. Bentrim 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 Bentrim, 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. Bentrim, 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.

Dated: 8/31/07

Wilmington, North Carolina

Ronald E. 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

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 0.792 % 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 Mtg Per Ln Fee	$_____ ___
• Check Fee	$3.00 ___	• Document Stamps	$_____ ___
• Title Insurance	$_____ ___	• Misc.	$12.50 ___
• Recording Fees	$11.00 ___	• Misc.	$_____ ___
• Appraisal Fees	$_____ ___	TOTAL	~~$250.50~~ 263.00
• Flood Certification Fee	$11.50 ___		

FIRST UNION FEES PAID $0.00 CUSTOMER FEES PAID ~~$250.50~~ 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 04/24/24 (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;
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 y 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.

Signature (SEAL)
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 Prosseini
(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 seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower 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.

0112100873
(1/97) SC MORTGAGE

EXHIBIT 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' 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 misrepresent 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 or 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;
(h) The only liens or encumbrances on the Property in addition to the lien created by this Deed of Trust are as follows:

BK 0373PG234

Davidson Bennett & Wigger ATTORNEYS AT LAW

11-00A

(i) 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
(j) 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.

_____ (SEAL)
Witness

_____ (SEAL)
Witness

_____ (SEAL)
Witness

_____ (SEAL)
Witness

_____ (SEAL)
Signature: Brent E. Bentrim

_____ (SEAL)
Signature

_____ (SEAL)
Signature

_____ (SEAL)
Signature

FILED
0373-230
2001 JUN -6 PM 3:40
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

STATE OF SOUTH CAROLINA)
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

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/22/02

_____

EXHIBIT "A"

BK F 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

BK0 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# .
0373, 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:

WITNESS

WITNESS

(SEAL)
Borrower/Owner: BRENT E BENTRIM

(SEAL)
Borrower/Owner:

FIRST UNION NATIONAL BANK

BY: (SEAL)
Name: MICHAEL CLOUD
Title: Vice President

ATTEST: (SEAL)
Name: MARK ENOS
Title: ASSISTANT VICE PRESIDENT

HEL Visit #: 0205200092

Page _ of _

Exhibit C

BK 402PG552

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, 20 02, 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
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires December 2, 2002

My Commission Expires:

HEL Visit #: 0105100092

Page _ of _

Davidson Bennett & Wigger
ATTORNEYS AT LAW

BOOK 402 PAGE 553

FILED
D402-551
2002 APR -3 PM 3:15
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

MTG/MOD
7.00
C

Bentrim 02-243 Be

NEGOTIABLE PROMISSORY NOTE
(Fixed or Variable Interest Rate)

BK: 41 LOC: LN TP: 39
LC: 0008774 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

_X_ 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.

_X_ 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.

_X_ MAXIMUM RATE. If indicated, the maximum interest rate will not exceed: ~~15.88~~ 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. _X_ 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.

530939 (REV 10) Page 1 of 4 *0205200092* SC PROMISSORY NOTE-HEL

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.

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.

_____ (SEAL)
Guarantor – Co-Signer

_____ (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.

_____ (SEAL)
Owner or Co-Owner

_____ (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)
Borrower
BRENT E. BENTRIM

_____ (SEAL)
Borrower

Return To:
First Union National Bank
Consumer Loan Operations
P O Box 50010
Roanoke, VA 24022
Parcel No:

Prepared By:

MORTGAGE

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrim

(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.

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 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 disbursal, 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 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.

BGB

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:

Witness

Robert J. Donaldson, III
Witness Name Typed or Printed

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.

Witness

[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

FILED
C402-182
2002 APR -3 PM 3:15
CHARLIE LYBRAND
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

IN THE COURT OF COMMON PLEAS

C/A NO.: 09-CP-10-4700

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).

SUMMONS AND NOTICES

(Non-Jury)

FORECLOSURE OF REAL ESTATE MORTGAGE

FILED
2009 JUL 30 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

09-12543

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

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 10th 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 E. 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

IN THE COURT OF COMMON PLEAS

C/A NO.: 09-CP-10-4700

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).

COMPLAINT

(Non-Jury)

FORECLOSURE OF REAL ESTATE MORTGAGE

(Deficiency Judgment Demanded as to Defendant Brent E. Bentrim)

FILED
2009 JUL 30 AM 11:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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. Bentrim, 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. Bentrim (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. Bentrim 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. Bentrim (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 Mayy 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. 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(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 Bentrim 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. Bentrim. 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. Bentrim. 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, 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

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 <u>not</u> 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, 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

_X_ If indicated, this is a variable rate loan and my initial Interest Rate is 4.89 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.

_X_ 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.

_X_ 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. _X_ 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.

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 09/12/02

____ 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.

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

_____ (SEAL)
Guarantor – Co-Signer

_____ (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

_____ (SEAL)
Owner or Co-Owner

_____ (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)
Borrower
BRENT E. BENTRIM

_____ (SEAL)
Borrower

Return To:
First Union National Bank
Consumer Loan Operations
P.O. Box 50010
Roanoke, VA 24022
Parcel No:

Prepared By:

MORTGAGE

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrim

(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.

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 disbursal, 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

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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.

BRB

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:

Witness

Robert J. Donaldson, III
Witness Name Typed or Printed

Witness

Bridget G. Legare
Witness Name Typed or Printed

X _____ [SEAL]
Borrower Brent E. Bentrin

_____ [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.

Witness

_____ [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

FILED
C402-182
2002 APR -3 PM 3:15
CHARLIE 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) 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

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

Plaintiff's Motion to Compel.....3

Certificate of Reporter.....11

NO EXHIBITS WERE INTRODUCED

Tuesday, October 5, 2011

THE COURT: Bentrim vs. Wells Fargo.

MR. SLOAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. BAKER: Good afternoon, Your Honor.

THE COURT: Counsel, if you'll state your name for the record and the party you represent.

MR. SLOAN: William Sloan, Your Honor, for the plaintiff. I just filed a notice of appearance this afternoon. I was just retained on the case.

THE COURT: Are you prepared to go forward at this time?

MR. SLOAN: Yes, ma'am, I am.

THE COURT: And you are?

MR. BENTRIM: I'm Mr. Bentrim.

THE COURT: All right. Thank you.

And, Ms. Baker, you represent Wells Fargo?

MS. BAKER: Yes, I do.

THE COURT: Have we heard matters in this case before?

MS. BAKER: That was a different Wells Fargo. That was the Williams case, actually.

THE COURT: All right. We're here on your motion to compel?

No, your motion to compel, correct?

MR. SLOAN: It's Mr. Bentrim's motion to compel.

THE COURT: Thank you. I have not had an opportunity to review the memos, so I may take this matter under advisement to give me an opportunity to do so. Thank you.

MR. SLOAN: Thank you, Your Honor. This action was filed by Mr. Bentrim against Wells Fargo as servicer of his mortgage on property at Nicholson Street. Wells Fargo had previously filed foreclosure against Mr. Bentrim, and Mr. Bentrim answered that action and disputed, A, the ownership of the note of Wells Fargo; and B, their accurate accounting.

In that previous action Judge Scarborough --

THE COURT: All we're here for today is for the original promissory note signed on March 12th, 2002, right?

MR. SLOAN: Yes.

THE COURT: You want Wells Fargo to turn that over to you, right?

MR. SLOAN: For production and inspection, yes, ma'am.

THE COURT: All right. Can you do that, Ms. Baker?

MS. BAKER: No, I can't do that.

THE COURT: Why not?

MS. BAKER: The rules don't allow it. I mean, the

loaner of the note can't give away the original note. We produced a copy. Rule 34 allows it. The Rules of Evidence 1001 says the copy is as good as the original. So we complied. They produced it, we produced a copy of it. That's all the rules require. So I ask that you deny their motion.

MR. SLOAN: Your Honor, Judge Scarborough in the previous foreclosure requested that Wells Fargo produce that original note for inspection, and Wells Fargo could not produce the original note and therefore he dismissed the case pending Wells Fargo refiling it.

And defendant's counsel has sent Mr. Bentrim a -- we'll call it a demand letter dated September 27th where it certainly appears they are getting ready to file foreclosure again against Mr. Bentrim, in which case that case will almost be certainly referred to Judge Scarborough and he will almost certainly again request that Wells Fargo produce that original note for inspection.

THE COURT: Well, Counsel, tell me why a copy is not sufficient.

MR. SLOAN: A copy is not sufficient because we don't -- because first Union was the original holder, was the origihal creditor in the case, and we would like to inspect the original note to make sure that it was

properly --

THE COURT: Counsel, Ms. Baker, can they come and look at the original note?

MS. BAKER: I think I'll request it with Wells Fargo. As you know, it's a huge institution so it may take -- it could take them -- it takes me a while to get in touch with them. It could take six weeks for them to, you know, get ahold of it, find it and send it over to me. So I can request it but I need plenty of time for them to do what they do because this note is a portfolio note. It's not securitized -- a securitized loan. And, actually, Wells Fargo is the holder of the note but it first started exactly as two banks merged. So the initial holder was First Union National Bank that merged with Wachovia, now it's Wells Fargo so...

But in terms of this motion we complied with the rule, I mean, the Rules of Evidence and the Rules of Civil Procedure. We sent a demand letter recently. The

foreclosure action has not been filed yet. There are a bunch of claims, about five or six claims asserted against my client --

THE COURT: Counsel, is there any allegation or anything -- why is it that you need to physically see the note?

MR. SLOAN: Your Honor, that is standard protocol

in a foreclosure case, which I do expect Wells Fargo to refile. Even regardless if they do not file foreclosure if they cannot produce the original note as the servicer then that does lead cause to damages against Mr. Bentrim, his credit report, the title to his property.

MS. BAKER: Foreclosure is not an action -- a cause of action at this moment, and I also respectfully disagree with whether you need the original note or not. There's been a lot made about that. I was in front of the Master-in-Equity in Georgetown County who just requires copies, not the original.

And if for some reason a note is lost anyway I know Scarborough, all he needs is a type of loss-note affidavit where the bank can trace exactly the ownership of the note. I mean, and you can even look at the Rules

of Evidence. You know, 1001 and 1002, if for some reason it is lost there's nothing you can do about it and a copy is as good as the original. But I think for purposes of this motion we are getting into way too much detail about everything else --

THE COURT: I'm just determining whether or not I'm going to order you to produce the original for inspection.

MS. BAKER: Okay. Right.

THE COURT: What causes of action are you going

forward on at this time?

MR. SLOAN: Your Honor, at this time I am certain, as I've just been retained on the case today, I am going to further meet with Mr. Bentrim as to possibly amending our complaint for further causes of action, and we would likely make a motion to refer this case against Wells Fargo as the servicer to Judge Scarborough.

THE COURT: All right. Answer my question so I don't have to pull the complaint back out of the file, what cause of action did you file?

MR. SLOAN: Your Honor, may Mr. Bentrim answer that question?

THE COURT: Ms. Baker, what --

MS. BAKER: It's in my memo right here that you got a copy of. There's five causes of action. There's RESPA violation, breach of contract, Truth-in-Lending Act violations, Violation of Unfair Trade Practices Act, and punitive damages. So those are the claims.

THE COURT: All right. Anything further, Counsel?

MR. SLOAN: May I have a moment to confer with Mr. Bentrim?

THE COURT: You may.

(PAUSE.)

MR. SLOAN: Your Honor, Mr. Bentrim contends that Wells Fargo has produced inaccurate or possibly false

copies of the note. So Mr. Bentrim is actually bringing the accuracy of the note -- of the copy of the note he received. He received a copy of the note that was only certified by Bridget Lagree, who is actually the closing paralegal for Mr. Donaldson, the attorney who did this closing back in 2002.

MS. BAKER: If you want someone at Wells Fargo to certify it or authenticate it I'll be happy to do that. And that note is secured by this mortgage right here

which is, you know, recorded. So if anyone wants to see a copy of the mortgage I can pass this up as well.

MR. SLOAN: And, Your Honor, I would rely on Judge Dukes, the Master-In-Equity in Beaufort County, who will not take a foreclosure without the original note.

THE COURT: We are not here on a foreclosure.

MR. SLOAN: Yes, ma'am.

THE COURT: And we are not in Beaufort County.

MR. SLOAN: Yes, ma'am.

THE COURT: We are not in the master-in-equity's courtroom.

MR. SLOAN: Yes, ma'am.

THE COURT: All right. Your motion to compel is denied at this time. I am not going to order that Ms. Baker make it available; although, I do not see what is preventing you if you can make an effort to have it

available for physical inspection.

A copy based upon the rules of what I'm hearing as to the nature of the claim is acceptable and admissible under the rules. So I am not going to order them to produce, to give to you the original.

Counsel, of course, at any time you may refile a

motion to compel if you believe that circumstances or your new causes of action would indicate that you do need an original document. Thank you.

Good luck to you, sir.

MR. SLOAN: Thank you, Your Honor.

MS. BAKER: Thank you, Your Honor.

THE COURT: Thank you.

MS. BAKER: Will this be a form order or do I need a --

THE COURT: A form order will be fine.

MS. BAKER: Okay. I appreciate it.

(WHEREUPON, the hearing was concluded.)

C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the

Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 5th day of October 2011.

I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

April 25, 2014

SHARON L. VIZER

CIRCUIT COURT REPORTER

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:
) BRENT E. BENTRIM
WELLS FARGO BANK, NA,)
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.

APPEARANCES

For the Plaintiff(s): Brown & Varnado, LLC
By: Robert B Varnado, Esquire
103 Church Street
Mount Pleasant, SC 29464

For the Defendant(s): Womble Carlyle Sundridge & Rice, LLP
By: Jana B. Baker, Esquire
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(Brent E. Bentrim, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MS. BAKER:

Q. Mr. Bentrim, as you know, we met beforehand. My name is Jana Baker. I represent Wells Fargo, the defendant, in this case. I'm going to start out just a little bit like the ground rules. First of all, you received notice of this deposition through your counsel, I believe.

A. Yes.

Q. Okay. This deposition is taken pursuant to notice. All objections to or defects in notice are waived. All other objections except to the form of the question are reserved until the time of the trial. The deposition is taken pursuant to Rule 30 of the South Carolina Rules of Civil Procedure for all of the reasons permitted by the rule. And then, your attorney, you know, reserves your right to read and sign the transcript. Would you please state your full name for the record?

A. Brent Bentrim.

Q. Okay. Mr. Bentrim, do you feel well enough today to listen to the questions that I'm asking you?

A. Yes.

Q. Okay. And do you feel well enough to give truthful answers?

A. Yes.

Q. Are you under the influence of any prescription drugs that would affect your ability?

A. No.

Q. Okay. And also, just, I guess you knew what I was going to ask that time, but let's try to, you know, not interrupt each other, wait for me to finish the question so the record's clear. And also, right now you're answering perfectly yes or no, I just remind you to keep doing that versus saying, versus shaking your head just so again the record's clear.

A. Right.

Q. Yes. And if at any time during this deposition you don't understand a question, just please feel free to ask me to restate it.

A. Okay.

Q. Because, you know, your answer will be binding on the court reporter, you know, it will be binding on the record.

A. Okay.

Q. And also as we discussed, if you need to take a break at all for any reason, just let me know and

we will take a break.

A. Okay.

Q. If you need to go to the bathroom, get water, or whatnot. And if you speak to your attorney at all when there's a break, just know that there's no privilege of communication between you and your attorney.

A. Okay.

Q. Therefore I can ask, you know, what you guys spoke about and get the answers to the questions.

A. Okay.

Q. Okay. Do you understand the rules?

A. Yes.

Q. Okay. Do you understand you're under oath today?

A. Yep.

Q. Okay.

A. And I may stand up. I've got a bad lower back so sometimes I'll just stand up just to stretch.

Q. That's fine. Yeah.

A. I just didn't want you to think that --

MR. VARNADO: That you were leaving?

THE WITNESS: Yeah. What's he doing?

Q. Yeah. That's fine. Just you know, whatever, however you, whatever you want to do to make sure you're fine.

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A. Okay.
Q. Mr. Bentrim, have you ever been deposed before?
A. No.
Q. Okay. You have not. Okay. Have you ever been in a law suit before?
A. No.
Q. Okay. Have you ever needed to be represented by a law before?
A. Yes.
Q. Okay. In what context?
A For securities when I left Wachovia Securities or First Union years ago, just, you know, contract, leaving type of dispute stuff. Actually Rob worked it out. So, yeah.
Q. Okay. So, you worked for First Union in the past?
A. Uh-huh.
Q. Yes?
A. Yes. Sorry.
Q. Yes. That's okay. When did you work for First Union?
A. From July 2000 until March 2002.
Q. Okay. And then, and you said you worked for Wachovia Securities?
A. When I went over to First Union, that was right

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at the time that they purchased Wachovia. So, you know, it was like First Union Securities and then it became Wachovia Securities through the merger.
Q. Okay. And when did you finish working for Wachovia, or what did you leave Wachovia Securities –
A. Yeah. In March of 2002.
Q. Okay. And that's when you had issues with you said some certain employment issues?
A. Yeah. You know, firms always make you sign contract and non-disclosure and who's getting, you know, clients, et cetera. You know, people try to deal with those stuff.
Q. Okay. But you didn't have to file a law suit?
A. No.
Q. Okay. It was just more of the reviewing certain contracts when you were leaving type of thing?
A. Yes. Sometimes there'll be like an arbitration, hey, we paid you to come here for X and, you know, we say X is owed, I say X is owed, you know, and that's where we were.
Q. Okay. And so, was that the only time you've been represented with a, I guess, lawyer?
MR. VARNADO: Jana, I'm going to object. I

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don't think you can ask if he's ever gone to a lawyer and what did he go to a lawyer for, because that would impact the privilege. I think the question is, I think it's pushing the envelope a little on have you ever been to a lawyer? I mean, you can ask if you've ever been in a law suit or --
MS. BAKER: Rob, I'm not trying to get, I was just trying to go around, just, you know, it kind of becomes relevant in this case. But, anyway.
A. Yes. Other than that, well, no. Bill Sloan, but other than that, no.
Q. Right, right. Or if you've closed on a home before.
A. Oh, yeah. Gosh, sorry.
Q. Okay. Did you review any documents to prepare for this deposition?
A. I did.
Q. Okay. What did you review?
A. I reviewed my complaint, the answers that were originally given by McAngus.
Q. McAngus.
A. Law Firm. They're the original counsel.
Q. Okay. For Wells Fargo?

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A. For Wells Fargo.
Q. Okay.
A. Reviewed your discovery answers, reviewed the counterclaim. Our answers to your discovery, when I'm saying yours, I mean Wells Fargo obviously. And just the exhibits.
Q. Exhibits to?
A. The ones that were attached both in discovery and our answers to discovery.
Q. Okay. So, the documents that were produced --
A. Yeah.
Q. Okay. Have you spoken to anyone about this deposition, any witnesses, besides your attorney? I mean, have you spoken to anyone recently about this case, this law suit?
A. Huh-uh. No.
Q. Okay. Have you ever been arrested in South Carolina or any other place?
A. In South Carolina.
Q. Okay. What was it for?
A. In college, party, mouthing off to a cop, you know, when they came to bust it up. And I had to do some community service.
Q. Okay.
A. Yeah.

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Q. But that was it?
A. That was it.
Q. Okay. Any prior alcohol or drug treatment in your past?
A. No.
Q. Okay. And your full name, what's, it's Brent E. Bentrim?
A. Yes.
Q. Okay.
A. E-R-I-K.
Q. Erik?
A. Uh-huh.
Q. Okay. And what's your date of birth?
A. March 24th, 1971.
Q. And where were you born?
A. Findlay, Ohio.
Q. And what's your Social?
A. 251-61-1089.
Q. Okay. And where are you living now currently, what's your address?
A. 10 Nicholson Street.
Q. Okay. Do you own that home or are you renting it?
A. I own it.
Q. Okay. When did you buy 10 Nicholson Street?

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A. September 2000.
Q. Okay. Is there a mortgage on there or did you, I mean, is there a mortgage?
A. That's the hundred thousand dollar question.
Q. Okay.
A. Yeah. I don't know. We've asked your client that and haven't been able to get answers.
MR. VARNADO: Can we go off the record real quick?
MS. BAKER: Yeah.
(The deposition went off the record for a brief period of time.)
Q. Okay. So, you live on 10 Nicholson Street which is the house involved in this law suit?
A. Yes.
Q. But you have an office located on Archdale Street?
A. Uh-huh.
Q. Okay. And what's the address on Archdale?
MR. VARNADO: Say yes or no.
A. Yes. 49 Archdale Street.
Q. Okay.
A. Suite 2E.
Q. Now, do you own or rent this office?
A. I rent.

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Q. Okay. And what's your monthly payment?
A. Eleven ninety-five.
Q. Okay. And who's your landlord?
A. Keith Culbreth.
Q. And are you making the monthly rental payments for your office?
A. Yes.
Q. Okay. And this is, what work are you in right now?
A. I have an investment advisory firm.
Q. Okay. And what's the name of it?
A. Carolopolis, C-A-R-O-L-O-P-O-L-I-S.
Q. Okay. And how long have you, is this your own company?
A. Yes.
Q. How long have you been running it?
A. Since March of 2002.
Q. Okay. And do you have any employees?
A. No.
Q. Okay. So, it's just you?
A. Yeah.
Q. So, have you been, how long has your company, how long has it been located at 49 Archdale Street?
A. I believe since 2007, June 2007, maybe 2008. I can't remember when I moved over there.

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Q. Okay. And before that, where was your office?
A. In the Franke Building.
Q. Okay. Okay. So, and do you own any other homes besides 10 Nicholson Street?
A. No.
Q. Okay. And so, and at 10 Nicholson, have you lived there since --
A. September 2000.
Q. -- since when you purchased the house?
A. Yes.
Q. Okay. Who do you live with?
A. A dog and a cat.
Q. Okay. So, you're not married?
A. No.
Q. And no kids, any kids?
A. None that I know of.
Q. Okay.
A. Furiously shaking his head no, no, no.
Q. You hope not, right?
A. Yeah.
Q. Okay. So, when did you move to South Carolina? You said you were from Ohio.
A. When I was three years old.
Q. Okay. Did you go to high school in South Carolina?

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A. Yes.
Q. In Charleston?
A. No. In Greenville, Taylors.
Q. Okay. And where did you go to college?
A. I started at the University of Miami down in Florida.
Q. Right.
A. And then transferred and finished up at the College of Charleston.
Q. Okay. What year did you finish?
A. '94.
Q. Okay. And what was your degree at the College of Charleston?
A. I had a degree in both business finance and corporate communications.
Q. Okay. And so after, you said you graduated in '94?
A. Uh-huh.
MR. VARNADO: Say yes or no.
A. Oh, yes.
Q. Do you have any military background?
A. I do not.
Q. Okay. When you graduated in '94, what did you do or where did you start working right after?
A. I did. I moved to Richmond, Virginia and worked

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for my national fraternity headquarters.
Q. Okay. Which was?
A. Sigma Phi Epsilon.
Q. Okay. And then after that? I mean, how long were you there for?
A. Right at a year and a half.
Q. Okay. And so, until about 1996 or so?
A. Mid-'95, 1996. Yeah.
Q. Okay. And then where did you go to work after that?
A. I spent about six months back in Greenville just working BS retail and then moved to Charleston and started working with Merrill Lynch in April of 1996.
Q. Okay. And then, were you with Merrill until 2000?
A. 2000. Yes.
Q. When you started working for First Union?
A. Yes.
Q. Okay. Okay. You said you had no military background, correct?
A. No.
Q. Okay. Do you belong to a church?
A. Not really, no.
Q. Okay. Okay. Well, let's go to, you know, why

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we're here today. Okay. You know, with regarding this -- I apologize on that earlier today.
A. That's all right.
(DEED MARKED AS DEFENDANT'S EXHIBIT NO. 1 FOR IDENTIFICATION.)
Q. And this is just so I want to make sure the record is clear. This is, we can use this as -- I wish I hadn't marked this, but this is the deed, or you can take a look at this first.
MR. VARNADO: Do you have an extra?
MS. BAKER: Yeah. I just --
MR. VARNADO: That's all right. I'll just share with him.
MS. BAKER: I'm sorry about that, Rob.
MR. VARNADO: As long as you don't mind, can I write on this? If that's the real exhibit for the court reporter, can I just write number one on this, and I'll just take a copy home?
MS. BAKER: You can take it all with you.
Yes.
Q. Okay.
A. Okay.
Q. Okay. And have you seen this deed before?
A. I believe so.

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Q. Okay. And this is the deed showing that you purchased the 10 Nicholson property, correct?
A. Right. From Ms. Zervos.
Q. Okay. Exactly. And what was the year that you, when was the original closing for this?
A. September 2000. I know it's dated here on October 6th, but I think that's when they stamped it.
Q. Is it September 29th, 2000?
A. Right around, yeah. It's going to be somewhere around there.
Q. Okay. And did you, when you initially purchased the property, did you obtain a mortgage?
A. I did.
Q. Okay. And was it with Bank of America?
A. It was.
Q. Okay. And were you able to make the monthly payments at that time?
A. I was.
Q. Okay. And what was the amount of the mortgage with Bank, B of A, if you recall?
A. I believe it was one sixty, I'm trying to think if I did like an eighty/twenty, but I don't believe I did. I believe it was just one sixty. I don't think there was a second on there.

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Q. Okay. I'm not going to hold you to that.
A. Yeah. No. I was just trying to –
Q. Okay.
A. -- some of these questions, you're like, wow, why don't, you know.
Q. It was a long time ago. Right, exactly. Okay. And then you, after that, you went ahead and refinanced with First Union, correct?
A. Right.
(PROMISSORY NOTE MARKED AS DEFENDANT'S EXHIBIT NO. 2 FOR IDENTIFICATION.)
Q. Okay. And take a look, we're going to use this as Exhibit Two. This is the note. I'll just let you hold onto that. Okay. And so, do you recall the date that you refinanced with First Union?
A. Yes. It was March 12th, 2002.
Q. Okay. And take a look at what's marked as Exhibit Two which is a negotiable promissory note?
A. Right.
Q. Have you seen that before, have you seen the document before that you're looking at?
A. Yes.
Q. Okay. And does it appear to be a true and accurate copy of the note that you signed?

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A. At this point, I have no idea, Jana. There's been three or four notes proffered by your client that says that this is a true and accurate copy.
Q. Do you know the original note we have here in our vault?
A. Right.
Q. Okay. And you're welcome to look at it with your attorney.
MR. VARNADO: In fact, we might do that. We might take you up on that at a break.
MS. BAKER: We can do that.
THE WITNESS: Okay.
Q. Well, how about this, if you turn, this is again Exhibit Two of the note, if you turn to the last page of the document which is at the bottom, it's labeled WF eight.
A. Yep.
Q. Is that your signature?
A. Yes. It is.
Q. Okay. And do you recall the amount of the loan with First Union?
A. One eighty-two seven hundred.
Q. Okay. And do you recall what the interest rate was?
A. Yes. I do.

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Q. Okay.
A. It was an adjustable rate mortgage.
Q. Okay.
A. It was based off the prime plus a quarter.
Q. Okay. Or you could actually, if you look at the note, it may, where the X is on the first page it's indicated. Is that correct? Here, I can show it to you.
A. Yeah. That is correct.
Q. Do you want to read it just for the record?
A. The interest rate is prime rate which was then four point seven five percent plus point two four percentage points or twenty-four basis points.
Q. Okay. And where are you? Sorry about this. Okay. I see what you're saying. Okay. That's the initial interest rate?
A. Yeah.
Q. And then, if you read above that where the X is located, is that correct? If indicated, which is where the X is. I can point it.
A. Four point nine nine.
Q. You can just read that sentence.
A. "If indicated, this is a variable rate loan and my initial interest rate is four point nine nine."

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MR. VARNADO: Just in the future, if Ms. Baker asks you to read something, just remember Jay's trying to write it down. And some people, they read real quick.
THE WITNESS: Okay. I'm sorry.
Q. Okay. And so, and then the variable rate was tied to the Wall Street Journal, the prime rate, correct?
A. Correct.
Q. And initially, if you take a look at the note, do you recall, and you can take a look at the note if you don't recall, the amount of monthly payments needed to pay off the loan?
A. Three hundred and sixty.
Q. Okay. And you were supposed to make monthly payments, correct?
A. Yes.
Q. Okay. And what was the initial amount?
A. Nine eighty-four twenty-one.
Q. Okay. Do you agree that this amount could increase based on an increase in the interest rate?
A. Absolutely.
Q. Okay. Now --
A. Every sixty months.

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Q. Every sixty months. Okay.
A. Not to exceed point, not to exceed twenty-five percent over what the previous one was.
Q. Well, I guess, and if you take a look at the note again, where the X is down on page one, it says variable, I'll show it to you just so we're making sure that we're on the same page. I think we are. And if you want, if you look at where the X is and read that paragraph just to explain. This has to do with the payments and what you were talking about with the sixty months.
A. Right. And I'll go ahead and read that, but the payments are also governed by the adjustable rate disclosure statement.
Q. We'll get to there, yeah.
A. Okay.
Q. I just want to start with the note first, so.
A. "If indicated, my loan has multiple payments for a term more than sixty months. Any increase in my interest rate will increase the number of payments, it may increase the payment amounts. If my loan were for ten thousand for a hundred and forty-four months at twelve percent and the interest rate increased to twelve point five percent in three months, my payment would

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increase by seven hundred, or seven dollars and thirty cents beginning with the sixty-first payment."
Q. Okay. So, basically, you know, this loan was, you know, it has multiple payments for more than sixty months as we discussed earlier, so it's possible that if any increase in the interest rate would increase the payment?
A. Absolutely.
Q. Okay. And then, the maximum interest rate would not exceed eighteen percent, correct?
A. Yes.
Q. Okay. And why did you decide just to refinance with First Union versus stay with Bank of America?
A. When I was working with First Union, we were as a financial advisor or whatever they were calling us at that time, you know, everybody basically was a financial advisor, financial consultant. I can't remember what it was. We would work with the, you know, the folks in the branches to cross sell stuff, and I was approached, hey, this is a great loan, look at it for some of your customers. And when I saw the adjustable rate disclosure on how the principal and interest were

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actually calculated and put on a loan, that's what made me say, hey, this is not a bad loan to get.
(MORTGAGE MARKED AS DEFENDANT'S EXHIBIT NO. 3 FOR IDENTIFICATION.)
Q. Well, let me, the next, the next Exhibit Three will be the mortgage. Take a look at that.
MS. BAKER: And Rob, if you want to make a note, that's Three.
Q. Have you seen this document before?
A. All except the last page.
Q. It's probably a document from Wells Fargo's files, but you've seen one through fifteen?
A. I –
Q. I mean, what's labeled, excuse me, WF nine through WF fifteen which is really one through –
A. Right. Yeah. I'm assuming it's the same one.
MR. VARNADO: Is the last page Bates labeled?
THE WITNESS: Base load?
MR. VARNADO: Okay. This stamp down here is called a Bates label in lawyer slang. Can you flip to the last page? Yeah. Okay. Thank you.
Q. Mr. Bentrim, did you sign the mortgage on what's labeled WF thirteen which is page five of the

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mortgage?
A. I did.
Q. Okay. And what's the date of the mortgage?
A. It should be March 12th, 2002, and it is.
Q. Okay. And it is. Okay. Now, do you recall, did you have a closing attorney?
A. I did.
Q. Okay. Who was your closing attorney?
A. Rob Donaldson.
Q. Okay. Do you agree that this mortgage secures the property located at 10 Nicholson Street?
A. I do not.
Q. You do not. Okay. And why, why is that?
A. One is no evidence that your client funded the loan and, two, you know, we don't know if this is still in effect as a valid lien.
Q. Well, the note doesn't evidence the debt on Exhibit Two, does the note evidence the debt?
A. I don't believe so, but that would be a legal conclusion.
Q. Well, I mean, I can still ask you a question. We're in a deposition.
A. Yeah. And I've said, I don't believe so, but I think that's a legal conclusion.
Q. Okay. So, who recorded this mortgage?

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A. Am I supposed to -- where would I, I don't understand the question.
Q. Well, typically it would be your attorney for this.
A. Okay.
Q. I mean, if you look on page WF fourteen on the bottom right, it says Davidson Bennett and Wigger Law Firm.
A. Okay.
Q. So, do you know if, I mean, typically you would think that your attorney would be responsible for it?
A. Right.
Q. Okay. Well, so why did you purchase this property?
A. As a home to live in.
Q. Okay. But you just, is there a reason for this, I mean, you like, was this for a home to live in, you liked it?
A. Good location, yeah.
Q. Okay. Was this the first home you ever purchased?
A. It was.
Q. Okay. Have you ever purchased any other homes individually? I mean, this was the first one you

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purchased, but after this, have you purchased any other homes?
A. I've not.
Q. Okay. Have you purchased homes with other people?
A. I have not.
Q. Are you a member of any LLC that owns property?
A. No.
Q. Okay. Are you a member of a corporation that owns property?
A. No.
Q. Okay. Are you a partner in a partnership?
A. By property, you're referring to real estate?
Q. Real property.
A. Yeah. No.
Q. Yes. Real estate. Yes.
A. Yeah.
Q. Okay. And are you a partner in a partnership that owns real estate?
A. I am not.
Q. Okay. And right now, the only space you rent is on Archdale Street where your office is?
A Yes.
Q. And before that was the Franke Home when you were renting out of there?

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A. The Franke Building.
Q. The Franke Building. Yeah. Do you rent any other spaces right now, you know, or is it just the one on Archdale Street?
A. Just on Archdale.
Q. Okay. So, you only have one office?
A. Right.
Q. Okay. And you're current on your rental payments right now?
A. Absolutely.
Q. Okay. And how are you making those payments?
A. Through the corporation.
Q. Through, you mean, through your business, the corporation that you're talking about?
A. Yes.
Q. Okay.
A. The corporation's actually the lease, leasee?
Q. Okay. As a leasee?
A. Yeah. It's not really me.
Q. The tenant. Okay. Well, let's mark this as Exhibit Four.
(TRUTH-IN-LENDING DISCLOSURE MARKED AS DEFENDANT'S EXHIBIT NO. 4 FOR IDENTIFICATION.)
Q. You can look at it.
MR. VARNADO: Jana, I'm just going to ask

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Mr. Bentrim just for ease to number.
Q. All right. I'll wait for you. Have you seen this document which is labeled as Exhibit Four?
A. I have.
Q. Okay. And what is this?
A. Truth-in-lending disclosure statement.
Q. Okay. Did you sign this document?
A. I did.
Q. Okay. And what is the date of this disclosure statement?
A. March 12th, '02.
Q. Okay. And do you agree this shows your, you know, estimated payment schedule?
A. No.
Q. Okay. Tell me why.
A. Because of the variable rate of the payment itself, it can't estimate it. I mean, that's the nature of the variable loan.
Q. Well, when I say estimate, I mean, I think we're saying that we both that the payments can change because it's a variable rate, but does it set forth the number of payments, you know?
A. Yes.
Q. Okay. And the amount of the initial payments you make?

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A. Yes. That's fair.
Q. Okay. And again, it does disclose, you know, or does it disclose, you know, the interest, you know, the fact that the interest will not, should not increase over eighteen percent?
A. It does.
Q. Okay. And the fifteen percent was crossed out?
A. Yes.
Q. It looks like to me. Okay. Okay. Well, let's just go the next document, Exhibit Number Five.
(SETTLEMENT STATEMENT MARKED AS DEFENDANT'S EXHIBIT NO. 5 FOR IDENTIFICATION.)
Q. Have you seen this document before?
A. I have.
Q. Okay. And is this the settlement statement for the, showing the refinance for the closing in regard to the 10 Nicholson Street property?
A. It is.
Q. Okay. And what was the date of the settlement or of the closing of the refinance?
A. March 12th, 2002.
Q. Okay. And is that your signature on the bottom of the page?
A. It is.
Q. Okay. And you said Mr. Donaldson, Rob Donaldson

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was your attorney?
A. Yes.
Q. Okay. And then, on the settlement statement if you look at one, I guess it's line one o four under summary of borrower's transaction?
A. Yes.
Q. Okay. And is that the mortgage, the payoff to Bank of America, is that accurate, a hundred and fifty thousand nine twenty forty-four to the best of your knowledge?
A. Yeah. It's ballpark.
Q. Okay.
A. I mean, that depends on the disbursement of moves, I believe.
Q. If you turn to the next page of this document, the bottom is labeled WF twenty.
A. Yes.
Q. Okay. And there's the line that says eight o one loan origination fee?
A. Yes.
Q. And it's to, you know, one point five percent to First Union National Bank?
A. Yes.
Q. And the amount is, what is the amount right there?

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A. Two thousand seven hundred dollars.
Q. Okay. Are you contending that this is part of your damages in this law suit, the twenty-seven hundred dollars here?
A. No.
Q. You're not. Okay. You were represented by counsel, you already testified, in this closing. Did your counsel review the loan documents before you signed them?
A. I would assume so.
Q. Okay.
A. I would have no way to know.
Q. Okay.
A. We'd have to ask him.
Q. Okay. So, this twenty-seven hundred dollars is not part of this law suit?
A. No.
Q. Okay. Are you contending anything is incorrect on this settlement?
A. Yes.
Q. Okay. Tell me what's incorrect.
A. The, if you'll notice, the note was for one eighty-two seven hundred.
Q. Right.
A. The origination fee was charged on the settlement

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statement and then charged again.
Q. But you had an attorney at this time?
A. Yes.
Q. Okay. So, theoretically, your attorney should have caught this?
A. Absolutely. Yeah. Absolutely.
Q. Okay. And you knew about this since the closing, this discrepancy here, that it's part of your law suit, too?
A. I knew about it since April, like April, right around the end of March, early April of 2000.
Q. Of 2000?
A. 2002. Sorry.
Q. 2002. Okay. And how did you realize about, when did you, so when you discovered this in April 2002, how did you discover the discrepancy?
A. The attorney called me and said, we've got a discrepancy on the closing.
Q. Okay. And did the attorney, the attorney's Rob Donaldson?
A. Yes.
Q. Did he try to fix this in April of 2002?
A. He did.
Q. Okay. And did he fix this?
A. Yes.

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Q. Okay. And how did he fix it?
A. We disbursed the twenty-seven hundred dollar check to your client to pay principal which they booked as origination fee again.
Q. They booked as origination fee again?
A. Yes.
Q. Okay. And when was that?
A. It is showing on one of the discovery documents that you provided on March 21st of 2002.
Q. Okay. And when did you discover that they booked it incorrectly?
A. I first saw that it was missing as far as payment, you know, not being applied in December of 2008. And then when I got the discovery from you from Wells Fargo, that's when we actually had the ledger to see how it was booked.
Q. Okay. So, did you try to, and so you realized it was wrong in December of 2008?
A. I did.
Q. Okay. And did you do anything at that time?
A. Oh, yeah. I called your client. I sent them letters. I did it for years prior to that.
Q. Now, and then can you, you're saying that there's a document that shows it was booked incorrectly. Can you just provide that? You said I produced,

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we produced it in discovery. Can you let me know what document that is or can you, I guess at the break you can exactly we can – I'm curious as to which document you're talking about.
A. It was the last like big bulk of the discovery that you guys sent over. It was like those last pages. It was that ledger balance. So, if you've got it, I can point to it fairly quickly.
Q. Okay. I'll probably just, I don't want to, in the interest of time, if I have follow up you can tell me exactly what document pretty quickly?
A. Yes.
Q. Okay.
A. I believe you've got them all marked with page numbers.
Q. Okay. It's probably, it's probably here anyway.
A. Yeah.
Q. But it's a ledger you're referring to, your payment history or ledger something?
A. Yes.
(LOAN INFORMATION STATEMENT MARKED AS DEFENDANT'S EXHIBIT NO. 6 FOR IDENTIFICATION.)
Q. Okay. And I think, this is number, this will be Number Six, I believe.
A. Yes.

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Q. Okay. You can go ahead and – Mr. Bentrim, let me know when you're, after you, when you've reviewed what's marked as Exhibit Six.
A. I have reviewed it.
Q. Okay. And what is this document?
A. It is the First Union adjustable rate loan information sheet.
Q. Okay. And what's the date of this document?
A. It is dated March 12th, 2002.
Q. Okay. And did you, is that your signature at the bottom of the page?
A. It is.
Q. Okay. Earlier you referred to this, the First Union, this document earlier.
A. Yes.
Q. And you were, I don't know if you said there was a mistake on it, or explain to me what you were, what you want to explain to me, I guess, about this document.
A. The document under how my payment can change bullet point four.
Q. How my interest or how my payment can change?
A. How my payment.
Q. The bold how my payment can change; is that what you're referring to?

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A. Yes.
Q. Okay. Okay.
A. It says, "because my periodic payment may change once every sixty months."
Q. Okay. Where are you looking right now?
A. Can I point for you?
Q. Yeah. You can --
A. Starting here (indicating).
Q. Oh, the fourth bullet point.
A. Yeah. Sorry.
Q. Oh, I got you.
A. "Because my periodic payment may change once every sixty months and my interest rate may change monthly, my periodic payments may not fully cover the interest due. Such interest will be added to the loan amount and due at the end of the term of my loan. In such cases, unless the program I choose has a balloon provision, I will continue to make my final adjusted periodic payment for as long as any unpaid balance remains on my loan. If I have a balloon provision, I must make a single payment of the total of my periodic payment plus the remaining unpaid balance including any accrued interest and other unpaid fees and charges I owe at the end of the

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loan term."
Q. Okay. So, do you want to explain what you just read to me?
A. Yes. What it says is the payments are set for sixty months, but the prime rate can change monthly. So, you can have a situation where the prime rate goes above four percent or, you know, up to eight, nine, ten, eighteen percent, or it could go underneath what it is. Basically it says, okay, if it goes to the point where that nine eighty-four twenty-one, the initial payment does not cover all the interest, that interest is put on the back of the loan, not applied to the next statement.
Q. Okay. Okay. But is there any other, okay, I just didn't know if you had any other issues with anything.
A. Okay.
Q. Because as you were referring to it earlier --
A. But that's very important as to how the loan is calculated.
Q. Okay. And how might, but if you go back, okay, and you go back to how my payment can change, you were at bullet point number four, correct?
A. Right.

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Q. Okay. Can you read the first bullet point?
A. Yes. "My monthly payment can increase or decrease substantially upon the interest, the changes in interest."
Q. Based upon the changes in the interest rate?
A. Yes.
Q. Okay. So, did you read, do you understand and did you read this at the time that you signed the document?
A. Absolutely.
Q. Okay. Okay. And then, I think the, well, you know, we've discussed this earlier, but if you could read the third, there's a third bullet point, just the first sentence.
A. Yeah. "My payment can change on the sixty-first calendar month and, if applicable, every sixty calendar months thereafter based on changes in the interest rate."
Q. Okay.
A. Wow, I'm getting old. I'm like, holy cow, that's small.
Q. Small print. Exactly. It is small print. Okay. And you read that and understand that sentence when you refinanced?
A. I did.

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Q. Okay. And how my interest rate can change, if you read the, can you read the first bullet point?
A. My interest rate can change monthly.
Q. Okay. And you read that at the time you refinanced and you understood that, correct?
A. Yes.
Q. Okay. And then, the next bullet point?
A. "My interest rate cannot exceed eighteen percent."
Q. Okay. And you agree with that statement as well?
A. Yes.
Q. Okay. Okay. And can you, if you could go back to, do you want to --
A. I'm just going to check to see if it's anything urgent, if you don't mind.
Q. We'll go off the record for a second while you check something.
(The deposition went off the record for a brief period of time.)
Q. Okay. Can you go back to exhibit, the note will be Exhibit Three, I believe; is that correct? Or is Two, Two. Let's go back to Exhibit Two.
A. Okay. I'm going to grab a cup of water while you're talking, if that's okay.

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Q. Do you need a break?
A. No.
Q. Okay. If you look at this, are you looking at the negotiable promissory note which is Exhibit Two?
A. I am.
Q. Okay. It's actually four pages, I believe. If you could look at page, the second page of it, it's labeled WF six at the bottom right hand corner.
A. Yes.
Q. Okay. And there's some bold on the left and one is, one says, interest rate changes, is one, you know, I guess portion, and then it goes to payment provisions?
A. Yeah.
Q. And then variable rate payment changes.
A. Yeah.
Q. Okay. And do you see variable rate payment changes?
A. I do.
Q. Okay. Can you just read the second sentence for me of that paragraph, if you can read it? It's small as well.
A. Yeah. "Prior to each payment change, you will

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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."
Q. Okay. So, prior to each payment change date, you will calculate the payment estimated to pay the outstanding principal balance?
A. Yes.
Q. So, what does that mean to you?
A. It means that First Union, after sixty months expires, they're going to say, hey, here's the principal balance left on your loan. Here's the current interest rate, and in order to say, let's say that was after the first sixty month period.
Q. Right.
A. In order to amortize this over the next twenty-five years, your payment's going to be X, assuming the interest rate stays static.
Q. Assuming, so therefore it's an estimated number?
A. Yes.
Q. Okay. I got it. And so, the payoff amount's theoretically estimated as well because the interest rate could change?
A. Right.
Q. Right. Yeah. Okay.

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A. Yeah.
Q. Okay. And then, did you also obtain a prime equity loan and mortgage with First Union on May 24th, 2001?
A. I did.
Q. Okay. Is that paid off?
A. No.
Q. Okay. Is this, let me just – this will be Exhibit Number Seven.
(MODIFICATION AGREEMENT MARKED AS DEFENDANT'S EXHIBIT NO. 7 FOR IDENTIFICATION.)
Q. Have you seen this document before?
A. I have.
Q. Okay. And did you sign, is this the modification agreement to prime equity line of mortgage?
A. It is.
Q. Okay. And did you sign this document?
A. I did.
Q. Okay. And so –
MR. VARNADO: Is this Number Seven? I'm sorry.
MS. BAKER: Yes. It is.
Q. So, is the amount, the amount on this loan, how much was the initial amount of this loan?
A. Forty-nine thousand.

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Q. Okay. And then, was this, did this reduce, what did the modification do?
A. Ten grand. Ten thousand.
Q. It reduced it to ten thousand dollars?
A. Yeah.
Q. Okay. You said, is it still open?
A. What happened last or in 2011 when your firm sent me out an acceleration on the other loan is they quit accepting payments and quit sending me statements on this loan. So, it's still got something on it.
Q. Okay. So, there's still a -- okay. What did you, did you use the loan proceeds to buy anything or did you –
A. Heck if I know.
Q. All right.
A. Yeah.
Q. Does this law suit that we're here, does it have anything to do with this amount?
A. No.
Q. No. Okay. Okay. Now --
A. However.
Q. Okay.
A. Sorry. When I did call and say hey, you know, why did you quit accepting my payments and quit

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sending me statements, they said because we're foreclosing, so I believe Wells Fargo believes this is part of it.
Q. Okay.
A. Yeah.
Q. But it's not part of any of your claims against Wells Fargo?
A. No. Not part of my claims against them.
Q. Okay. Now, in regard to, let's see here, the current, you know, the mortgage and note and mortgage, are you currently, you know, which is Exhibit Two that we looked at and probably Three.
A. Three.
Q. Are you making payments now on this loan?
A. No.
Q. Okay. When did you stop making payments, do you recall?
A. In January 2009, your client refused to take further payments.
Q So, you were making payments in January of 2009; is that a yes?
A. Yes. It is. Sorry.
Q. Okay. Why did Wells Fargo, why did they stop accepting the payments?
MR. VARNADO: Object to form. You can

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answer. Remember I, I sometimes can object to her question. Unless I instruct you not to answer, you should go ahead and answer.

THE WITNESS: I didn't hear what he said. What did you just say?

A. In November 2008, I maybe have the dates off a little bit here, but it was October, November 2008, I got a notice and intent to foreclose letter from your client.

Q. 2008, you did?

A. Yes.

Q. Okay.

A. And they said, you know, you owe X, I said there's something not right here, call in. And when I called in, they said no, no, everything's fine. And then, the next day, I actually got a different letter that says, you know, pay this amount. And we went back and forth. And so, I said, something's not right here and asked for a payment history on the account. And that's when I noticed the twenty-seven hundred dollars was not credited, and I also got a letter from, I believe it was Sherrie Caudill or Caudill that said, hey, this is a ledger and this is how your principal and interest is calculated, and it

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didn't meet any of the stuff that was described in the note, et cetera and so forth.

Q. And this is in 2008?

A. '08.

Q. Okay. Did you ever have any problems before 2008 making payments?

A. Yes.

Q. Okay. And when was that?

A. We fought about this for years because I was --

Q. When you say we, who is --

A. Wachovia and, it was Wachovia Bank at the time.

Q. Okay.

A. And me, because with the twenty-seven hundred, my assumption is I'm three payments ahead, and they're always putting me in arrears. It was, you know, just never could get an answer out of them. So, it was pay up or we're going to foreclose.

Q. Okay. Were you working for Wachovia Securities, you said, around, were you having trouble making payments when you were working for Wachovia Securities?

A. No. And I don't, I wouldn't say it was trouble making payments. I would say there was trouble with the payment history ledger as to an accurate

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accounting.

Q. Okay.

A. Is that fair? Yeah.

Q. Right. But you contend you were making payments?

A. Yes.

Q. Okay. And going back, so, okay. Just you left, okay, when did you leave Wachovia Securities exactly?

A. March 2002.

Q. Okay.

A. So, right after --

Q. Right after the closing or the refinance? Yeah. And again, why did you leave Wachovia Securities?

A. To start my own firm.

Q. Okay. And did you have a problem with Wachovia? I mean, did you?

A. I mean --

Q. Why did you leave?

A. Oh, okay. That's fair.

Q. Yeah.

A. To start my own firm. They had recruited me to come over from Merrill Lynch.

Q. They is Wachovia?

A. First Union, Wachovia.

Q. Okay.

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A. Because the CEO of First Union wanted to be the next Merrill Lynch. But once I got there, I realized that they didn't, that wasn't really their desire. And so, it was not a good fit. It was seniority based instead of a merit based system there.

Q. Okay.

A. So, yeah.

Q. So, you, it wasn't a good fit, so you wanted to leave?

A. Yeah.

Q. Okay. And who was your supervisor over there at the time?

A. Todd Gauthier hired me, and I've got to tell you, Jana, there was so many mergers and stuff going on at that point, literally one of the reasons why is I think I went through about five supervisors at that time. Yeah.

Q. Okay.

A. I would love to remember them all.

Q. Okay.

A. Everybody was merging left and right at that point.

Q. Okay. So, but your position is that you were making, I just want to be clear as I understand,

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Is it your position that you were making payments?
A. Yes.
Q. Okay.
A. And that I was ahead on payments.
Q. Okay. And do you have evidence to show, either bank statements, I know they're older, probably back in 2008 or maybe 2003, just to show that you were making or that you were ahead of the payments?
A. Yes. And your client's ledger balance shows it as well.
Q. Okay. But you also can show --
A. Yes.
Q. You have the documents in your house somewhere?
A. The twenty-seven hundred dollar signed over, that would be the only piece that would have to be gotten.
Q. Well, but you're saying you can show that to me in our documents?
A. Yes.
Q. Okay.
MR. VARNADO: I'm sorry, Jana. I don't understand. When you mean, since you're asking about documents, what documents do you mean? I

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want to make sure that, you know, that we're up to date on our discovery.
MS. BAKER: Just, and maybe we could, proof of, he just said that he was ahead of the payments.
MR. VARNADO: So, you mean the documents that he would have received from your client, too?
MS. BAKER: If I have the documents, there's no reason for you to --
MR. VARNADO: Oh, I agree.
MS. BAKER: You can tell me, you know, what documents. I mean, like if there's any, if he has any bank statements or canceled checks or something showing that he was making the monthly mortgage payments, and he said that he has.
A. Yes. And your client's got them in their records.
Q. Right. But you have your own records?
A. I'm assuming I have the bank statements that long.
MR. VARNADO: To the extent that you want that, I might, I'm just going to reserve an objection now on the record, but let's keep going.

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MS. BAKER: Right. And that's fine.
MR. VARNADO: Okay. Yeah. Well, we'll deal with that later.
Q. Okay. And this goes back to what we were just talking about, I guess I'll mark these. Let's see here. Okay. This next document is Defendant's Exhibit Number Eight. If you can just take a look at that, Mr. Bentrim.
(NOTICE OF FORECLOSURE MARKED AS DEFENDANT'S EXHIBIT NO. 8 FOR IDENTIFICATION.)
MR. VARNADO: What is this?
A. Okay. Number Eight.
Q. It's Number Eight. Yeah. And the document's labeled notice of intention to foreclose?
A. Yep.
Q. And have you seen this before?
A. Yes.
Q. Okay. And what's the date of this document, the letter?
A. November 21st, 2003.
Q. Okay. Do you recall receiving this notice of intention to foreclose in 2003?
A. Yes.
Q. Okay. Do you recall whether or were you in default?

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A. No.
Q. Okay. And what did you do when you received this letter?
A. I called the bank.
Q. Okay. And what did the bank do?
A. Nothing.
Q. Okay. But did they, but the bank, did they start foreclosure proceedings in 2003?
A. No.
Q. Okay.
A. That is when I first pointed out to them the missing amounts, twenty-seven hundred.
Q. Okay. And so, in 2003 -- just to be clear, so I'm clear for the record, when we look to the twenty-seven hundred, you know, amount from the settlement statement, and you can --
A. Yes.
Q. Okay. And at the time, your lawyer said on the settlement statement, there's an issue with this twenty-seven hundred dollars?
A. Yes.
Q. And it was supposedly fixed by your lawyer in, at the time of it, right after the closing?
A. Yes.
Q. Okay. Now, you receive this notice of intention

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to close, November 21st, 2003?
A. Yes.
Q. Okay. At this time, is this the time, November 21st, 2003 when you realized again, there's an issue with the application of twenty-seven hundred dollars?
A. Yes.
Q. Okay. And how did you figure that out then?
A. Because I thought I was ahead, and your client's sending me a statement saying you owe us thirty-nine, thirty-eight ninety-one o five.
Q. Okay. And so -- Okay. And so, you, at that time you realized the twenty-seven hundred was booked incorrectly?
A. Yes.
Q. Okay. Did you do anything November 21st, 2003 to try to correct it?
A. Yes.
Q. Okay. And what did you do?
A. I called your client.
Q. Okay. Do you know who you, I mean -- okay.
A. Yeah. No.
Q. That's fine.
A. Yeah. I know I made numerous calls.
Q. Okay.

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A. Yeah.
Q. Around this time frame in 2003?
A. Yes.
Q. Okay. Was anything ever done to correct?
A. No. They basically just ignored me.
Q. Okay. Did you, so you called and you contend that Wells Fargo, or Wachovia ignored you?
A. Yes.
Q. Okay. Did you ever try to file a law suit at this time?
A. No.
Q. Okay. Did you ever try to talk to your closing attorney around this time?
A. No.
Q. Okay. Now, I'm going to show you another document. This will be Exhibit Nine.
(NOTICE OF FORECLOSURE MARKED AS DEFENDANT'S EXHIBIT NO. 9 FOR IDENTIFICATION.)
MR. VARNADO: He's waiting for you.
Q. Okay. Mr. Bentrim, have you seen what's Defendant's Exhibit Number Nine before?
A. I have.
Q. Okay. This is a notice of intention to foreclose?
A. It is.

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

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A. Uh-huh.
Q. Okay.
A. If you take twenty-seven hundred dollars off of that.
Q. Right.
A. It doesn't add up to a missed payment.
Q. Okay.
A. And then when you take the ten dollars as well.
Q. Okay. So, that's the twenty-seven hundred dollars that we've been looking at in the settlement statement?
A. Right.
Q. Okay. So, did you do anything at this point in 2004?
A. Same stuff. Called, tried to get somebody to talk to me.
Q. Okay. Did you try to file a law suit?
A. Nope.
Q. Okay. Despite receiving the notice, were you still making your monthly payments that you were supposed to make?
A. Yes.
Q. Okay. Now, let's move forward to more recently. We'll mark this as Exhibit Ten, Bentrim's Number Ten. Thank you.

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(NOTICE OF DEFAULT MARKED AS DEFENDANT'S EXHIBIT NO. 10 FOR IDENTIFICATION.)
Q. Do you recall receiving this notice of default?
A. I do.
Q. Okay. And what was the date of this notice of default?
A. September 27th, 2011. This is Ten, Jana?
Q. This is Ten.
A. Okay.
Q. Yes.
A. Thank you.
Q. At this point, were you making mortgage payments?
A. I was not.
Q. Okay. Do you know when you stopped making mortgage payments exactly?
A. January 2009.
Q. Okay. So, you haven't made, January 1st or was your last payment in January 2009 at some point?
A. Yeah. The last payment was sent in January 2009.
Q. Okay.
A. And it was not accepted.
Q. Okay. It was not accepted. Do you know the amount?
A. Twelve hundred and some odd bucks.
Q. Was it, did you pay by check?

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A. I probably did it on-line then because I had an account at Wells Fargo. I can pull that monthly statement.
Q. Okay. When did you start making payments on-line?
A. Heck if I know.
Q. Okay. But you still have the information that you could pull?
A. Yeah. And you can see it in your client's ledgers.
Q. But you can pull it as well if I wanted to get it from you? Would that be difficult for you to get?
A. No. I think I've got most of those.
Q. Okay. So, January 2009 was the last time that you paid. Okay. So, when you received, you recall receiving Exhibit Ten which is the letter dated September 27th, 2011?
A. Yes.
Q. Okay. And you just testified, and just correct me if I'm wrong that you were not making payments at this time to Wells Fargo?
A. Yeah. I couldn't.
Q. When you say you couldn't --
A. Your client was not accepting payments.

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Q. Okay. Did you try to, when your, when do you contend that Wells Fargo or, you know, its predecessors exactly stop taking the payments, was it 2009?
A. Yeah. January 2009.
Q. Okay. In January 2009, did you do anything to try to resolve this dispute?
A. Oh, yes. Absolutely.
Q. Okay. And what did you do?
A. I continued to contact your client, Wachovia Bank, at the time. And they said, we can't talk to you, this has been referred to an attorney for foreclosure. Once it got to Ms. Suzanne Brown with Brock and Scott, I communicated with her.
Q. She's the attorney with Brock and Scott, right?
A. Yes. Communicated with her over and over. And she even sent a letter back and said, hey, the notice of intent to foreclose that we sent you in October or November was wrong. We didn't apply a payment. But they continued on the path for foreclosure.
Q. Okay. But -- got you. But you're contending, though, that although you received noticed in '03 and '04, you were still, it was, it was incorrect, those notices, because of the twenty-

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seven hundred dollars?
A. I am.
Q. Okay. Now, let's just go back up a little bit. I believe the next one will be Exhibit, we'll mark this as one --
MR. VARNADO: Eleven.
MS. BAKER: Eleven. Yeah.
(DEMAND LETTERS MARKED AS DEFENDANT'S EXHIBIT NO. 11 FOR IDENTIFICATION.)
Q. I think it will be easier just to mark these all as a group. Let me see that one more time.
MR. VARNADO: What are we marking, Jana?
Q. Take a look at these.
MR. VARNADO: Are these all one exhibit?
MS. BAKER: Yeah. They're just demand letters, Exhibit Eleven.
Q. Which ones are you looking at? Do you have the July 13th, 2005?
A. '05.
Q. December 13th, 2006, do you have a copy of?
A. '06. Uh-huh.
Q. Okay. You have, what's the next one that you have?
A. '07.
Q. Is that January 19th, 2007?

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A. Yeah.
Q. Okay. And then do you a March 20th, 2007?
A. I do.
Q. Okay. And for the record, for Exhibit Eleven, would you agree with me these are demand letters from Wachovia to you?
A. I would.
Q. Okay. Have you received all these demand letters?
A. Yes.
Q. Okay.
A. I believe.
Q. Yeah. Just take a look at it. Let's go through the first one. Have you received the one, and you might need to look at it, dated July 13th, 2005?
A. Yes.
Q. Okay. And have you received the one dated December 13th, 2006?
A. Yes.
Q. Okay. And then, have you received the one dated January 19th, 2007?
A. I have.
Q. Okay. And did you receive the one dated March 20th, 2007?

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A. I have.
Q. Okay. On January 13th, 2005, do you still contend that you were making the payments to Wachovia?
A. Yes.
Q. Okay. And with this one, are you contending that this demand letter is incorrect?
A. Again, yes.
Q. Because of the same reasons we discussed earlier, the twenty-seven hundred dollars?
A. Yes.
Q. Okay.
A. Yes.
Q. Okay.
A. I was checking the date on it.
Q. Okay. And look at December 13th, 2006 letter.
A. Yes.
Q. Okay. Was the past due payment incorrect there as well?
A. It was.
Q. Okay. And was it, what else was wrong with it besides the twenty-seven hundred dollar inaccuracy?
A. Late charges of ten dollars have been put on the account, and there's no provision for it.

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Q. There's no provision, oh, because you're contending that you are not late on any of the payments?
A. Well, even, what's even more bizarre than that, Jana, is it's not even a part of the note.
Q. There's not a condition for late charges?
A. It's not ten dollars.
Q. Okay. What was the late charge, do you recall or we can look it up?
A. It's five percent of the next payment.
Q. So, it could be, I guess, let's take a look at it. Okay. So, you're looking for the five percent is, you're looking at the note on page three of four of the note is --
A. I've got it over here.
Q. Okay. And that's Exhibit --
A. Two.
Q. -- Two. Exactly. And if you look on page three of four of the provisions, page three of four of the note.
A. Yes.
Q. Okay. And that's the five percent of the payment?
A. Yes.
Q. And were any of your payments late?

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

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let me take a look. The 2003 demand letter which was, I believe, it's Exhibit Number Eight. Okay. If you look at Exhibit Number Eight from 2003, did you --

A. Yeah. I don't remember when I started complaining about the ten dollars because it wasn't until December of 2008 when I got the payment, the first payment ledger from your client that showed they were booking both five percent and charging ten dollars. Yeah.

Q. Okay. So, were you -- okay. But do you recall - -

A. I don't.

Q. -- in '04 whether you complained about the late charge?

A. No, no.

Q. Or in '05, you just don't recall?

A. Don't recall.

Q. Don't recall. Okay.

A. Yeah.

Q. But you did complain about the twenty-seven hundred dollars in 2003?

A. Yeah. I mean --

Q. Okay.

A. -- and I, I know we talked about the HUD one,

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Jana, and I just can't remember when. One of these issues.

Q. Okay. Maybe in 2003 or something?

A. I don't remember which one.

Q. Okay. But it would have been early 2000s, let me say early to mid?

A. Yes.

Q Okay. Okay. So, now let's look at, this will be Bentrim Number Twelve.

(LETTER OF 8/24/10 MARKED AS DEFENDANT'S EXHIBIT NO. 12 FOR IDENTIFICATION.)

MR. VARNADO: What's the date on that one?

MS. BAKER: Well, it's August 24, 2010.

MR. VARNADO: Oh, again, I'm sorry.

THE WITNESS: Oh, that was the --

MS BAKER: Eleven is the, was the group of these demand letters.

THE WITNESS: -- the demand letters.

MR. VARNADO: I got you. I'm sorry.

MS. BAKER: It was from 2005 to 2007.

MR. VARNADO: And you're going to identify Number Twelve now?

MS. BAKER: Yes.

Q. Yes. Mr. Bentrim, have you seen this document before?

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A. I have.

Q. Did you write this document?

A. I did.

Q. What is the date of this document?

A. August 24th, 2010.

Q. Okay. And who did you send it to?

A. Wells Fargo Bank Credit Bureau Dispute.

Q. Okay. Tell me why you sent this letter to Wells Fargo Credit Bureau Dispute.

A. After the case, the 2009 foreclosure case that your client had against me was dismissed --

Q. Right.

A. -- they put on my credit report immediately that the --

Q. You're saying Wells Fargo?

A. Yes.

Q. Okay.

A. Put it immediately on my credit that the house had been foreclosed on.

Q. Okay.

A. And they had gotten title and deed of, in lieu in deed of title or something on my credit.

Q. Okay. So, this was an inaccuracy, there was just, the credit reporting wasn't accurate, is that why you wrote this memo?

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A. Yes.

Q. Okay.

A. And it was also against the order of the judge.

Q. Was this the first written letter to Wells Fargo?

A. Oh, gosh. No.

Q. Okay. Let's see here. Was this the first written letter in regard to, when did you start writing them letters then? Because I thought that you –

A. November 2008.

Q. Okay. Because I thought the documents produced - -

A. I may have written before those, but those are the only ones I've got.

Q. Okay. 2008. Okay.

A. Yeah.

Q. And that was, and the 2008, that was in regard to just the allegations of, or what was the 2008 letters referring to?

A. When I got the notice of, another notice of intent to foreclose, and I called and said, you know, and that's where it got even weirder because when I called them this time, the person said no, there's no problem, here's what you owe. And a couple of days later I got a statement and

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another letter that showed different amounts owed.
Q. Okay. But that was in 2008?
A. Yeah.
Q. Okay.
A. And that's when I sent them the letter saying, hey, something's not right here, send me a payment history.
Q. Okay. But there wasn't an issue with the credit reporting in 2008?
A. I didn't bring up that issue at that point.
Q. Okay. Was there an issue with it in '08, did you have issues with your credit report in '08, and did Wells Fargo do anything in 2008?
A. Yeah. They were always showing it as behind.
Q. Okay.
A. Yeah.
Q. Since when did they, when did it affect your credit, I guess?
A. Probably 2002, 2003.
Q. 2002, 2003. Okay. Did it affect your ability to obtain a loan with anyone else?
A. Absolutely.
Q. Okay. With, when did it affect you, like what did it, just --

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A. It just, you know, bad credit. It looks bad when they're always reporting you ninety days late.
Q. Okay. So, it was 2002 when it started or 2003, I guess?
A. Yeah. Somewhere around there.
Q. Okay. When did you try to obtain a loan, you know, during the time period --
A. I would have to check my records as to what I was looking -- yeah.
Q. Do you recall if you tried to obtain a loan in the past three years?
A. No. I think in the past three years I pretty much had given up as we started all this litigation.
Q. The past five years?
A. I'd have to check my records.
Q. Okay. Could you check your records if I, if we want that information and try to find it to see if you obtained for a loan and the reason for the loan and --
A. Yeah. Absolutely.
Q. -- and with, you know, what financial institution.
A. Yeah.
Q. Okay. Okay. Okay. So, there were issues with

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the credit report 2002 to 2003ish or '04?
A. Yeah.
Q. Okay. But in 2010, you're addressing the issue of the foreclosure with Wells Fargo?
A. Yeah. I'm addressing at that point instead of a dispute over late, they're actually putting on there that the home was foreclosed although the case was dismissed.
Q. Okay. And you, and we're talking about, so we're clear with our record that when the case, the initial foreclosure case was dismissed, we'll make this Exhibit Number Thirteen. Is that what you were talking about? Just so we're clear for the record.
A. Yeah.
(FORECLOSURE DISMISSAL MARKED AS DEFENDANT'S EXHIBIT NO. 13 FOR IDENTIFICATION.)
Q. Okay. So, Exhibit Number -- I'll wait for you. Sorry. Okay. Exhibit Thirteen.
A. Uh-huh.
Q. Explain this to me. I mean, don't explain this to me. This is, is this where the judge dismissed the foreclosure case?
A. Yes.
Q. Okay. And what was the date, when did this

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occur?
A. July 10th.
Q. Or July 7th, 2010?
A. Yeah.
Q. Is that right?
A. That would be correct.
Q. Okay. Why, so when, do you recall when the foreclosure initially, was it, I guess, did it, did Wachovia initiate the foreclosure in 2009 against you?
A. They did.
Q. Okay. And why was it dismissed?
A. We, I answered affirmatively --
Q. By your, you were pro se?
A. Uh-huh.
Q. That's a yes?
A. That is yes. Sorry about that.
Q. Okay.
A. And the first hearing was scheduled in December 2009, I can get the exact dates for you. And the Brock and Scott attorney, myself, and Judge Scarborough sat down and looked at what was provided. And I said, Your Honor, these payments are not correct. They're missing, and he said, okay, obviously there's an issue here. You guys

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work this out, and I'll schedule, you know, trial later. And if you don't, if you guys can't work it out, Wells Fargo or Wachovia, you're going to have to bring somebody to testify to these numbers.
Q. Okay. So, they, so Brock and Scott came to the foreclosure without somebody to testify?
A. Yeah. And so, I got together with him, their attorney.
Q. Him being -- okay.
A. Yeah. And said, here's what the principal balance should be. Here's the money to bring it current in a certified check from January to December, and here's January's 2010 payment, if your client will agree that this is where, you know, what we should be on balance.
Q. And then what happened?
A. They never responded.
Q. Brock and Scott didn't?
A. No. Wachovia, Wells Fargo never responded. Didn't show up to court.
Q. Okay. But you were in contact with their attorney at the time?
A. Uh-huh.
Q. That's a yes?

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A. That is a yes.
Q. Yeah. Okay.
A. And I kept asking and he said, they're not, they won't respond.
Q. Okay. And so, what did the judge say about, did the judge allow Wachovia to bring this law suit back again because if it couldn't be resolved?
A. He had two provisions. One, could not refile for ninety days and before refiling, I had to get a calculated payoff.
Q. Okay. Did you get the calculated payoff?
A. No.
Q. Didn't you eventually? You never got a calculated payoff?
A. Not prior to refiling.
Q. Not prior, you didn't -- okay. So --
A. You sent that with the lost note affidavit in April of 2012.
Q. Okay. So, but so the action was dismissed, and then you wrote this letter to Wells Fargo regarding your credit reporting which is shown by Exhibit Number Twelve?
A. Yes.
Q. Okay.
A. And excuse me, can we take a break?

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Q. Yes.
A. Okay.
(The deposition went off the record for a brief period of time.)
Q. Mr. Bentrim, we're back on the record. I just want to remind you that you're under oath.
A. Okay.
Q. Did you speak with your attorney at all during this short break?
A. Yes.
Q. Okay. What did you, did y'all talk about this law suit?
A. No.
Q. Okay.
MR. VARNADO: I think I told him where the bathroom was.
THE WITNESS: Yeah. I'm just trying to be honest.
Q. Okay. Well, let's, earlier we were talking about this foreclosure law suit instituted by Wachovia 2009 that was dismissed by the judge?
A. Yes.
Q. Which is, I'm referring to Bentrim Exhibit Thirteen?
A. Yes.

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Q. Did Wachovia institute a foreclosure proceeding ninety days after this was dismissed?
A. They did not.
Q. Okay. Did they wait until, when I say they, Wachovia or Wells Fargo --
A. Yeah. I think we --
Q. -- was the next suit, foreclosure suit instituted when you filed the complaint against Wells Fargo in 2011?
A. Yes.
Q. Okay.
A. I'm trying to keep all the years straight, but yes, it was.
Q. Okay. So, Wachovia files in 2009 a foreclosure action?
A. Yes. As a counterclaim?
Q. Okay. So, you initially filed a complaint in 2009?
A. No. I filed -- which one are we talking about?
Q. We're talking about the 2009 case that was dismissed?
A. Yes. Okay.
Q. Okay. So, was that a foreclosure action filed by Wachovia, I believe the plaintiff --
A. Yes. It was. It was.

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Q. Okay. The case was dismissed?
A. Yes.
Q. Okay. Wachovia couldn't file a law suit pursuant to this order which is Bentrim Thirteen, they had to wait at least ninety days?
A. Yes.
Q. Okay. Did they wait ninety days?
A. Yes.
Q. Okay. And isn't it, and Wachovia which is now Wells Fargo waited until actually you brought the current law suit that we're in today to counterclaim in the foreclosure?
A. Yeah. Yes.
Q. Okay. And I believe, and your law suit was filed, I want to say 2011 but I can look it up and make sure.
A. April 2011?
Q. Okay. Okay. And then in, you know, as a result of this law suit, it was dismissed and you're contending that there was, that Wells Fargo or Wachovia, Wells Fargo incorrectly or damaged your credit, damaged your credit because of reporting the foreclosure on your, to a credit reporting agency, I mean, to an agency?
A. Yeah.

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Q. Okay. Did they ever, do you recall, let's take a look at it. This will be Exhibit Number Fourteen. Take a look at this. Mr. Bentrim, do you, or looking at Exhibit Number Fourteen, do you recall receiving this letter?
A. I do.
(LETTER OF 8/25/10 MARKED AS DEFENDANT'S EXHIBIT NO. 14 FOR IDENTIFICATION.)
Q. Okay. And what's the date of this letter?
A. August 25th, 2010.
Q. Okay. And so, Wells Fargo replied to your inquiry regarding the credit reporting?
A Yes.
Q. Okay. And did they fix, or did they, Wells Fargo contended that their investigation showed the information they reported was accurate; is that true?
A. That is true.
Q. Okay.
MR. VARNADO: It's true what's said in that letter? I just want to make sure.
THE WITNESS: Yeah. It's true what it said in the letter.
Q. Okay. So, here's the question. Did Wells Fargo, Wells Fargo wrote you a letter in response to

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your letter dated August 25th, 2010 which is Bentrim Fourteen. And Wells Fargo says, if you read the second sentence, the result of our investigation establishes that the information we reported is accurate?
A. That is what the letter says.
Q. Okay. And was that correct?
A. It is not.
Q. Okay. And how do you know it was not correct?
A. We know from ledger balances. We know from the promissory note. We know from the adjustable rate mortgage disclosure, and we know from the HUD one.
Q. Okay. But what about the, was the foreclosure status removed from your credit report?
A. They removed the entire thing off the credit report.
Q. When you say thing, what is that?
A. All the history of the loan, boom, disappeared off the credit report.
Q. Okay. So your credit report was cleared up, I take it?
A. I wouldn't phrase it as cleared up because then it looks like you've had no credit. So, it's not a positive, either.

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Q. But they took off the negative, like the negative?
A. No. They took the whole loan off.
Q. Oh, they took the loan off?
A. Yeah.
Q. Okay. So, if you look at, let's see here, and you don't recall if you applied for a loan, you know, since 2009?
A. I seriously doubt it. Yeah.
Q. Okay.
A. I can check records though. I have the credit monitoring.
Q. Okay. The next will be Exhibit Fifteen.
(LETTER OF 9/1/10 MARKED AS DEFENDANT'S EXHIBIT NO. 15 FOR IDENTIFICATION.)
Q. Take a look at Exhibit Fifteen. Have you seen this letter before?
A. Yes.
Q. Okay What's the date of this letter?
A. September 1st, 2010.
Q. Okay. So, in this letter, Wells Fargo states the foreclosure status has been removed from credit reporting for this loan and the former Wachovia account number, and it gives the account number. Is that, did that occur?

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A. It did occur.
Q. Okay. Did that resolve the previously reported entries that you were complaining about?
A. Yes. But it did not resolve the fact that, actually it didn't resolve it by simply removing it, it doesn't resolve it.
Q. Okay. So, what would have resolved it in your mind?
A. Putting that this loan has been paid on time and not, that it was not in foreclosure.
Q. On September 5th, 2010, and this would be Exhibit Number Sixteen, this is Exhibit Sixteen. Have you seen this letter before?
A. Yes.
(LETTER OF 9/5/2010 MARKED AS DEFENDANT'S EXHIBIT NO. 16 FOR IDENTIFICATION.)
Q. Okay. Did you write this letter?
A. Yes.
Q. Okay. And what's the date of this letter?
A. September 5th, 2010.
Q. Okay. And what's the purpose of this letter?
A. Most likely these were crossing in the mail, because this one's dated the first from Montana and this is faxed to them on the 5th.
Q. When you're saying this one, from, which one,

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when you're saying, it's just so the record's clear. Are you looking at the September 1st, 2010?
A. Yes. These are, Exhibit Sixteen and Fifteen probably crossed in the mail.
Q. Okay. When you say derogatory credit information, what did you mean by that?
A. That the account was, had been foreclosed on and I had given them title in lieu of foreclosure.
Q. You also say, at the last sentence, "you will need to report that the account has been in good standing and paid on time since March 2002."
A. Yes.
Q. Okay. Do you have proof that the account, from your records, not the bank's records, do you have proof in your records that your account was in good standing?
A. Yes.
Q. Okay.
A. And it's in your client's ledger balances as well.
Q. I know, but I'm saying do you have it in your, regardless of what's in my client's account ledger --
A. I was just letting you know that your client has

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that information already.
Q. Right. I understand. But you have it, do you have this information?
A. Yes.
Q. Okay. So, what proof do you have to show that your account was paid on time and paid, you know, the correct amount?
A. Bank statements.
Q. Okay. And you have bank statements that you can give me if I want it?
A. Yes.
Q. Okay.
A. Back to --
Q. Well, how far back do you have the bank statements?
A. I don't know.
Q. Okay. But you can find that out?
A. Yeah.
Q. Okay. Do you know how far back, you know, I mean, you don't know how far back that you, how far back the bank statements go that you have in your possession, but do you know whether you have bank statements in your possession since 2008, or do you not?
A. I would say from at least 2006, 2005.

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Q. Okay. So, 2005, 2006?
A. Yeah.
Q. Okay. And maybe, you may still have them earlier, you just don't know and have to check?
A. Yeah.
Q. Okay. And you can show, were your payments made via checks pretty much or is it, when did you start going more on-line?
A. It was a hodgepodge mix.
Q. Okay.
A. Yeah.
Q. But the point is, you can get me this information?
A. Yes.
Q. Okay. How long, if we need this information, how long will it take?
A. I wouldn't --
MR. VARNADO: I don't think this is a proper question.
Q. I mean, could you do it within ten days?
MR. VARNADO: Do what within ten days?
MS. BAKER: What we're talking about, get proof that his, you know, give me the documentation that the account was --
MR. VARNADO: Well, we rely partly on proof

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that you've provided to.
MS. BAKER: I know. But I have --
MR. VARNADO: Sure. That's fine. I just want to make sure that you're not trying to box us in and say our whole case is predicated on his documents, that your documents don't count.
MS. BAKER: Oh, I'm not saying that, but it is part of his claim so if we want a right to see his, you know, his bank statements for records, you know, my point is, so it's a basic question, and he answered it. He said if he has them, definitely from '05 to '06, and my question, and he can get the documents from me if we need the documents. The question is, is it going to take ten days, two weeks?
A. Yeah. I would say two weeks just because that's, one, it's going to take a while to redact other stuff on there. And two, if I'm missing anything, I unfortunately have to rely on your client to get those, and I don't know if they would provide those.
Q. Right. Okay. And this would be from a Wells Fargo bank account? I mean, you said it was a hodgepodge of, you know, sometimes you made payments on-line but you also made payments via

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check, so I don't know if you have an account with, you know, some other bank that you were, you know --
A. No. It was Wachovia, First Union, Wachovia, Wells Fargo.
MR. VARNADO: I'm going to object to form. Go ahead.
MS. BAKER: Object? What was wrong with the last question?
MR. VARNADO: Because it's all over the place, it's a compound question A, and B, it's talking about discovery tech stuff and when he can answer, and I don't think it's, I think it's outside the scope of discovery, and I don't think it was a proper question. But I just note my objection on the record. I'm not even saying I won't help you and cooperate with you to get it. We'll do what we can to make you happy about that.
MS. BAKER: Well, let me start over.
Q. In terms of bank accounts, when you were making the payments, when you were making the payments to Wachovia slash Wells Fargo, how many bank accounts did you have at that time?
A. Institutions?

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Q. Or financial institutions?
A. Just one.
Q. And that was?
A. First Union, Wachovia, Wells Fargo.
Q. Okay. So you've only had, you've had one bank account since 2002 personally?
A. Well, yeah. I've recently changed, but yeah.
Q. Okay. And you made payments through the personal bank account, not through your business bank account?
A. I'd have to look and see.
Q. Okay. Okay. So, going back to the, well, and this may have been a crossover, too. But to the credit reporting issue, this would be Exhibit Number Seventeen. Have you seen this document before?
A. I have.
Q. Okay. And what's the date of this letter?
A. September 13th, 2010.
(LETTER OF 9/13/2010 MARKED AS DEFENDANT'S EXHIBIT NO. 17 FOR IDENTIFICATION.)
Q. Okay. So, would you agree that Wells Fargo was not ignoring your request to try to, regarding the credit reporting issues?
A. No.

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Q. Okay.
MR. VARNADO: September 13 what?
THE WITNESS: 2010.
Q. Now, let's move to October 25th, 2010. This will be Bentrim Number Eighteen. And this is a little difficult to read. Hopefully I'll have another copy of that. Have you seen this letter before?
A. I have.
(LETTER OF 10/25/2010 MARKED AS DEFENDANT'S EXHIBIT NO. 18 FOR IDENTIFICATION.)
Q. Okay. Did you write this letter?
A. I did.
Q. And who did you write it to?
A. April O'Quinn and Rob Donaldson at Brock and Scott.
Q. Okay. And the date of this letter?
A. October 25th of 2010.
Q. And April O'Quinn worked for Wells, she was the person who you spoke with at Wells Fargo in the past or why was it addressed to April, or who is April O'Quinn?
A. I had forwarded, after the dismissal, like qualified written requests to --
Q. When you're saying after, you're talking about just so the record's clear of when the, 2009

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foreclosure law suit was dismissed.
A. Yeah. The July 10th dismissal.
Q. The order, right. Okay.
A. Right. I had forwarded to your client via their attorney a qualified written request and hadn't gotten an answer. And he said, this is the person to contact.
Q. You forwarded it to Wells Fargo's attorney?
A. Yes.
Q. Okay.
A. Because you guys were represented by counsel.
Q. Okay. And April O'Quinn was, he told you to speak with her?
A. Yes.
Q. Contact her? Okay. In your letter, you say you, to stop further harassing, I guess you're asking to stop further harassing phone calls. What, explain to me about these about why, one, why were these phone calls harassing and, two, when did they start, I guess? Tell me a little bit about that.
A. Yeah. Almost immediately started, almost immediately after the 2009 was dismissed.
Q. The case?
A. The case, yes.

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Q. Okay. So, it wouldn't have been in July of 2010?
A Oh, yes.
Q. Okay. What type of, why were the calls harassing?
A. The repetitive nature of them over and over.
Q. What did they say, the calls? You said repetitive. Like what was, like what were the contents of the phone calls?
A. We're calling to see if we can get a modification.
Q. Okay. And where were they calling you?
A. At my office.
Q. And was it a person on the phone or a recording?
A. Sometimes it was a recording and sometimes it was a person.
Q. Okay. And when you said your office, that would be the office on Archdale Street?
A. Yes. Office phone number.
Q. Okay. Did you give Wells Fargo your office number or that office phone number?
A. I did not.
Q. Okay. Then how did they get the office phone number?
A. It's a great question.
Q. How many times did Wells Fargo call you that

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summer, I guess?
A. I have no idea.
Q. I mean, did you record any of those phone calls?
A. I did not.
Q. Who did you speak, do you recall who you spoke with because sometimes it's a recording but sometimes you said it was a person?
A. No. Because I basically said this is, you know, in dispute, just got dismissed.
Q. But did you recall whether it was a person sometimes calling?
A. Yeah. Sometimes a person, sometimes it was recorded.
Q. Okay. Okay. And when did the phone calls stop?
A. After this letter.
Q. Okay. So, you're saying those calls from July 2010 until about October 25th, 2010?
A. Yes.
Q. Okay. Do you recall how many times a day you received phone calls?
A. No.
Q. Was it daily or weekly or monthly?
A. If I recall correctly, it would be like they would call, and if you didn't pick up because the caller ID, they would keep calling until you

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picked up. And then, if you said no, you know, we've got a dispute about this, they would wait like three days. But if you didn't pick up the phone, they'd keep calling you over and over again over a course of several hours.
Q. Did you ever take any notes after you, if it was a live person on the phone?
A. I don't believe so.
Q. Okay. Are these harassing calls a basis for your, any of your remaining claims against Wells Fargo?
A. No. No.
Q. Okay. In this letter, you say towards the end, not the last, I guess it's the, towards like the third from the bottom. "I do not believe there's any question that the loan servicer on this account lacked the factual basis to ever determine if the account was current." And then you can finish the rest, or in arrears or in default, yet on a hunch negatively impacted my credit and wrongfully foreclosed. Explain that.
A. Your client has been unable to produce any ledger or payment records that would support the account being in arrears or any of the numbers that they are purporting.

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Q. Have you prepared a similar, I guess a payment history to show that the account is current or would have been until 2009?
A. I gave that to Rob at, Rob Johnston at Brock and Scott in 2009 when I forwarded the certified funds to them.
Q. Okay. So, and you forwarded again the certified funds to Rob Johnston?
A. Donaldson.
Q. Donaldson. Yeah. Okay.
MR. VARNADO: Wait, wait, wait. You said Johnston, you said Donaldson?
MS. BAKER: Donaldson.
THE WITNESS: Oh, Johnson. Sorry.
MR. VARNADO: There's three Robs in the case which is probably --
THE WITNESS: Ron, Ron Johnson.
MS. BAKER: Ron, Ronald Johnson. Okay. Yeah.
THE WITNESS: Can we start putting stickers on Robs around here?
MR. VARNADO: Just to make sure, you weren't sending it to Rob Donaldson?
MS. BAKER: You sent it to Ronald Johnson of Brock and Scott?

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THE WITNESS: Yes.
Q. You also, are you still questioning the stand in?
A. Yes.
Q. And tell me why.
A. Because until, what was it, last month, there was no, no --
Q. But you know now, you know there's the original, that it was located?
A. No. I do not.
Q. Okay. Well, we informed your counsel of that.
A. I know you're, I'm not trying to be picky, but we don't know that's the original note.
Q. We've had, we welcomed, once we received it, you know, you guys have, you and your counsel have, can look at the note whenever you like.
A. Okay. That's fine.
Q. And we've made it available when we, when it was in our hands. Now, do you want to review the original note? I'm asking you the question yes or no?
A. Yes. I would.
Q. Okay. You also mention here about what, you said Wells Fargo was applying a staggering twenty-seven three four percent annualized rate of interest to this account. Explain that to me.

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A. The difference between the, what was showing on the statements and the payoff values that had been received previously, showed a twenty-seven percent jump in interest.
Q. Can you, and you're probably relying on what I would think are our documents.
A. Yes.
Q. And when we get to it, can you show it to me to help explain that to me, what you're talking to?
A. Yes.
Q. What you're referring to.
A. Yes.
Q. What documents do you recall, you said you received some balance, like an account, like a statement or maybe a foreclosure letter or maybe just a payment history, but what document is showing that Wells Fargo charged twenty-seven point three four percent interest rate?
A. The statement that was sent when the forced placed insurance was put indicated that.
Q. Okay. I will, hopefully it's in one of these here. If not, I would like just for you just to show, you know, at some point, show it to me and help explain why.
A. Okay.

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Q. Perhaps it could be, and I don't know what to show you to look at, but just maybe this will help explain it, maybe it won't. But let's just mark these two documents as what will be Exhibit Nineteen, and it's labeled Bentrim twenty and twenty-one. And I'll give this to you just so we can -- Exhibit Number Nineteen.
(NOTICE OF INTENTION TO FORECLOSE MARKED AS DEFENDANT'S EXHIBIT NO. 19 FOR IDENTIFICATION.)
Q. Okay. Exhibit Number Nineteen, the first document or the first page is Bentrim twenty. Is it a notice of intention to foreclose, Mr. Bentrim?
A. It is.
Q. Okay. And what's the date of this?
A. November 17th, 2008.
Q. Okay. And have you seen this before?
A. I have.
Q. Okay. And if you'll look at Bentrim twenty-one, the next page --
A. Yes.
Q. Okay. But it's still the same exhibit.
A. Is it twenty or twenty-one?
Q. The exhibit, oh excuse me, the exhibit is Exhibit, Exhibit Nineteen is Bentrim twenty and

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twenty-one. Exhibit Nineteen --
A. And so, these are both Nineteen?
Q. Yes. Exactly.
A. Okay.
Q. So, if you look at the first page, you've sen that before, right, the notice of intention to foreclose?
A. Yes.
Q. Okay. And then the second page of Exhibit Nineteen which is labeled Bentrim twenty-one, have you see, it's a past due notice, correct?
A. Yes.
Q. Have you seen that document before?
A. Yes.
Q. And what's the date of this past due notice?
A. 11/26/2008.
Q. Okay. Now, do either of these help explain or maybe the incorrect interest rate or what do these --
A. They do not.
Q. Okay. Because I believe that you guys produced both of these, and we probably labeled them. Are you, what are you, do you have issue with this first letter and the second payoff statement?
A. What sort of issue?

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Q. I guess my question to you is, was there a, did you take issue with difference, with the differences in, with the balances or was there --
A. Oh, this was what prompted the calls and the letters saying you're sending me different --
Q. This, these two documents?
A. Yeah. And the phone calls. Yeah.
Q. Okay.
A. Because this one clearly says --
Q. When you're saying this one -- I'm sorry.
A. Yeah. Page two, the 11/26/08 document clearly show that it's two thousand two hundred and seventy-nine dollars and eighty-three cents. And the other one says four thousand nine hundred and twenty dollars and o nine cents.
Q. Is it possible that you could have made a payment and like, you know, the letters passed, you know, crossed paths in the mail is why the differences?
A. No. And in fact, Suzanne Brown at Brock and Scott acknowledged that this first notice of intent to foreclose was incorrectly sent.
Q. Okay. But the note also did say that you may have received estimated payoff amounts, correct, as well? The note that you signed?
A. I don't think so.

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Q. Based on change in interest rate, how sometimes you can have an estimated -- well, let's take a look at it again one more time. This is Exhibit Number Two, the second page, the variable rate payment changes. Second sentence. Prior to each payment change date.
A. Uh-huh.
Q. You will calculate a payment estimated to pay the outstanding principal, is that a payment estimated?
A. Uh-huh.
MR. VARNADO: You don't, you have to say yes or no.
Q. Okay.
A. Yes. But you said pay off.
Q. Okay. Well, is it, I guess I did say pay off. Exactly. But, however, is it, you know, because it's a variable interest rate, because you have one, a variable interest rate --
A. Yes.
Q. The payments will be, some of the payments were estimated.
A. None of the payments are estimated.
Q. I mean -- okay. You will calculate the payment estimated to pay the outstanding principal

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balance; is that correct?
A. Yes.
Q. Okay. But you don't contend that it's possible that these two documents are a little bit different just because of, you know, maybe you made a payment and the payment crossed paths with the letter, with one of these letters?
A. No. And Ms. Scott or Ms. Brown at Brock and Scott sent a letter to that effect.
Q. Saying?
A. That this was an incorrect notice.
Q. The first notice?
A. Yes.
Q. Which is Bentrim, what's Exhibit Number Nineteen but is page Bentrim twenty.
A. Page one.
Q. Okay. Did they correct the notice, then, Wells Fargo?
A. No.
Q. So, at this point, you still believe that you are making payment, that you are current on your loan?
A. Yes.
Q. Were you the only --
A. In, well, you've been jumping around from 2010 to

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2008. We're back in 2008, correct?
Q. Yeah. Because we're at 2008, the time of this, we're looking at Exhibit Number Nineteen, 2008?
A. Yes.
Q. Right. You contend, I believe, that you were current under January 2009?
A. I do.
Q. Right. Okay. Yeah. Were you, was anyone else living with you at the time or have you always, you know, at the residence?
A. No.
Q. Okay.
A. Sorry. A little OCD. I had to get my stack back in order there.
Q. This is probably a little bit easier to read and you produced this one, if I can find it. Hold on a second. Okay. And then you said around October, going back to 2010, toward the, you know, the 25th, 26th, Wells Fargo agreed to stop calling you regarding the loan modifications?
A. Yes. And --
Q. And they've been requesting you to modify the loan?
A. And they were also sending overnight FedEx packages requiring signatures to the office.

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Q. Okay. What kind of signatures were they sending you or what kind of packages were they sending you?
A Modification.
Q. Modification packages?
A. Yeah. And I put that in, it was in the complaint because they were like, don't ask for any counsel on this.
Q. Okay. But on Bentrim, I'm giving you a document now that's labeled Bentrim Twenty. It's a letter. Have you seen this before?
A. I have not.
(LETTER OF 10/26/10 MARKED AS DEFENDANT'S EXHIBIT NO. 20 FOR IDENTIFICATION.)
Q. Okay. You've never seen this document before?
MR. VARNADO: Which document are we looking at?
Q. Oh, it's dated October 26th, 2010, Bentrim number Twenty.
A. No. I have not.
MR. VARNADO: Okay. The witness is looking at, what is that, did you write, oh, I'm sorry. That's my fault. You haven't written -- I'm sorry, Jana. I thought he was looking at a different document. Many apologies.

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A. Is this Twenty, Jana?
Q. Yeah.
A. Okay. I have not.
Q. Well, the second sentence, can you read this, well, take a look at this, and when you're ready, let me know when you've read it. And just to let you know, we produced this to document. That's why it's WF one twenty-two at the bottom, so.
A. Okay.
Q. And read the second sentence.
A. "This letter is to advise you we have received and processed your request."
Q. Okay. And the first sentence as well. Sorry.
A. "We recently received a letter from you instructing us to cease communication with you regarding the above referenced account."
Q. Okay. And would you agree that Wells Fargo stopped, I guess, calling you regarding, I mean, it says communication, but did they stop calling you and sending you loan modification packages regarding --
A. Oh, yeah. I already said that.
Q. Okay. And it was the same time period?
A. Right.
Q. Okay. Now, but the second, okay, the first

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sentence of the second paragraph, can you read that?
A. Yes. "Please be aware that while Wells Fargo has agreed to cease collection calls and letters, regardless of this obligation, you do continue to owe this debt."
Q. Okay. And did you, what was your response to that, you know, regarding, you know, did you again try to, I mean, contact Wells Fargo regarding the debt or speak with anyone?
A. Oh, absolutely.
Q. Okay. And there was still no resolution of this?
A. No.
Q. Okay. This is the one that's a better copy. You produced this, I believe, to us. We've looked at this before, but it should be Bentrim Twenty-one. It's a little easier to read.
A. Oh, yes.
Q. Yeah.
(LETTER OF 10/25/20 MARKED AS DEFENDANT'S EXHIBIT NO. 21 FOR IDENTIFICATION.)
Q. Okay. So, Ronald Johnson at Brock and Scott, Bentrim Twenty-one, he's the one who told you to get in contact with April O'Quinn?
A. Yes.

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Q. Okay. And was April O'Quinn was responsive to your communication when you tried to contact her?
A. Yes.
Q. Okay. This letter which is, or I don't know if it was sent via fax or via, it looks like via e-mail, Bentrim one o, which is Bentrim Twenty-one, the exhibit labeled Bentrim one o one at the bottom.
A. Yes.
Q. Do you recall whether you faxed this letter to April O'Quinn?
A. It was faxed to April O'Quinn and e-mailed to Ron Johnson with attachments.
Q. Okay. And this was on October 25th, 2010, was that when it was, did you fax it on that date?
A. Yeah. I would assume as such.
Q. You guys don't see the fax transmittal?
A. Yeah.
Q. Okay. Okay. Did you ever, when you were, you know, in this letter you're concerned about, you know, the discrepancies, I guess, you know, in the payment history and whatnot. Did you ever provide any, you've testified earlier that you probably, that I think you provided documentation in a certified check to Ronald Johnson. Did you

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also, since you put, since Mr. Johnson put you in contact with Ms. O'Quinn, did you send Ms. O'Quinn anything, April O'Quinn?
A. Just the attachments to this letter.
Q. Okay. The attachments, I believe, were -- hold on one second. Did she respond to this letter?
A. No. She forwarded it.
Q. To?
A. The executive offices.
Q. Of Wells Fargo. Okay. And how do you know that?
A. Because I got a reply from Corrina Gardner.
Q. Okay. And the reply from Corrina Gardner, would that have been in 2010, do you recall?
A. Yes.
Q. Okay. And I'm sure I have that letter in here somewhere. Do you know if it was, if this was October 25th, 2010, would it have been in 2010 that you received a reply from Ms. Gardner?
A. It was right around that time.
Q. Okay. So, Wells Fargo replied, I guess initially to your request, although Ronald Johnson seemed not to reply to your -- you know, Ronald Johnson told you to address your concerns to April O'Quinn pretty much?
A. Yeah. He said, hey, these are the people that

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you contact. I'm passing it off. You can go ahead and contact them. And that was the first time I was instructed.
Q. Okay. But once you contacted April O'Quinn, someone from Wells Fargo returned, contacted you and responded to your concern?
A. Yes.
Q. Okay. Okay. When you were talking about -- hold on one second. The, you know, the twenty-seven point three four percent staggering annualized rate in your letter that's dated October 25th, 2010 that's marked as Exhibit Twenty-one which, I believe, it's easier to read.
A. Yes.
(WACHOVIA ACCOUNT HISTORY MARKED AS DEFENDANT'S EXHIBIT NO. 22 FOR IDENTIFICATION.)
Q. If you'll look at what's, let's label this as Bentrim Twenty-two. It's exhibit one sixteen through one nineteen. This is an account, a Wachovia account history. Can that help explain or can you show me what that document or was it, is that one of the documents that you reviewed to conclude that the interest rate was staggering?
A. Well, no. This ledger balance, well, transaction statement, excuse me.

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Q. Yeah. That's fine. Yeah.
A. Was in response to April O'Quinn and sent by Corrina Gardner.
Q. Okay.
A. Is this Twenty-two?
Q. Twenty-two.
MR. VARNADO: Yes.
Q. So, that doesn't help show incorrect, or can you look at that and say Wells Fargo did something wrong with this transaction statement?
A. Oh, gosh, yes.
Q. Okay. Tell me, well, help explain.
A. One, we've got zero principal balance accruing from March 21st, 2002 through 9/26/2003.
Q. Okay.
A. We're showing a loan amount of one seven nine five seven six thirty-four. We're showing the twenty-seven hundred dollars booked as an interest rate change.
Q. Which is the twenty-seven hundred that we've been discussing since 2002?
A. Yes. And we're also seeing late charges of ten dollars applied. And this in no way matches the one that was sent in December of 2008.
Q. The transaction statement that was sent in 2008,

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you said, when you say the ones, you're talking about a transaction statement?
A. Yes.
Q. Okay. Let's see.
A. That is it.
Q. This is it. That's what I thought. Okay. This is the one by Ms. Sherrie Caudill or Caudill.
A. Caudillo.
(CONSUMER LOAN PAYMENT HISTORY MARKED AS DEFENDANT'S EXHIBIT NO. 23 FOR IDENTIFICATION.)
Q. Okay. Let's mark that as Exhibit Twenty-three, and this is a consumer loan payment history dated 12/19/2008. Do you agree with that, Mr. Bentrim?
A. I would.
Q. Okay. Now, help, because you're the finance guy I'm just, you know, not the wisest lawyer. Explain to me --
MR. VARNADO: You're a hard core banking lawyer, Jana. Don't sell yourself short. We saw it on the web site.
Q. And explain to me, you know, exactly why or, you know, look at the consumer loan payment history and help explain, you know, why it's different which is Exhibit Twenty-three than from Exhibit Twenty-two which is what you say, you said they

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don't match each other at all.
MR. VARNADO: What date is Twenty-two again?
Q. Yeah. Let's look at Twenty-two was prepared --
A. September 9th, 2010 by Helen Arnold.
Q. Exactly. And one, the other one was 2008?
A. Yeah.
Q. The other one, I'm saying Exhibit Twenty-three.
A. Okay. The first one, the loan amount --
Q. When you say the first one, let's just, which one, the consumer, the transaction statement or consumer loan payment history?
A. Consumer loan payment history.
Q. Okay.
A. Shows a loan amount of one eighty-two seven hundred.
Q. Okay.
A. The other one shows a loan amount of one seven nine five seven six thirty-four.
Q. Okay.
A. The 5/26/2002 principal balance on the consumer loan payment history is one eighty-two seven hundred. The same date on the transaction statement is zero.
Q. Okay. And you're looking at, what date are you looking at?

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A. 5/26/2002.
Q. Okay.
A. Then, 5/28/2002, principal balance of one eighty-two seven hundred on the consumer loan payment history, on the other one, zero.
Q. Uh-huh.
A. This goes on for about eighteen months. I mean, I can go through them all if you'd like.
Q. When you say this goes on, you're looking at the Bentrim, are you looking at the transaction statement, when you're saying going on for eighteen months, or the consumer loan payment history?
A. It doesn't matter. They're inaccurate.
Q. Okay. You're saying it's --
A. Yeah. They don't match.
Q. Okay. Now, help explain to me, I think you said the consumer loan payment history which is Exhibit Twenty-three would help show that the interest rate was actually, you know, over twenty-four percentish, about. Can you help me show me how you came up with that rate?
A. No. I said the statement that was sent with the forced place flood insurance.
Q. Okay. And you've, we may produce that, but if

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you, you can show me that document?
A. Yeah. If I can find it.
Q. Okay. Was that amount ever, so it's just one document that shows --
A. It was two statements.
Q. It was two statements.
A. That showed payoff balances.
Q. Okay.
A. And you will notice on neither of the transaction statements is a payoff balance present.
Q. Okay. But going back to the twenty-four percent interest rate --
A. Yes.
Q. -- are you still contending that Wells Fargo applied a twenty-four percent interest rate?
A. Yes.
Q. Okay. Based on, based on these, but not based on these documents, based on --
A. No.
Q. -- based on the two, you said, it was a payoff summary or not a payoff summary, it was a statement, a bank statement?
A. What was occurring after they quit accepting payments in 2009 --
Q. 2009. Okay.

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A. -- is the address on my statements changed to the foreclosure department.
Q. Okay.
A. And so, they would send statements there.
Q. When you're saying they, the foreclosure department would send --
A. The master servicer.
Q. -- would send statements.
A. To the foreclosure department.
Q. Okay.
A. They changed the address from me to the foreclosure department.
Q. Okay.
A. And when insurance would be flagged for coming up as, you know, needing to be renewed, the master servicer would send the request to the foreclosure department, and I would never get it to be able to provide it. They would place the insurance and then send me a statement along with that.
Q. Okay. So, there were two statements that you're referring to?
A. Yes.
Q. And what year was this statement?
A. 2010.

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Q. Okay. So, there are two statements in 2010. Do you recall whether we produced these statements? I mean, that's a bad question, but I mean it's a question. Do you recall seeing these two statements in this law suit? And you know, do you recall whether Wells Fargo produced these 2010 statements?
A. I do not.
Q. Okay. And do you know if you produced these 2010 statements to us in discovery?
A. I do not.
Q. Okay. Do you know if you have these two 2010 statements?
A. No. But your client would.
Q. Okay. So, based on those two statements where you were getting the twenty-four percent rate?
A. Yes.
Q. Okay.
A. Or twenty-seven, whatever it was annualizing at at that point.
Q. The number you used in the letter?
A. Yeah.
Q. Which was, I believe you said, I can't read backwards, but twenty-seven point three four percent.

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A. Twenty-seven point three four percent.
Q. Okay. But these documents don't help explain the interest rate is my point? You know, it just doesn't show inaccurate, you know, application of an interest rate?
A. Oh, it does.
Q. Okay. Explain that to me again, how this does, the consumer loan payment history?
A. It doesn't explain the twenty-seven percent, but it shows the, how the adjustable rate disclosure statement was not followed.
Q. Okay. And tell me exactly why.
A. Okay. Hold on. I'm sorry.
Q. That's fine.
A. Okay. Exhibit Six under how my payment can change.
Q. Right.
A. The fourth bullet point.
Q. Right.
A. Second, or first and second paragraphs or first and second sentences. "Because my periodic payment may change once every sixty months and my interest rate may change monthly, my periodic payments may not fully cover the interest due. Such interest will be added to my loan amount and

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will due at the end of the term of the loan." This statement shows that they applied it not at the end of the loan but to the next payment so that the principal was never dropping.
Q. Okay. I didn't know if you were going to say something else. Okay. The next, we're on Exhibit Twenty-four. Okay. Here's a letter, or Exhibit Twenty-four --
MR. VARNADO: What date is that?
THE WITNESS: October 28th. That was the letter which Exhibit Twenty-two was attached to.
Q. Okay. That was one of the attachments that you sent.
(LETTER OF 10/28/10 MARKED AS DEFENDANT'S EXHIBIT NO. 24 FOR IDENTIFICATION.)
Q. Okay. Exhibit Number Twenty-four, okay, is this, did you receive this letter, do you recall receiving this letter?
A. I did receive this letter.
Q. Okay. And what's the date of this letter for the record?
A. October 28th, 2010.
Q. Okay. And did you send a copy of this letter to Ms. O'Quinn? Okay. You said it was attached to, I thought you said something about this letter.

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A. No.
Q. Okay.
MR. VARNADO: He said that it was attached to Exhibit Twenty-two. Twenty-two and Twenty-four go together.
THE WITNESS: Right.
MS. BAKER: Right. I know that. Okay.
Q. Okay. So, this is October 28th, 2010 letter, and this is from, did you ever speak with Ms. Gardner over the phone, by the way?
A. No.
Q. Okay. And did, so they go together because the, she enclosed with this letter a copy of the transaction history which would be Exhibit Number --
A. Twenty-two.
Q. Twenty-two. Okay. And did you receive a copy of the transaction statement or history on, in October 28th, 2010?
A. With this letter? Yes.
Q. With the letter. Yeah. Okay. And just to go back with Ms. O'Quinn's letter, April O'Quinn, I believe you sent her a letter that we were looking at as well right here. Okay. On October 25th, 2010 when you, I guess, faxed Ms. O'Quinn a

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letter which is Bentrim Twenty-one.
A. Correct.
Q. Okay. And you said that April O'Quinn forwarded the document to another person in the Wells Fargo department?
A. She said she was forwarding it to the executive offices.
Q. Okay. And the executive office, that would be, well, Corrina Gardner would have been the person at the executive office responding to your inquiry?
A. Yes.
Q. Okay. So, on October 25th, 2010, you went a letter to Wells Fargo --
A. I sent a letter -- sorry to interrupt, but with a ton of attachments.
Q. Right. I agree with you. With a ton of attachments. Exactly.
A. Yeah.
Q. To Wells Fargo because you were, and Wells Fargo responded three days later with this October 28th letter; is that correct?
A. Yes.
Q. Okay. And they sent a transaction history which you wanted?

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A. Yes.
Q. Okay. And I believe they also sent you, you know, what you dispute but a copy of the note that you signed? When I say that you dispute, you dispute, you know, whether it's, you have some issues with the note, I think, with this law suit. But did Ms. Gardner also send you a copy of a note that you signed in regard to this loan?
A. Ms. Gardner said that she sent, and let me read from paragraph two.
Q. That's fine. Go ahead and read. Yeah.
A. Yeah. The second, "enclosed please find a copy of the transaction history" which I said I got.
Q. Okay.
A. "And a certified copy of the original notes for your records." She did not sent a certified copy.
Q. Where does it say certified? I see an a copy of the original note?
A. No. And it says, "and a certified copy."
Q. Okay. Am I looking, is this Exhibit, are we looking at the same paragraph?
A. Yeah. Paragraph two.
Q. Oh, you're looking at the second, and a certified copy. Okay. So, but didn't, do you recall

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receiving a certified copy of the original note at some point?
A. No.
Q. You never did? Okay. I believe we produced a certified copy but --
A. No. You produced a copy of the closing attorney's certified copy and tried to pass it off as your own.
Q. The original was never produced, and we have it here for you to look at.
A. Right.
Q. All right. Okay. But okay. So, you received a copy of the note, you're saying, from Wells Fargo and a transaction history?
A. No. This is what I received.
Q. Okay.
A. I received a copy of a certified copy at closing.
Q. Okay.
A. That your client said was a certified copy.
Q. But it was -- okay. Say it again. A certified copy at closing?
A. Uh-huh.
Q. A certified copy of the note from?
A. The closing file.
Q. Okay.

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A. What the closing attorney does.
Q. Which, but you also could have obtained it from your attorney as well, your closing attorney?
A. But they mailed it to me.
Q. They being Wells Fargo?
A. Wells Fargo mailed it as evidence that they were in possession of the note.
Q. Okay.
A. When it was a copy of a certified copy.
Q. That you had -- okay. Got you. Okay. So, oh, did you have a question? Okay. Now, regarding this forced place insurance claim that you have, tell me a little bit about that.
A. Well, again, as I said earlier, after January 2009 they switched the address on the statements.
Q. When you say they, Wells Fargo?
A. The master servicer or whoever was servicing.
Q. Okay.
A. Switched the address to the foreclosure department.
Q. Okay.
A. And so, you know, as insurance comes up for renewal --
Q. Right.
A. -- a request goes out that says, hey, we're

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looking for a renewal. It was sent to the foreclosure department. They didn't do anything on it, waited for the insurance to be placed, and then send me a copy of it afterwards.
Q. Did your insurance ever lapse?
A. Nope.
Q. Okay. It never did. And can you give us proof of insurance if we need it?
A. Should be able to.
Q. Okay.
MR. VARNADO: Jana, we're getting close to 12:00.
MS. BAKER: Are you just dying right now or can we go at least like fifteen minutes?
MR. VARNADO: What have you got, I mean?
MS. BAKER: Are y'all, I'm just in the middle of just trying to -- just hold on one second.
(The deposition went off the record for a brief period of time.)
Q. Mr. Bentrim, we're back on the record again.
A. Okay.
Q. You understand you're still under oath?
A. Yes.
Q. And I assume you went to lunch with your

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attorney?
A. Yes.
Q. Did you talk about this case?
A. No.
Q. Or this deposition?
A. No.
Q. Okay. Now earlier, you were explaining to me about a consumer loan payment that you received and a transactional, I believe it's called a transaction statement --
A. Transaction statement.
Q. -- that was provided to you by Wells Fargo, when we were off the record last. Now, in the information that you received, which is the transaction history and a certified copy of the note, or however you worded it --
A. I worded it as a copy of a certified copy.
Q. A copy of a certified copy. Okay. And this was provided to you from a Ms. Sherrie Caudill, I'm not sure how you pronounce her last name, but it's C-A-U-D-I-L-L?
A. No. The copy of the certified copy and the transaction statement came from Corrina Gardner in 2010. Two years earlier, Ms. Caudill sent me the consumer loan payment history in 2008.

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Q. Okay. And I'm one step ahead of myself. And what you were just referring to would be, and since you just referred to it, we'll make it Exhibit Number Twenty-five.
(LETTER OF 12/19/08 MARKED AS DEFENDANT'S EXHIBIT NO. 25 FOR IDENTIFICATION.)
Q. Okay. So, Exhibit Twenty-five, do you recall receiving this letter?
A. Absolutely.
Q. Okay. And what's the date of the letter?
A. December 19th, 2008.
Q. And this is the letter we were just talking about from Sherrie Caudill?
A. Yes.
Q. And this included a consumer loan payment history, which reviewed earlier today?
A. Yes.
MR. VARNADO: That was Exhibit Twenty-three?
THE WITNESS: Twenty-five.
MS. BAKER: That would have been Exhibit Twenty-three. Exactly.
Q. Did you speak with Ms. Caudill over the phone, or was it just via letter?
A. Via letters.
Q. Okay. Did this December 19th, 2008 letter

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satisfy your inquiry at the time?
A. Oh, no.
Q. Okay. And tell me why it did not.
(The deposition went off the record for a brief period of time.)
Q. Tell me why did it did not satisfy your inquiry. And actually, to refresh your recollection, we'll mark this as Exhibit Twenty-six.
(LETTER OF 12/22/08 MARKED AS DEFENDANT'S EXHIBIT NO. 26 FOR IDENTIFICATION.)
Q. It may or may not, but anyway. So, going back, Exhibit Number Twenty-five, December 19th, 2008 letter, the response from Wells Fargo to you did not satisfy your inquiry, and tell me why.
A. Right. Oh, you want me to tell you why?
Q. Yeah.
A. It clearly shows that they, Wachovia Bank at the time, did not follow the adjustable rate disclosure statement as far as how principal and interest was to be applied, that they are charging ten dollars on the loan, and that the twenty-seven hundred was missing.
Q. Okay. And so, I just gave you a document that's labeled Exhibit Twenty-six. Do you have it?
A. Uh-huh.

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Q. Did you write that letter?
A. Yeah.
Q. Okay. What's the date of the letter?
A. The 22nd of December, 2008.
Q. Okay. And tell me why you wrote this letter.
A. It was in response to getting this (indicating).
Q. When you say this, you're pointing to --
A. Consumer loan payment history.
Q. So, is that in response to the letter from Ms. Caudill, enclosing the consumer loan payment history?
A. It is.
Q. Okay. And in this letter, you said you reviewed the consumer loan payment history and the terms of the loan, correct?
A. Yes.
Q. And did you do that?
A. Yes.
Q. Okay. And again, and I might be being repetitive, but you stated, I believe, that Wachovia has not correctly credited principal payments to the loan, incorrectly forcing costly foreclosure procedures over the past few years?
A. Yes.
Q. Okay. As to the first part, they have not

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credited the principal payments correctly to the loan?
A. Yes.
Q. Okay. Explain that to me, just so I'm on board again.
A. Yes. What is going on is if interest, you know how on the adjustable rate disclosure, it says that, you know, your interest is not enough to cover, or your payment is not enough to cover the interest due, the interest goes to the end of the loan. This shows that the interest was applied to the next payment.
Q. Okay. And then, it says incorrectly forcing costly foreclosure proceedings over the last few years. I thought the foreclosure proceeding was instituted in 2009. Was there another foreclosure?
A. Oh, gosh. Like I said, we've been at this since 2005.
Q. The letter since 2004, I think?
A. Uh-huh.
Q. Is that a yes?
A. What's the question?
Q. The question is -- maybe explain to me what you mean by that, incorrectly forcing costly

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foreclosure procedures over the years. What do you mean by that?
A. These, and there's a lot of them, so we can say, you know, across the board the default notices --
Q. Is that what you mean by foreclosure procedures?
A. No. I'll answer it if you give me a second.
Q. I'm sorry to interrupt you.
A. No, that's okay. The default letters, when I would call in and say, wait a minute, something is missing, it was like, no, pay it or we're going to go and foreclose. So, they would get an attorney and, you know, start the foreclosure process. I would try to talk to them, and nobody would listen. It was just, pay it or we're foreclosing.
Q. But, how many foreclosure lawsuits were instituted? Was it just the one?
A. Three and now four.
Q. Okay. There were three instituted?
A. Yeah.
Q. When were the first -- I know one was in 2009, and the fourth one would be the one that we filed in response to your complaint?
A. Yeah. And there is 2005 or 2007. It's public record. We can pull that up pretty easily.

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Q. Okay. One was in 2005. When was the next one?
A. I think in 2007.
Q. So, you were involved in other lawsuits, then, besides this lawsuit?
A. Well, yeah. I guess.
Q. From when I asked you earlier?
A. Yeah.
Q. So, there was a lawsuit in '05 and '07?
A. Yes.
Q. Okay. And did you have a lawyer in either of those lawsuits?
A. Huh-uh.
Q. Is that a no?
A. That is a no. Sorry.
Q. Okay. So, the first lawsuit, I mean, was it just allegations of not making payments on the loan?
A. Yes.
Q. Okay. And how was it resolved?
A. I was told by the attorney that was with -- and I've got that name, go ahead and forward, you know, payment, and we'll make sure it's corrected.
Q. Okay. Did you, I mean --
A. Yeah. I brought it up current to what they said, and with the promise that they would, you know,

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get back to me on the records.
Q. So, were you current or were you not current in 2005?
A. I said I was current.
Q. But then, you made an extra payment?
A. Uh-huh.
Q. Is that a yes?
A. That is a yes.
Q. So, was that an accurate extra payment or a non-accurate extra payment?
A. It was non-accurate. It was a demand.
Q. You mean the demand was, the bank, through their attorney, sent a demand to you in 2005?
A. Yeah.
Q. And so, you cured, I guess, the default?
A. The default.
Q. Okay. So, were you in default?
A. I have contended over and over again, no.
Q. Okay. Did you try to recoup your money back in 2005?
A. No.
Q. Okay. Why not?
A. I just figured it's further along on the payment.
Q. Okay. What about in 2007, you're saying there was another lawsuit instituted in 2007?

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

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

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A. Yes.
Q. Okay. In writing?
A. Yes.
Q. Okay.
A. And he, they confirmed it in a letter.
Q. That it was?
A. Yeah.
Q. When did you realize that it wasn't applied?
A. 2008, when I got this (indicating).
Q. Okay. And what about in 2007?
A. That's also when I realized that it wasn't applied.
Q. How much did you pay in 2007 to resolve?
A. Seven thousand one hundred thirty-five fifty-one.
Q. Okay. And that was on 12/5/2007?
A. Yeah.
Q. Now, at this point, did you still contend that you were making the payments on time and properly?
A. Yes.
Q. And then, you went ahead and paid another seven grand?
A. Yeah.
Q. Okay. And you just paid it, even though you thought it was wrong to pay this amount?

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A. Yeah.
Q. Okay. In 2007, did you say, look, we had the same issue in 2005?
A. I did.
Q. And did you say, did you look into whether the 2005 payment was properly applied?
A. Yeah.
Q. You did in 2007?
A. Yes.
Q. Okay. In --
A. No. You're asking if I asked them that or did I do it?
Q. My question is did you, you're contending that in 2005, you paid thirteen thousand dollars when you theoretically shouldn't have paid an extra thirteen thousand dollars, because your loan was current?
A. Yes.
Q. Okay. And then again, in 2007, you're --
A. Hold on. I think you're mischaracterizing this. What would happen -- and I think you're probably familiar with it -- is they'll say you're behind or the bank will say you're behind, quit accepting payments, and you've got a big lag until everything gets straightened out, gets to

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the attorney, et cetera. So, some of those were, yeah, payments that were not accepted during that time. You know, it's not like they'll say, let's keep taking your payments. It's like, you either pay us what is demanded or we're foreclosing. It's not like, oh, let me keep paying. So, I don't want that to be mischaracterized.
Q. Okay. Understandable.
A. Yeah.
Q. But in 2007, the same thing happened?
A. Yeah.
Q. Okay. Did you say, look, there was an issue in 2005?
A. Yeah.
Q. What did you do to my thirteen thousand dollars then, like what happened with that? Did you ask?
A. I did.
Q. Okay. And what did the bank tell you or the bank's attorneys?
A. The bank's attorneys, you know, said this is what you have.
Q. Okay. Did you go ask about the previous thirteen thousand dollars?
A. Yeah.
Q. Okay. And then, you went ahead and paid them

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seven thousand one thirty-five, whatever, fifty-one, I believe.
A. Yeah.
MR. VARNADO: Off the record real quick.
(The deposition went off the record for a brief period of time.)
Q. Okay. Back on the record. So, 2007, did you, you inquired about what happened to the thirteen thousand dollars; that's a yes?
A. Yes. And I affirmedly (sic) told the attorneys both times, you know, I'm not pass due, help me with this, and all they did was send us a statement that says this is what you owe or we're going to foreclose.
Q. Was it the same attorneys or different attorneys?
A. The first one was a different attorney.
Q. '05 was different from '07?
A. Yeah. And then '07 and '09 was Brock and Scott.
Q. And '05 was a different law firm?
A. Yeah. Different law firm.
Q. Which law firm, do you know? We can figure it out.
A. No.
Q. Okay.
MR. VARNADO: I can tell you right now.

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

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A. Yeah.
Q. So, did you on, you know, around 12/5/2007 say, you know, I want to see the records?
A. Yeah.
Q. Okay. And you made the inquiry around, I mean, in the beginning of 2008 or end of 2007?
A. Oh, I had been making and asking the attorneys, you know, since 2005.
Q. Okay. So, since 2005, you had an issue with Wells Fargo regarding the application of payments?
A. No. Because Wells Fargo was a separate entity then.
Q. Wachovia, excuse me.
A. Well, I'm --
Q. Wells Fargo's predecessors?
A. Yes.
Q. Okay. But since 2005, you had, that's when you had this issue?
A. Yes.
Q. Okay. When I say this issue with the application of payments or is it more, I would say, the application of the interest or how the --
A. No. At that point, it was the twenty-seven hundred dollars which really isn't a big part of the law suit.
Q. Right. Okay. So, that's part of it, and then what else was your other problem in '05 besides the twenty-seven hundred dollars?
A. That was it.
Q. But then in '07 when you had to pay the seven thousand one thirty-five fifty-one, what did you contend, what did you want from Wells Fargo's predecessors, Wachovia at that time?
A. To go ahead and make sure that the twenty-seven was correctly credited. At that point, I did not know they were misapplying principal and interest.
Q. Okay. Did you ask for records in '05 when you --
A. Yes. I said that several times.
Q. Okay. In this deposition?
A. Yes.
Q. Right. Okay. I'm just trying to --
A. I understand.
Q. And so, you asked, in '05, and you never got any records in 2005?
A. I would get a payoff statement from the attorney, pay this, that's it.
Q. In 2007, you asked again?
A. Yes.

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Q. Okay. Now, and so going back to, it was, this is December 22nd, 2008 letter which is Bentrim Twenty-six. When you said the foreclosure procedures, those were the previous two?
A. Yes.
Q. Theoretically three at that point, no, two at that point because another one was filed in 2009?
A. Yeah.
Q. Okay. Now, the second paragraph, okay, of your letter, second sentence. In fact, this is again, we're looking at Bentrim Twenty-six. I'm sorry. Do you want, is that the December 22nd, 2008 letter? In the second paragraph, second sentence. In fact, with the very first payment on 5/28/2002, Wachovia failed to apply two hundred and twenty-two dollars and forty cents of the payment towards principal. When did you find out about, you know, as early as 2002 was pretty much when you refinanced, I thought, was 2002.
A. When did I find out what?
Q. That the two hundred and twenty-two dollars and forty cents was not applied towards the principal?
A. When I got this letter on the 19th.
Q. This letter just so the record's clear would be

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Ms. Caudill's letter to you?
A. Yeah. Exhibit Twenty-five.
Q. Okay. Okay. Then, the next paragraph, you say, in late 2005 when Wachovia refused to accept payments forcing my loan into default, evidence in your payment history and loan documents, the note was in fact nearly six months ahead of schedule for payments?
A. Yes.
Q. Okay. And do you have proof of this that you can show me if we want it?
A. Yes. It's right here.
Q. Okay. And show that to me when you say right here.
A. The consumer loan payment history.
Q. Right. Exhibit Twenty-three.
A. Exhibit Twenty-three. When you add in the twenty-seven hundred dollars plus what was paid.
Q. The transaction amount.
A. Uh-huh.
Q. Under payment?
A. Uh-huh. That shows that there's almost six months ahead schedule.
Q. Okay. And you also have that, even though it's on here, you have it in your records as well,

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your banking records?
A. Yeah.
Q. Okay. So in 2005, there was a, you were having serious issues or issues with Wachovia then?
A. I wasn't having serious issues. It was twenty-seven hundred dollars we were bantering about. In 2008 once they again said that, hey, you're behind, that's when I finally got a loan payment history, not just a letter that said what I owed, and that's when I realized that Wachovia had not been applying principal and interest correctly and the late, the other charges on the account.
Q. Okay. Although you paid over that amount in 2005, you paid thirteen thousand dollars to bring it, to bring the account current?
A. Yes.
Q. Okay. Okay. I think you were talking about earlier about your correspondence with Suzanne Brown at Brock and Scott or someone at Brock and Scott. I thought you said Suzanne Brown. Let's make this Exhibit Twenty-seven.
(LETTER OF 7/1/09 MARKED AS DEFENDANT'S EXHIBIT NO. 27 FOR IDENTIFICATION.)
Q. Okay. Hold on one second. Exhibit Twenty-seven, have you seen this letter before?

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A. I have.
Q. Okay. Did you write this letter?
A. I have. I did.
Q. Okay. You did. Okay. What's the date of this letter?
A. July 1st, 2009.
Q. Okay. Who did you send it to?
A. Ms. Brown, the attorney for Brock and Scott.
Q. Did you receive, you're saying that, on April 28th, 2009, you sent a letter to Ms. Brown, I believe, to try to settle the matter?
A. Yep.
Q. Did you, and did you receive any information on the loan or an amortization schedule?
A. I did not.
Q. Okay. So, Ms. Brown didn't respond to your letter?
A. She did not.
Q. Okay.
A. She responded to one of those, but I did not get a loan amortization.
Q. So, I think when you said you didn't get a loan amortization, but you said she responded to the letter, and that may have been, may not have been, so I just want to, I'm trying to get my

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time line right. Here's a July 10th, which will be Bentrim Twenty-eight.
(LETTER OF 7/10/09 MARKED AS DEFENDANT'S EXHIBIT NO. 28 FOR IDENTIFICATION.)
A. Well, the question is, did you ask if she responded to the April 28th letter or the July 1st letter?
Q. Well, did she respond, did she respond to the July 1st letter?
A. I believe the July 10th letter is the response.
Q. Okay. And that would be Bentrim, which is Exhibit or Bentrim Twenty-eight.
A. Yes.
Q. Okay. And did you receive this letter?
A. I did.
Q. Okay. And what's the date of this letter?
A. July 10th, 2009.
Q. Okay. But she sent you a letter, this letter, did she ever send you any other documentation such as an amortization schedule?
A. She did not.
Q. Okay. Okay. So, let's move on to, let's look at, here's a letter that you wrote, and this will be Bentrim Twenty-nine, it appears.
(LETTER OF 11/16/09 MARKED AS DEFENDANT'S

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EXHIBIT NO. 29 FOR IDENTIFICATION.)
Q. You can let me know if you've written this or not. Have you seen -- okay. Bentrim Twenty-nine, have you seen this document before?
A. Yes. I have.
Q. Okay. And what's the date of the letter?
A. November 16th, 2009.
Q. Okay. And who did you send this letter to?
A. Ronald Johnson with Brock and Scott.
Q. Okay. And you say in the second paragraph, you're again, you're complaining about the incorrectly applied principal and interest?
A. Yes.
Q. And although there were issues in, issues in '05 with, when I say issues, I mean a foreclosure law suit was filed around '05 or so. And then, in '07 or so, you contend that you did not know or do you contend that you did not know that there were issues with the application of principal and interest until you received the consumer loan payment history?
A. Yes.
Q. Okay. Did you ever try to contact the initial attorney who closed the loan in 2002, your, I think it was --

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MR. VARNADO: Rob Donaldson.
Q. -- Rob Donaldson?
A. After April 1st?
Q. Around this time, 2009 or 2008?
A. No.
Q. Okay. Okay. In, and now I think we're going to 2010, let's see here. Let me show you this document. Bentrim Thirty.
(E-MAIL OF 7/9/10 & DOCUMENTS MARKED AS DEFENDANT'S EXHIBIT NO. 30 FOR IDENTIFICATION.)
Q. Okay. Have you -- sorry. Can you take a look at Bentrim Thirty? Those were produced, this Exhibit Thirty which the bottom is, it says Bentrim seventy-nine through should be Bentrim ninety-eight.
A. Yes.
Q. And these documents were produced from you to us?
A. Yes.
Q. Okay. So, have you recalled seeing these before or do you recall?
A. Yes.
Q. Okay. And the first one, it appears, it's an e-mail, correct?
A. Yes.
Q. Okay. And this is from you to Ronald Johnson?

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A. Yes.
Q. Okay. And the date is July 19th, 2010?
A. Yes.
Q. Okay. And you're talking about a Q, should I send a QWR to your office, or do you have an address? The bottom, the last two sentences of the e-mail. Do you see the e-mail?
A. Yes.
Q. Okay. QWR, qualified written request, is that, is that what you mean by that?
A. Yes.
Q. Okay. So, did you send what you contend as, you know, a QWR to counsel for Wachovia slash Wells Fargo?
A. Yes.
Q. Okay. Did you send any to Wells Fargo directly?
A. Yes.
Q. Okay. And which letters, now did, did the counsel for Wells Fargo respond to your QWRs properly?
A. He said on Bentrim eighty, on Bentrim eighty, he said you can send them in, I will pass it along to Wachovia.
Q. Okay. But you sent to Ronald Johnson?
A. Yes.

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Q. Okay. Now, but then you also sent a QWR to Wells Fargo as well, right?
A. Yes.
Q. Okay. Would that be Exhibit, well, let's label this Exhibit Thirty-one.
(LETTER OF 3/4/11 MARKED AS DEFENDANT'S EXHIBIT NO. 31 FOR IDENTIFICATION.)
Q. Take a look at that exhibit. Have you seen that before?
A. I have.
Q. Okay. I believe it's, does it look familiar to you?
A. It does.
Q. Okay. Did you write this letter to Ms. Gardner?
A. I did.
Q. Okay. And when did you write this?
A. March 4th, 2011?
Q. Okay. And this letter has attachments, but there's, you attached, okay, you said you sent attachments, you enclosed other attachments to Corrina Gardner when you sent her this letter, correct?
A. Yes.
Q. Okay. So, do you consider this to be, I guess, a QWR to Wells Fargo?

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A. This letter is, I think if we read it, it says on July 10th, or July 21st, I sent a qualified written request which is attachment A. Your attorney received acknowledgment of it which was attachment B to this letter.
Q. So, right. So, you're forwarding her a document that you sent to Wells Fargo's attorney that you considered a QWR?
A. Yes.
Q. Okay.
A. Yes. And then, paragraph three, I said Wells Fargo ignored this request until I contacted you on October 10th, attachment Correct.
Q. October 12th. Okay.
A. Oh, sorry.
Q. Uh-huh.
A. And requested evidence supporting my question on October 25th, 2010. So, on the 12th and 10th, they received a QWR, a copy of the July 21 directly to them.
Q. On October 12th, you're saying?
A. Yes.
Q. Okay. And then, she, did Wells Fargo respond?
A. She responded on, partially on October 28th, 2010?

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Q. Okay. And was it, and tell me, you said partially, is that because you didn't receive the original, how was it partially responded to?
A. Paragraph, I'm looking at Exhibit Twenty-four.
Q. Okay.
A. Paragraph four. She says, as for your request to see the calculation that determined the payoff amount.
Q. Whoa, whoa. One quick second. You're saying Exhibit Twenty-four, I thought I had it here, paragraph four. Hold on a second. Here is Twenty-nine, Twenty-seven, Twenty-six. Okay. Exhibit Twenty-four. Go ahead. That is the October 28th, 2010 letter?
A. Uh-huh.
Q. Okay. Paragraph four, you're looking at, right?
A. As for the request to receive the calculation to determine the payoff amount of one ninety-eight o nine six twenty reflected on the statement dated May 14th, 2010, once we have completed our review, a copy of our findings will be sent to you in a separate correspondence.
Q. Okay. Did you receive --
A. Never received it.
Q. Okay. Is that what you have a problem with, never receiving A, would a payoff -- I mean, what exactly did you want to receive? Like did you, from Wells Fargo, what were you looking for?

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A. It's in my QWR.
Q. Which I believe is, are you talking about your July 21st, 2010?
A. Yes.
Q. Okay. That would be, this will, let's just mark, this was Exhibit A to that letter. Okay. Let's make it, what are we at, we're at Thirty-two now.
(LETTER OF 7/21/10 MARKED AS DEFENDANT'S EXHIBIT NO. 32 FOR IDENTIFICATION.)
MS. BAKER: Okay. This is Bentrim Thirty-two. And why don't you mark this as, why don't we just mark this together or just mark it as Thirty-three. That's fine.
(LETTER OF 12/19/08 MARKED AS DEFENDANT'S EXHIBIT NO. 33 FOR IDENTIFICATION.)
Q. Okay. Okay. So, Exhibit, so Bentrim Thirty-two and Bentrim Thirty-three, have you seen those before, these documents?
A. Yeah. We've gone over Thirty-three a few times.
Q. Right. Well, but my question is, is document number Bates number Thirty-two has an attachment A and handwriting on the top of it?

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A. Yes.
Q. And is that your handwriting?
A. Yes.
Q. And you enclosed that with your letter to Ms. Gardner, correct?
A. It was also in the fax to April O'Quinn.
Q. Right. But it was, my question is, it was, this was Exhibit A to your March 4th, 2011 letter to Corrina Gardner; is that correct?
A. It was.
Q. Okay. And then in Exhibit, Bentrim Thirty-three which is marked Exhibit D, is that your handwriting?
A. Yes.
Q. Okay. And that was also sent as an attachment to your March 4th, 2011 letter to Corrina Gardner?
A. Yes.
Q. Okay. So, tell me why, again what you wanted, you were looking, you wanted, I believe, to look at your Exhibit Thirty-two to see exactly what you want -- what did you want to get from Wells Fargo?
A. "The following information on Wells, Wachovia Wells Fargo's servicing the above" --
Q. You might as well speak a little slower just so

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he can hear it.
A. Yeah. That's what I was just getting ready to do. "The following information on the Wachovia Wells Fargo servicing of the above referenced loan is requested. One, date payments received. Two, total payment amount. Three, interest rate applied to payment. If more than one rate applied, please indicate the number of days at each rate that was applied. Four, fees applied to the account at any time and the amount of said fees. Five, evidence supporting the calculation of a payoff balance statement dated 5/14/2010 of one ninety-eight zero nine six twenty.
Q. Didn't you receive, though, a payment transaction history for your loan in 2008 and in 2010 you also received a payment history or consumer history that we were looking at earlier today?
A. I did.
Q. Okay. So, what, I mean, did that not satisfy your inquiry from Wells Fargo?
A. No.
Q. Okay. So, when you say date payment received, just tell me exactly, when you list these five items.
A. Let's skip the five. I think that's the big

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issue, isn't it?
Q. Okay. Well, tell me what exactly, I mean, I'm looking at --
A. Yeah. If we look at number five, the payoff balance.
Q. When you're saying the, okay, this --
A. On Exhibit Thirty-two.
Q. Okay.
A. And then we'll go back and pull --
Q. Evidence supporting calculation of payoff balance?
A. Uh-huh.
Q. Yes. Number five.
A. Yes. Let's go back. Give me a sec. And we look at, can I grab this just for a second?
Q. Yeah. That's fine.
A. Twenty-two and then what's the --
Q. The consumer history, is that the one I want to look at? Yeah. That would be, it's just here.
A. Here. I've got them.
Q. Okay.
A. The consumer loan payment history, I don't know what exhibit that is, and then Exhibit Twenty-two.
Q. Which is the transaction statement?

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A. The transaction.
Q. Okay.
A. Neither of these have payoff balances, Jana. They've just got principal balance.
Q. Consumer loan payment history, Exhibit Twenty-two?
A. Yes.
Q. Okay. You wanted the payoff balance?
A. Yes. How did you calculate the payoff balance?
Q. When you say evidence, what did you mean by evidence? I know you said how did you calculate it, but what do you mean by evidence or how did you, like what documentation did you want?
A. Well, it should show how they arrived at that number by, you know, how, what interest was being applied to it, where that number or discrepancy in between what is being claimed here as far as the principal balance and what's being claimed as the payoff balance.
Q. But didn't, did you receive a payoff balance when you received statements or when you were receiving statements from Wachovia or Wells Fargo?
A. On some of them.
Q. Okay. Okay. So, after this inquiry to Ms.

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Gardner, did she, how do, do you recall, you know, what her responding to you?
A. No. She never responded.
Q. Okay. Did anyone respond after that? So, your problem, I guess, saying that it was a partial, just so I know, a partial response to the QWRs, you wanted something showing the evidence of a payoff balance, not just a payoff balance?
A. Yes.
Q. Okay. And you contend the consumer loan payment history is not sufficient or the transaction statement's not sufficient?
A. No. It only has the principal balance.
Q. Okay. But you didn't, it was all, you didn't have any, of course, any communication with Ms. Gardner over the telephone? It was just --
A. No.
Q. Okay. I mean, I'm just asking.
A. No. The reason why I'm laughing is their letters say, hey, call me anytime, and you'd call and leave messages and she didn't ever respond.
Q. And do you know if Brock and Scott forwarded your, what you contend is a QWR to Wells Fargo when you sent the July, I believe it was July 21st, we were just looking at it, July 21st, 2010

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e-mail to Brock and Scott's attorney that you labeled qualified written request which is Exhibit Thirty-two?
A. Yes.
Q. Okay. Do you know if Mr. or if anyone at Brock and Scott forwarded what you contend, this letter to Wells Fargo?
A. Yes. He forwarded it to April O'Quinn, and that's why he gave me her contact number.
Q. Okay. And then, she forwarded it to the other folks?
A. Yes. And when he gave me her number to follow up, she said, yeah, we're researching it, we can't, we don't know. And that's when I sent her the fax.
Q. Okay. Do you also have a problem, you know, with the fact that, when you say partial response, is that also because you did not receive the original note from Wells Fargo because you requested it, I believe, the original note?
A. Yes.
Q. Okay. And so, that's another, is that another problem with the response from Wells Fargo?
A. I –
Q. When you say it's a partial response to your –

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A. The partial response is specifically paragraph number -- wait a minute, one, two, three, four on number Twenty-four.
Q. Okay. Which is?
A. We don't know how the, we will figure out the calculation and send it to you later. I'm paraphrasing.
Q. When you say twenty-four, you're talking about the Exhibit Twenty-four?
A. Yeah. Exhibit Twenty-four.
Q. Okay.
A. The problem is the deceptive nature of the certified copy of the original note.
Q. Okay. How is it deceptive?
A. Because it was not a certified copy.
Q. I mean, do you think that was some type of intentional action on the part of Wells Fargo or Wachovia?
A. Absolutely. Absolutely.
Q. Can you tell me why you think that, or just exactly why you think it was deceptive, though? Or maybe just explain a little more –
A. Yeah. I don't believe that your client has had the mortgage since 2002.
Q. The note?

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A. The note. Yeah.
Q. Okay. Do you have any reason to believe that?
A. Yes.
Q. Okay. And what's your reasoning?
A. The first one is a public statement of the 2002 annual report which says we didn't do any sub-prime lending home loans in 2002. So, who was my lender? The second part was, we sold substantially all of our home equity loans in the last quarter of 2002. And then, when you go and look at their SEC filings for some of those, they clearly state, we transferred the notes through blank endorsement to the trustee –
Q. Okay. Do you, on Exhibit Bentrim Thirty-one, the March 4th, 2011 letter to Wells Fargo, do you still, are you still demanding three million dollars in damages? The last paragraph?
A. No. I think we're way above that.
Q. Where's your number?
A. Based off of the consent order your client signed with the attorney general in South Carolina for thirty-four million, the recent seven hundred and twenty-five million settlement with the OCC in January of this year and then the – I think my numbers may be off, but about the two hundred

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million settlement in 2011 for not, you know, doing this stuff any more.
Q. So, how much are you looking for, two hundred million dollars is what I'm hearing?
A. I don't know. That's not for me to judge.
Q. What's your, you filed the law suit. I mean, I'm just trying to figure out how much, what are your damages?
A. Well, in punitive, if I'm to understand it right, and I don't know if I do or not, what needs to occur is for Wells Fargo to quit doing this.
Q. Doing what?
A. Claiming to have ownership of notes that they don't and providing false documents to homeowners and documents that have been altered or made up.
Q. What false documents did you receive?
A. I received four different payment ledgers.
Q. So, why are you saying those are false?
A. There's a couple of reasons. This one –
Q. You say this one, we're looking at –
A. Exhibit Twenty-two.
Q. Okay.
A. Does not match the consumer loan payment history.
Q. So, why is that, and so, you're saying this is an intentional, you're saying Exhibit Twenty-two and

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Twenty-three are intentionally false documents created by Wells Fargo?
A. Yes. I'm saying that beginning in October of 2011, no, 2010, Wells Fargo started intentionally creating documents and trying to pass off the ownership of the mortgage as their own, or the loan as their own.
Q. Who are your witnesses if we go to trial who are going to testify to support your position?
A. I believe Helen Arnold will.
Q. Okay. And so, you think Helen Arnold's going to say that this is a false document that Wells Fargo, that she made up these numbers or was told to do so by Wells Fargo?
A. Yes.
Q. Okay. Are you going to depose Helen Arnold at some point?
MR. VARNADO: That's work product. You know that. Don't answer that question.
MS. BAKER: I know. I'm just asking if you're going to depose --
MR. VARNADO: You can't ask him about work.
MS. BAKER: I'm just asking who your witnesses are and if you're going to depose her. I mean, I'm just trying to figure out for trial

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purposes who the, you know -- you list them in discovery.
MR. VARNADO: You're being argumentative.
MS. BAKER: Well, anyway.
Q. So, I guess this Helen Arnold, I mean, is she listed as a witness or if not, will she be named as a witness in this law suit?
A. I believe we named her in the responses as a potential witness.
Q. Okay. So, basically what you're saying is these transactional statements, Bentrim Twenty-two and the consumer loan payment history, Exhibit Twenty-three constitute false documents?
A. Yes.
Q. Okay. What else are false documents that you know of?
A. The transaction statement that was included in your discovery response.
Q. This one that we're looking at here, a different one?
A. There's another one.
Q. Oh, okay. I thought that was a payment. Whatever. Okay. Another, another document that's a transaction statement but a different date, I'm assuming.

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A. Yes. You can clearly see where they tried, where somebody tried to correct the principal amount, but they put the wrong interest rate in.
Q. And you think that was intentional?
A. Oh, absolutely.
Q. Okay. So, what else --
A. Because the case got dismissed in July of 2010 because of these issues, that the numbers weren't matching.
Q. I understand. Okay. So, these are intentional false documents. What else has, what other documents has Wells Fargo intentionally falsified, or the word is falsified?
A. The October 2011 demand letter saying it was the owner of the mortgage, the motion in opposition for my compelling the note where Wells Fargo said it was the holder of the note.
Q. That I answered, I believe.
A. Yes.
Q. Okay. So, I've, and so you're saying that I falsified something, just so I know? Are you saying I falsified something or Wells Fargo falsified something?
A. I don't know. I mean, I'm assuming that you just relied on what they told you.

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Q. Okay. That's great, that I'm being accused of, I don't know if I'm being accused of falsifying something or not. But go ahead.
MR. VARNADO: Wait. I'm going to object to that. That's argumentative.
MS. BAKER: I'm just trying to figure out what else was falsified.
A. Well, let me -- let's back up for a minute.
Q. Or my law firm for something that I need to know as well.
MR. VARNADO: You're starting to personalize it, and you're asking him a question what he thinks falsified, and he's telling you.
Q. If you want to tell me what's false, let's continue that.
A. The reason why, in October 2011, I received the motion, and it was filed with the court that said the defendant is the holder of the note. And then, in, I believe it was February 2012, a loss note affidavit was filed.
Q. Continue.
A. Those don't mesh.
Q. So, you think this is intentional falsification?
A. Yes.
Q. Okay. You have, I believe, I think you produced

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this in discovery, well, we'll mark this. What are we at now, Thirty-eight now? Thirty-four. Okay. Here we go.

(2003 MORTGAGE INTEREST STATEMENT MARKED AS DEFENDANT'S EXHIBIT NO. 34 FOR IDENTIFICATION.)

Q. Okay. Exhibit Thirty-four, what is this document?

A. It is the 2003 Form 1098 mortgage interest statement. What number are we on?

Q. Exhibit Thirty-four. In discovery, you have requested the EINs of Wells Fargo, Wachovia, and First Union from us. What is the purpose of the request in the EINs?

A. The 2003 Exhibit Thirty-four, the mortgage interest statement is showing that I am paying to somebody else, not First Union or Wachovia. That is not your client's tax ID number.

Q. So, you have the tax ID numbers?

A. We have Wachovia N.A.'s tax ID number and Wells Fargo's Bank N.A. tax ID numbers. That's public record.

Q. Right. Okay. But you've requested EIN numbers, but you have these documents?

A. I don't believe we've requested those, we've requested that you admit that it is your client's

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and, for this particular one, EIN five six one nine four eight nine two one, we have asked for the identity of this.

Q. Now, when do you recall when the last 1098 was issued to you from Wells Fargo?

A. Wells Fargo never issued one. The last one I got was from Wachovia Bank, their master services in 2008.

Q. And that was because you stopped paying it in 2009?

A. It's because, yeah, your client quit accepting payments.

Q. Okay. Or excuse me. Exactly. Okay. However you want to describe it. Let's see here. In your office space, you don't own, you're renting, you testified earlier. Are you able to make your other, like you're able to make your rent payments per month with your landlord, with your company's landlord?

A. Yes.

Q. Okay. Are you able to make your car payments?

A. I don't have a car payment.

Q. Okay. Are you able to make any other payments that you may have?

A. Yes.

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Q. Okay. Now, in the complaint, wait, you have a couple of, I think three or so allegations against Wells Fargo. One is mail fraud.

A. Yes.

Q. Are you still contending that Wells Fargo is liable for mail fraud?

A. Yes.

Q. Okay. Can you just tell me how exactly?

A. I believe --

MR. VARNADO: That's strange.

MS. BAKER: It's because we had too much air on.

MR. VARNADO: But earlier it was off. I haven't, I've been a good boy. I've been trying to keep you warm.

COURT REPORTER: We're on batteries. Go ahead.

A. I believe the definition of mail fraud is using the mail or, you know, telephone, et cetera to obtain possession of somebody's property under false pretenses. And the note, the copies of the note and the assertions that, you know, we have it when we know that hasn't been the case is the reason why the mail fraud is in there.

Q. Well, how did Wells Fargo exactly use the mail to

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commit fraud?

A. They mailed me copies of notes, they mailed me letters saying they owned the note. I got a letter mailed that said that we're the holder of the note. I'm trying to think what else.

Q. When -- go ahead. I didn't mean to interrupt you.

A. No. I was done.

Q. When was it committed then, this mail fraud?

A. The mail fraud started in October of, it looks like October 2010.

Q. What damages are you seeking under this claim?

A. We haven't determined those yet.

Q. Have you determined or are you going to list what witness, I know you've listed witnesses in your answers to interrogatories, and I can, I'm just curious what witness -- let me give you a copy of, do you really need to make this, do you want, Rob, an exhibit?

MR. VARNADO: We don't need to make it an exhibit, I mean, you know.

MS. BAKER: It's just extra paper.

MR. VARNADO: We told you what witnesses in your, so I guess you can, if he can use it to refresh his recollection.

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MS. BAKER: Okay. Exactly.
Q. What witnesses are going to testify as to the mail fraud?
A. I believe number ten will. And this is --
MR. VARNADO: Isn't there a specific interrogatory that deals with that cause of action?
THE WITNESS: I believe so.
A. Geez, I would say almost all of them could.
Q. Okay. That's fine. So, I mean, are there, is there anyone not named on here, I guess, is a better question that you may add as a witness to testify as to mail fraud?
A. Not at this point, not that we know of.
Q. Okay. Okay. You also allege unfair trade practices act.
A. Yes.
Q. Do you plan to call any other witnesses at this time, I mean, at this time to support this claim?
A. At this time, we haven't.
Q. Okay.
A. Yeah.
Q. Can you tell me what damages you're seeking under this?
A. We haven't gotten, I mean, we're still in

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discovery, so.
Q. How did Wells Fargo commit an unlawful trade practice?
A. Asserting ownership of the note, not keeping accurate records, sending false documents, not responding.
Q. So, that's the unlawful trade practice?
A. Off the top of my head.
Q. How did it, how does it affect the public? These items that you listed, does it affect the public?
A. Oh, absolutely.
Q. Okay. Tell me how.
A. Wells Fargo has had a pattern of claiming to own notes that it does not, claiming to amounts owed on notes on mortgages and loans that are not the truth, adding and incorrectly amortizing loans. It's consented not to do it anymore with it's, with the attorney general of South Carolina with its regulator, the OCC. And it continues to do it.
Q. Okay. And if you look on response to interrogatory fifteen A, we had some questions regarding the allegations in your complaint that said that Wells Fargo engaged in fraudulent, deceptive and dishonest trade practices, et

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cetera. Can you list a certain thing under fifteen A, so I'm looking at pretty much page fourteen.
A. Uh-huh.
Q. Okay. Are you there with me?
A. Yes.
Q. Okay. So, let's just go through, so defendant and its predecessors failed to timely and accurately apply payments made by you, Mr. Bentrim, and failed to maintain accurate account statements?
A. Yes.
Q. Okay. And is this based on the transaction statement and the consumer history?
A. Yes. And the two other ones provided in discovery.
Q. Which, and you said that we provided it?
A. Yes.
Q. But those two other, but you can, when this is over, we'll figure out the exact two that you're talking to.
A. Yes.
Q. Because I haven't asked you about those clearly today.
A. Yes.

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Q. Right. Okay. And then, the issue with the forced place insurance, imposed forced placed insurance is another contention of yours?
A. Yes.
Q. And you're going to provide us the proof of the adequate coverage, or you can, correct?
A. Yeah.
Q. Yes. Okay.
A. But I think the big part about the reason why it's unfair and deceptive is that before you can place that, you have to send a notice, and I never received a notice. So, I can provide that to you as well as that I didn't receive a notice until after your client had put insurance on my house.
Q. Okay. That's fine. And then, the false or misleading information in response to your complaints, the false, are those the payment histories that you were just talking about earlier and the two other documents?
A. They're the payment history, the two other documents, claiming that they're the holder of the note, passing off, you know, copies of the note that weren't really copies of the note.
Q. Okay. And you understand, though, that we have

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the original note in our vault somewhere here, in our vault in this building, the original note, we have?
A. Yes. I understand.
Q. And then, you say fail to maintain appropriate staffing, training, and quality control systems. Can you, what does that mean?
A. There obviously is a problem when somebody asks for a payment history or a transaction statement and you get four of them off the same loan. When people are sending out statements saying that hey, this is a certified copy of your mortgage, it's not. When folks are saying, hey, we're the holder of the note when they don't have it. So, these are all, you know, servicing, training issues that a person would rely on their bank to keep accurate records and know what's going on at all times.
Q. Okay. And then you say, furthermore, defendant and its predecessors act in the following manner, failing to properly identify the foreclosing party. When did that occur and what do you mean by that?
A. It occurred in 2005, 2007, 2009, and now currently.

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Q. And how, just tell me how, what was improper about that in '05, '07, '09, and now?
A. Wachovia, Wells Fargo were not the owner or holder of the note during that period.
Q. 2005, '07, '09, and now?
A. It appears from 2002 until you sent the e-mail in February that your client didn't have the note.
Q. But you're saying, but the failing to property identify the foreclosing property, that would have been in 2005, is that what you're talking about?
A. 2005, 2007, 2009, and in the year, your counterclaim in 2011 or '12.
Q. Okay. And why didn't you bring this up in 2005 to Wells Fargo or to Wachovia?
A. It wasn't known to me until October 2010.
Q. Okay. And when you said going back to the, preparing and executing and notarizing and presenting false and misleading documents, that would be, it's just the consumer loan payment history, the transaction history, the two other documents, and then the note that you're talking about?
A. And the loss note affidavit.
Q. The loss note. Okay. And filing false and

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misleading documents with the courts and government agencies, what would that be?
A. That would be motion in opposition to compel where it says defendant is the holder of the note. It would be the counterclaim in, the current counterclaim, and it would be the foreclosure prior.
Q. How can you prove that Wells Fargo was not, or Wachovia was not the holder of the note.
A. Your client has admitted.
Q. But it admitted that it didn't have, thought it lost, didn't admit that it wasn't the holder, they thought that it lost the note, but then it found the note. They never admitted it wasn't the holder of the note.
A. Well, you can't be both the person that lost it and the holder?
Q. Regardless. How are you going to show that Wells Fargo's not the holder of the note in this law suit?
A. Because I never paid them. This is the entity that's got the payment rights. Why would I pay somebody else?
Q. You talk about repeated false attestation of information and affidavits. What affidavits are

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you, is this to the lost note affidavit or is there more than one affidavit?
A. The lost note affidavit. I think that's, you know, declarations that this is a certified copy of the note.
Q. Okay. And you're saying that documents weren't properly notified, notarized, excuse me. What document wasn't properly notified and what state law are we referring to, or are you referring to?
A. Where are you?
Q. Sorry. It's still the same. It goes, it's at the end of the, there's a robo signing, there's a period and end quote, and then it says executed, but it's not capitalized. So, executed, starting with that, on page fourteen, and it goes to page fifteen. Was executed and filing affidavits in foreclosure proceedings that were not properly notarized in accordance with applicable state law?
A. Well, I don't believe we've gotten the discovery of the notary yet.
Q. Okay.
MR. VARNADO: Can I see this real quick?
THE WITNESS: Yeah.
MS. BAKER: If you need something, Rob, let

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me know.
MR. VARNADO: No. I'll just say that this interrogatory response is not necessarily limited to what we allege Wachovia, Wells Fargo did in this case but also would, encompasses other activities because that's part of the UTPA.
MS. BAKER: Oh, that's, I was just curious. What was not properly notarized?
MR. VARNADO: Well, that probably, I can tell you since I drafted that, that was probably taken from the consumer orders that Wachovia, Wells Fargo entered into with the OOC and the attorneys general.
MS. BAKER: OCC.
MR. VARNADO: I'm sorry. Did I get that wrong? I mean, because I think that interrogatory talks about UTPA type allegations, and obviously UTPA allegations are not necessarily limited to this.
MS. BAKER: I'm not, yeah, I mean, so. I'm just trying to get just the facts for all these, you know, because these are, you know, statements that are, just so I know, you know.
Q. Anyway, this says misrepresenting the identity office or legal status of the affiant executing

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foreclosure related documents. What misrepresentation are you referring to?
A. We haven't taken his or her deposition yet. I don't know if Tracy's a man or a woman. But it appears as though that she, he/she misrepresented most of what she swore to on that that affidavit.
Q. Okay. Now, I believe your response to twelve, page twelve, on the same response to interrogatories as in twelve asks about the allegation, the RESPA violation that you allege.
A. Okay.
Q. What are the, what is the basis for your RESPA violation? How did Wells Fargo violate RESPA?
A. They failed to fully respond in time to my request, qualified written request.
Q. Okay. And when was this, like what year?
A. July 21st, 2010.
Q. Okay. And that was when you sent it to, the letter by e-mail to Brock and Scott?
A. Yeah. Ronald Johnson.
Q. Yeah. When the document was forwarded to Wells Fargo, Wells Fargo did respond, although Brock and Scott didn't respond?
A. Wells Fargo partially responded. They still have not fully responded.

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Q. Right. And by fully is you want the evidence supporting the calculation of the payoff balance?
A. Yes. And they deceptively responded by the copy of the, passing of saying this is a certified copy.
Q. Okay. And deceptively, okay, with an intent, does that mean you think that they intended to act deceptively, too?
A. Yes.
Q. Okay. And why is that?
A. I believe at that point it was, whoa, we don't have the note, we can't locate it, so let's stuff this because it looks official and he'll never know.
Q. You believe, but you're not positive that it was deceptive, that it was intentionally meant to be deceptive?
A. Well, I would think that it's intentionally meant to be deceptive because when I responded to Ms. Gardner and said, wait a minute, are you saying that the closing attorney has a copy of it, but let me clear, I'm asking if you've got it. And a few months later, I get a, from Wachovia Vault Services a copy of my other note that I didn't ask for that was certified with the, certified

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copy from Ms. Legare again tucked in behind it.
Q. The other note, is that the --
A. The modified line.
Q. Oh, the modified line?
A. Yeah.
Q. Okay.
A. So, even when I said, wait a minute, you know, hey, this isn't what I asked for, again it was, yeah. One time, okay. Twice, nah.
Q. Okay. So, in your response twelve, you know, one question is going to list all the documents you contend support your RESPA allegations, and you list out on page twelve, twelve B, you know, I think it's Exhibit F, Q, R, S, T, U, V, W, X?
A. Yes.
Q. Which, and then that explains what those are on page five, I think. Yeah. What the letters mean, what the letters refer to.
A. Uh-huh.
Q. Is that a yes?
A. Oh, that is a yes. I'm sorry.
Q. So, the documents that support your RESPA claim would be Exhibit, what's marked as F, initial QWR and y'all have it labeled initial QWR incorrect calculation letter?

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A. Yes.
Q. Okay. And that would be, I believe there was a December 22nd, 2008 document that we already marked as an Exhibit?
A. Yes.
Q. Okay. I just can't find it right now, but I can find it. Do you recall the December 22nd, 2008 letter?
A. I do.
Q. Okay.
COURT REPORTER: Twenty-six.
MS. BAKER: Twenty-six. Okay. That's Exhibit Twenty-six. Okay.
Q. So, that's, okay, so that's one document to support your claim. The next document to support your claim is, I've got to go back to this. Sorry about that. Okay. You said, and then there is a, what you all have labeled as Q. QWR 2010 number one is how you have it labeled, and I believe, because I did pull this from your discovery, that would be the e-mails that we marked that you sent July 19th, 2010 to Ronald Johnson. I mean, I can show it to you, we don't have to mark it again, but we did mark it earlier. It was the --

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A. Yeah. It would be the attachment to that e-mail.
Q. Yeah. Okay. And I'm just trying to find --
COURT REPORTER: Exhibit Thirty.
Q. Okay. And that would be Exhibit Thirty. I just want you to take a look at it, Brent, so we're on the same page, even though I think we are on the same sometimes on the same page. Exhibit Thirty. Okay. Where is this?
A. I got it.
Q. Okay.
A. It would be the attachment to Exhibit Thirty.
Q. It would be, which would be, I actually have copies of those, and if y'all want me to mark it, I can, but just take a look. You just sent that to us in discovery. But it would be, this is what I have. Actually the attachment would be the July 21st, 2010 letter?
A. Yes.
Q. Which is Bentrim Thirty-two?
A. Yes.
Q. Okay. And then, the next document you have is, I believe, Exhibit R that supports your claim which says credit dispute number one is how y'all have it labeled?
A. Yes.

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Q. Which would be the, well, there's an August I have this, and we can, why don't we go ahead and mark it? I don't think we've marked this yet. The August 24, 2010 letter from you to Wells Fargo. Maybe we have. Mark this. I believe we have marked this actually as an exhibit.
COURT REPORTER: Twelve.
MS. BAKER: Yeah. Exhibit Twelve.
Q. Let me find Exhibit Twelve. I had this in order. It's probably right underneath me. Okay. Exhibit Twelve.
A. That's correct.
Q. Okay. So, that would be QWR, I mean, it's the credit dispute number one?
A. Yes.
Q. Okay. And then, the next, you also list in twelve A besides R, S, credit dispute number two. And that would be an August 30, 2010 letter sent from you to Wells Fargo that I don't think we marked as an exhibit.
A. I don't know that we have it.
Q. And a September 30th, 2010 letter that I think that we did, September 13th, 2010 was marked as an exhibit regarding the credit reporting.
A. Number Seventeen. Yes.

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Q. Seventeen. Okay. And so, that's part of your claim and why don't we go ahead and just mark this August 30th, 2010 and take a look at that for a minute. Have you seen that document before?
A. Yes.
(LETTER OF 8/30/2010 MARKED AS DEFENDANT'S EXHIBIT NO. 35 FOR IDENTIFICATION.)
Q. Okay. And you wrote that document, or is that your --
A. Yes.
Q. Okay. And the date is, just to be clear.
A. August 30, 2010.
Q. Okay. And that supports your QWR claim as well?
A. Yes.
Q. According to your interrogatory. Okay. And then, you say in your response, Exhibit T, which is the, what y'all call, I believe, a don't hire attorney scare letter?
A. Yes.
Q. Okay. And I did not mark this as an exhibit. Let's go ahead and do it. Take a look at this first, and then we'll mark it. I thought it was two pages, but it's just one page. It will be one page.

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A. No. It's two because I wanted to --
Q. Okay. We'll mark that as the next one then which would be Thirty-six.
(FORECLOSURE RESCUE SCAMS MAILING MARKED AS DEFENDANT'S EXHIBIT NO. 36 FOR IDENTIFICATION.)
Q. Okay. So, Exhibit Thirty-six, you've seen this document before?
A. Yes.
Q You received it?
A. Yes.
Q. You refer to it as a scare letter, I believe, and that's part of your QWR claim, part of your documents to support your claim?
A. Yes.
Q. Okay. The next one as a document you list, I believe, it says it's an exhibit, y'all call Exhibit U?
A. Yes.
Q. Okay. Which would be, let me just double check. You actually, y'all, it supports your claim as U, V, W, and X. And U, is that correct?
A. Yes.
Q. U is a 2010 number two is how y'all label it. And that would be an e-mail dated September 21st, 2010 from you to Ronald Johnson, and this is not

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marked as an exhibit?
(The deposition went off the record for a brief period of time.)
(E-MAIL OF 9/21/10 MARKED AS DEFENDANT'S EXHIBIT NO. 37 FOR IDENTIFICATION.)
Q The documents you listed in your response to interrogatory that you list that support your QWR claim, and the last one we were looking at, I just marked as Exhibit Thirty-seven. If you could just take a look at that, and Exhibit Thirty-seven, what we have in this deposition marked as Bentrim Exhibit Thirty-seven, it's identified, I guess, as Exhibit U in the response to discovery.
A. Yes.
Q. And then, when I say listing documents, I believe it's in response to twelve, to interrogatory twelve.
A. Oh, and this also, this brings me to, reminds me of something, Jana. When I --
Q. When you're looking, when you're saying, just for the record, you're looking at Exhibit Thirty-seven.
A. Oh, Exhibit Thirty-seven.
Q. And can you just tell me please what, if you've

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seen the document before?
A. Yes. I've seen the document before.
Q. Is it an e-mail?
A. It's an e-mail.
Q. From? Is it from, is it, it's from --
A. It's from me to Ronald Johnson at Brock and Scott.
Q. Okay. We can go ahead, and the date of it is July?
A. September 21st, 2010.
Q. Okay.
A. You asked earlier if anybody from Brock and Scott acknowledged receiving the QWR, and there was a letter from Suzanne Brown that said, we did receive, and like the formal little QWR response letter.
Q. And Suzanne Brown works for Brock and Scott/
A. Yes. Suzanne Brown. Yes.
Q. And that's --
A. And that just prompted me to remember that.
Q. Okay. And that's part of your claim, part of your documents that support your RESPA claim?
A. Yes.
Q. Okay. And then, we said Exhibit V, W, and X, that's the exhibit that was, how you labeled it

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in responses to interrogatory. So, V is, it states QWR 2010 number three. W is QWR 2010 number four. And X is QWR 2010 number five. And then, so that would be, so let me get this for you so we can speak, so we can be clear. Okay. Exhibit V is a September, here take this. Let me just look. September 23rd, 2010 e-mail from Ronald Johnson to you. And I'll let you look at it and tell me if you've seen that before.
A. Yes. This is his response to Exhibit Thirty-seven.
(E-MAIL OF 9/23/10 MARKED AS DEFENDANT'S EXHIBIT NO. 38 FOR IDENTIFICATION.)
Q. Okay. And what is he telling you?
A. He said that he had sent a follow up on the status of the QWR and that I'm pushing for a response, and that's all I can do.
Q. Okay. And you recall receiving that e-mail?
A. Yes.
Q. Okay. And then the last one is, that you list is Exhibit W which I believe is many pages. It's probably, well, it's not the last one. Excuse me. There's also an X as well. But Exhibit W is, let's mark this as an exhibit, and this is altogether. This is Exhibit Thirty-nine.

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(E-MAIL OF 10/12/10 MARKED AS DEFENDANT'S EXHIBIT NO. 39 FOR IDENTIFICATION.)
Q. Okay. Have you seen Exhibit Thirty-nine before?
A. Yes.
Q. Okay. And what is that, it's a stack of document -- let's see here. If you go through them very quickly, do you recall receiving the first, or do you recall, is that your, the first page, Bentrim to Ronald Johnson.
A. Yes.
Q. And what's the date of that e-mail?
A. October 12, 2010.
Q. Okay. And tell me the purpose of this e-mail.
A. The follow up on the qualified written request because I had not gotten a response.
Q. Yeah. But at this point you were sending these letters to Brock and Scott?
A. Yes.
Q. Okay. And then the next page of the letter?
A. Was the attachment to the e-mail making sure everything was put properly.
Q. Okay. But it was sent via, it was the attachment still sent to Brock and Scott?
A. Yes.
Q. Okay. And that was just another letter to Wells

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Fargo that was -- okay. And then, is there anything else?
A. And then, he responded on the, later that evening and said, hey, I passed it along, and then I think shortly thereafter is when he said, call April O'Quinn.
Q. Okay.
A. Yeah.
Q. Exactly. And then, you did so?
A. Yeah.
Q. Because your Exhibit X, we'll mark the whole thing as, this is the next document that you list in support of this claim, and let's just make it all Exhibit Thirty-eight. And I believe this is the entire -- excuse me. Forty.
A. Forty.
Q. I hope I didn't misstate the other one.
(DOCUMENTS MARKED AS DEFENDANT'S EXHIBIT NO. 40 FOR IDENTIFICATION.)
Q. Okay. Take a look at Forty. Have you seen this before, Mr. Bentrim?
A. I have.
Q. Okay. Is this, did you send this fax to Ms. O'Quinn at Wells Fargo?
A. It was faxed to Ms. O'Quinn and attachment to

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Ronald Johnson.
Q. Okay. Now, what, when was this faxed, do you recall at all?
A. October 25th, 2010.
Q. Okay. And we've seen this letter before?
A. Yes.
Q. Okay. But the whole package would be, let's go through, the first page was, the whole package was faxed to Ms. O'Quinn?
A. Yes.
Q. And that would be this October 25th, 2010 letter to Ms. O'Quinn, correct?
A. Yes.
Q. Okay. And then the attachments to that which we've seen, that was the Sherrie Caudill letter dated December 19, 2008?
A. Yes.
Q. To you where she enclosed what we've gone over as Rob would like for me to say, the consumer loan payment history?
A. Yes.
Q. As well as a statement, now this consumer loan billing statement and payment due notice that's attached here dated 12/25/08.
A. Yes.

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Q. Did you circle the, there is a payoff amount there, and you have it, did you circle that one eighty, a hundred and eighty thousand seven twenty-seven eighty-nine?
A. Yes. This, this actually jogs my memory. You know how we were talking about the twenty-seven percent. This is where I based it off of.
Q. Okay. That's what I thought. Now, how did you base it off of that?
A. Oh, sorry. Yeah. I was like where did I -- oh, how did I?
Q. Yeah. How did you figure out that a twenty-seven percent interest rate was being applied? At the end we'll mark these just so we're clear.
A. That's all right. I'm looking through. The difference between the payoff amount that I circled on what has Bentrim one o seven on it.
Q. Okay.
A. That one eighty seven twenty-seven to --
Q. Okay.
A. -- the payoff of one ninety-eight o nine six.
Q. Where do you see that?
A. Which is Bentrim one ten.
Q. Okay. So, Bentrim one ten which is another payoff, is that a billing statement or what is

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that? I'm trying to --
A. Yeah. It's --
Q. I can't --
A. -- a May 14th, 2010 billing statement.
Q. Okay. You're looking, and I have that amount. So, you're comparing the one eighty-seven twenty-seven o nine on Bentrim one o seven with what number on Bentrim one hundred nine --
A. The payoff amount of one ninety-eight o nine six twenty.
Q. Okay. And one is dated 12/25/08, that would be Bentrim one o seven?
A. Yes.
Q. And the Bentrim one ten, is that dated 5/14/10; is that correct?
A. Yes.
Q. Okay. But that can't be. It looks like the due date, though, is -- okay. Well, go ahead and explain, explain yourself to me, please.
A. Explain?
Q. Explain the twenty-seven percent interest rate.
A. It's the difference between one ninety-eight zero nine six twenty on 5/14/10 and one eighty seven twenty-seven eighty-nine on 12/25/08, amortized over the months.

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Q. So, tell me how you calculate that since you're the banker and I'm not the banker. You're taking the difference, you're subtracting. Okay. And then, what do you do?
A. It's the difference divided by the one over the number of months minus one.
Q. Okay. And if you get, and what number do you get?
A. I believe it was the twenty-seven percent.
Q. So, what you did is you took the difference between one eighty and one seventy-six, right?
A. No. And one ninety-eight.
Q. Excuse me. Okay. One eighty and one ninety-eight which is, I don't know, like --
A. Eighteen thousand.
Q. -- eighteen thousand and a little bit of change, though. Anyway, eighteen thousand dollars. Okay. So, you take eighteen thousand dollars and you multiply it by?
A. You divide it.
Q. Oh, you divide it.
A. Divide the difference, and then you --
Q. Divide it by -- okay.
A. One minus the months minus, one divided by the months.

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Q. Write this down for me, what you're, just so I'm, can you write this down so I can figure it out. There you go. We'll make this whatever an exhibit number.
(CALCULATION MARKED AS DEFENDANT'S EXHIBIT NO. 41 FOR IDENTIFICATION.)
Q. And will you calculate it?
A. Not with, can I use Excel?
Q. Oh, yeah. Go ahead.
MR. VARNADO: Do you want on my computer? I don't know if I've got Excel.
THE WITNESS: Because I don't have a computer that can raise --
Q. Okay. So, what you do is here, you can make this Exhibit Forty-one, is that what it is?
MR. VARNADO: What are we trying to do again?
MS. BAKER: We're trying to figure out this twenty-seven percent interest rate.
MR. VARNADO: Can we supplement that?
MS. BAKER: Oh, we can supplement that, yeah. But just for, just for, he, that's fine to supplement just so you can calculate it after, how about that? But you can at least show me, this won't take long, that will give me the

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number about how you, you can calculate it after and supplement it.
A. Yeah. When you raise the exponential, that's where you've got to have a scientific calculator or Excel?
Q. That's what it is. Okay.
A. Yeah.
Q. But on Exhibit Forty-one, what you do is you take, you took the one ninety-eight payoff amount from the --
A. The April 14th, 2010 statement.
Q. Okay. And you subtracted, you take the difference, you subtract from the payoff amount from the --
A. The January or the December 28th, 2008 statement, December 25th, 2008 statement, I'm sorry.
Q. And then, you divide it by the difference?
A. By the difference. And then you raise it to one divided by the number of months.
Q. Between these?
A. Between these two. Yeah.
Q. Right. Okay.
A. Minus one.
Q. Minus one. And that gave you the percentage interest rate?

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A. Yes.
Q. Okay.
A. And that's an annualized interest rate.
Q. Okay. So, in regard back to your, I guess falsified documents and all the documents showing the twenty-seven percent staggering interest rates, what, and in addition as being part of your RESPA claim, as part of your, those other documents that you're referring, which is Bentrim one o seven and Bentrim one o -- shoot, one o seven and one ten, I believe.
A. That is correct.
Q. Okay. And those are the only, those are the two other, when we were discussing, you know, we were calling them, I think, two other payoff balances, we were referring to them as two other documents from Wells Fargo?
A. There's two other payment ledgers that were included in discovery that you guys, that your client sent to us.
Q. That I haven't asked you about that you're going to tell me which ones they are?
A. Yes.
Q. So, it's these two and two more?
A. Yes.

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Q. Okay. So, back to this set, so this refreshed your memory as to how to calculate the, or where you got the interest rate number from?
A. Yes.
Q. And then one o nine, what's labeled Bentrim one o nine is another statement, and this is, tell me, you just tell me what this was, this was sent again to Ms. O'Quinn, the purpose of this document because you sent it to Ms., to April O'Quinn?
A. Yeah. If you'll notice, the principal balance that's being shown on, like, there's a payoff balance --
Q. You don't have to write on it.
A. Oh.
Q. You can write, if you want to write on that, I don't care.
A. There's, I was just going to point out for both. There's a payoff balance and a principal balance on the statements.
Q. I see a payoff balance, payoff amount and the current principal balance, yes.
A. Yes. You'll see the current principal balance is one seventy-four five o four twenty.
Q. Wait. Maybe I'm looking at, which Bentrim are you looking at? You're looking at one o seven.

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A. One o seven.
Q. Okay. Go ahead. One seventy-four five o four twenty?
A. Yes. When we take, when we go to that date on the consumer loan payment history.
Q. Okay.
A. It does not match up.
Q. And it gives you a number of?
A. Sixty-two.
Q. One seventy-four seven twenty-seven sixty-two instead of eighty-nine?
A. Yeah. Yes.
Q. So, the cents is wrong. It's off by forty-one cents?
A. Forty-one cents.
Q. Forty-one cents.
A. And that -- hold on one second -- is why I believe they doctored this so it would match.
Q. When you say this, you're talking about the transaction statement?
A. Oh, I'm sorry. Yes. The transaction statement.
Q. Which is Bentrim Twenty-two.
A. Twenty-two.
Q. Okay. And you think this was doctored in the

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date, on September 2010 to match this consumer payment history?
A. No. To match the statements that were being sent showing a principal balance of one seventy-four five o four twenty.
Q. Okay. But, you're still not sure if it was doctored or not until you deposed, I guess, if you need to depose --
A. Yes. But, one of the pieces you just provided in discovery is clearly altered.
Q. Okay. So, which one was that? Did you already name it here? Did we talk about it today?
A. Yes. That's the one that we keep saying there's two of them, that you provided.
Q. And you're going to find it?
A. Yeah.
Q. Okay. So, that's Bentrim one o seven. Bentrim one o eight, you're also using it in your RESPA claim, which is, and just tell me again the reason this was sent to Ms. O'Quinn, Bentrim one o eight, which is part of Exhibit Forty?
A. Yeah. It was just showing that the principal balance of one seventy-four five o four twenty.
Q. You just wanted to show here that --
A. There were several of those.

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Q. Oh, okay. That each month --
A. Yeah.
Q. And then, Bentrim one o nine, tell me why Bentrim one o nine was sent, which is part of Exhibit Forty.
A. That was the force placed insurance.
Q. Okay. On 2/5/2010?
A. Yeah.
Q. Okay. Bentrim one hundred and ten?
A. Again, a force placed insurance, but one allowed me to calculate the twenty-seven percent interest rate, as well.
Q. Okay. Bentrim one eleven?
A. I got no idea why I sent that one.
Q. Okay.
A. Ms. O'Quinn was saying, hey, just send this to us so I can get it up to them in the executive office.
Q. And Bentrim one twelve? It's blank, so I don't know what that is. Okay. It might have been a space between twelve and thirteen. And Bentrim one thirteen?
A. Again, saying I'm still disputing how you're calculating the payment.
Q. And that was to Brock & Scott?

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A. Yes.
Q. Okay. Got you. Okay. But, the documents that you've listed, I just want to make sure that those are the documents that you named in discovery and we've gone through, that these are the documents that you're going to rely on to support your RESPA claim?
A. At this point, yes.
Q. Okay. Are you also seeking to recover your attorney's fees?
A. Yes.
Q. Okay. And how much is that, to date?
A. No clue.
Q. How much do you think the real estate is worth today, on Nicholson Street, 10 Nicholson?
A. You know, I haven't appraised it. Three hundred.
Q. When was it appraised last?
A. At refinancing.
Q. But, back in 2002?
A. 2002.
Q. Okay. What do you think it's worth?
A. Mine's a little larger. It's a three bedroom, two bath, which is unusual. I don't know if you know the area.
Q. I don't know it.

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A. Yeah. Most of them are two bedroom, one bath. The two ones are selling at about two fifty right now. So, I would say maybe three. Yeah.
Q. Okay. In regard to your credit rating damages, do you know, do you have a number for that?
A. What do you mean, like --
Q. What are your damages to your credit?
A. No number on that.
Q. Okay. I think I am done, I believe.
MS. BAKER: Rob?
MR. VARNADO: That's it.

(Deposition concluded at 3:19 o'clock, p.m.)

* * *

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of May, 2013.

_____
Notary Public for South Carolina
My Commission Expires: April 4th, 2022

Reference No.: 394758.513286

Case: BRENT E. BENTRIM -vs- WELLS FARGO BANK

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

_____
BRENT E. BENTRIM

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

(Notary Sign)_____

(Print Name) Notary Public,

In and for the State of _____

Reference No.: 394758.513286

Case: BRENT E. BENTRIM -vs- WELLS FARGO BANK

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BRENT E. BENTRIM

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

BRENT E. BENTRIM,)
)
Plaintiff,)
)
v.)
)
WELLS FARGO BANK, N.A.,)
)
Defendant.)

VIDEOTAPED DEPOSITION OF

TRACY THOMAS

10:03 a.m.

August 6, 2013

1301 Riverplace Boulevard, Suite 1609
Jacksonville, Florida

Richetta R. Bright, Registered Professional Reporter

APPEARANCES OF COUNSEL

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Also Present: Miriam Beckford, Videographer
Brent E. Bentrim

- - -

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DIRECT EXAMINATION
By Mr. Varnado 5

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(Exhibits attached to the original transcript)

THE VIDEOGRAPHER: This is tape number 1 to the videotaped deposition of Tracy Thomas, in the matter of Brent Bentrim versus Wells Fargo Bank, being heard before the Court of Common Pleas, Ninth Judicial Circuit, Case No. 2011-CP10-2946.

This deposition is being held at Esquire Deposition Solutions, located at 1301 Riverplace Boulevard, Jacksonville, Florida. Today's date is August the 6th, 2013. The time on the record is 10:03 a.m. My name is Miriam Beckford. I'm the videographer. The court reporter is Richetta Brown [sic].

Counsel, will you please introduce yourselves and affiliations, and the witness will be sworn.

MR. VARNADO: My name is Rob Varnado, and I am counsel for the plaintiff.

MS. BAKER: My name is Jana Baker, and I am counsel for Wells Fargo, and I'm with the firm Womble, Carlyle, Sandridge & Rice.

THE COURT REPORTER: Would you raise your right hand? Do you swear or affirm that the testimony in this cause will be the truth, the whole truth, and nothing but the truth, so help

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you God?
THE WITNESS: Yes.
TRACY THOMAS, having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. VARNADO:
Q. Good morning, Ms. Thomas. My name is Rob Varnado. I introduced myself to you before the deposition began. I'm an attorney. I practice law in Mount Pleasant, South Carolina. And I represent the plaintiff in the lawsuit that brings us here today. This is a deposition taken pursuant to a notice of deposition which your attorneys and I agreed to. This deposition is taken pursuant to the South Carolina Rules of Civil Procedure.
Ms. Baker and I have agreed off the record and will confirm now that all objections to my questions, save to the form of the question, are going to be reserved, and that she and I have agreed also to waive all the technical rules for videotaped depositions contained within the South Carolina Rules of Civil Procedure. None of that really affects you immediately, but that's our agreement.
MR. VARNADO: Is that correct, Ms. Baker?
MS. BAKER: That is correct.

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MR. VARNADO: All right.
BY MR. VARNADO:
Q. So we're here today to proceed with your deposition. Just a few ground rules first, if you don't mind. Under the South Carolina Rules, I'm required to tell you that while I am asking you questions, if you have any question yourself about the deposition process or the procedure, that you would direct that question to me, not your attorney, Ms. Baker. Do you understand?
A. Yes.
Q. Great. Now that you've been sworn, you're not permitted to speak with Ms. Baker about the substance of your testimony or what you've testified to or might testify to except in very, very limited circumstances. Do you understand that?
A. Yes.
Q. Great. The deposition is not a marathon. You can take a break at any time. I normally take breaks every hour to 90 minutes. But if you need one for any reason before that time, please let me know and I'll be happy to accommodate you. Okay?
A. Yes.
Q. If for any reason you're uncomfortable with the temperature, light or need any kind of

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refreshment, please let us know. We'll be happy to assist you with that. Okay?
A. Okay.
Q. What's really important is that you and I not to talk over each. Because the court reporter, seated to your left, is going to take down a transcription of everything that we say. So it needs to be a very formal conversation in which I finish asking my question before you answer, and concomitantly, you -- I cannot start asking a new question before you finish your answer. Do you understand?
A. Yes.
Q. Okay. So from time to time, I might ask you, please let me finish my question. If it comes up even if I'm asking a question and I'm not doing a good job of asking it or you know exactly where I'm going and you're trying to help me out, please just wait until I've completed the question before you start to answer. Okay?
A. Okay.
Q. And by the same token, I may be thinking that you finished an answer, and you've taken a pause to consider adding to it, please raise your hand or let me know, I'm sorry, I haven't finished my last

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answer. Is that fair?
A. Yes.
Q. Okay. For the same reason that we can't talk over each other, we also need to make sure that we avoid nonverbal gestures or responses to the best we can. So a shake of the head or a uh-huh or a huh-uh, she really can't take that down with any sort of precision. So from time to time, me or Ms. Baker might say, I'm sorry, you need to answer the question. We're not trying to be rude. We're just trying to make sure we have a good record. Do you understand?
A. I understand.
Q. Okay. If for any reason you don't understand my question -- and that could be I haven't asked a really artful question or I've used phrases or terms which you don't understand or for any reason you're momentarily distracted by something or -- will you please ask me to ask the question again?
A. Yes.
Q. Okay. From time to time, Ms. Baker may object to my question. She may say, I object, or I object to the form of the question. You can -- you can go ahead and answer. She's merely preserving h objection on the record. If that distracts you,

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though, you can ask me to repeat my question or we can even have the court reporter read it back. Do you understand?
A. Yes.
Q. Okay. So it's really important that if I ask you a question and you answer it, that means you heard it and you understood. Can we agree on that?
A. Yes.
Q. Okay. And that you're going to give a truthful answer, correct?
A. Yes.
Q. Okay. And I think that covers the initial ground rules. Again, if you have any question at all about it, let me know. If you need a break for any reason, let me know. Okay?
A. Okay.
Q. Are you ready to get started?
A. I am.
Q. My first general question is, are you under the influence of any medication or any sort of drug or alcohol or anything which would interfere with your ability to give a full and truthful answer to my questions, to hear them and understand them?
A. No.
Q. Is there anything going on in your life

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right now which is so distracting to you that as you sit here today it's really impossible for you to concentrate on my questions or to give truthful answers because of the distraction?
A. No.
Q. I didn't think so. Okay. Would you please go ahead and state your full name for the record, please, ma'am.
A. Tracy Michelle Thomas.
Q. And what's your business address if I needed to contact you?
A. It's 3563 Philips Highway, Building D, Jacksonville, Florida 32607.
Q. Okay. Is that in the downtown Jacksonville area? I see a big Wells Fargo Building across the railroad. Is that where you work?
A. No.
Q. Okay.
A. It's south.
Q. It's south of here?
A. Uh-huh.
Q. All right. What is your -- what's your age, ma'am?
A. 28.
Q. And what's your date of birth?

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A. September 1st, 1984.
(Exhibit-1 marked for identification.)
Q. Okay. We went ahead and marked as Exhibit No. 1 a copy of your Facebook page. Do you have that in front of you? I'm going to hand that to you.
A. Thank you.
Q. And we've agreed to redact certain personal photographs which are not germane to anything we're doing today. But is that a copy of your Facebook page or part of your Facebook page?
A. It's general information on my Facebook page, yes.
Q. All right. I'm going to ask you just a few questions about this and a few questions about your background so I better understand where you're from and who you are. So where were you born?
A. Gainesville, Florida.
Q. Okay. Did you grow up in Gainesville?
A. For the most part, yes.
Q. So you might have moved away here or there, but you attended high school in Gainesville; is that correct?
A. Yes.
Q. Okay. And you graduated in 2002; is that

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correct?
A. Yes.
Q. All right. And what additional education did you pursue?
A. I went to Santa Fe College in Gainesville and obtained an associate's degree as a paralegal.
Q. Is Santa Fe a two- or four-year program?
A. Then, it was a two-year.
Q. Did you obtain a two-year degree, an associate's degree?
A. Yes.
Q. And a paralegal certificate?
A. Yes.
Q. Do you still have the certificate with the State of Florida or some other governing body, or did you let it go? Let me start over again.
Did you actually attain a certification or a license from the State of Florida?
A. No.
Q. Okay. You just graduated with an associate's degree in paralegal?
A. Yes.
Q. Okay. When you were at Santa Fe College, did you take any banking or finance courses?
A. I don't recall.

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Q. Did you take any accounting courses?
A. I don't recall.
Q. Have you ever worked -- before you joined Wells Fargo Bank, did you work for a bank while you were in Santa Fe College, maybe as a teller or some sort of assistant?
A. No.
Q. Okay. Did you have any part-time employment while you were at Santa Fe College?
A. Yes.
Q. What did you do?
A. I -- the first three years I was a manager at Pizza Hut. My final year, I went to school full time, worked full time as a receptionist at a spa, and then worked part time at Pizza Hut.
Q. Okay. It was a two-year program, but you spread it out? In other words, you weren't a full-time student for the program?
A. Correct.
Q. Until the last semesters or so?
A. Correct.
Q. All right. Did you go straight from high school to Santa Fe College, or did you take a break between high school and enrolling there?
A. I went straight to college.

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Q. And you said you obtained an associate's degree in paralegal, correct?
A. Yes.
Q. Okay. When did you join Wells Fargo Bank?
A. July 3rd, 2006.
Q. Was it Wachovia Bank at the time, or was it a different bank?
A. It was Wachovia Bank.
Q. Okay. What was the entity within Wachovia that you worked for? Did you work for big Wachovia Bank, N.A.?
A. I initially started as a temp through their internal temp agency.
Q. Okay. What was the name of the internal temp agency? How was it denoted, or what was it called?
A. I believe it was First Place.
Q. How did you find the job? Were you recruited? Did you go to a job fair? Did you send resumes out? Did you interview?
A. My aunt worked for Wachovia, and she pointed me in the right direction.
Q. Okay. So you applied for a temp agency job?

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A. Yes.
Q. With -- within the bank?
A. Yes.
Q. Was that in Gainesville or here in the Jacksonville area?
A. Jacksonville.
Q. My understanding is y'all call this area the First Coast; is that right? Or what do you call this area of Florida?
A. Some people do call it the First Coast.
Q. Okay. What do you call it?
A. Jacksonville.
Q. The Jacksonville area. So you started working -- well, it might go all the way down to St. Augustine; that's including Jacksonville or Daytona.
A. Yes.
Q. Y'all laugh at me. So let me just repeat -- ask again.
Did you start in Gainesville, or you started up here in the Jacksonville area?
A. I started in Jacksonville.
Q. Okay. And what were your duties when you first started in 2006?
A. My first temp job, I was a receptionist.

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Q. Okay. And how long did you work as a receptionist?
A. I believe it was -- it was only two weeks.
Q. Okay. Then what did you do next?
A. Then I was an executive administrative assistant.
Q. And what division or branch was that?
A. I don't remember. It was in this building. I don't remember.
Q. In the building that we're in currently?
A. Yeah.
Q. Okay. Do you remember who you were working for or what they did?
A. I don't remember her name.
Q. That's fine.
A. I'm sorry.
Q. How many weeks or months did you do that?
A. That one, I believe was either three or four weeks.
Q. Okay. Why don't you run me through, then, what you did as a temp before you got a full-time position.
A. After the executive administrative assistant, I went to -- worked as an appraisal ops

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representative for Wachovia.
Q. What does an appraisal ops representative do?
A. I was basically the go-between between loan officers who would order an appraisal for a loan that was being originated and our appraisal vendors. So I would initiate the work with the appraisers and follow up with them to make sure it's completed on a timely basis.
Q. Okay. Then what next?
A. Then I moved over to the post foreclosure -- pre/post foreclosure department for Wachovia Bank.
Q. Were you still with the temp agency then, or were you now a full-time employee?
A. I was still with the temp agency.
Q. Okay.
A. And then --
Q. Was that your first experience with foreclosures?
A. Yes.
Q. Okay. How many weeks did you spend in that department as a temp?
A. That was February of 2007 through end of March or early April, and then I was hired full time

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as a foreclosure specialist.
Q. In April '07, roughly?
A. Yeah. Either late March, early April of '07.
Q. Sometime in that spring, you think?
A. Yes.
Q. What is a foreclosure specialist, or what did a foreclosure specialist do in 2007?
A. I would receive a foreclosure file. I would review it for accuracy. I would then refer it to an attorney to begin the legal process of the foreclosure.
Q. Did you receive files from certain states or a certain region, or it could be from all over?
A. In the beginning, I handled nonjudicial states.
Q. Okay. What's an example of a nonjudicial state?
A. Georgia, Texas, Tennessee, North Carolina.
Q. You might be reviewing files from all those states --
A. Yes.
Q. -- at your desk; is that correct?
A. Yes.

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Q. At any time thereafter in '07 or '08, did you begin to review files from South Carolina?
A. I started handling judicial files -- I believe it was late 2008.
Q. While you were still a foreclosure specialist?
A. At that point, I was a senior litigation foreclosure specialist.
Q. Okay. What is your understanding of the difference between a judicial and a nonjudicial state?
A. Basically, it's court process versus noncourt process.
Q. Okay. And then take me through the -- back in '07 and '08, the various, well, ranks and titles that you would have proceeded through as you went further and further into your job. So you started as a foreclosure specialist?
A. Yes.
Q. And then what would have been your next title?
A. In either April or May of 2008, I was promoted to foreclosure specialist II.
Q. What's the -- what's your understanding of a distinction or difference between a foreclosure

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specialist and a foreclosure specialist II?
A. I took on a more active role in assisting the newer employees, training, more projects.
Q. Would you consider it a quick promotion, or would you consider it sort of a standard promotion based on the time you had put in?
A. It was a quick promotion.
Q. Okay. What additional education did you get from Wachovia in order to be a foreclosure specialist or foreclosure specialist II?
A. There were various online courses that we took through the bank. I mean, I don't recall the names of them.
Q. Do you remember how many courses you would have taken in order to become a foreclosure specialist II? Was it one, two, three, four?
A. I don't -- there wasn't any -- I didn't have to take classes to be promoted. So there wasn't any, I guess --
Q. What were the classes for? Were they required to do the job, though? Or did you have to obtain them within a certain time frame in order to retain the job?
A. There were, you know, federally regulated classes that we have to take, like the Fair Debt

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Collections Practices Act. Classes on elder abuse and how to spot that, fraud, all kinds of --
Q. Would you take them at your desk in the office, or would you take them at home?
A. At my desk at the office.
Q. Okay. Would they generally last an hour or two hours? How long would, like, the Fair Debt Collection online class take back in '07 or '08?
A. I don't recall.
Q. Would it be about an hour or two, or it would be just like in the morning? Does that ring a bell?
A. I would say -- I mean, not more than an hour. I don't recall any class taking an enormous amount of time. I just don't recall exactly how long they took.
Q. Was there a written test? Was there any sort of follow-up with a live supervisor or a manager about what you learned?
A. There was a test at the end of the course, through the course.
Q. Was it a pass/fail, or was it a graded test?
A. It would have been graded.
Q. You don't remember any of the grades, though? Did you ace them all?
A. Yeah. You have to score above -- for most of those type courses, you have to score above an 85 or 90 percent in order to pass them.
Q. Fair enough. Okay. So you became a foreclosure specialist II, and then I think you told me that there was another title above that or maybe several. Can you just walk me through how you rose through the ranks?
A. Late 2008, I was promoted to the senior litigation foreclosure specialist.
Q. How old were you at that time?
A. 2008, late in the year, I would have been 24.
Q. Okay. And you would have been a full-time employee with the bank since -- for about a year and a half at that point?
A. Yes. Well, because I started as a temp, within --
Q. Oh, they counted that?
A. They count that, yes.
Q. To your seniority?
A. Yes.
Q. Okay. And what does a senior litigation foreclosure specialist do in addition to the other jobs you had? Is it more management? Is it more training? Or did you have a greater responsibility? Can you elaborate on that for me?
A. I handled the litigated foreclosure matters.
Q. So you would be dealing directly with counsel in various states?
A. Yes.
Q. And you would be making decisions on -- with the advice of counsel on whether to proceed or not proceed, things like that? Generally speaking. I'm not going to ask you about any specific matters. I just want to understand what your -- your broad kind of powers were, if that's fair.
A. With the advice of counsel and, depending on the situation, management.
Q. All right. You would make decisions on whether to settle or proceed based on the facts of the case?
A. Yes.
Q. Who would -- who were you working for at the time? Who was your direct supervisor?
A. Ken Tew.
Q. Okay. And how many senior litigation foreclosure specialists were there in the Jacksonville area working on the same kind of files you were?
A. Just me.
Q. Just you. Okay. How many people would have been in that department back in '08 working under Mr. Tew?
A. Probably 12 to 15 people.
Q. That would include temps and foreclosure specialists and admin assistants --
A. Yes.
Q. -- in addition -- were there any other managers?
A. Yes.
Q. Okay. Were you a manager as a senior litigation foreclosure specialist, or would you consider yourself one?
A. I was not at that time, no.
Q. Okay. And that was your only title at that time?
A. Yes.
Q. In -- what would the name of the department have been, the foreclosure department? Or what would -- did it have a special name at that time?
A. It was the foreclosure department.

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Q. Okay. How many foreclosure departments were there in the Wachovia system that you're aware of at the time? I mean, there's one here in Jacksonville. Did that cover a particular region? Were there others in the southeast? Can you elaborate on that for me?
A. Our division had two foreclosure departments, one in Jacksonville and one in Philly.
Q. Okay. And you said your division. What was the name of your division?
A. We handled home equity accounts.
Q. But did it have a special name, foreclosure home equity division? What -- what did you call it?
A. Foreclosure department.
Q. Okay. Home equity division?
A. We just fell under the home equity umbrella.
Q. Okay. Did you do all your training online here in Jacksonville, or did you ever attend workshops or conferences in person put on by the bank back in '07, '08?
A. It would have all been done online.
Q. Okay. Were you able to make decisions independently, or did you need to run everything by

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Mr. Tew or other managers?
A. It depended on the situation.
Q. Okay. What was your next title or position with the bank?
A. Foreclosure supervisor.
Q. Okay. What does a foreclosure supervisor do? And when would you have obtained that position?
A. That was -- I believe it was December of 2009. And I managed a team of foreclosure specialists.
Q. What would those duties entail in terms of management? Would you have any direct responsibility for working with lawyers, or were you just supervising the people directly under you and having them report to you?
A. I still handled probably 80 percent of the litigated foreclosure matters, as well as oversaw the work of a team. I think there was 12 team members.
Q. Why do you say 80 percent? Does that mean that 80 percent of the total that were in the department, you had some hand in, or 80 percent of your own work was devoted to that?
A. 80 percent of the total litigation matters within the department, I handled.

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Q. Okay. And so '09 was right kind of the teeth of the economic downturn, so the department would have had hundreds, thousands of foreclosures?
A. I -- I don't --
Q. Any way to quantify it at all?
A. I don't recall how many foreclosures we had at that time.
Q. Were you handling foreclosures out of South Carolina at that time?
A. Yes.
Q. As a -- as a supervisor?
A. Yes.
Q. How long did you hold the rank of supervisor?
A. May 31st, 2011.
Q. Okay. What were you promoted to then?
A. At the time, they called it research remediation analyst, I think.
Q. What is a research remediation analyst?
A. It's the same thing that I do now; we just had a title change. But I handle litigated foreclosure matters, attend personal appearances on behalf of the bank, review and execute legal documents and affidavits.
Q. Did you ever execute legal documents and

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affidavits on behalf of Wachovia Bank before May 31st, 2011?
A. Yes.
Q. Okay. Walk me through some of the kinds of documents that you would have executed on behalf of the bank during the time that you were a senior litigation foreclosure specialist, foreclosure specialist II, all the way up through a research remediation analyst. For example, a lost note affidavit?
A. Yes. I don't think I -- I don't recall executing anything when I was a foreclosure specialist II.
Q. Okay.
A. When I was a senior litigation foreclosure specialist, affidavits -- I think that was before we had to verify complaints in Florida. Judgment affidavits would have been the biggest, occasionally a lost note affidavit.
Q. Okay. How much of your time would have been spent, on a percentage basis, as a senior litigation foreclosure specialist doing legal document review and execution?
A. 15 to 20 percent, maybe.
Q. Okay. Did that workload increase when

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you became a foreclosure supervisor?
A. Yes.
Q. Same question. On a percentage basis, how much of your time as a foreclosure supervisor would you have spent in reviewing and executing legal documents on behalf of the bank?
A. Probably 40 percent.
Q. Were you working basically a 40-hour workweek or more?
A. More.
Q. More?
A. Yes.
Q. Then when you became a research remediation -- I'm sorry, what was the last part of that term?
A. Analyst.
Q. -- analyst -- I apologize -- how much of your time would have been spent, on a percentage basis, reviewing and executing legal documents?
A. It varied. We had -- initially, we had the foreclosure supervisors that were also reviewing and executing the documents. So in the beginning, I would say 30 to 40 percent. And then we completely took over that process, my group did, and it probably increased to 50 to 60 percent.

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Q. When you say your group, would that mean other research remediation analysts?
A. Correct.
Q. Okay. And did the research remediation analysts work in the same offices that you had previously worked in as you rose through the ranks, or did you have a new suite, new supervisor?. Tell me how that worked.
A. We -- there was two in my Jacksonville office; one, two, three -- three in Des Moines; and we had two in Beaverton, Oregon. But now there's only one.
Q. Okay. To your knowledge, were -- were those all the research remediation analysts for Wachovia at the time that you were one?
A. Other departments had them. I don't know how many there were, who they are.
Q. Same department name that we already went over, or did the department name change in 2011 when you became a research remediation analyst?
A. The foreclosure department.
Q. Foreclosure department. And who did you report to? Mr. Tew again or --
A. No. Initially, I reported to Mark Caruso.

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Q. And what was his title?
A. He was the loan administration manager. And then Laurie Saurensen.
Q. Did -- did Ms. Saurensen hold the same title as Mr. Caruso?
A. No. She was a step higher up on the ladder. I don't remember her title.
Q. Okay.
A. And then Ryan Hughes, and now Lisa Epperly.
Q. Okay. I think you told me earlier that there was some change in the organization of what a research remediation analyst did, or maybe a change in title. Can you walk me through that? You said you became a research remediation analyst on May 31st of 2011.
A. Yes.
Q. And what you told me that you were doing at first, maybe 30 to 40 percent of your job was legal document review and execution, correct?
A. Yes.
Q. What would have been -- the balance of your work have been, just generally speaking?
A. Litigation foreclosure matters.
Q. Okay. And some supervisory role at that

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point or no supervisory role?
A. No. I was the sole contributor.
Q. Okay. And then what was your salary at that time; do you remember?
A. Low 50s.
Q. Okay. Then take me through what happened next in terms of your -- your job, your career path.
A. They changed our title to bank officer at some point. I don't remember when. And then when it was -- late 2012, they changed our titles again to vice president loan documentation.
Q. Your title was bank officer?
A. Yes.
Q. And then it became vice president of loan documentation?
A. There's no of. It's just vice president loan documentation.
Q. No hyphen in there, either?
A. No.
Q. Okay. Did your duties change from what you did as a research remediation analyst to a bank officer?
A. No.
Q. Did your salary increase when you became a bank officer?

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A. No.
Q. Are you actually an officer of the bank as a bank officer?
A. Yes.
Q. What is your understanding of what a bank officer is compared to someone who is not a bank officer, but a full-time employee of the bank?
A. You're held a little bit to higher standards. You have more signing authority when it relates to certain documentations and settlements, those sorts of things.
Q. Can you give me an example?
A. I handle a lot of equitable subrogation cases. And being a bank officer, I'm able to execute the actual subordination agreement at the end of the settlement negotiations if that's the course that we're taking.
Q. But did your duties really change between what a research remediation analyst did and a bank officer did, or are they pretty much identical?
A. For how it relates to me, nothing really changed.
Q. Did you take any additional online courses when you became a bank officer in order to hold that title?

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A. I don't recall.
Q. Okay. Did you do any -- travel to any outside workshops, either here in Jacksonville or anywhere, in order to get more hands-on training to be a bank officer?
A. I don't think so, no.
Q. And did your compensation change when you became a bank officer, or did it remain the same?
A. It did not change.
Q. All right. And then at what time and point did you become vice president loan documentation?
A. It was late 2012.
Q. Okay. Same questions. Did your duties really change?
A. No.
Q. Did your compensation change --
A. No.
Q. -- as a result of being given a new title?
A. No.
Q. Did your department change? Did you get additional duties, or same thing you had been doing before?
A. Same thing.

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Q. You've walked me through maybe four supervisors. So the last person you named is your current supervisor?
A. Lisa Epperly, yes.
Q. Okay. Are you currently a vice president loan documentation?
A. Yes.
Q. Okay. What's your current salary, if I may ask?
A. 54- or 55-.
Q. Do you ever attend board meetings of the bank?
A. No.
Q. Do you speak with senior bank officers? President, chief operating officer, chief executive officer?
A. No.
Q. Do you know them?
A. No.
Q. Okay. Tell me about the merger between Wachovia Bank, N.A., and Wells Fargo Bank, N.A. What was your role in that merger?
A. My role pretty much just consisted of the foreclosure department at that time. I assisted in transition of our foreclosure files from the Wachovia

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systems to the Wells Fargo system. You know, we made sure all of the information transferred over correctly and --
Q. What was the effective date of the merger; do you remember?
A. March 20th, 2010.
Q. Okay. Who currently -- let me start over again.
What corporate entity is your actual employer?
A. Wells Fargo Bank.
Q. Okay. So your checks -- when you get a direct deposit confirm, it says Wells Fargo Bank, N.A.?
A. Yes.
Q. Okay. You don't work for a subsidiary or related entity, to your knowledge?
A. No.
Q. Okay. Sitting here today, are you able to tell me the general corporate structure of Wells Fargo Bank, N.A., in terms of its major divisions and what they do?
A. High level, yes.
Q. Walk me through that, then. What do you know?

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A. So the Wells Fargo Bank, N.A., is kind of --
Q. A holding company?
A. No. It's -- it's like an umbrella --
Q. Okay.
A. -- over everything. And then there's different divisions. There's home equity, home mortgage, financial, reverse, credit card.
Q. Is there a servicing loan?
A. Each division has their own servicing.
Q. Which division would you have fallen under at the time of the merger, to the best of your knowledge?
A. Home Equity.
Q. Okay. Do you still consider yourself part of that division?
A. Yes.
Q. Do you understand or do you have any knowledge, sitting here today, about whether or not any of those divisions have separate corporate identity from Wells Fargo Bank, N.A.?
A. I don't know.
Q. Okay. Have you ever testified in court before?
A. Yes.

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Q. Okay. How many times have you testified in court? Roughly. You don't have to be -- say that with a hundred percent certainty.
A. 75 to a hundred times.
Q. Mostly here in Florida, or all over the southeast, the country?
A. I handle essentially the entire East Coast.
Q. Okay. Have you testified in a court in South Carolina before?
A. No.
Q. Have you ever given a deposition before?
A. Yes.
Q. Okay. Same question. Roughly how many depositions have you given before?
A. 35 or 40, maybe more.
Q. Okay. To the best of your knowledge, have any been arising out of a South Carolina case?
A. Maybe a couple.
Q. Same general question with respect to a lost note affidavit. Sitting here today, can you give me your best understanding of how many lost note affidavits you've executed on behalf of Wachovia and/or Wells Fargo Bank?
A. I would say less than 15.

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Q. So it's not an everyday occurrence?
A. No.
Q. Okay. Do you recall what title you held when you executed your first lost note affidavit?
A. No.
Q. It might have been as a foreclosure manager or a foreclosure supervisor, or do you think you were already a research remediation analyst?
A. I don't recall.
Q. Okay. Would you consider a lost note affidavit to be a more complicated legal document than some of the other legal documents you do? How would you rank it in terms of time and complication put into it?
A. Time, it -- it does take more time. So if you're basing it off of that, I would say out of a 10-point scale, it's a 7 or an 8.
Q. How important do you take your duties when you execute those? Are you very serious --
A. It's --
Q. -- about your work?
A. It's extremely important.
Q. To you, personally?
A. Yes.
Q. Not just to the fact that you're a bank

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officer, but you take it personally when you do it, correct?
A. Yes.
MR. VARNADO: Okay. Why don't we take a very short break and --
THE WITNESS: Okay.
MR. VARNADO: -- we'll continue in a moment.
THE VIDEOGRAPHER: We're off the record at -- we're off the record at 10:42 a.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 10:50 a.m.
BY MR. VARNADO:
Q. Ms. Thomas, we took a short break, and now we're back on the record.
And we're going to wrap up sort of your -- your background information. I'm going to take you back to May 31st, 2011, when you became a research remediation analyst. Had there been a shake-up in Wachovia? Had there been layoffs or firings around that time in your department, to your -- best of your recollection?
A. Not to my recollection, no.
Q. Do you recall having to apply for that

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position, or was it just a new title or a promotion given to you at that time?
A. I did have to apply for it, but it was a promotion.
Q. You consider it a promotion from your previous title?
A. Yes.
Q. Okay. Did you take additional coursework in accounting or bookkeeping in order to be eligible for or hold the research remediation analyst position?
A. Not that I recall.
Q. Would you consider yourself trained in accounting or bookkeeping?
A. No, not officially.
Q. How strong are your math skills, would you say, on a scale of 1 to 10 compared to your peers?
A. Compared to my peers?
Q. I mean, your peers generally.
A. An 8 or a 9.
Q. Okay. Did you take math classes at Santa Fe College?
A. Yes.
Q. Okay. What level of mathematics were you

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taking, including statistics?
A. I did not take statistics.
Q. Okay.
A. Wow. Algebra II or III.
Q. Okay. Sitting here today, do you know how to calculate interest payments on a note? For example, if I presented you with a note, would you be able to calculate the interest on it if I gave you a calculator?
A. I could calculate the per diem.
Q. Okay.
A. As far as calculating what the actual payment would be, I don't think so.
Q. What would you rely on in order to do that, what the payoff would be or the payments would be?
A. I would rely on our system of record.
Q. Okay. Is there some sort of system, proprietary or not, that you use in order to calculate interest rates, per diems, and payoffs?
A. Our system of record, SHAW.
Q. SHAW. Okay. What does SHAW stand for?
A. I don't know.
Q. Is it all caps, S-H-A-W?
A. Yes.

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Q. Okay. Is it part of your desktop? When you log on in the morning, do you log into SHAW as a registered user?
A. Yes.
Q. Did you have training on SHAW, or is it something they just kind of threw you in the deep end of the pool and let you figure out for yourself?
A. We did have training, yes.
Q. Okay. And how much training would you have had on it? Would it have been a workshop? Would it have been a day? Would it have been online courses? Help me out with that.
A. There was online courses as well as workshops.
Q. Okay. Does SHAW have some sort of internal calculator that you plug information in, or does SHAW calculate based on individual account numbers; so that if you pulled up an individual account, SHAW would calculate what the per diem would be, what the interest rate would be, and what the payoff would be?
A. You put in the account number, and it pulls up essentially all of the servicing information for that loan. So the current interest rate, transaction history, payoffs.

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Q. Who inputs into SHAW? Do you input into SHAW?
A. I do not, no.
Q. Take me through -- was SHAW online, for lack of a better term, when you became a foreclosure specialist in '06 or '08, whenever it was? I'm sorry, forgive me.
A. SHAW is a Wells Fargo system.
Q. Okay. Did Wachovia have a similar system?
A. Yes.
Q. What was its name?
A. For loans, we used ACLS. For lines of credit, we used FDR.
Q. Okay. When you were a foreclosure specialist, was part of your duties data entry into those Wachovia systems?
A. No.
Q. Okay. As you've moved up the ladder, you don't do data entry into the old Wachovia system or the Wells Fargo SHAW, correct?
A. No.
Q. Okay. Are SHAW and the old Wachovia systems fairly the same, or was it -- do they handshake together or a totally new kind of training

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situation?
A. They are pretty similar.
Q. Okay. Who handles the data input into those; do you know?
A. Somebody in servicing.
Q. Okay. Is that somebody in your department? Would you even -- if I asked you, Do you know anyone who does data input into SHAW or data input into the old Wachovia system, would you be able to say, I know Karen does it or Jim does it?
A. No.
Q. Okay. You don't talk to those people, correct?
A. It's possible that I have talked to them.
Q. Okay. But you don't intentionally have any sort of -- during your day-to-day job duties in any of those positions you've held, deal with the data entry people, correct?
A. Correct.
Q. Okay. So -- but you do agree with me that someone has to enter the data into SHAW?
A. Yes.
Q. Okay. We just don't know exactly who, and we know it's not you. Fair?
A. Correct.

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Q. All right. So in terms of -- I asked you if you were able to calculate an interest payment. You said you think you could do -- or you feel pretty confident you could do a per diem. You would still allow SHAW to do that at this time; is that correct?
A. Correct.
Q. Okay. You wouldn't -- would you independently verify it or independently do the math, or would you go, This is what SHAW says; this is what it is?
A. I have had no reason to independently verify it.
MR. VARNADO: Okay. We're going to mark as Exhibit No. 2 a lost note affidavit.
(Exhibit-2 marked for identification.)
MS. BAKER: Mr. Varnado, do you have an extra copy for me?
MR. VARNADO: I do.
MS. BAKER: I know I've seen it, but just so I can --
BY MR. VARNADO:
Q. Ms. Thomas, I'm going to hand you what we've marked for identification as Exhibit No. 2. And I'm going to represent to you that is a lost note affidavit. And it's my understanding that this is

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the lost note affidavit which was executed by you, and I'm going to ask you about it. And appended to it is a negotiable promissory note, which I understand was supposed to be part of it.
And I'm going to draw your attention along the bottom right-hand corner to some little numbers and letters at the bottom, WF 219. And I'm going to represent to you that those are what lawyers call Bates stamps so that we can keep track of documents -- who has produced what document. And then I'm going to further represent to you that this is a document which I received from counsel for Wells Fargo.
Have you had an opportunity to look it over, or do you need some time to look it over, or are you ready to answer some questions about this document, Exhibit No. 2?
A. I have reviewed it.
Q. Okay. Great. And did you review it before the deposition today?
A. Yes.
Q. Okay. So let me ask you just a few things just generally right off the bat. Is this a lost note affidavit, this Exhibit No. 2, a document which you signed?

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A. Yes.
Q. Okay. On the bottom of Page WF 222 -- I'm sorry, or at the top, rather -- is that your signature, Tracy M. Thomas?
A. Yes.
Q. Is that your understanding of the date, February 7th, 2012, that you executed this document?
A. Yes.
Q. Okay. Who is Sarah Taylor?
A. She works in the foreclosure department.
Q. Okay. Did -- what was her title at that time, 2012?
A. I don't recall.
Q. Was she an admin assistant? Was she a foreclosure specialist?
A. I think she was in our property preservation area.
Q. Notary public?
A. Yes.
Q. Okay. Did you sign this in front of her?
A. Yes.
Q. Okay. I notice that you didn't initial the pages, which is fine. But is this still, to the best of your knowledge, a true and accurate copy of the lost note affidavit you executed on February the

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7th, 2012?
A. It does appear to be.
Q. Okay. And for any reason you see something that's wrong with it, will you please let me know?
A. Yes.
Q. Okay. Is that your handwriting, too, on the first page, WF 219?
A. Yes.
Q. Personally appeared before me Tracy M. Thomas, that's your handwriting, correct?
A. Yes.
Q. And then in numbered Paragraph 1, the words bank officer, is that your handwriting?
A. Yes.
Q. Okay. Now, would you agree with me that this is a form document?
MS. BAKER: Object to form.
Q. You can go ahead and answer.
A. What do you mean by form?
Q. Is it a form that you would keep on your computer or be able to access to -- in a bank of forms that Wells Fargo would have had available to someone of your rank at this time, a bank officer?
A. Yes.

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Q. Okay. Great. I'm going to also ask you to draw your attention to the other sort of small numbers on the bottom left of the page. Do you know what those numbers mean? They read double 06, dash, all caps, NTL, dash V1?
A. Yes.
Q. What does that stand for, Ms. Thomas, to the best of your knowledge?
A. That's the -- the version of the form.
Q. So does NTL mean national?
A. Yes.
Q. So this is national form, number double 06, version one?
A. Yes.
Q. Okay. All right. If you were going to do a lost note affidavit in another matter -- so I'm just asking you hypothetically now -- around the same time -- January, February, March of 2012 -- what would be the first thing you -- you would do? Would you pull up this form, double 06 NTL-V1 on your computer?
A. Yes.
Q. Okay. With the blanks already in there?
A. Yes.
Q. Okay. Who would put the caption at the

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top of the document? Obviously, this is -- this particular Exhibit No. 2 has a caption for Charleston County. Every state has a little different caption sort of way of doing things. Do you do that, or does an assistant do that for you?
A. I believe our attorney would do that.
Q. Okay. And would this be, to the best of your knowledge, an internal Wells Fargo attorney or your outside counsel?
A. Outside counsel.
Q. Okay. Would outside counsel have a copy of this form, or would you send the form to outside counsel?
MS. BAKER: I'm going to object in -- in terms of, you know, privileged communications --
MR. VARNADO: Well, I mean --
MS. BAKER: -- with attorney-client --
MR. VARNADO: -- this is nothing about communication. I want to know where did the document originate and who sent it to who. So that's all I'm asking.
BY MR. VARNADO:
Q. Did you originate the document?
MS. BAKER: If she knows, she can answer, yeah.

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MR. VARNADO: Okay.
Q. And we can be specific to Exhibit No. 2, as well. Did you pull this up and send it to your outside counsel?
A. Yes.
Q. Okay. And to your understanding -- and I'm only limiting this question to the caption -- outside counsel would have put the caption in; is that correct?
A. Yes.
Q. Someone in their office. Okay.
All right. I'm going to ask you just quickly to look over the numbered paragraph -- I mean, numbered Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9. Which of those are standard to the form, double 0 zero -- double 06, rather, NTL-V1. And we can just go through them one at a time. Is No. 1 standard to the form?
A. Yes.
Q. Okay. Is No. 2 standard to the form?
A. Yes.
Q. Is No. 3 standard to the form?
A. Yes.
Q. Okay. And I'm not trying to ask a trick question. Obviously, there's -- there's

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account-specific information in there, but the format is standard. And then you would input -- someone would input the numbers; is that correct?
A. Yes.
Q. All right. Let's continue. Is Paragraph 4 standard to the form?
A. Yes.
Q. Okay. Again, it has account-specific information or information specific to a recorded instrument. But that would be inputted on a standard form, correct?
A. Yes.
Q. Is 5 standard?
A. Yes.
Q. What is standard about 6, if anything? Or do you have -- are there different options, and you choose which one is applicable? Or is it always the same?
A. Always the same.
Q. Always the same, okay.
7, that references the South Carolina code. Is that a standard form? I mean, a standard -- is that a standard paragraph of this lost note affidavit form?
A. I don't recall.

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Q. Okay. Fair enough. 8, same question?
A. Yes.
Q. 9?
A. Yes.
Q. Let me ask you about 9. As a bank officer in 2012, are you authorized to indemnify and hold the bank harmless, as you've attested to in this affidavit?
A. Yes.
Q. You have that authority?
A. Yes.
Q. Okay.
THE VIDEOGRAPHER: Five minutes on the tape.
MR. VARNADO: Okay.
BY MR. VARNADO:
Q. With respect to numbered Paragraph No. 1, why -- in the personally appeared before me line, why is that left blank? Why don't you just write -- type your name in?
A. It's my personal preference. I like to write my name.
Q. Okay. Is that -- I mean, were you the only one handling the Bentrim v. Wells Fargo matter as a bank officer in February 2012, or was anyone

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else working on it in the department?
A. I don't know.
Q. How many people in your department in February 2012 would have been authorized to sign this lost note affidavit?
A. If I remember correctly, it would have been just the people in my specific group. So the --
Q. The three people --
A. There was seven, I believe.
Q. Seven who were -- held the title bank officer?
A. Yes.
Q. Okay. And who were y'all working under in February of 2012, again?
A. I don't remember.
Q. Okay. If you had been out of town, busy on another matter, or on vacation, could somebody else have signed this as the bank officer in your group, one or the other seven people?
A. Yes.
Q. Okay. So you -- the way y'all handle files is not specific to one person. In other words, if you were on a family vacation or you were ill or you were away on other duties, it wouldn't be waiting for you on your desk; somebody else could have pick

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it up?
A. It depends on how urgent.
Q. Okay. Is that one of the reasons why it was left blank in terms of name and office that you held or title that you held in Paragraph No. 1?
A. No.
Q. Okay. That's just your personal preference?
A. Yes.
Q. Do other people do it differently, or do they all do it the same?
A. I don't know if -- I don't look at other people's work.
Q. Do you remember the names of the other bank officers in your group in 2012? Can you run down their names? And then we'll take a break for the tape.
A. Jodie Hawkins --
Q. Okay.
A. -- Ann Christman, Ryan Janke, Eric Hawbacker, Katie Abney. And I think Stephanie Bradford was with us at that point.
Q. Were you all equal --
A. Yes.
Q. -- or were some of you more senior than

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others in terms of duties, responsibilities, administrative oversight?
A. We were equal.
MR. VARNADO: Okay. Why don't we go ahead and take that break for the videographer to change the tape.
THE WITNESS: Okay.
THE VIDEOGRAPHER: We're off the record at 11:08 a.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 11:10 a.m.
BY MR. VARNADO:
Q. We took another short break to change the videotape. Are you ready to continue, Ms. Thomas?
A. Yes.
Q. Okay. Do you have a copy of the lost note affidavit in front of you, Exhibit 2?
A. I do.
Q. Okay. Can you read into the record, at a relatively slow pace so our reporter can take it down, Paragraph No. 2 of the lost note affidavit?
A. I am authorized to make this affidavit on behalf of Wells Fargo. In the regular performance of my job functions, I am familiar with business records

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maintained by Wells Fargo for the purpose of servicing mortgage loans, and I have personal knowledge of the operation of and the circumstances surrounding the preparation, maintenance and retrieval of records in Wells Fargo's recordkeeping system. These records, which include data compilations, electronically imaged documents and others are made at or near the time by or from information provided by persons with knowledge of the activity and transactions reflected in such records, and are kept in the course of business activity conducted regularly by Wells Fargo. It is the regular practice of Wells Fargo's mortgage servicing business to make these records. In connection with making this affidavit, I have acquired personal knowledge of the matters stated herein by personally examining these business records.
Q. Ms. Thomas, having just read Paragraph No. 2 into the record and having had an opportunity to review the lost note affidavit in preparation for today, do you still consider what you've averred to in Paragraph No. 2 to be correct and true to your knowledge?
A. Yes.
Q. Okay. You told me earlier that Paragraph

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2 was a standard part of the lost note affidavit of this national form. Do you make any additions or edits or amendments to it, to Paragraph No. 2?
A. No.
Q. Okay. Have you ever made any amendments, edits, or additions to Paragraph No. 2 when you've signed other lost note affidavits?
A. Not that I recall.
Q. And did you do it in this case, to the best of your knowledge?
A. No.
Q. Okay. All right. You said you're authorized to make this affidavit on behalf of Wells Fargo; is that -- who authorized you? Or is that just part of your job duties?
A. That is part of my job duties.
Q. In other words, did somebody actually hand this to you and say, I need you to do this, Tracy?
A. Not to my recollection.
Q. Okay. And you say you're familiar with the business records maintained by Wells Fargo for the purpose of servicing mortgage loans; is that correct?
A. Yes.

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Q. Okay. Generally, what kind of records are you looking at? SHAW? We've already discussed that. That's an --
A. Yes.
Q. -- online recordkeeping system, correct?
A. Yes.
Q. Okay. And what other records would you look at, in addition to SHAW, that you reference here, the business records maintained by Wells Fargo for the purpose of servicing mortgage loans?
A. CLIPR.
Q. Okay. What is CLIPR?
A. CLIPR would be our document imaging system.
Q. Okay. What would be in CLIPR?
A. Any -- you know, a copy of the note, a copy of the mortgage, correspondence to and from the customer, copies of default letters, origination documents like the HUD-1. A variety of -- of documents.
Q. Somebody scans all the stuff in?
A. Yes.
Q. Okay. And, again, that's not your task or responsibility?
A. No.

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Q. Or is it your office's responsibility or your department's responsibility to feed documents into CLIPR?
A. It is not.
Q. And they are -- they are scanned images, like a PDF or similar? In other words, you can bring them up, they're not illegible, this can view them and print them if you need to; is that correct?
A. Correct.
Q. Okay. Later on in the affidavit, you talk about the foreclosure file and the origination file. Are those documents which we -- would be maintained on CLIPR?
A. Some, yes.
Q. Some would and some would be paper?
A. Some would be in --
Q. Or paper only? I'm sorry.
A. Some would be in other systems.
Q. Okay. What other systems besides SHAW and CLIPR are we talking about in terms of computer electronic data management?
A. Mobius would hold origination records.
Q. Are there others besides CLIPR, Mobius and SHAW?
A. ECaR.

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Q. Ecard or ECaR?
A. ECaR, E-C-a-R.
Q. Okay. What is that?
A. The collection system.
Q. Any others, ma'am?
A. I think that's it.
Q. Would there be paper files only that you would review in addition -- as part of the documents that you're familiar with and that you reference here in Paragraph No. 2?
A. No.
Q. Okay. Does Wells Fargo try to be paperless or try to put as much on the computer system as possible?
A. Yes.
Q. Okay. In terms of these kinds of documents that you've talked -- talked to me about?
A. Yes.
Q. Okay. All right. I'm going to hand you some documents we're going to mark as exhibits, and I'm going to ask you if these are part of the documents or systems which you've just testified about. If you'll bear with me one second, we'll put stickers on them. I'm going to hand to you what's marked -- been marked as Exhibit No. 3, which I believe is called a transaction statement. I'm going to hand you also what I'm going to mark as Exhibit No. 4. If you'll bear with me; it's a little loose.
(Exhibit-3 and Exhibit-4 marked for identification.)
MR. VARNADO: We'll need to make a copy of this at the break.
Ms. Baker, I'm going to hand it to you first so you can see it.
MS. BAKER: Okay.
MR. VARNADO: All right. Now, I'm going to hand the witness Exhibit No. 4.
BY MR. VARNADO:
Q. And I'm going to represent to you that I think it's just called a History Card Report; is that correct?
A. Yes.
Q. Okay. And, finally, Exhibit No. 5. That's 5. Have you had an opportunity to look over Exhibits 3, 4 and 5?
(Exhibit-5 marked for identification.)
A. Yes.
Q. Do you recognize these documents or types of documents?
A. Yes.

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Q. Okay. Exhibit No. 3, what is that again? What would you call that?
A. The payment history.
Q. Okay. Where would that be located in terms of electronically?
A. The transaction record, it is within SHAW, and then CRIS pulls that into this document.
Q. CRIS, is that different from CLIPR? Did I --
A. Yes.
Q. What is CRIS? I'm sorry if I didn't write that down. What is that?
A. That's the system that generates this payment history.
Q. Okay. So CRISPT talks to SHAW; you can go back and forth between SHAW and CRISPT?
A. CRIS, C-R-I-S.
Q. C-R-I-S. Okay. Does CRIS only handle transaction histories --
A. That's --
Q. -- or does it handle other things, too?
A. That's all that I've used it for.
Q. Okay. That's all you would use it for in terms of the lost note affidavit?
A. Yes.

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Q. Okay. What is Exhibit No. 4? What would you call that?
A. This looks like a rough transaction record from ACLS.
Q. What's ACLS, ma'am?
A. It was the Wachovia servicing system for loans.
Q. Okay. Can you still access that?
A. I cannot, no.
Q. Could you have accessed it back in February of 2012 when you did a lost note affidavit?
A. No.
Q. Okay. I'm going to show you -- I'm also going to point out to you that it bears the Bates stamps which show that it was provided by your attorney. Okay. Tell me -- Exhibit No. 5, what is that?
A. This appears to be the -- a SHAW screen print for Mr. Bentrim's loan.
Q. Okay. Would that be the typical screen shot that would come up when you pulled up Mr. Bentrim's loan on SHAW? Would that be the front page, or is that like an internal page you have to navigate to get to?
A. This would be Page No. 1.

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Q. Okay. And how many pages would be behind it in SHAW, not counting CRIS?
A. I don't know. There's many pages in SHAW.
Q. Do you usually use Page No. 1 when you do a lost note affidavit?
A. Yes.
Q. Okay. Do you only use Page No. 1, or do you delve further into SHAW?
A. For this loan, there was two pages that I used.
Q. What was the other SHAW page that you would have used?
A. It was either the third or fourth page in SHAW.
Q. What would you call that third or fourth page, or what information would be on it that you would have accessed in order to do this lost note affidavit?
A. It would have showed the -- what the payment amount was at the time that I was executing the affidavit.
Q. You would have looked at it solely for that purpose?
A. Yes.

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Q. Okay. There appears to be handwritten notes on there. Just by quickly looking at it, it appears to be in a woman's handwriting. Do you know whose handwriting that is? Is it yours, to the best of your recollection? Or can you tell one way or the other?
A. It's not my handwriting.
Q. Do you see the numbers at the top of the page? Is that your handwriting?
A. No.
Q. Okay. Would it have been a common practice and habit in the foreclosure department to print off a screen shot of SHAW and then maybe make some handwritten notes on it?
A. It's possible. But I didn't do this, so I don't know what the reasoning for.
Q. You didn't do those -- those notes, you mean?
A. Exactly.
Q. Okay. Do you believe that to be an accurate screen shot of SHAW as of the date, which I believe is sometime in 2011?
A. It appears to be April 20th, 2011.
Q. So we know that your lost note affidavit was executed in 2012, correct?

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A. Yes.
Q. And you would have pulled up SHAW in order to do the lost note affidavit, correct?
A. Correct.
Q. You would not have relied on a 2011 SHAW screen?
A. No.
Q. Okay. Would you have -- would -- in the course of doing a normal lost note affidavit, your habit and custom, would you have printed the SHAW screen, or would you have just looked at it as part of doing a lost note affidavit?
A. We didn't used to print. Now, we do.
Q. Okay. When did the printing and hard copy retention start? Was that after February 2012?
A. Yes.
Q. Was it in 2013? Was it late 2012? Do you remember when that happened --
A. I believe it was --
Q. -- custom started?
A. I believe it was mid 2012, mid to late 2012.
Q. Do you believe that somewhere in your office or somewhere in the foreclosure department there is a little paper file on the Bentrim lost note

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affidavit?
A. Not to my knowledge.
Q. Okay. If you did a lost note affidavit now, in your current capacity, would you keep a little paper file on it?
A. No.
Q. Where would -- you said you would do printouts. Where would the printouts go? Would you throw them away when you were done, or would you save them someplace? I'm just curious.
A. Now, they would all be -- the screen shots would be scanned into CLIPR along with the executed lost note affidavit.
Q. Okay. But you don't believe CLIPR would have a screen shot scanned into it from February of 2012?
A. It does not.
Q. Okay. And would you have any reason -- can you -- sitting here today, can you think of a -- a reason within the realm of possibility or rationality why there would be a screen shot from February 20, 2011, saved and produced by your attorneys in this case?
A. Like I said, I -- I didn't do that screen shot, so I -- I don't know. I don't want to

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speculate.
Q. That's fine. Did you know anything about Mr. Bentrim's account specifically before you did this lost note affidavit?
A. Excuse me. I believe the first time I was brought into this account was when I was asked to do the lost note affidavit.
Q. Okay. It's not a very super common name. You don't recall Bentrim before? I know you do a lot of foreclosures, but I'm just asking you what you remember.
A. I -- I -- I don't recall.
Q. So you think the first time you dealt with it was to do this lost note affidavit?
A. Correct.
Q. Okay. Are you aware that there had been prior litigation between Wachovia and Mr. Bentrim even before this lawsuit? Did you have any knowledge of that?
A. Then, I was aware that there was a lawsuit. I -- I don't believe I was aware of the specifics.
Q. Okay. Before we go on a break, Paragraph No. 3 contains --
A. Are we back to the --

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Q. We're on the back of the lost note affidavit, which is Exhibit No. 2. Paragraph No. 3 goes from WF 219 to WF 220. Okay. It starts with certain things which are specific to this particular account, the first one being maker of the note, payee of the note. Then it goes on to the next page, original principal amount, and so on, all the way down to late fees. Do you see that?
A. Yes.
Q. On the -- all the information is in bold.
A. Yes.
Q. Okay. Who would have actually typed that into the form?
A. Me.
Q. Okay. How long would it take you to do a lost note affidavit? You said it was -- in terms of time, it was pretty time intensive compared to some of your other legal documents?
A. Yes.
Q. Generally, how long would it take to do a lost note affidavit, start to finish, in 2012?
A. It just depends on how much research is involved. I don't recall how long it took me to do this one. I know that I would have reached out to several people within different departments of the

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bank.
Q. For what reason, if you had all -- access to all those different programs, software systems?
A. To attempt to track down the original note.
Q. Okay. Well, we're going to come back to that in a little bit. In terms of the documentation in Paragraph No. 3 of Exhibit 2, would all of that have come from the software platforms that you had access to as a bank officer?
A. Yes. It would have come from a copy of the note as well as SHAW.
Q. Would it have come from the other exhibits that I showed you, Exhibits 3 and 4?
A. No.
Q. You wouldn't have used those?
A. No.
Q. Wouldn't have accessed those?
A. No.
Q. Same question I asked you earlier about your job, but with respect to an LNA, a lost note affidavit, how important is it to you personally to make sure it's accurate and correct?
A. Very important.
Q. Okay. Is there any sort of procedure or

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protocols written down in the bank of, This is how we do lost note affidavits at Wells Fargo?
A. There is a high level procedure, I believe.
Q. That you have access to?
A. Yes.
Q. That you can draw up online?
A. Yes.
Q. When I mean draw up, I mean, in other words, you can access online?
A. Yes.
Q. Okay. Was that part of your training, or do they give you manuals, and go, Tracy, we want you to take to these manuals home and make sure you familiarize yourself with them or read them at work? How did that work?
A. We had high level training on the documents and where to find the documents and the procedures.
Q. Was that online, or was that done face to face in terms of the department?
A. Both.
Q. The department head would bring you in and go, Okay. We're going have a working lunch. We're going to deal with how we do lost note

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affidavits?
A. No.
Q. How would -- or how would you do it? Would it be a workshop? Would it be -- how would it do face to face?
A. There was a workshop.
Q. Okay. It would be held in the office?
A. Yes.
Q. Everyone would attend?
A. Yes.
Q. Was there a written test on it, or was it just, Learn this information and follow it?
A. I don't remember.
Q. When you bring up the internal high level procedure to do a lost note affidavit, does it contain a checklist?
A. I don't remember.
Q. Do you do -- do you have your own checklist? Do you have like Tracy Thomas's own internal checklist of, When I do a lost note affidavit, I'm going to hit all these steps?
A. No.
MR. VARNADO: Okay. Let's take that break.
THE WITNESS: Okay.

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THE VIDEOGRAPHER: We're off the record at 11:30 a.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 12:08 p.m.
BY MR. VARNADO:
Q. Ms. Thomas, we're back after our lunch break. And are you ready to proceed?
A. I am.
Q. Okay. Great. We were on Exhibit No. 2, and I had a couple of questions I just wanted to cover before we sort of kind of get back into the -- the heart of the document.
But in Paragraph No. 2, the lost note affidavit, in -- four sentences down or four lines down, I think it commences, quote, I have personal knowledge of the operation and the circumstances surrounding the preparation, maintenance and retrieval of records in Wells Fargo's recordkeeping system.
Can you tell me or elaborate on what that means?
A. That means that I have knowledge about how the systems are updated. Meaning they are input by the person with most knowledge of that specific

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transaction, record at the time or at about the time that the transaction or record occurred.
Q. When you say input, what is that? I thought there would be just technical people who would just feed documents into the system. Is that not -- is that in -- is that an incorrect understanding?
A. Yes. You know, when it comes to the transaction records, somebody has to, you know, key that that payment was received and how much it was for and that sort of thing.
Q. They do that into SHAW?
A. Yes.
Q. Who is allowed to access SHAW in February 2012?
A. A bunch of people.
Q. Okay. If you were a foreclosure specialist first grade, junior level, in Wells Fargo in 2012 working under you, would you have been able to -- or someone of your rank now, would you have been able to access SHAW?
A. Yes.
Q. Okay. Can people change things on SHAW?
A. Not everybody.
Q. Who has the ability to edit SHAW and make

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corrections or change datapoints of an entry and things like that?
A. I don't -- I don't know anybody specific.
Q. Well, you -- you were, quote/unquote, bank officer, which was the title that came after -- I lost my note. Forgive me. What was the first title? It was like --
A. Research remediation analyst.
Q. Yes, research remediation analyst.
A. Yes.
Q. What was -- is a research remediation analyst or a bank officer or vice president -- vice president documentation -- loan documentation entitled and able to make changes to the SHAW system?
A. No.
Q. Okay. Who -- who would be -- in your table of organization, in your chain of authority, would be able to do that?
A. I don't know.
Q. Okay. If you saw something wrong with SHAW, Wait a second. There's something -- somebody inputted something wrong, this is incorrect. This cannot be correct, what would be the procedure?
A. I would contact the servicing research group.

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Q. Okay. Who was the servicing research group? What is their role and capacity in your professional life here at Wells Fargo?
A. They perform research on accounts to ensure accuracy if something is brought to their attention.
Q. Is that -- is accuracy your job? Or your job is merely if you notice that something is wrong, you'll tell them, but you're not looking for things to be wrong?
A. Correct.
Q. Okay. So that when you pull up a SHAW screen, you're not going to go double-check the numbers unless something immediately jumps out at you as incorrect?
A. Correct.
Q. Okay. When you do a lost note affidavit, you're not going to go double-check the primary source documents?
A. Correct.
Q. You're going to look at SHAW?
A. Correct.
Q. Okay. So has it ever come to pass where you saw something wrong in SHAW, and be like, Hey, this isn't right? This interest rate isn't right or

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this payoff isn't right; this isn't -- something is wrong?
A. Yes.
Q. How many times has that happened, to the best of your knowledge, since you've been senior enough to be able to understand and deal with that?
A. Less than ten.
Q. Did anything jump out at you in the screen shot of SHAW for Bentrim?
A. No.
Q. Okay. You said you've done around -- I think I'm saying this accurately -- about 14 or 15 lost note affidavits during the course of your time with Wachovia and Wells Fargo?
A. I believe I said less than 15.
Q. Okay. That's fine. Would you say less than 15, more than 10? I'm not trying to trap you or anything. I just want to know generally how many you think you've done.
A. I don't know.
Q. Okay.
A. I know it hasn't been -- it -- very few and far between.
Q. Okay. In terms of where Mr. Bentrim's lost note affidavit has fallen on that range, is it

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towards the back side? Is it in the middle? Is it one of the first ones you did?
A. Back side.
Q. Okay. How many have you done, do you think, since February of 2012, just sitting here today?
A. Maybe one.
Q. Okay. You said it's time intensive. How much of the time is spent looking for the lost note and how much of the time is actually spent in preparing the document?
A. The majority of the time would be spent looking for the lost note.
Q. Okay. With respect to the Bentrim lost note, Exhibit 2, or any lost note that you would do, say if one was asked to be done tomorrow, how much time do you think it would take? Let me ask this question this way. If a relatively new supervisor came and said, Ms. Thomas, I want you to do a lost note affidavit, can you ballpark for me how long you think it's going to take to look for the note and then do the document, because we need it to be done expeditiously, what would you tell that person?
A. It could take anywhere from a couple of hours to a couple of days.

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Q. Okay. Do you remember for Mr. Bentrim's lost note affidavit, whether it took a couple of days, a day, less than a day?
A. I don't recall.
Q. Okay. Maybe as we go through the note, we can maybe refresh your recollection a little bit about what you did.
MR. VARNADO: Thank you so much.
THE WITNESS: This is the original.
MR. VARNADO: Yeah. Jana, that's Exhibit No. 4. Thank you.
BY MR. VARNADO:
Q. About CRIS, the C-R-I-S system, do you have the authority as a bank officer to access CRIS?
A. Yes.
Q. Do you have the authority to make changes in CRIS?
A. I don't know.
Q. Do you think that you could go in and go, I know something is right -- or something is wrong, rather, I'm going to change it?
A. I don't think so. I've never tried.
Q. If you saw something wrong in CRIS, would you change it yourself, or would you go to a supervisor?

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A. I would escalate it.
Q. In other words, you would kick it up to a more senior level supervisor to ask permission to do it?
A. To get guidance on how to proceed with it.
Q. Have you ever done any edits on CRIS before?
A. No.
Q. Okay. Same thing with ACLS. That was -- ACLS was what Wells Fargo uses SHAW for. That was what Wachovia used; is that correct?
A. Yes.
Q. Okay. You were probably more familiar with ACLS than SHAW, at least during the transition time; is that fair?
A. Yes.
Q. When did you stop using ACLS?
A. I don't recall the exact date. It would have been shortly after -- somewhere in June of 2010.
Q. Okay.
A. Shortly thereafter.
Q. By the end of the summer of 2010, you're not using ACLS anymore?
A. That sounds about right.

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Q. Any of the Wachovia people?
A. I don't know. All I can testify is to me personally.
Q. Okay. I'm going to ask you, do you have any knowledge of you or anyone else in your department continuing to use ACLS after June of 2010?
A. After June of 2010, yes. It was --
Q. And I mean inputting data, reviewing it, using it for things. Go ahead and finish, please.
A. It was, I believe, decommissioned a couple of months after June of 2010.
Q. Do you use it -- I think I asked you earlier, would you have accessed ACLS for Mr. Bentrim's lost note affidavit?
A. No.
Q. Do you know what the employee [sic] identification number is of Wells Fargo Bank, N.A.?
A. Not off the top of my head.
Q. Do you know any associated employer identification numbers or EINs?
A. Not off the top of my head.
Q. Do you think you have it somewhere back at your office?
A. It's possible.
Q. Okay. All right. Let's look again at

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the lost note affidavit, Exhibit No. 2. And look at Paragraph No. 3. The maker of the note, first thing. Do you know what a maker is?
A. The originator.
Q. Okay. Not the -- not the person making the promise, but you think it's the -- the bank that created the note?
A. Yes.
Q. Okay. The payee of the note, First Union National Bank?
A. Yes.
Q. Okay. Where would the original principal amount have come from?
A. The note.
Q. Would you have double-checked that against SHAW?
A. No.
Q. Okay. So when you do the -- when you're doing the lost note affidavit, the affidavit itself -- not the search process, but the data input -- for those first three things we've just gone over, you would have looked at the note that would have been captured in the CLIPR?
A. Yes.
Q. Okay. So you have a copy in CLIPR that

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you're looking at signed, correct?
A. Yes.
Q. And is that what has been attached to Exhibit No. 2?
A. Yes.
Q. Okay. Let me ask you a question about Exhibit No. 2 and the -- your -- the exhibit. I think it was supposed to be numbered, but the numbering didn't get on it. It's supposed to be Exhibit A, but I don't think an exhibit sticker was put on it. If you look in Paragraph No. 8 of the lost note affidavit, it references it will be an Exhibit A. Is that supposed to be Exhibit A?
A. Yes.
Q. That's your intention to have it been Exhibit A?
A. Yes.
Q. That's okay. I don't label exhibits. Sometimes too. Everyone does.
All right. Tell me what -- I'm going to point to the document. What are this row of numbers that almost looks like a supermarket checkout thing? What's going on there?
A. That is the visit number.
Q. What is a visit number?

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A. It's the number associated to the loan at origination. So it's basically before a loan number is assigned.
Q. Okay. And what's a reference number? Is that the same thing as a visit number?
A. Yes.
Q. Okay. So they really -- they're the identical numbers, but just with the bar code, correct?
A. Correct.
Q. Okay. And then -- what about account number, why is that blank?
A. I don't know.
Q. Okay. And then for the book and page number of where it would be recorded in a deeds office, that's in the upper left-hand corner of the note?
A. No.
Q. What is that? Book 41, Location LN TP 39, what do those numbers mean?
A. I don't know.
Q. You don't create this document?
A. No.
Q. You just look at it. Fair enough?
A. Yes.

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Q. Okay. Do you know what it means to -- promise to pay -- and this is -- in this section, First Union -- First Union National Bank, an order. Do you know what the order means?
A. No.
Q. Do you know whether or not this document is considered a security or not?
A. It's a security instrument.
Q. Okay. You do know that from your training?
A. Yes.
Q. Okay. And what is the -- what is the initial interest rate on this document, which is supposed to be Exhibit A to your lost note affidavit, which is Exhibit 2?
A. 4.99 percent.
Q. Okay. Go back to -- please, ma'am, to the -- Page WF 220 of the lost note affidavit. Okay. So as we continue to go down this list, which you testified earlier you inputted, how much of this comes directly from the note that would have been scanned to CLIPR? Term of Note, 30 years?
A. Yes.
Q. First Payment, date of note, May 11, 2002?

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A. Yes.
Q. Date of default of the note?
A. No.
Q. That would come from SHAW?
A. Yes.
Q. Would you look any other place than SHAW to get that information?
A. No.
Q. Original interest rate, we just covered that, correct?
A. Yes.
Q. Original monthly payment, does that come from the note?
A. I believe so. Yes.
Q. Current interest rate, does that come from SHAW?
A. Yes.
Q. Would you look any other place in SHAW for that?
A. No.
Q. Would there be any need to go back and recalculate it or double-check it?
A. No.
Q. Why do you put so much reliance on SHAW?
A. It's the system of record.

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Q. Are there errors in SHAW ever?
A. Very few.
Q. Do you trust SHAW that the information is absolutely correct?
A. Yes.
Q. Why do you have that trust in a -- in the recordkeeping system? You don't input it and you rarely see errors and you don't -- you don't have the authority to change it. Tell me why you put so much trust and confidence in SHAW.
A. Because we have many checks and balances within the bank to ensure that errors are few and far between.
Q. Tell me what checks and balances that you are personally aware of that are in the bank to keep errors few and far between.
A. So with a legal document --
Q. Right.
A. -- I receive it. I review it. If it's true and correct and accurate, I'll execute it. It's then sent to a second level review process, who then also does a complete review and ensures everything that is within the document as well as the information that I've input in the document is true and accurate.

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Q. This is within the bank?
A. This is within the bank.
Q. So it's your testimony that -- it's your understanding and it's the custom of the bank and habit and recordkeeping that your lost note affidavit would have been reviewed by somebody else --
A. Yes.
Q. -- over you?
A. Yes.
Q. Do you know who that person would have been, him or her?
A. It was Deborah Fortunato.
Q. And who is Ms. Fortunato?
A. I don't know her exact title.
Q. Okay. And does she work in the department with you?
A. She works in the foreclosure department, but she's separate from my group.
Q. So she's independently directed, in other words? I think you used the term earlier about --
A. Sole contributor.
Q. -- a sole contributor. Is she a sole contributor, to your knowledge?
A. To my knowledge, yes.
Q. Who does she report to, to your knowledge? Or who would she have reported to back in February 2012, to your knowledge?
A. I believe she reported to Mark Caruso.
Q. Okay. And he was at one time a direct supervisor over you?
A. Yes.
Q. Okay. So have you talked to Ms. Fortunato about your testimony today?
A. No.
Q. Have you, at any time between the making of Mr. Bentrim's note -- lost note affidavit, rather, and today, have you talked to her about this lost note affidavit?
A. No.
Q. How do you know that she was the one who did the additional review?
A. She was the one that reviewed my documents at the time, and there's a note in the ECaR collection system showing that she reviewed it.
Q. Okay. When you were getting ready for today -- I don't want to know anything that you and Ms. Baker talked about or you and anyone at the Womble, Carlyle firm, nor do I want to know anything about what you talked to with any internal counsel for Wells Fargo. I'm interested in what documents

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you looked at and what you did. So I know you would have looked at the lost note affidavit, certainly, correct?
A. Yes.
Q. All right. Would you have looked at CRIS?
A. Yes.
Q. Would have you looked at ECaR?
A. Yes.
Q. Would you have looked at -- and I guess -- if I could take a quick break. Why would you have looked at CRIS if you didn't look at it to do the lost note affidavit?
A. It's just a habit at this point to pull a payment history.
Q. Okay. Did you notice any errors or discrepancies between CRIS and SHAW?
A. No.
Q. And then you said you looked at ECaR?
A. Yes.
Q. And ECaR would have shown that Ms. Fortunato did an examination of it?
A. Yes.
Q. Did -- did it say like what day -- was it within a couple of days of your doing the lost note

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affidavit?
A. I believe it was either the same day or the day after.
Q. What other checks and balances, to use your phrase, do you know about being in the bank to make sure that you are able to depend on SHAW?
A. When judgment figures are calculated or payoff quotes by our demand team within foreclosure, in order to ensure that the late charges listed within SHAW are correct, they go back and review the transaction history to ensure that the late charges listed in the payoff quote in SHAW are correct.
Q. Would that be ACLS or CRIS that they would go back to look at or both?
A. SHAW. And sometimes CRIS, depending on how far default the loan is.
Q. And who within that team would be the one doing late charges?
A. Whoever is preparing the quote.
Q. Can we agree that the note establishes the relationship between the bank and the customer as a general proposition?
MS. BAKER: I object to form.
Q. You can answer.
A. The note is the actual binding document

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financially for -- between the customer and the bank.
Q. Do you agree with me that the customer is not responsible for fees, charges, interests that are not contained within the four corners of the note? Do you agree with that?
A. Yes.
Q. Okay. Do you agree that SHAW and CRIS should -- let me start over again.
Do you agree that the SHAW software platform and the CRIS software platform should be in harmony and agree on important matters such as current interest rate, initial interest rate, initial amount of loan, balance, default date, things of that nature?
A. Yes.
Q. Okay. Do you believe that if they do not agree, then there's a major issue?
A. Yes.
Q. Do you agree that if you describe a note -- if you describe a customer amount and it is not consistent with the original note, then you are not describing the original note, but a different product?
A. Can you -- I don't understand what the question was.

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Q. That's fine.
A. I'm sorry.
Q. Hypothetically, if you're describing a series of amounts due, default date, interest, all the things that go into preparing, for example, a lost note affidavit, and the information is not consistent with the note, then that means that the customer has a product which is not the note?
MS. BAKER: I'm going to object to form.
Q. You can answer.
A. I still -- I'm -- I'm sorry, I don't -- I don't get what you're saying.
Q. Let me come at it this way. Is it your responsibility to accurately describe all the terms of the note when you do a lost note affidavit?
A. Yes.
Q. Okay. So that if you do a lost note affidavit and it does not correlate to the original promissory note, that means you're not describing the original promissory note?
MS. BAKER: Object to form.
A. That would mean I would put incorrect information in the lost note affidavit.
Q. Do you believe that that's happened in this case?

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A. No.
Q. Okay. Let's just finish in Paragraph No. 3 on Wells Fargo, Page 220. The current interest rate from SHAW, correct?
A. Yes.
Q. Current monthly payment from SHAW, correct?
A. Yes.
Q. You did not independently calculate that on your desktop or using a calculator; you took it directly from SHAW?
A. Yes.
Q. Okay. Maturity date, from the note or from SHAW?
A. From the note.
Q. Principal balance at default?
A. SHAW.
Q. Late fees?
A. SHAW.
Q. Did you go back and determine whether or not late fees were part of the promissory note?
A. I don't recall if I did that or not.
Q. You would have taken it from SHAW, though?
A. I would have taken the amount from SHAW,

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yes.
Q. Okay. How did you know the recording date and the -- in Paragraph 4, and the book and page number in Charleston County, South Carolina, for the recordation of the lien instrument?
A. I would have reviewed a copy of the recorded mortgage held in CLIPR.
MR. VARNADO: Okay. We're going to go ahead and mark as an exhibit, Exhibit 6. I've got to find an empty place to put the sticker.
(Exhibit-6 marked for identification.)
BY MR. VARNADO:
Q. I'm going to hand you Exhibit No. 6. That's another copy of the --
MR. VARNADO: Sorry, Jana.
MS. BAKER: That's all right.
BY MR. VARNADO:
Q. -- promissory note. And I'm going to point out to you this signature which is next to the exhibit sticker. The exhibit sticker is the only place I could find that was empty enough to put one on.
A. Yes.
Q. And it says, Bridget Legare. That's a South Carolina name. Do you know who Bridget Legare

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is?
A. No.
Q. Is this certification -- if you don't mind, if I could take the exhibit real quick, I'll read it into the record.
I certify this to be a true copy. Can you read that?
A. Yes.
Q. Okay. Is that a Wachovia or First Union way of doing things, to your knowledge? Do you know who Bridget Legare is?
A. I have no idea. I've never done that process.
Q. Have you ever seen this sort of stamp before?
A. Yes.
Q. Where would you see -- where would you run across a stamp like that? In CLIPR?
A. In CLIPR, yes.
Q. Would it be part of the closing package?
A. I have no idea.
Q. If I represented to you that Ms. Legare was an assistant who worked in the office of the closing attorney, Rob Donaldson, would that help you to determine kind of where you -- where this document

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would have come from scanned into CLIPR?
A. Like I said, I -- I -- I don't know.
Q. Okay. When you prepared for the deposition today, do you recall seeing that particular version of the promissory note, Exhibit 6, with this Bridget Legare signature?
A. Yes.
Q. You did see that?
A. Yes.
Q. Okay. Have you asked anybody who it is, other than your attorneys?
A. No.
Q. Okay. Do you think it's germane or relevant?
A. No.
Q. Is that anything having to do with Wells Fargo or Wachovia, the Bridget Legare signature?
A. I have no idea.
Q. No idea. Would you rely on this document at all to be a true copy?
A. I don't know. I've never had to.
Q. Okay. That's not a version that you attached to the lost note affidavit, Exhibit 2, correct?
A. That's correct.

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Q. Okay. Fair enough. Let's move on to -- quickly to Paragraph 5 of the lost note affidavit, which is Exhibit 2, Wells Fargo 220. All right. Can you -- again, in a measured voice, please read Paragraph 5 into the record.
A. The subject note has been inadvertently lost, misplaced or destroyed. Affiant states that Wells Fargo Bank, N.A., a 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. Wells Fargo has not lost or destroyed the original note in bad faith.
Q. All right. Earlier I think I asked you whether or not this was part of the standard double 06 NTL-V1 form.
A. Yes.
Q. Do you believe that Paragraph 5 was correct and true at the time you executed the lost note affidavit?
A. Yes, I do.
Q. Do you believe it to be true and correct, sitting here today, having just reread it?
A. Yes.
Q. Okay. Did you make any amendment or

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change to Paragraph No. 5?
A. No.
Q. Okay. Paragraph No. 5 came to you as is, and you agreed with it?
A. Yes.
Q. Okay. Is there a different form if the note came from Wachovia, but not from First Union?
A. Let me back up.
I would have added this language right here, Wells Fargo Bank, as successor by merger to Wachovia Bank, successor by merger to First Union National Bank.
Q. So is that when -- if I was going to see a blank copy of double 06 NTL-V1, would there be a blank there or a space to add?
A. There would be a blank line there, yes.
Q. Okay. So you did put -- you did input that?
A. Yes.
Q. Okay.
A. I apologize.
Q. That's okay. No other -- you didn't change any other or make any other edits to it, though, to your knowledge?
A. No.

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Q. All right. And you wouldn't typically, right?
A. No.
Q. All right. Let me make sure I understand. Are you stating that when you signed this affidavit and -- that means you know this and you're agreeing with it of your own personal knowledge; we agree on that, right?
A. Yes.
Q. That the reason why Wells Fargo is entitled to enforce the note is that it is the successor to First Union National Bank, which was the original payee of the note, correct?
A. Yes.
Q. All right. Earlier in the affidavit -- I've asked you this a couple of times -- you said you're familiar with the process of how documents are prepared and kept. Walk me through what would have happened with a First Union note from Charleston, South Carolina, executed in 2001, 2002. Where would it have gone and been stored?
A. It would have gone to, I believe, the vault in Roanoke, Virginia.
Q. Okay. What is the name of the facility in Roanoke, Virginia? I'm generally aware that there

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was a big Wachovia center in Roanoke.
A. Yes.
Q. Okay. Your understanding, was that a First -- do you know what would happen with a First Union note, originally?
A. First Union essentially acquired Wachovia, but took the name of Wachovia. So the First --
Q. Right. They merged into Wachovia?
A. Yes.
Q. First Union was the bigger bank?
A. Yes. So First Union sites would have stayed.
Q. Okay. Is it your understanding that First Union had the Roanoke, Virginia, site?
A. Yes.
Q. Okay. So is that where the vault is?
A. Yes.
Q. Describe for me the vault.
A. I've never seen it.
Q. Never been in it?
A. No.
Q. Never been to it?
A. No.
Q. Never took you on a tour when you were up -- have you ever been to Roanoke?

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A. No.
Q. Not for any -- no -- no training, no nothing?
A. No.
Q. Okay. Do you know what the procedure is to log in a document into the vault in Roanoke?
A. Yes.
Q. What is the procedure to log in a document into the vault in Roanoke?
A. They receive the document. It's then bar-coded along with the loan number on the bar code. It's scanned -- the bar code is scanned into their -- I don't know what it's called. They have some tracking system. A copy is then scanned into the imaging system --
Q. Which has become CLIPR?
A. Which has -- correct. And it's placed in a folder. That folder is bar coded, as well and scanned, and then placed in the vault.
Q. How do you know this without having been to Roanoke or seen the vault? Was it part of training?
A. Yes.
Q. Okay. So part of the training might

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actually have been a video showing this or text, This is what we do. Is that how you know that?
A. It would have been through conversations with managers in the area.
Q. On the phone?
A. Yes.
Q. Okay. Was it just out of curiosity, or is it part of your training?
A. Both.
Q. Okay. So you think a 2002 note would have gone to Roanoke?
A. Yes.
Q. It would have been logged in in a system that you told me?
A. Yes.
Q. Were there any -- is there a vault in Jacksonville?
A. No.
Q. Is there a vault in a little town in South Carolina called Fort Mill? Or as we say in South Carolina, Fort Mill.
A. I have no idea.
Q. Okay. Are you aware of any other vaults on the East Coast where Wells Fargo documents from predecessor banks would be kept?

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A. No.
Q. Is Roanoke it? Is there -- how about the whole country? I'm just -- how many vaults are there that Wells Fargo maintains? I know originally there were California banks, one in -- out west somewhere.
A. Home Equity now has two vaults for the original Wachovia and predecessors to Wachovia, is held in Roanoke, and all original Wells Fargo and Wells Fargo predecessors is held somewhere else. Minnesota, maybe.
Q. Okay.
THE VIDEOGRAPHER: You have five minutes on your tape.
BY MR. VARNADO:
Q. All right. Let me ask you this. Turn to your Exhibit A to the lost note affidavit. Now, you're certifying in the lost note affidavit that Exhibit A is a true and accurate copy of the note, correct?
A. Yes.
Q. Okay. Where is the bar code for the vault?
A. It's usually the fifth page. I don't know what happened to the fifth page.
Q. What's the fifth page?

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A. There would be a -- a bar code with -- the loan number on the bottom with a bar code on it.
Q. Okay. Tell me what it would look like.
A. Just a blank page with a bar code on it.
Q. How big would the bar code be? Would it take up the whole bottom of the page?
A. It's normally at the top.
Q. Is it at the top of the first page, or is it at the top of the fifth page?
A. Fifth page.
Q. Okay. Do you know from your own training or own intellectual curiosity being satisfied, how they would -- would it be on the back of the fifth page? In other words, they would keep the document upside down so the bar code -- the physical bar code would be on the back? Or would it be -- if you opened the document up like a book, it would be on the top behind the next page bar code?
A. It would be at the top of the front of the fifth page or the -- the last page of the document.
Q. Do you believe that you included a fifth page with your lost note affidavit?
A. I don't know.
Q. Sitting here today, do you have any

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recollection of that?
A. I don't recall.
Q. Would you have intentionally omitted a fifth page if you had a fifth page?
A. No.
Q. When you looked at CLIPR, did you see a fifth page on the -- when you were getting ready for today, a fifth page to the promissory note?
A. I don't recall.
Q. Isn't that something that you would be interested in?
A. No.
Q. Is the document an accurate copy for purposes of a lost note affidavit, if it does not contain the fifth page?
A. I believe so.
Q. Why?
A. Because the fifth page has nothing to do with the note; it's for our tracking purposes only.
Q. Okay. Don't you think it's important, though, if it's a lost note, that you would want to see the fifth page, which would say where the tracking was in order to determine whether or not you had tracked it down?
A. The fifth -- I mean, it would not tell me

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anything.
Q. It wouldn't?
A. No.
Q. Okay. So you -- but you -- when you prepared the lost note affidavit, obviously you didn't travel to Roanoke; you've never been there before --
A. Yes.
Q. -- right?
You didn't look at the vault log, did you?
A. I personally did not, no.
MR. VARNADO: Okay. All right. We're going to come back to that after we change the tape. We're going to take two minutes, if that's okay.
THE VIDEOGRAPHER: We're off the record at 12:45 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 12:53 p.m.
BY MR. VARNADO:
Q. Ms. Thomas, we're back after a short break. And we are on Exhibit 2, numbered paragraph 5, Page WF 220. I want to make sure I understand a

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couple of things. As Paragraph 5 is written, it's my understanding that what you are saying is -- and correct me if I'm wrong -- that Wells Fargo is entitled to enforce the Bentrim promissory note because it is the successor in interest by merger to First Union National Bank; is that correct?
A. Yes.
Q. And that it is entitled to enforce the note because First Union would have transferred the note to Wachovia and Wachovia would have transferred the note to Wells Fargo; is that correct?
A. The ownership would have transferred, yes.
Q. Okay. And that actually dovetails into my next question, which is, Wells Fargo Bank owns the note by virtue of those transfers, not because it obtained it through an independent source, correct?
A. Correct.
Q. And when you mean that, quote, has not pledged, assigned, transferred, hypothecated or otherwise disposed of the note, unquote, that means that Wells Fargo has always owned it; is that correct?
A. Yes.
Q. All right. You're aware that in the

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banking industry it was not uncommon or unusual for notes to be sold to outside trusts or purchasers, sometimes called a REMIC? Are you familiar with those terms?
A. Yes.
Q. Okay. Did that happen to this note?
A. No.
Q. How are you sure of that?
A. It would have -- it would not have been in SHAW if that was the case.
Q. Okay. It would not have been in the SHAW system?
A. Correct.
Q. The SHAW system would have said it was sold?
A. Yes.
Q. Would the ACLS system had done the same thing?
A. Yes.
Q. Okay. And if this note ever existed, it would have been in the vault in Roanoke, correct?
A. At one time, yes.
Q. The original -- the actual original note, correct?
A. Yes.

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Q. And no one can just waltz into Roanoke and check it out?
A. No.
Q. There's all sorts of safety procedures and logging and all that sort of thing?
A. Yes.
Q. The whole -- do you know the name of the team that does that?
A. Somebody in servicing.
Q. You could not drive to Roanoke, fly to Roanoke, walk into the unit there, flash your credentials, and get that original note?
A. No.
Q. It would have been impossible?
A. Yes.
Q. Okay. Only they are allowed to check it in and out, that document team?
A. From my knowledge, that's correct.
Q. Okay. Are you aware that the original note has been found?
A. Yes.
Q. Okay. Do you have any knowledge of how the original note was found?
A. The comment in the system just says that it was received in the vault from an attorney.

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Q. Okay. What system are you referring to? ECaR --
A. Yes.
Q. -- or SHAW?
A. ECaR.
Q. And remind me again, what is ECaR?
A. The collections system.
Q. And that it was received from an attorney?
A. Yes.
Q. Does it say which attorney?
A. No.
Q. Does it say when -- what date?
A. February 27th, 2012.
Q. Are you -- I know you don't have ECaR in front of you, but I'm asking you to testify, is that the date that you remember on the ECaR system? Because I've never seen ECaR before.
A. Yes.
Q. February 27, 2012?
A. Yes.
Q. Which is the -- 20 days after you signed the lost note affidavit?
A. Yes.
Q. Which -- how would an attorney have the

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original note ten years after it was executed?
A. I -- it may have been sent to the foreclosure attorney. I mean, I don't know. I didn't send it to the foreclosure attorney.
Q. You've already told me you didn't really have any recollection of this loan or any litigation associated thereto until you were asked -- tasked with doing the lost note affidavit, correct?
A. Correct.
Q. Wouldn't it have been logged out of the Roanoke vault if it went to the -- whatever attorney?
A. It was logged out of the vault on February 26, 2009, by Brandie Hunt.
Q. Okay. Who is Brandie Hunt?
A. She was a foreclosure specialist.
Q. Did she work with you?
A. Not directly.
Q. Okay. Brandy Hunt. Do you know Brandie Hunt?
A. Yes.
Q. I mean, did she work down here in Jacksonville?
A. Yes.
Q. Is she still employed with the bank?
A. As far as I know, yes.

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Q. Okay. Do you have any kind of connection with her professionally, socially, work in the same department now?
A. We worked in foreclosure together. There is no outside social relationship.
Q. Okay. That's fine. Do you know what her current title is?
A. No.
Q. She was a foreclosure specialist in 2009, right?
A. Yes.
Q. Do they still use the same nomenclature, a foreclosure specialist, foreclosure specialist II, senior litigation foreclosure specialist?
A. No.
Q. Is foreclosure specialist entry level, or is it -- you've been around for a while now, in 2009 at least?
A. That was an entry level.
Q. Okay. I remember you told me when you broke into full-time employ- -- employment with the bank, even though they gave you credit for the temp, that was actually your first job as foreclosure specialist. You were pretty green at that time, fair?

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A. Yes.
Q. Okay. So Ms. Hunt, she's an entry level, right? She's not even the next level up, right?
A. Correct.
Q. How did she sign it out? You told me that you couldn't go to Roanoke -- and you're a bank officer, you're a vice president. How did she get it out of the bank -- out of the vault?
A. She made a request.
Q. Okay. And maybe I asked the question wrong. I said could you waltz up there and get it, and you said no. Can you -- but could you actually send a request through channels and have it -- theoretically have gotten it?
A. Yes, if there's a business reason.
Q. Let me just ask you hypothetically. Tracy, we're asking you to do a lost note affidavit. As part of your process, Well, it's in the vault. They found it.
Okay. Well, the lawyers want to see it.
Okay. Well, I can send a request through channels to get it.
A. Yes.
Q. Do -- have you ever done that before?
A. Sent a request --

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Q. Yes, ma'am.
A. -- for the original note?
Q. Yes, ma'am.
A. Yes.
Q. Okay. Is it -- is that -- would you consider that fairly routine, not routine, pretty extraordinary?
A. Fairly routine.
Q. Okay. Does it have to be approved by someone of your level now?
A. For me, it doesn't. I don't know about the foreclosure specialists.
Q. Do any foreclosure specialists work under you, still?
A. No.
Q. Okay. But when you were a foreclosure supervisor, if one of your foreclosure specialists had come and said, Tracy, I would like to get a copy of the note, would you have been the one to tell them to -- they could do it or not to do it? Or would you have kicked it up to Mr. Caruso or somebody like that?
A. I don't recall the exact process. In 2009, it was different than it is now. I don't recall having to approve requests for original

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documents.
Q. Why did Tracy -- I'm sorry, why did -- who is the lady? We were just talking about her.
A. Brandie Hunt.
Q. Ms. Hunt. Why did Ms. Hunt sign the document out?
A. I don't know. I -- I didn't -- I wasn't there when she made the request. I wasn't involved in the account at that time. I can tell you that for judicial states, a lot of the judicial states do require the original note and mortgage --
Q. So it doesn't --
A. -- at the foreclosure hearing.
Q. I'm sorry. Have you finished? I'm sorry, I cut you off by accident.
A. The judicial states, most of them require the original note and mortgage at the foreclosure hearing.
Q. Okay.
A. That may have been why. But like I said, I wasn't there. So I don't know.
Q. So when you see Ms. Hunt as been noted to have logged it out, that doesn't necessarily make you go, My gosh, this is strange or unusual?
A. No.

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Q. It doesn't?
A. No.
Q. Okay. So it might have gone to a lawyer's office and then it was relogged back in?
A. Correct.
Q. Okay. Now, I need to make sure I understand this. My understanding is that the original at some point was at the Womble, Carlyle firm in Charleston, the actual original. Okay? When was it relogged into the vault, this note, that Ms. Hunt was the one who took it out?
A. February -- I'm sorry.
Q. Yeah, go ahead and finish.
A. February 27th, 2012.
Q. Okay. So was it relogged out again at the vault?
A. Yes.
Q. When was it relogged out of the vault following February 27, 2012?
A. I don't recall the exact date. I believe it was early 2013.
Q. Okay. And this -- all these records are on ECaR, right?
A. Yes.
Q. So if I could get screen shots of ECaR, I

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could see all this, right?
A. Yes.
Q. And who was the one who checked it out in 2013?
A. Sheila Sowers.
Q. And who is Sheila Sowers? And can you please spell her last name?
A. S-o-w-e-r-s.
Q. Okay. Who is -- who is she?
A. She is -- works for the executive office. I believe she was involved in this matter.
Q. What's her title?
A. I don't know.
Q. Why was she involved? Is she a lawyer, to your knowledge?
A. No.
Q. Is she an officer?
A. I don't know.
Q. Do you believe she's an admin or a --
A. She's not an admin. Similar to my -- to what I do.
Q. But she works in -- for the executive?
A. Executive office.
Q. What is the executive office? I know it's -- I know the bank is big. Just help me --

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what's the difference between an executive office and the foreclosure department?
A. They handle litigation, as well. It doesn't have to be foreclosure litigation, counterclaims --
Q. Is legal in the executive office?
A. No.
Q. Legal exists by itself --
A. Yes.
Q. -- to the best of your knowledge?
A. Yes.
Q. Okay. So Ms. Sowers works for the executive office, which means the office of the chief executive officer and all the other senior officers; is that fair?
A. No.
Q. Okay. Then why am I -- what is the executive office if it's not the head honcho's office?
A. They handle customer complaints --
Q. I gotcha. Okay.
A. -- that sort of thing, too.
Q. So it's not super high up?
A. No.
Q. Why would they be involved, when you were

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the one who did the lost note affidavit?
A. They were involved prior to my lost note affidavit.
Q. Then how did it land on your desk?
A. They don't execute documents.
Q. Okay. You execute documents?
A. Yes.
Q. Are you upset that this note actually wasn't lost, it was in a lawyer's office?
A. I'm happy that it was found.
Q. Okay. But does it upset you that you actually did a sworn statement and did all this work that it was lost, when it really wasn't lost?
A. It was lost at the time that I completed the affidavit.
Q. Okay. Well, let me ask you this. If you know that Ms. Hunt checked it out in '09, right?
A. Yes.
Q. And that's on ECaR?
A. Yes.
Q. That means that you would have known that when you did the lost note affidavit in February 2012?
MS. BAKER: I'm going to object to form.
Q. You can answer.

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A. Yes, I would have known that Brandy --
Q. Yeah. You told me that you checked ECaR as part of doing the lost note affidavit. You would have -- you would have known that Brandie Hunt checked it out, right?
A. Yes.
Q. Why is it not in your lost note affidavit?
A. It doesn't ask who was the last person that had it.
Q. Do you have faith in the accuracy of the logs?
A. Yes.
Q. Okay. And you know that -- from ECaR that she logged it out, correct, Ms. Hunt --
A. Yes.
Q. -- in 2009?
Did you -- as part of doing the lost note affidavit, did you contact Ms. Hunt?
A. Yes.
Q. And what did she say?
A. She didn't have it.
Q. But who did she give it to? Did you ask her?
A. She said she didn't recall.

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Q. And that was good enough for you?
A. Yeah, it was.
Q. And this is sworn -- this is sworn testimony that -- so that -- you were comfortable with that?
A. Yes.
Q. Did you investigate who were the attorneys working for Wachovia Bank in 2009 on this matter?
A. I don't recall if I did or not.
Q. Okay. Did you attempt to track down who counsel was at the time? We know South Carolina is a judicial state, correct?
A. Yes.
Q. We know -- you know from your own experience that in judicial states, sometimes the bank needs to transfer the original document from the vault through the bank to their attorneys to be held in trust on behalf of the bank for purposes of using it in court. Fair?
A. Yes.
Q. Okay. So did you call that -- did you try to find out who the attorneys were?
A. I -- I don't recall if I did or not.
Q. Brandy is a low level -- she's entry

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level. I mean, did you ask her, I want you to go back through your e-mails? Or I want to go to, you know, whoever central IT is and find out what e-mails Brandie Hunt sent in February of '09. Did you do that?

A. No.

Q. Okay. So this note really wasn't lost; it was with a lawyer for Wells Fargo?

MS. BAKER: I'm going to object to form.

Q. You can answer.

A. It was lost. The bank did not know where it was. I did not know where it was. I did a reasonable search and could not find it.

Q. Here in Paragraph 6, you say, in Subparagraph A, quote, Affiant -- that's you -- has personal knowledge that the original note has been lost and a good faith effort to search for it has been made in all files and records relating to this matter, close quote.

So we never looked for it in the lawyer's office?

A. Not that I recall, no.

Q. And if you were looking for one now, would you want to look in the lawyer's office?

A. Probably, yes.

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Q. Okay. If a new lost note affidavit request hit your desk now and you saw that a foreclosure specialist, entry level, had checked it out three years before, what would you do different?

A. It all depends on the circumstances. It really does.

Q. Okay. The following area -- this is Subparagraph B of Paragraph 6 of your lost note affidavit. The following areas were searched for the lost documents: Reviewed origination file. That's got to be CLIPR, right?

A. CLIPR and Mobius. Some would consider the -- the vault file part of the origination file, as well.

Q. Okay. Checked the vault?

A. Yes.

Q. You didn't check the vault; you had someone check the vault for you, right?

A. Correct.

Q. So you were -- that's not of your own firsthand personal knowledge?

A. I caused that to happen. So essentially, yes.

Q. But you were relying on someone to say, We checked, and it's not there?

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A. Yes.

Q. Okay. And you knew from ECaR that it had been checked out? You say you -- For the purposes of executing this affidavit on the 7th day of February 2012, I personally searched the foreclosure file. The original note was not in the foreclosure file. That's in Subparagraph B(III), or B(3) of Paragraph 6.

A. Yes.

Q. Why would you search the foreclosure file if you knew that Ms. Hunt had checked it out? Why would it be in the foreclosure file?

A. At this point, we no longer had paper foreclosure files.

Q. Uh-huh.

A. So the -- I mean, the only foreclosure file would be CLIPR or ECaR. And there's no way for an original note to be in either of those, so...

Q. Did you save any e-mails to CLIPR or ECaR from -- between you and Ms. Hunt saying, Hey, what happened? Where is this note?

A. I don't believe there were any e-mails.

Q. Did you go talk to her? Did you go, like, show up in her cubicle and say, Hey, I'm doing a lost note affidavit. You're the last one who

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signed it out three years ago. What happened to it?

A. Yeah. I mean, we worked on the same floor, so I would have just walked up to her and asked for her help.

Q. Was she -- was she still a foreclosure specialist, or she had been promoted?

A. I believe she was still in the foreclosure department.

Q. You think she had been promoted from an entry level to a more senior role?

A. I don't know what her title was at the time.

Q. I mean, you don't know what she does even now?

A. Now, I believe she's a supervisor in our recovery department.

Q. I see. Is this -- and I'm pointing to WF 221, Paragraph 6(b), Roman numeral III and IV, 3 and 4. Are those part of the form, or did you add those in yourself?

A. Those were part of the form, with the exception of the date. I would have filled that information in.

Q. Continue looking down on Subparagraphs C and D and E. With particular reference to E, how can

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you say that, quote, Affiant has personal knowledge of the time and manner of the loss at some unknown time from the date of the receipt thereof to the date of this affidavit, if you knew that Ms. Hunt had checked it out?

A. I still didn't know at what point she didn't have possession of it.

Q. Why would she have checked it out? To give to counsel in a judicial state?

A. Probably.

Q. Okay. Is there any other legitimate reason why a foreclosure specialist in 2009 would send a request through channels to check out the original note?

A. No.

Q. That's the only legitimate reason?

A. Yes.

Q. F, quote, Affiant has personal knowledge of the mortgage filed with the Court is a true and accurate copy of that lost or destroyed document. Well, it's not a mortgage, right? It's a note. See on Subparagraph F?

A. Yes.

Q. When Ms. Hunt asked for a document to be checked out, or anyone in the former department that

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you were a supervisor in or, you know, as an independent agent -- I forget the term you used.

A. Sole contributor.

Q. Sole contributor. I need to get more understanding of the lingo -- don't you have to say what the reason is why you're checking it out? Don't you have to give them a reason, I want this for X purpose?

A. Depending on the state. You know, if I were to go ask for the original note and mortgage for a nonjudicial --

Q. Uh-huh.

A. -- yes, I would need to give a pretty good reason of why I needed it. Because it's not something that happens in the normal course of business.

Q. Uh-huh.

A. For judicial states, no.

Q. Why did you not include anything in this affidavit about the fact that the last person to check it out was Ms. Hunt, and that the only legitimate reason she would have checked it out, considering the fact South Carolina is a judicial state, is to send to counsel?

MS. BAKER: I think I'm going to object.

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I think it's been asked and answered.

Q. You can go ahead and answer.

A. There's no spot within the affidavit to put that information.

Q. So you follow the form? You don't deviate from the form, correct?

A. Yes.

Q. All right. Paragraph 7, that's a lot of legalese. We know you're not a lawyer.

A. Correct.

Q. Right. So you just -- because that's the form, that's the -- that's what you signed, right?

MS. BAKER: I'm going to object to form of the question --

Q. You can answer.

MS. BAKER: -- if there's a question.

Q. You can answer.

A. Yes.

Q. Okay. I mean, you didn't -- were you the one who found the S.C. Code, Section 36-3-309?

A. No.

Q. Do you know who added that?

A. No.

Q. Do you know where it came from?

A. No.

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Q. Do you know -- are you familiar with the South Carolina version of the Uniform Commercial Code?

A. No.

Q. Okay. Are you familiar with what the universal -- the Uniform Commercial Code is? If I told you about that, or which articles might apply, would you know?

A. No.

Q. I'm not trying to patronize you. I'm just trying to ask.

A. No.

Q. Okay. Paragraph 8, we already covered. Paragraph 9, Wells Fargo agrees to indemnify and hold harmless Bentrim and his heirs, successors, and/or assigns, from and against any and all demands, actions, causes of actions, suits, controversies, claims, losses, liabilities, costs and expenses, parenthesis, including, comma, without limitation, comma, reasonable attorneys' fees and costs which may be suffered or incurred as a result of such breach or failure to deliver the original note.

Is that part of the form?

A. Yes.

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Q. You don't change that?
A. The only thing would have been adding Mr. Bentrim's name.
Q. Okay. Did you -- were you part of -- were you ever asked to help locate where the note was found when it was found?
A. Can you rephrase that?
Q. Yeah. I mean, we've already established that it was checked out in 2009. And it was rechecked into the vault 20 days after your lost note affidavit in 2012.
A. Yes.
Q. Okay. Did you know that it had been rechecked in?
A. When?
Q. In February 27 of 2012.
A. No.
Q. Why would you not know that information?
A. I was -- I had no dealings with this account until I was made aware by counsel that you wanted to take my deposition.
Q. Okay. So you wouldn't have followed up on it?
A. No.
Q. Okay. And who checked it back in?

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

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(Break taken)
THE VIDEOGRAPHER: We're back on the record at 1:26 p.m.
BY MR. VARNADO:
Q. Did you bring a copy of SHAW with you today or a SHAW print screen?
A. I brought copies of the two screens that I would have looked at.
Q. Do you have them with you?
A. Yes.
Q. May I see them, please?
MR. VARNADO: Let's go back off the record, then --
THE VIDEOGRAPHER: Okay.
MR. VARNADO: -- save video space.
THE VIDEOGRAPHER: We're off the record at 1:26 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at one 1:37 p.m.
BY MR. VARNADO:
Q. Ms. Thomas, we stepped out of the room to look at the documents that you brought with you today in response to the deposition notice, I assume. Can you describe for me, generally speaking, what the

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documents are and why you selected them to bring with you?
A. Well, you didn't -- I mean, you filed a notice of duces tecum --
Q. Uh-huh.
A. -- but you didn't attach anything on what to bring.
Q. Okay.
A. So I brought a payment history, note and mortgage, some of the closing documents, updated payoff figures good through today, and screen shots -- two screen shots of SHAW that I would have used in my review and execution of the lost note affidavit.
Q. You didn't bring the ECaR stuff, though?
A. No.
Q. Why not? You just didn't feel it was germane?
A. Well, you -- I mean, you didn't really give us anything --
Q. But you studied it pretty hard. You knew the dates and names of people, right?
A. Yes.
Q. So we could still get an ECaR printoff --
A. Sure. If you --

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

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

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A. I pulled these August 1st of 2013.
Q. Do you believe that anything substantive changed in SHAW between August 1st, 2013, and February 2012?
A. No.
Q. Okay. Where is the original loan amount?
A. Original amount, 182,7-.
Q. Okay. Where is the actual loan, the loan balance?
A. Current loan balance, 176- -- or $176,879.20.
Q. What is this $180,000 proceeds amount?
A. It's the amount financed.
Q. How can the amount financed be less than the original amount?
A. The original amount is including the $2700 loan origination fee.
Q. Don't you think that the 2700 origination fee was actually part of the 180- and not separate from?
A. It should not have been part of the 180-.
Q. But it -- okay. Now, you also brought the HUD, which back in those days only had two pages, right?
A. Yes.

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

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Q. Okay. So you've learned how to read them?
A. Yes.
Q. Where is the -- whose column is whose?
A. So this would be the borrower's column, and this would be the seller's.
Q. What's the loan amount?
A. $180,000.
Q. And you're referring to Page 2, right?
A. Yes.
Q. Then it has -- where is the 2700?
A. Paid from borrower's funds at settlement.
Q. So that means it was part of the one hundred -- the 180-, correct?
A. Yes.
Q. Okay. So right here, SHAW is wrong on Exhibit 7?
A. No.
Q. Why is SHAW not wrong? Why doesn't the HUD trump SHAW?
A. The HUD appears to be incorrect.
Q. The HUD was signed and accepted by everybody. It's the closing document. SHAW is incorrect, don't you agree?
MS. BAKER: Object to the form.

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MR. VARNADO: Thanks.
BY MR. VARNADO:
Q. You can answer.
A. We believe a mistake was made by the closing attorney and including the $2700 in -- for loan origination fee.
Q. How do you know that?
A. Because it shouldn't have been included.
Q. I know. But how do -- how do you know that? The first time you picked up this file was when you were asked to do the loan -- the lost note affidavit. Then the next time you picked the file up was when you were notified that I was seeking to take your deposition. How do you know that the closing attorney messed up?
A. We -- I discussed the account with our research group.
Q. Okay. Who did you discuss it with at research?
A. Darlene Lella.
Q. Okay. And who was Ms. Lella? What did she do at the research group?
A. I don't know what her exact title is, but she works in the servicing research group.
Q. So even though the HUD shows that the 2700 on Page 2 of the HUD was paid out of the borrower's share of the 180-, y'all just consider that incorrect, and, therefore, you're going with what you put in SHAW; Is that fair?
A. I go by what is in SHAW, correct.
Q. Okay. Even when SHAW disagrees with the HUD-1, that doesn't matter?
MS. BAKER: Same objection.
Q. You can answer.
A. I did not see the HUD when I executed the lost note affidavit.
Q. I thought it was part of CLIPR?
A. It is.
Q. And you said you looked at the CLIPR stuff as part of that.
A. Yes.
Q. But you didn't look at the HUD --
A. I --
Q. -- you didn't study it?
A. No, I did not study the HUD.
Q. Okay. I'm going to mark Exhibit No. 10, the First Union adjustable rate loan information statement.
(Exhibit-10 marked for identification.)
A. Yes.

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

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stamp on the bottom --
A. Yes.
Q. -- right?
So you really didn't download that one from CLIPR, because that one doesn't have a Page 5, does it?
A. It -- I did not personally pull this one, no.
Q. So that's not -- that's not the real CLIPR version of the promissory note?
A. I don't -- I don't know.
Q. Okay. When you were getting ready for today and you looked at CLIPR, did you see Page 5 on the CLIPR version?
A. I don't recall if I did or not?
Q. Wouldn't that be important to you? Because you know that that's something that's supposed to be there?
MS. BAKER: Asked -- objection. Asked and answered.
MR. VARNADO: You know you're not supposed to coach the witness, so --
MS. BAKER: I'm not coaching.
MR. VARNADO: -- just object to the form of the question, please.

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

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

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

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charge --
Q. Okay.
A. -- 120 per year.
Q. All right. Which one should we make 14, the First Union document?
A. Sure.
(Exhibit-14 marked for identification.)
Q. What's this?
A. That's the itemization of amount financed.
Q. Now, on Exhibit No. 14, I'm going to again point out to you that it says the amount financed is $180,000. That's -- and that is a bank document prepared by First Union for 180,000. But that is inconsistent with SHAW. Would you agree with --
A. No. It's a total of Items 1 through 4, 182,700.
Q. But the amount financed at the bottom, the last, is $180,000?
A. Correct. SHAW says amount financed, 180,000.
Q. Okay. Where did 13 get off to?
A. You took it off.
Q. There it is.

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

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

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MS. BAKER: Okay.
MR. VARNADO: We're going to lay them out here because they're going to get all messed up otherwise.
BY MR. VARNADO:
Q. All right. Let me ask you this, I'm going to hand you this 14-page exhibit. I assume you reviewed this before this morning, correct?
A. Yes.
Q. Okay. This is from SHAW, right, this 14-page document?
A. It's from CRIS.
Q. I'm sorry. It is from CRIS, but it shows SHAW transactions, correct?
A. Yes.
Q. Do you consider it to be authoritative in the same manner that SHAW information is authoritative?
A. The information contained in this payment history is pulled from SHAW. So, yes.
Q. And you would consider it to be correct --
A. Yes.
Q. -- right?
Okay. I'm going to ask you to explain

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

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

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

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

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

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

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

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

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

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tape.
MR. VARNADO: Let's take a break.
THE VIDEOGRAPHER: We're off the record at 2:04 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the record at 2:11 p.m.
BY MR. VARNADO:
Q. Back to Exhibit No. 3. This is a CRIS document, correct?
A. Yes.
Q. So it's supposed to be accurate, correct?
A. Yes.
Q. By the same token, it's not supposed to be inaccurate, right?
A. Correct.
Q. You're supposed to be able to rely on it, correct?
A. Yes.
Q. Okay. I'm going to draw your attention down to the bottom third of the page, Loan amount. Can you read what number that is?
A. $179,576.34.
Q. So that is the correct loan amount, correct?

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A. No.
Q. Why is that incorrect?
A. I don't know.
Q. Why are you sure that it's wrong?
A. Because the note says that the original balance was $182,700.
Q. These transaction reports, 3 and 14, are not describing the note, are they?
A. Yes, they are.
Q. They are not accurate to the note, are they?
A. Yes, they are.
Q. When I asked you about the zero balances through September of 2003, your testimony is that that was a computing error?
A. No.
Q. What is -- what explains the zero balances again?
A. When First Union and Wachovia merged, for some reason, the principal balance tallying in the system of record did not come through.
Q. Okay. Then how did it come through in Exhibit No. 3?
A. Again, I did not pull that document. I did not alter that document. I don't know how it got

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

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

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

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

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

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A. Okay.
Q. 11/29/06, Trans Code 35995174504.20, Loan sold to pool.
A. I don't know. I can tell you that it -- it wasn't. I don't know why this line item is there, but it was never sold.
Q. How do you know it wasn't sold, other than SHAW doesn't -- you told me earlier you know it's not sold because it's still in SHAW.
A. Correct. So it wasn't in -- if it was sold, we wouldn't still have it in our -- in our records.
Q. Is this ACLS wrong?
A. I don't know why that line item is there.
Q. Other than it actually got sold?
A. It was not sold.
Q. The only way you know it's not sold is that it's still in SHAW, correct?
A. Correct.
Q. All right.
A. It's still in SHAW, and we still had the original loan documents in the vault at that time.
Q. How do you know? Did you look back at the vault records in '06, the vault log on ECaR?
A. From my understanding, the loan documents

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

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loan if we've sold it already?
Q. If you don't know the answer to that question, that means you don't -- you're not familiar with that -- that process, that that happens.
MS. BAKER: Objection. Is there a question?
MR. VARNADO: Yeah. And you're again trying to interfere with my questions.
MS. BAKER: I'm not --
MR. VARNADO: I'd please ask you not to do that.
MS. BAKER: I'm objecting --
MR. VARNADO: I did ask a question.
MS. BAKER: -- just for the video.
MR. VARNADO: Thank you. Your objection for the video is irrelevant since you're trying to interfere with my deposition.
MS. BAKER: I think that should be --
BY MR. VARNADO:
Q. I'm going to ask you that question --
MS. BAKER: -- that comment should be struck, because I'm not trying to interfere with your deposition.
Q. I'm asking you again, do you know that banks have bought back allegedly nonperforming

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

MS. BAKER: I have no questions.
MR. VARNADO: And that concludes the deposition, then.
THE VIDEOGRAPHER: This concludes the deposition of Ms. Tracy Thomas on August the 6th, 2013, at 2:29 p.m.
(Deposition concluded at 2:29 p.m.)

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, the undersigned authority, certify that TRACY THOMAS personally appeared before me and was duly sworn on August 6, 2013.

WITNESS my hand and official seal this 16th day of August 2013.

Richetta R. Bright
Richetta R. Bright, RPR
Notary Public, State of Florida
My Commission No: EE 020283
My Commission Expires: September 9, 2014

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Richetta R. Bright, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of TRACY THOMAS; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 16th day of August 2013.

Richetta R. Bright
Richetta R. Bright, RPR

DEPOSITION ERRATA SHEET

Our Assignment No. 384624
Case Caption: Bentrim vs. Wells Fargo

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20___.

_____
Tracy Thomas

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	FOR THE NINTH JUDICIAL CIRCUIT
BRENT BENTRIM,	)
Plaintiff,	)
VS.	) CASE NO.:2011-CP-10-2946
WELLS FARGO,	)
Defendant.	)

COPY

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A. Cali, CSR and Notary Public, at 2:00 p.m. on November 5, 2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: R. Varnado, Esq.

For the Defendant: Jana Baker, Esq.

(Hearing commenced.)

MR. VARNADO: Yes, Your Honor?

THE COURT: Pretrial hearing for discovery.

MS. BAKER: Your Honor, if I may, today we're here, I believe, for Mr. Bentrim's Motion to Compel. It was my understanding that today the only issue to go forward was with discovery. I'm looking at Mr. Varnado's Motion to Compel filed in March, March 18, 2013.

The only issue that we did not have resolved was the issue regarding an EIN request to Wells Fargo. It was my understanding that we had no other issues.

I tried to meet many times with Mr. Varnado before today. We were able to meet yesterday at 3:30 -- excuse me, 2:30. At 2:30 I get a list of ten items that Mr. Varnado is seeking.

I have not had time to discuss whether my client's willing to produce these ten items, whether I can get the ten items, whether we have objections to the ten items, and whether even these ten items were even requested formally in discovery.

So I just wanted to point that out to the

Court's attention.

THE COURT: According to my Order discovery is still outstanding. So, Mr. Varnado, let's address the one, then tell me about the others.

MR. VARNADO: Your Honor, I'm sorry, I didn't quite follow you. I apologize. The one, the EIN --

THE COURT: Yes. You have a request for something?

MR. VARNADO: Judge, I just disagree with my colleague about what's before you. My Motion to Compel actually encapsulated a previous Motion to Compel filed by my predecessor counsel, Mr. Sloan. And that was filed in January of '11 and it resulted in an agreement with Wells Fargo's counsel that there would be a confidentiality order, and it was the Plaintiff's understanding the entry of that confidentiality order drafted by Wells Fargo counsel would open up a flow of documents, so to speak.

MS. BAKER: If I may, that Motion to Compel that was filed in January by Mr. Sloan, I have an email it was resolved in April of 2012. So that's why it's my understanding we only have the EIN number that's an issue before the court today.

Plus Mr. Varnado and I have been in contact on the phone with Mr. Laney. The issue we've been going over and over is the EIN issue. I have the email here with Carolyn Leonard --

THE COURT: Let me stop you right there. Let's talk about the EIN. Do we have a response to that, Mr. Varnado?

MR. VARNADO: No, I don't.

THE COURT: Ms. Baker, can you get a response? I will order a response.

MS. BAKER: I believe that we adequately responded to the Request To Admit. And --

THE COURT: I'm ordering you to produce the name of whoever the EIN is. That's my order.

MS. BAKER: Okay.

THE COURT: That's what's been asked for. That's what I'm ordering. Whoever it is, I don't know, I don't care. IRS form 1098 prepared by Wells Fargo with an EIN of 56-1948921. You-all will produce that within 15 days. Okay?

MS. BAKER: Okay.

THE COURT: And next is to admit or deny or fully answer Request For Admission, special interrogatories served December 12, 2012. Do you

have an issue with that, as well, Mr. Varnado?

MR. VARNADO: I would like Request For Admission number five was objected to, Judge.

MS. BAKER: We did answer it. We denied it. We objected to it. We denied it. We have the original Note in hand.

MR. VARNADO: Your Honor --

THE COURT: That was what the request was for?

MR. VARNADO: Yes. We all know a request for admission, denial is a denial. The remedy is later on if there is a ruling and if you see fit to.

THE COURT: Is there a question about the existence or validity? She says she's got it.

MS. BAKER: I brought it here. The original Note is with me. He looked at it yesterday. If you want to see it, Judge?

THE COURT: I don't need to see it.

MS. BAKER: It's here with me.

MR. VARNADO: Your Honor, then if those are the two things in my motion -- my motion also encapsulates Mr. Sloan's prior motion. And if we're going to have a discovery conference on this, Judge, I really feel like this would be a

good opportunity for me to explain to you what I think that Wells Fargo has not produced and what they should have produced. And I thought that I had done a yeoman's job trying to encapsulate it into ten things so that I wasn't asking my colleague to go on a wild goose chase. But we have a situation where, bluntly, I cannot proceed with either the prosecution of my case or the defense of her counterclaim without some of these documents. I can't even walk into a 30(b(6) deposition of her client without some of these documents, and I think that they are the exact kind of thing where I'm shocked that we hadn't gotten them and I'm shocked at -- I think they are pretty simple. So I don't see that -- there is not a situation here where there has been a blind side or anything. We've got to have these documents to go forward, and with the Court's permission I would just like to take about ten minutes and explain what's going on, and if we'll have a discovery status conference then I would like that opportunity, Your Honor. I think it's fairly before you and you need to know exactly where we're coming from, I think, in order to see what we need. It's pretty simple.

THE COURT: One second. I'm looking at your motion of March 18 and I have ruled on the two specific matters.

One, I've ordered them to produce within 15 days the identity, name, address and relationship with Wells of the EIN number.

And, two, I'm going to find that they have denied the Request To Admit. That's actually -- that's plural. Requests For Admissions and Special Interrogatories. So we hadn't got any specific items. I guess if there was something specific you were referring to, which you do -- respond completely discovery request propounded January 2, 2012. Do you have those in front of you? I'll give you ten minutes.

MS. BAKER: Again, it was -- that motion was closed out. It was resolved.

THE COURT: You have an order to that effect?

MS. BAKER: There is not an order but I can show you the email and the email from Mr. Sloan saying that it's -- I wrote, thanks, I will. Here's an email. Mr. Sloan informed me and authorized me to inform the Court he is withdrawing Motion to Compel. Thanks, Jana.

Carolyn Leonard. Thanks. I have now closed both motions within the system.

I have a printout from the system. It doesn't say closed. So that's why I was only prepared for EIN number. Also pursuant to Rule 7(b) a motion shall state with particularity the grounds therefor.

This was just a general notice of motion. I get this list of ten at 2:30 yesterday? Never -- Mr. Varnado never ever discussed these with me. I haven't had time --

THE COURT: The list of ten you got yesterday, was that previously propounded or not? If it was not you got 30 days to respond.

MS. BAKER: I don't believe it was.

MR. VARNADO: I believe these are specific documents which we think are out there, based on other discovery we've done, Your Honor, which were encapsulated in Mr. Sloan's discovery. Our understanding was that once the confidentiality order was in place a lot of these objections would disappear and they just haven't. So, Your Honor --

THE COURT: Let me restate my question to Mr. Varnado. Then I need to get an answer to that

question, and then I'll get a reply from Ms. Baker.

So the ten items that you gave to her yesterday that you're specifically requesting, have those been specifically requested before in your discovery requests from 2012?

MR. VARNADO: To answer your question, Your Honor --

THE COURT: That should be a yes or no.

MR. VARNADO: I believe that, yes, but I will caveat by saying that I didn't send a discovery request saying I want this, this, this, this and this by name, because some of these, for instance, I didn't even know their names until I took a deposition. For instance, our discovery, Mr. Sloan asked --

THE COURT: All right. All right. Okay. You don't have to explain. I understand what you're saying. Now, you just got these yesterday. You're not required to respond to them today. But you are required to respond to them if they've been properly put forward. Have you looked at the list? Is that something you can produce?

MS. BAKER: I looked at the list yesterday. I believe some of these weren't formally

requested. Some of these items came up as a result of a deposition that was taken in August. So I believe if he formally sends a request to me, I can go over these with my client, see if we're objecting to them and look at it that way within the 30 days.

THE COURT: I will ask that you re-propound those specifically, formally; ask that you take a look at those formally. If you have objection or if you seek a protective order I'm going to grant you that now. If you-all need a protective order as it relates to this case I'll grant it now, so you don't have to come back and seek that. It will be between the two of you-all; cover you on that one. Sounds like you already got a protective order in place but I'm going to re-order that as to these specific requests.

Mr. Varnado, anything else that you're seeking or requesting?

(Interruption)

THE COURT: Anything else you seek? My question to you, Mr. Varnado, anything else you seek other than those specific ten items and whatever -- this is a pretrial discovery conference.

MR. VARNADO: Yes, Your Honor. I conferred with my client. We want to, obviously, be mindful of the Court's time on this. I would reiterate that everything I put in these ten items -- if I can hand them up?

(Hands up document.)

MR. VARNADO: -- go hand in glove with my issue visa vis this EIN number. And I don't know if this is the time where you want to hear why we think we need this stuff or do you want to defer all that argument until she comes -- I propound it formally today as supplemental rule 34.

THE COURT: I much prefer you-all trying to work this out. If you can't I'll be glad to work it out for you.

MS. BAKER: I think -- I would agree with that. If he could supplement -- formally propound supplemental interrogatories, request for production, send it to me so I can have chance to review it and discuss it with my client.

THE COURT: I think that's the proper way to do that.

You-all have still got three months of discovery to do. Mediation, also head towards -- sometime this month. You-all have

experts.

I do see looks like a renewed motion for summary judgment was filed in October, but those aren't coming up until February.

MR. VARNADO: That's true. Just wanted to go ahead and get that out of the way.

I'd just like to say one thing for the record. When we come back -- Wells Fargo entered into a consent agreement with the attorney general of South Carolina and 49 other attorneys general saying they would produce records, they would have -- ready to have their foreclosure cases ready before they were filed. I think that's absolutely germane here.

If we can take a minute, if I could just, Your Honor, just explain kind of globally where we are in discovery. Mindful of your ruling, these need to be propounded as supplemental rule 34's with the caveat being when we come back, if they were -- rightfully should have been part of the original request for production I would like to bring that to Your Honor's attention, too, at that time depending on whether they agree or not agree.

The biggest questions that have been faced

in this case for the Plaintiff is who is the servicer of this mortgage. So Wells Fargo, Wachovia, never got mortgage interest. They paid mortgage interest to that EIN for six years. Or seven years, actually; these 1098's. We appreciate and thank Your Honor for ordering that. That will be a great break up in the log jam.

That also begs the question of who was servicing it? It also begs the question of why there are discrepancies in the accounting, default records and things like that. So, Your Honor, if we're doing this just for discovery conference I'm just kind of giving -- I understand your ruling but want to say these are the kinds of things that are going to be cropping up again. I'll be happy to work, but just -- year after year there has been -- Wells Fargo, even though they told Attorney General they would produce without objection, they moved this thing along, kind of just getting a lot of problems with it.

That's all I wanted to say, Judge. I'll sit down.

MS. BAKER: I just want to say this is an old

case. I've been available. I've been trying to contact Rob with email, Mr. Varnado, let's talk. I keep getting a push back. We finally meet yesterday and get a list of ten. It's not slow on my end whatsoever. Once I get the amended, whatever, the new discovery request, be happy to take a look at it and respond as quick as I can within the 35 days.

THE COURT: All right. Let's just do that. You may find that the servicer has moved through the period of the time the loan's been in existence. I see that all the time. You may get one document that shows the whole status of the loan or you may have to go to five or ten different servicers. I don't know. Servicers change, lenders change. These things are very fluid is what I've discovered. I'm just telling you that. I understand you may be chasing a rabbit, but that's what you need to do to properly represent your client and go at it.

MR. VARNADO: The other rabbit we're chasing, just generally speaking, since this is a status conference, is the record shows that the Note was sold in '06. The debt was sold to a pool, which would be shorthand code for agreement. Yet we had

two lawsuits filed in this court in '07 and '09 claiming successor by merger rights. In fact, the counterclaim says Wells Fargo assumes succession by merger. Even in their own records shows the Note was sold.

So that's going to be another thrust of discovery, Your Honor, just to inform the bench and my colleague about where we're going to be going with this.

May end up having to, Your Honor, since I'm going to serve these Rule 34's, Supplemental Rule 34's today with the caveat that I would like to at least have a chance to come back at a later time and argue that they should have been fairly part of the original request for production, but not withstanding that, it may impact the schedule a little bit, because I don't feel I'm doing my client a service taking a rule 30(b(6) deposition if a bank like Wells Fargo, major banking corporation, without the documents. So we'll push along and try to get it done but --

MS. BAKER: If you need more time for 30(b)(6) that's fine. I'm hard pressed to find some of these ten were in the original

interrogatories and request to production when some of these items didn't even come up until the August deposition of the (inaudible.)

THE COURT: I've got you-all coming back in here on the 17th of February for whatever motions and dispositive motions, pretrial whatever, whatever. If discovery is not complete I probably won't be entertaining the dispositive motions. We'll go from there. I'm setting cases into mid January right now, so I'm not sure I can get you in much sooner than that anyway. You-all just need to work together to try to get discovery done and do what you-all need to do.

MS. BAKER: Just to be clear. Since we're coming back February 17, if I -- I'll refile summary judgment motion, just as long as I file it ten days before that date or --

THE COURT: You've already filed it but February 7.

MS. BAKER: I think he filed one. I need to refile one.

THE COURT: It looks like Judge Dennis ordered in November of last year, granted some summary judgment.

MS. BAKER: He did.

THE COURT: As to some matters. So we have those to deal with, too.

MS. BAKER: Thank you very much.

THE COURT: All right. Ms. Baker, are you going to be at the sale today?

MS. BAKER: Yes, I will.

THE COURT: Mr. Varnado, you want to do me a short little order? Do you want this back?

MR. VARNADO: I'll take that back.

(Hearing concluded.)

STATE OF SOUTH CAROLINA)

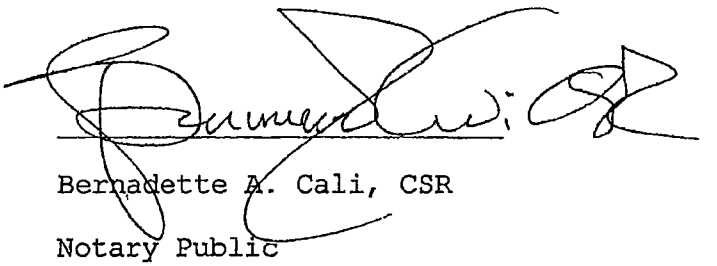
C E R T I F I C A T E

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.



Bernadette A. Cali, CSR

Notary Public

My Commission Expires

April 5, 2020

STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-2946

BRENT BENTRIM,
Plaintiff(s),
-vs
WELLS FARGO BANK,
Defendant(s),

HEARING

Given before The Honorable Judge Mikell Scarborough in the Charleston County Courthouse, 100 Broad Street, Suite 266, Charleston, South Carolina on Monday, February the 10, 2014, commencing at 11:15 o'clock a.m.

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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 Bentrim, Mrs. Bentrim

INDEX TO EXHIBITS

(None were marked.)

THE COURT: This case is captioned Brent Bentrim, the plaintiff, versus Wells Fargo Bank, the defendant, case number 2011-CP-10-2946. Present for the plaintiff is Mr. Rob Varnado.

MR. VARNADO: Your Honor, may it please the Court, I'm Rob Varnado. I'm an attorney for Brent Bentrim, the plaintiff.

THE COURT: And for the defendant, Mr. Sterling Laney.

MR. LANEY: Your Honor, Sterling Laney and John Hawk of Womble Carlyle Sandridge & Rice on behalf of the defendant, Wells Fargo Bank. And Judge Scarborough, just so I didn't upset the Court with the rules, Mr. Hawk was going to handle a couple of the items that we're here today. And we're going to divide that with the Court's permission.

THE COURT: I understand. That would be fine. It looks like we've got lots of motions out here and lots of motions for status conference. I think we set this one today pursuant to an amended scheduling order, which I just issued last month setting today for 11:15. So y'all have to bring me up to speed on all the motions. Looks like there's plenty of them.

MR. VARNADO: We're here today for discovery motions, Your Honor, and things related to discovery. And to the extent the Court would entertain us we have a few

extra status matters. But I think by the Court's, the last time we were together and by agreement of counsel we're not advancing any of our substantiative motions of summary judgment or cross summary judgment motions, and dismiss motions, and things of that nature which will be heard by the Court at later time.

MR. LANEY: We agree, Your Honor.

THE COURT: You agree with that, Mr. Hawk?

MR. HAWK: Yes, Your Honor.

THE COURT: Last order I issued looks like, besides the scheduling order, was an order --

MR. VARNADO: Both sides have motions to compel, Your Honor.

THE COURT: Motions to compel and another order in November ordering defendant to answer the amended complaint, which looks like it's been done. There's a summary judgment, but we won't get to that today. So that's fine with me.

MR. LANEY: Your Honor, at the last hearing just as a point of clarification you did grant our motion, I believe to take Mr. Bentrim's deposition again since there had been an amended complaint. I don't think there's been a formal order or anything, but I did want -- that motion is no longer pending. All the others are.

THE COURT: All right. And y'all have identified

experts or not?

MR. VARNADO: Yes, sir.

MR. HAWK: Both sides have identified experts. Yes, Your Honor.

THE COURT: Mr. Hawk, you want to start?

MR. LANEY: Yes, Your Honor. We'll start with the easy one today. We have, Wells Fargo filed a motion to compel in January relating back to some discovery we served on Mr. Bentrim in December. We never got a response on that, but fortunately we just met beforehand. And the parties have agreed that Mr. Bentrim will produced responses to us within 15 days, so by February 25th. And Your Honor, we just ask the Court to leave this motion open in case we find that those responses aren't responsive enough.

THE COURT: Okay. And that's to a motion compel filed what date and as to what action?

MR. HAWK: Your Honor, that's Wells Fargo's motion to compel filed on January 27th. That's related to discovery that was served on December the 12th. And I'm going to hand it over to Mr. Varnado now to argue his motion to compel.

THE COURT: All right. So that's been agreed to subject to whatever may come up later?

MR. HAWK: Yes, Your Honor.

THE COURT: All right. Mr. Varnado?

MR. VARNADO: Judge, I have two motions before the court.

THE COURT: Let me stop you. I'm not going to hear the motion to dismiss, the motion on the pleadings, or summary judgment. All those are beside.

MR. VARNADO: The one that I think Your Honor had said we would go forward on was two motions. One is a motion that I captioned a rule to show cause. And the basis of that motion is to challenge the sufficiency and veracity of the response to your order granting a motion to compel last October.

THE COURT: All right. I'm looking at two motions. One's a motion about responses to discovery questions filed January 14th?

MR. VARNADO: Correct.

THE COURT: And I got another one filed January 22nd, which is a motion on a rule?

MR. VARNADO: Yes, sir. And Your Honor, if I may I'd like to start with the motion on the rule and then roll into the discovery, because I think it's all interrelated.

THE COURT: All right.

MR. VARNADO: And I would like to preface it, Judge, by saying that we've had multiple meetings, in person and by telephone. And we have not been able to come to an agreement on these two motions. Except right today

Mr. Laney and I did try to hash out something that we'll tell you about when it gets time for the motion to compel.

Your Honor, you may recall last late fall there was a motion to compel hearing on this case. Ms. Baker appeared for Wells Fargo. I appeared for Mr. Bentrim. The purpose of that motion was a motion had been filed in March to get the bank to give the name, and address, and relationship to Wells Fargo National Bank of EIN 561948921. And I remember Your Honor came out and you read the motion. And I think one of the first things you said you're going to go ahead, I'll order that.

So we submitted an order. And the first response came back by way of a letter, which is appended, Judge, to the motion. It should be in front of you. I can hand you up another copy. So Mr. Laney's response to your order was by way of a letter, which again, I don't challenge the fact it's in a letter. That was the response. And it's an Exhibit. On Friday that response has been amended. Your Honor, I'm going to contend and I think you're going to see that the amended response raises more questions than the first response. And we need to get to the bottom of it.

The other thing that you'll see, Your Honor, is that appended to my motion there is an affidavit from a CPA in Columbia named Cliff Bodiford. He's got more than 40 years experience. And he's represented banks and handled banks.

He knows about the banking industry. All right?

And the first I need to bring to the Court's attention is that we think it's axiomatic, and beyond dispute, and beyond argument that if one EIN for one entity. One EIN for one entity. I know the EIN for Wells Fargo Bank, NA, because I asked it in discovery and they told me. And I know the EIN for the predecessor banks, First Union National Bank and Wachovia Bank, NA. It's the same one. And I know that. They confirmed that in discovery, too.

Your Honor, as we argued the last time, as you saw attached to that motion there were 1098 mortgage interest statements that came from something called Wachovia Bank Retail Credit Service to EIN 561948921. The first thing is that 561948921 cannot be First Union National Bank, cannot be Wachovia Bank, NA, cannot be Wells Fargo Bank, NA. It has to be something else. If you're going to go with the one EIN, one entity rule. And that comes directly from the SS4 document.

So you know when you apply for an EIN, I'm sure you did it when you were practicing law just like we all do, you just send it in to the IRS. You send in an SS4, you're supposed to keep a copy. People lose those all the time. Okay? And maybe the bank's lost theirs. I don't know. But then the IRS sends back a letter of authorization. You've seen these. You can see them in your mind's eye probably,

just the way they look. Okay. This entity is assigned this EIN.

All right. Mr. Botiford, the CPA, who's affidavit is undisputed from the other side has said that he cannot see a situation where this bank can be running more than one EIN. So if you do the one EIN, one entity rule it applies to a bank. It applies to a mom and pop store. The only exception would be a single member LLC and that's because of Patriot Act stuff and privacy. But this bank, mom and pop, anybody, trust, general partnership, you name it, one entity, one EIN. Now, a lot of times I think people get a little loosey goosey.

THE COURT: Let me stop you, because I hear what you're saying. All I need to know is what the problem is. The problem is you've gotten two different entities for EIN number?

MR. VARNADO: Yes, sir. That's exactly right.

THE COURT: Well, let me ask this question. Have you gotten a copy of the letter from the IRS assigning that EIN number to somebody?

MR. VARNADO: No, sir.

THE COURT: Well, why don't we get that?

MR. VARNADO: We would like you to order that, Judge.

THE COURT: Can you do that?

MR. LANEY: Are you talking about the SS4, Your Honor? I believe that's --

THE COURT: Whatever the letter is they call it from the IRS. The IRS sends a letter confirmed that this EIN number has been attached to so and so entity.

MR. LANEY: This EIN was requested by First Union. We're not sure of the exact date. So it's maybe decades ago when it was requested. We have looked for the SS4, Your Honor. We have been unable to locate it at this time. We do have the verified response, which we gave to Mr. Varnado on Friday, which states that the First Union number that was transferred through the merger to Wachovia and was used by the servicing division of Wachovia, which is Wachovia Retail Credit Services, which is the name that shows up on the 1098, Your Honor. And it was used for purposes of reporting mortgage interest to certain borrowers, such as Mr. Bentrim for that.

So we have answered the Court's question there. And I think it's significant that the original note is in the courtroom today, Your Honor. We have it. We also, there is no record of payments being made to anyone else other than First Union or Wachovia. So I think we have answered the Court's direction in October certainly. We answered the question.

I'm happy to continue to look and see what I can find

from the IRS, but you know, we produced a verified statement. And with us holding the note and with all payments there is absolutely no dispute. We took Mr. Bentrim's deposition earlier before he amended his complaint. There has been no dispute that payments were only made to First Union or Wachovia.

So I'm a little bit at a loss to where this would go in discovery as far as being relevant to something because 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's our position. But even if we had sold the note and payments were only made to us we would be a servicer and thereby have standing to be in front of Your Honor. What he's complaining about is previous foreclosure actions that were filed in 2007 and 2009 which were dismissed and were, they never resulted in an order and decree of foreclosure. So I give that up.

MR. VARNADO: Your Honor, may I continue on this?

THE COURT: Yeah. I think the problem that you've got is you got one answer the one time and a different answer a different time; is that correct? Is that what you told me?

MR. VARNADO: Yeah. I'm telling you that the answer they gave me on Friday is materially different than the answer they gave back in October. I mean, on huge

material points, which, I think bear on the Court's reason and rational to order comprehensive discovery on this. Because Your Honor, I've asked for the tax returns for this entity too, 561948921. I asked that that they submit a document called a form 4605T. I might be transponding the numbers.

But basically I'm stuck, Judge, because the only people under privacy law and IRS regulations who can cough up this document and this documentation is Wells Fargo. They're the ones that hold the keys to it. And I think that because they hold the keys to it it's in their control and subject to this Court's enforcement power to have them do it. And I'm going to draw Your Honor's attention to the difference between the verified request and the original answer.

May I approach, Your Honor, and just show you?

THE COURT: Sure.

MR. VARNADO: This is the original answer. You see, Judge. And this is my copy of their verified statement.

The first thing that jumps off, Judge, is the difference in the February thing. It talks about a special purpose EIN, and there's no such thing. You can Google special purpose EIN and you're going to get a gobbledygook, which there's thing called special purpose entities that banks use to hold assets off their records. As long as

there up front about it it's no illegals. But then their's EINs. And like I said earlier, an EIN is assigned by the IRS. And people can't internally assign EINs between themselves. You got to go to the IRS and get that blessed by them.

Perfect example would be, Judge, that when First Union National Bank bought Wachovia Bank in North Carolina and changed it's name to Wachovia Bank, NA. They tell the IRS same EIN. Begins with a 22. It's like 221147003. And that's interesting, Judge, because Mr. Bentrim signed two notes on the date of closing. And one note the mortgage interest is paid to, guess what, 221177003. I might be getting the numbers a little off, but the 22 number. And the other one goes to 56.

So 56 is not Wachovia Bank, NA, and it's not First Union National Bank, because those have a different EIN. It has a different small c corporate form. It must, because the SS4 form says it must. And Mr. Botiford says it has to be. There has to be a different corporate formation. And what we're seeing here, Judge, and I think this is intentional, is that the bank is trying to use different entities to assume the identity of different entities for the purpose of needs at any given time. And I think it's completely germane, Judge, because Mr. Laney might have the note --

THE COURT: Let me stop and let's go back to the origination of the loan. He took out two mortgages, both Wells Fargo or First Union at the time he took out the mortgage?

MR. VARNADO: Two notes, one mortgage.

THE COURT: Two notes, one mortgage?

MR. VARNADO: Yes, sir. Two mortgages. I'm sorry. Two notes, two mortgages.

THE COURT: So was it 80/20; is that what they were? They both purchase money?

MR. VARNADO: One was a modification of an existing line to roll into the one that's in dispute.

THE COURT: Is there a track history of payments being properly credited to one and not to the other; is that where we're going?

MR. VARNADO: We contend that there's a huge problem with the big one, the one that they're foreclosing on today, because the credit are not properly noted. He's not in default. They're not following the terms of the transaction of the note. All that we're going to show you in the trial of the case, Judge. We're going to come in, we're going to establish to you that they're not following the terms of the note. We're going to show you that Mr. Bentrim is not in default. We're going to show you that this note was sold and repurchased, but during the time it

was sold and repurchased that there were two foreclosure actions brought.

We concede Mr. Laney's point that a servicer can bring a claim. We've seen that case. I think Your Honor alluded to it or authority kind of from it before, but in that case it's totally distinguishable because that bank, Bank of America said, hey, we're the servicer. And here's our service and pooling agreement, whereas in this case from the getgo and still to this day, no, we never sold this note. We have the rights by success or by merger. Ignore what's in our documents. Doesn't mean what you think it means, which we find really hard to swallow, really disingenuous.

But here we have a situation where we have the bank is basically advancing the argument that they can run multiple EINS off of one entity. That 571948921 is Wachovia Bank, NA and is Wells Fargo Bank, NA. Look at the other major difference between the two documents, Judge. In the first, the letter in October it says this is currently assigned to Wells Fargo Bank, NA. In the Friday verified statement it says it's no longer being used and we don't know who has it. We don't know what happened to it.

So we've got to get to the bottom of it. I think the easiest way to get to the bottom of it would be to get the authorization letter and get the tax returns for this entity. I don't know why -- and I want to tell Your Honor,

we have signed a consent confidentiality agreement. So it's not like they should be worried that this stuff's going to be floating out there. We need to see it. We need to test this.

And the reason why, Judge, to kind of square the circle is that Your Honor said, listen, and I think you were pretty clear about this. If they have the note that's a big presumption right there because of the 2002 changes to UCC talked about transfer. But if there's a question about the transfer being accurate that would drive a big wedge into the Court's normal understanding of that. Because we understand that. It's really about securitization and whether or not it's okay, so you can transfer them back and forth. The UCC allows that. That's fine. If there's proof of transfer, and if the transfer was followed correctly.

So all these things are prerequisites in order to make the normal filing. And here we have, you know, the bank's own system of record, Wachovia Bank's own system of record specifically uses the word "sold to pool." And pool in this realm means a ream of trust. And it specifically uses the word "repurchased."

Now, we've asked for the codes. I'm going to get to that later, and all the rubiks and codes. And we haven't gotten those. So we have no idea if we're going to get the straight turkey on that. But the words mean what they say.

They were sold, and we think that will blow up. It has impact on defending the counter claim under -- it has impact on defending the counter claim under holder theory, under truth and lending. I've launched truth and lending as a offensive cause of action, but I reserve it as a defense. And it's on fraud, good faith and fair dealing. All those things are impacted by that, and my fraud case.

So Mr. Laney says, I have the note. I don't anything more. And maybe he does and maybe he doesn't. Maybe Your Honor will go with him with that on the trial and maybe You won't. But here today for rule 26 with a presumption towards discovery, and we have something that's so clearly different. I mean, we're still on the realm of --

THE COURT: Let me ask you another question and see if you can help me here. Is your client getting multiple 1098s from Wachovia or Wells Fargo or --

MR. VARNADO: He's getting them once a year from 2002 to 2008.

MR. LANEY: It's important to note 2008 was the end of the 1098s. There hadn't been any because no payments have been made since that time.

MR. VARNADO: And as we've already established that's because they told them don't send me anymore. You've heard that before.

THE COURT: I know about that one. But they were

two separate ones, correct?

MR. VARNADO: Yes, sir.

THE COURT: Was one in the nature of an equity line or something, or what?

MR. VARNADO: That's exactly right.

THE COURT: Well, that makes sense to me that they come from two different sources. That's what's going on.

MR. VARNADO: There may be an innocent explanation, but there's just huge holes. Why is there a difference between the October and the February answers, Judge? Why do they say it's really assigned to us and it's not now. They don't give me the address.

And I think what's happening here is that if you follow the rule of one EIN, one entity then they haven't given me the real name of the entity. It's a third party. 561948921 is a third party to Wachovia Bank, NA. And I've sued the depository bank. I sued Wells Fargo Bank, NA and I sued Wachovia Bank. I haven't sued their holding company. And I haven't sued any other entities which may be connected there to. I've sued that bank, and that's a different entity. And that will be critical for discovery and for finding out and tracking what happened to this note.

And I think we're getting kind of a gobbledygook answer. I don't know why they would say in October that it's currently at 561948921 currently assigned and now it's

not. And it's for 1098 purposes, and yet it was originally with First Union National Bank. There's so many holes. I think they got to say what is the actual corporate name of 561948921. And I use corporate with a small c, because they might be a limited liability company. They might be a corporation. And we've also asked for other documents kind of associated with that. And you know, we get objected on that.

So I think the best thing is to give a straight answer. What is the true and accurate corporate name? Not who it's assigned to or how it flowed through assignments but actually the true corporate name and the documents that back it up. That's the only way to break through this, because this is really holding us up on being able to get to the bottom of it. Because if in fact it turns out to be a third, complete third party that, I mean, then the bank's whole defense is really called into question. The whole factual predication of their defense is really called into question.

THE COURT: All right. So back to my question. Mr. Bentrim was making two payments on two notes and receiving two separate 1098s from 2002 to 2008; is that right?

MR. VARNADO: Yes, sir.

THE COURT: And there was no question that the 22

number, the one that starts 22 is the Wachovia?

MR. VARNADO: No doubt. They've already admitted that.

THE COURT: What you're trying to figure out is who was the entity that had the 56 number?

MR. VARNADO: Right, because it can't be Wachovia Bank, NA. It can't be First Union National Bank. It has to be some other entity.

THE COURT: All right. Mr. Laney, that's the question.

MR. LANEY: Thank you. Your Honor, under his own affidavit that he submitted in support in paragraph four he said Mr. Botiford states that there are instances in which multiple numbers can be issued. And if you go and look about whether or not you need a new EIN on the IRS website it's pretty clear when there's a merger that there's now becomes a division of the remaining, that you can use -- the old EIN can stay in existence.

And that's exactly what our answer says. This was a First Union EIN. Then after the merger it stayed within the corporate family and was used by the servicing division of Wachovia, which is Wachovia Credit -- excuse me -- Wachovia Bank Credit Retail Servicing. And that's who issued the 1098s which we produced in discovery to Mr. Bentrim and that's who he was receiving them from. And that's the loan

that's the subject of this lawsuit.

The home equity loan is not subject to this lawsuit that he was receiving, like you have astutely picked up on. That was recorded under a different EIN because it's a different loan. It's a different type of loan. And so this number was used to report mortgage interest on certain types of loans like Mr. Bentrim.

But we've answered the Court's question, and we've told them that. He's certainly welcome to, you know, I'm sure he'll go and do a deposition and learn more about that.

THE COURT: Is there consistency in those reports for that time period that we're talking about?

MR. LANEY: All of them are annual.

THE COURT: They're annual reports that are consist with the payments.

MR. LANEY: I do want to point out though that actually there were two home equity lines. So it's not a classic loan. It's two home equity lines foreclosed that day under different notes, very, very different kind of loans, Your Honor.

MR. VARNADO: And that's a good point --

THE COURT: So we got no issue with the 22 one. We got the issue with the 56 one, right?

MR. VARNADO: Right. But the 22 one is good evidence that that mortgage interest is being paid to the

bank. And yet the 1098 form itself on it's face says that if you're collecting for a lender you can't use your own EIN as a servicer. You have to use the lender's EIN. That's just in the 1098 form itself. That's just a matter of public record.

Mr. Laney says -- and this is even more. It's part of the First Union family. That means it would have a separate small c corporate existence, because we know that First Union, the merger between First Union National Bank and Wachovia Bank of North Carolina was one where First Union was the survivor. And then it changed it's name. We all remember that.

And Judge, so it has a separate corporate existence. So we should be able to see the SS4 if it still exists. We should be able to see the IRS authorization form. And we should be able to see tax returns which would prove or disprove this theory. Because if you read Mr. Botiford's --

THE COURT: Let me stop you there. Can y'all get the SS4, the letter from the --

MR. LANEY: We're looking for it, Your Honor. We haven't been able to locate it because I believe it was a 54 so many -- I've been told they only keep tax returns for seven years. This was probably decades ago, but we've tried. If we find that we'll certainly produce that.

THE COURT: What about inquire with the IRS; can

y'all do that?

MR. LANEY: Certainly we'll do that.

THE COURT: I think that'd be a way to answer that question. I mean, I understand the merger and the transfer, the acquisition. First Union actually acquired Wachovia but adopted Wachovia's name. And then Wells Fargo took a hold of that company. And now it's Wells Fargo. I'm with you on that. So I think that can answer that question.

MR. LANEY: We certainly can make inquiry to the IRS and see what we can find out.

THE COURT: Yeah, I think that would be the simple way to do that. I'm not going to make them get the tax returns at this point in time. I don't see any need for that, but I'd like to see the letter. I think that would explain it.

MR. VARNADO: My understanding, Your Honor, is you can apply for that online and can have it in 48 hours.

THE COURT: Just see what you can do. Just ask them at the IRS and see if they've got it. If they don't then they'll take forever and say no, they don't have it.

MR. VARNADO: Can we get a time frame on that, Your Honor?

THE COURT: Yeah. Go ask for it this week.

MR. LANEY: We will ask for it, sir. I have no idea how long the IRS will take to get it back to us, but we

will certainly make the inquiry this week.

THE COURT: But it should be something they've got in their corporate system.

MR. VARNADO: So the SS4 if they have it. If they've lost it that they will ask for the IRS authorization form?

THE COURT: Yeah.

MR. VARNADO: And the only reason I asked for tax returns, Judge, is because since there has been changes, you know. I mean, Mr. Laney's like me, he noticed there's been mergers and stuff. And they might have changed it's name along the way. They might have gone to the IRS and changed it's name. Only the IRS can assign an EIN. And I don't know why the corporate tax returns would be privileged or stay secret.

THE COURT: I want to go back to that point. So what I'm trying to do is establish who the original EIN number was assigned to. That's the first point of inquiry. Second point of inquiry then, Mr. Varnado, is that you take issue with what is being reported; is that what you're telling me? You take issue with what's being reported, or you take issue with whom is reporting it? That's what I'm trying to figure out.

MR. VARNADO: I think the whom.

THE COURT: Then I think that inquiry is going to

answer it.

MR. VARNADO: I'm looking forward to it, because I think it will be interesting.

THE COURT: Let's see if we can't get that information from the IRS.

MR. LANEY: Yes, sir, Your Honor.

THE COURT: It may open up some more can of worms, but we'll see. Okay. Let's just see where it goes.

What's our other issue?

MR. VARNADO: I think that pretty much exhausts the one EIN, one entity thing. Now, we're going to the motion to compel.

THE COURT: That's the one filed January 14th?

MR. VARNADO: I'm looking at it right now, Your Honor. That's correct. Now, we're at complete loggerheads, because the first -- this case was filed pro se first. Then an attorney from Summerville, Mr. Sloan, became counsel of record. And then I became counsel of record. Mr. Sloan served a set of discovery. And I served discovery. They've answered, but every request comes with a big boilerplate objection right off the rip. And they've given about 233 documents.

And Mr. Laney's telling me when we met -- and I have no reason to doubt my colleague's veracity. I don't like his client, but I have no reason to doubt his veracity -- is

telling me, I've given you everything. I've given you everything, Varnado. And I'm worried that I haven't gotten everything, which I know for a fact some stuff I should still get.

And so there's kind of four major areas of documents that I think we ought to get. And if we want we can go through blow by blow, but I think maybe we can come to some resolution of it now. On the first set would be I want every servicing record from this bank for Mr. Bentrim's file, all the servicing files. Now, I've gotten -- you heard me before talk about the ACLS report, the report that says this loan was bought, was sold, and repurchased. I got that from them. You've heard me talk about these things called Chris (ph) statements.

And I've told Your Honor I'm going to come up and I'm going to show you that there have been records that have been tampered with by Wells Fargo Bank. I've also argued the last time I was in front of you when Ms. Baker was here and I think the last time at a status conference, and I'm still waiting on certain servicing records that I've learned about in this lady named Tracy Thomas's deposition. She's what we consider to be a robo-signer down in Jacksonville.

And we learned from her that there were additional servicing records from Mobius and E-card. Mr. Laney said, I'll get those to you, but I don't have it. I don't know

when I'm going to get them, hopefully soon.

And then I know that I submitted a kind of a correspondence file for lack of a better word, you know, from all Mr. Bentrim's correspondence to and from Wells Fargo. But I haven't seen their correspondence file. And Mr. Hawk to me said we're not so sure you asked for that, even though I think that's subsumed in the servicing records. They said, I think we aught to get every servicing record.

Now, I will caviat. There is one thing where it's important, and it's part of the servicing records. This bank with other counsel entered into agreements with their regulator, the Office of the Comptroller of the Currency, the OCC, and they entered into a consent agreement with all the 50 attorney general saying that they were going to redo all their servicing. They were going to get to the bottom of what's going on. They were going to make sure. They were going to create records. They were going to do all this stuff. Now, I've asked for all that.

Now, Mr. Laney says, no, no way. You can't have that. The OCC order says that this doesn't create a private right or cause of action. Well, I'm not seeking to create a private right or cause of action. Nothing in that OCC order says that these discovery records are -- these records are immune from discovery. Nothing in that OCC order says that

those are state secrets. Nothing in the AG's order even says anything like that. They don't want to give me records.

They told their regulators and they told the attorney general we're going to create additional records and documents, but they haven't given those up. And I need them, because I'm going to tell you why I need them, Judge. I'm not seeking to create a new cause of action or a new right. If this bank has told their regulators that we're creating new sets of documents, servicing records and that order doesn't say that they're omitted from discovery then they're fair game for discovery in your Court.

Because if we weren't allowed discovery what I'm fearful -- and I think this is what's happening -- is that there's one set of books and protocols for their national regulators and attorneys general, and then there's another set of books and protocols that deal with cases in state court for plaintiffs like Bentrim for this Court, two sets of records.

I believe that those need to be harmonized. I believe that the rule of 26 is broad enough to allow it. And if they've done -- they've told the regulators we're going to create new documents. And if those regulators hadn't said these are immune from discovery then they're fair game.

And we all know there's things that are immune from

discovery. For example, if the bank did a check-kiting thing. That's --

THE COURT: I want to stay on focus with discovery. So what you're looking for is the servicing files and communication?

MR. VARNADO: The complete servicing file with all the electronic documents, with all the communications, and with everything that would have been done pursuant to the OCC and AG's order, Your Honor. That would all be the servicing record. And I want Mr. Laney to tell me, you know, maybe Mr. Sloan didn't ask these right, maybe you didn't ask them right, but I've given you everything. And if they don't exist then that's fine too. But I need to know.

THE COURT: Mr. Laney, I want to hear about that.

MR. LANEY: Your Honor, as far as the -- before I get started if I could just ask my counterpart, we try to be civil here, but to refer to my witness, Ms. Thomas, as a robo-signer in this Court really, I think is improper. And I'd just like to note that for the record. I would prefer us to keep things a little bit civil. I do take some umbrage with that.

We will produce the servicing record. That's what I've told Mr. Varnado. And we do have some that we are in the process of reviewing to make sure we don't produce work

product or attorney/client information there. If there is such we will create a privilege leg label where we'll redact it or retain and we'll produce those to him.

With regards to the OCC consent order and the attorney general orders, Your Honor, they're very clear. I'm reading from the consent judgment, and it says the servicer, who's Wells Fargo's obligation shall be enforceable solely in the US District Court for the District of Columbia. An enforcement action may be brought by a party to the consent judgment or the monitoring committee. They've set up a monitoring committee to make sure that the banks, those JP Morgan, Bank of America, Wells Fargo, are complying with it. And any action to enforce the consent judgment must be brought before the District of Columbia.

Now, Mr. Bentrim, along with me, along with you, and anybody else who may hold a Wells Fargo mortgage is represented by Alan Wilson, the State Attorney General for South Carolina in this matter. And they can certainly seek to enforce compliance with this order. However, I have a dozen cases from around the country I'm happy to hand up. I don't know if you want to read these, but that hold that private borrowers simply lack standing and cannot create a right to enforce the enforcement of these terms as a third party beneficiary or otherwise, because only the parties to government orders have the standing to seek compliance with

those.

And I think Mr. Varnado's going to say, well, I'm not seeking compliance with it. I just want discovery. I want to see if you're doing it. That can amount to the exact same thing, Your Honor. If you allow discovery on it then you're allowing private borrowers all over the country to say to see whether or not the parties to this are complying with the order. His redress is simply to go through the attorney general or through the regulator with regards to the consent order not through this Court. Jurisdiction for these orders is exclusively reserved in both of them to the Distinct Court for the District of Columbia, Your Honor. And I have the orders. I'm happy to hand up and show you the sections where that is.

THE COURT: You've got no problem with getting what's in the files, right, the servicing files?

MR. LANEY: No, sir. No, sir. We've told Mr. Varnado that. And we do not want to waive our objections because he didn't want to redraw his questions, but we certainly are going to provide the servicing material with regards to this subject. There's no question about it.

THE COURT: And then there's something that's attorney/client privilege you can assert that, redact that. We'll cover that another day.

MR. LANEY: Exactly.

MR. VARNADO: May I briefly be heard, Judge? This is critical I think, because the purpose of these orders is this bank telling it's regulators that we are going to confirm everything that we're doing in a foreclosure action. We're going to confirm our right to foreclose. We're going to confirm whether we've had the documents at the time we said we need to have them. We're going to confirm that all affidavits are done with truth and knowledge. We're going to do all sorts of programs and principals to make sure that this thing is accurate. This is the duty that they've undertaken. They have changed the landscape.

Now, Mr. Laney says, he doesn't deny that they've done these consent orders. He doesn't deny that these programs and things are in existence. They have happened. They certainly have happened. But he's not showing Your Honor that they're immune from discovery. And we are not here today in a merits hearing where Your Honor in the future might say, you know what, that argument might carry the day. I don't know. I'm going to have to hear from experts on that. I'm going to have to study these orders. We're going to have a full blown trial on that. All right. It's critical, I think.

But if his client has created a new set of documents for compliance purposes then how am I a third party beneficiary to that when I just want to see the documents?

I just want to see the discovery. Mr. Laney is setting up a strongman argument that by just the force of giving the documents over means that I'm somehow able to enforce or compel anything. That's not the case. The rule 26 is broad enough to cover this. These are not privileged documents. These are not work product documents. I am not seeking to create a new cause of action based on these consent orders. I merely want the documents that they've created. I think they're fair game, Judge.

And I think the main reason they're fighting this hard not to give them up is because maybe they don't say the same thing that the other ones say. And then that would be grounds for me to come in and challenge them there. I don't know why I can't see them, Judge. I don't think that they are -- I'm not trying to enforce anything. I just want to see discovery. The only thing I'm trying to enforce is the discovery.

And also, the final thing is I would like a date from Mr. Laney when we're going to get Mobius and E-card. I asked for them back in the fall. I thought that they were fairly covered in Mr. Sloan's initial discovery request where he asked for all programs and everything having to do with the servicing file. And I'm a little, I take umbrage in the fact that I had to go down to Jacksonville to find out they exist and then still haven't gotten them yet. I've

been asking for them.

THE COURT: I don't know what they mean, so what are they?

MR. VARNADO: Sir?

THE COURT: Mobius and E-card, I don't know what they mean.

MR. VARNADO: They are proprietary programs. There's Mobius, E-card, Dots, and I forget the name right off the top of my head.

MR. LANEY: They're different servicing --

THE COURT: Programs?

MR. LANEY: Yes, sir. They pretty much do similar items. One may be an underwriting, I believe. I'm not sure which one, but E-card is a servicing, holds into the servicing notes in a computer program. And that's what we're going through right now. And we certainly will get that in a timely -- I would hope in the next two weeks we'll have that done. Just about the same time as his response to us.

MR. VARNADO: And a correspondence file too if it exists. I think it's fair game.

MR. LANEY: I do not have a correspondence file. I'll have to go to my client and see that. That was not -- as Mr. Hawk had told Mr. Varnado previously, that was not subject to one of the -- I understand if the Court's going

to want us to get it we'll go to our client and get it, get what we have.

THE COURT: My experience has been that there's a whole litany of stuff. One's numbers, they show when the money comes in and the money goes out. That's clearly one thing they're looking for and they're entitled to. The other one would be Mr. Bentrim called in on such and such a date wanting to know whether or not his payment was promptly applied. That's the correspondence file we're talking about.

MR. LANEY: Okay. We'll look for any communication between the parties.

THE COURT: We called Mr. Bentrim 28 times on January, 2012 because he hadn't made his payment. Okay? That's the kind of stuff that I would think would be in a correspondence file. So I think you're entitled to that. I'm not going to grant you the relief you seek as to compliance with the OCC order. If you want to get that I think the proper method is the through AG's office. So I'm going to deny you on that basis.

MR. VARNADO: Thank you, Your Honor. The next major area of discovery -- and I'm trying to do this rather than go through blow by blow, number one, number two --

THE COURT: That suits me.

MR. VARNADO: I want to see all the records which

prove or disprove that there was a sale of this note. I have the ACLS document right here. And Mr. Laney has a copy and Mr. Hawk have copies of this.

Your Honor, may I approach? Your Honor, I have just handed Mr. Laney an exact copy of what I'm handing to you. This is documents which were received from Womble Carlyle. They bear the Bate's stamp at the bottom WF. So this is WF159 to 217. I showed you that page, Judge. 11-29-06, note, loan sold to pool, loan sold to pool with a transaction amount associated with it, 174,504.20. That's on WF187.

And then if you turn to the last page of this Exhibit, 217, right at the bottom, Judge, 5-13-10, 176,879.20, repurchase principal. Now, Mr. Sloan's discovery asked for all the codes and rubiks which would explain this objection. I think I'm entitled to that. I asked for all the codes and rubiks after the last hearing that I had when Ms. Baker and I were here and you had said go ahead and re-ask those, Rob, which I did. And those were objected to too saying, well, we might let you look at them only, Varnado. As if that would do any good. I'm not that strong with the numbers. I just show them to my client. I'd just show them to my experts.

This is the system of record of this case. This is a document produced by them. It's inconsistent with other

documents they produced, but it absolutely establishes that the note was sold and the note was repurchased. And the only way I contest that, Mr. Laney said, well, obviously you can take somebody's deposition that's not going to say what it says it says. I just want to know, not get every document which shows the sale and the repurchase, because I don't think I am. Because why would you repurchase something you didn't sell? Why would you sell something you didn't own? So that's the next kind of broad group. And that would kind of encompass, in order to make sense of it for right now it'll encompass the codes the rubiks which explain the whole thing.

THE COURT: Mr. Laney?

MR. LANEY: Your Honor, as I've told Mr. Varnado, I can't prove a negative. He has this document. It says what it says. We will produce an affiant and a deponent to explain it to Mr. Varnado. We have produced -- and you made a point a little while ago, you said, you know, you don't have to show everything. The transaction history, all the pavements that were made, that's what this is. We've also produced a re-keyed payment history that is another form to show all the payments made by Mr. Bentrim. And that's where we're having our biggest dispute. He says it says one thing. We say it says another. That's why we'll be there in front of you.

But we have produced all the documents. The only document remaining that he wants to see is the general ledger, meaning -- I don't even know what it is to be honest with you, but the general ledger for the bank, when we have produced these documents specific to this loan. And I cannot imagine if there is such a thing as a general ledger it takes in millions of transactions, First Union and Wachovia were doing on a day by day basis in these time periods, you know. The time, the amount of burden and cost and everything to go through and pick out just Mr. Bentrim's entries on that and we've already produced this.

I mean, we're not hiding anything. It says what it says, and we'll have to explain it to the Court's satisfaction. And I think under the oncology and hematology associates case which recently came out Mr. Varnado keeps saying discovery for all, discovery for all, but you do have to show that there's a reasonable expectation of obtaining informational that will aid in the dispute's resolution.

Your Honor, we have the original note. There is no malange 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 the 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.

THE COURT: Have you had somebody explain or provide for those codes and whatever the codes mean? Are they self-explanatory? If you punch in one code it kicks out this statement or such thing as that?

MR. LANEY: We have not, Your Honor. And those are proprietary, which we have objected to producing up to this point.

THE COURT: The codes themselves?

MR. LANEY: The codes, yes, sir.

THE COURT: You got a body that's going to testify as to that issue?

MR. LANEY: Yes, sir.

THE COURT: And that name's been released and y'all --

MR. LANEY: We'll have to --

THE COURT: You're saying yes. You're saying no.

MR. LANEY: We'll have to produce somebody, sure, to walk through this history card and be able to explain it. I imagine it would not be to Mr. Varnado's satisfaction, but we'll have to let the Court decide if it's satisfactory or not.

MR. VARNADO: If I may briefly be heard. I'm flabbergasted because the codes may be proprietary, but this

impacts their counter claim and my claim. I should see these codes. I should understand what the rubiks are. Whoever is going to come explain this is going to probably talk to me about codes. I need to see them in advance.

The general ledger, I'm really, I don't understand. They are by law required to have a general ledger for Mr. Bentrim's account. Mr. Laney's talking about opening up the whole books of the bank. I don't want to see every book of the bank. At this point all I want to see is the general ledger for Mr. Bentrim's account. Now, here's something very interesting, Judge.

THE COURT: Isn't that what this is?

MR. VARNADO: No, sir. That's a servicing record. That's an incomplete servicing record. There's something very important about that record, it doesn't contain the first 18 months of records for this loan. It's incomplete.

MR. LANEY: It does, Your Honor. He's just misreading, but it does.

MR. VARNADO: You know, that's the kind of thing where we can duke it out later, but I think it's pretty clear on it's face it doesn't. If you look at it it says that there is a loan established nine days before it was funded. And there's an immediate like interest and principal fine levied on the same first day. And there's just no records for the first 18 months. It's just on the

first page, it's not there.

But Judge, I'd like to talk about the general ledger. Mr. Laney says I don't even know what he's asking for. Well, Womble Carlyle produced one page, if I may approach, Your Honor, of a general ledger. They produced one page of a general ledger. You will see the odd thing about that one page of the general ledger that they produced is that on that one page it just says an amount was moved from the credit side to the debit side. It doesn't tell me where the money came from. It doesn't tell me where the money went.

If there is a general ledger for Mr. Bentrim's loan, which there has to be by law, then it needs to be discovered. And here's a bank. What does a bank do? It keeps records. And a general ledger, there's a general ledger. I'd like to see everything associated with those general ledger numbers. This is what they do. This is the bank. This is what they do.

Now, why is it important? It establishes truth and lending, holder, and you know what, in my new complaint I say that they didn't fund the note. And I think it's important. They say in response to that we lack information sufficient to admit or deny. But in their counter claim they say that they gave consideration, for valuable consideration given. All of that would impact the general ledger. So there's the general ledger.

The other area that I didn't mention earlier I'm sure we have a fight on would also establish sale would be vault records. The vault records associated with Bentrim notes, those would establish where they were and when they went out. We know that they came out of some vault. We don't know whose vault. They came out of some vault. And they got down to Jacksonville maybe or maybe not. We need to see the vault records.

THE COURT: Are you talking about the money that funded the loan?

MR. VARNADO: Sir?

THE COURT: Is that what you're talking about, the money that funded the loan?

MR. VARNADO: Just on the vault records which would be where the note was and who was in custodian of it. But yeah, who funded the loan would be very important. Yeah, exactly. Who funded the loan, whose books the loan value came off of. We'll have expert testimony to go into that. It's just an area of inquiry. It's an area of inquiry. They say that they gave consideration, so I'd like to see evidence of the consideration they gave. Mr. Laney's like I've got a note.

THE COURT: You're not disputing he got a loan, are you?

MR. VARNADO: I am disputing that the transaction

took place that they say took place. There's some money went into a closing attorney's file, but I don't know where it came from. I don't know whose money it was. And they're saying they gave consideration. It would be a very easy thing for a bank who keeps records to say, this is where the money came from, this is -- for Mr. Bentrim's file.

I don't want to see the, you know, 80 billion page general ledger for the whole bank. I want to see it for Mr. Bentrim's file. Right now I think they need to give that.

THE COURT: Mr. Laney?

MR. LANEY: Your Honor, the document you're holding shows the funding. That's the money, the wire money that's going from the bank to the closing attorney.

THE COURT: Base line of the debt was 180,000, right?

MR. LANEY: Yes, sir. The note says 182,700 but there was an origination fee. That's part of our dispute. But we also -- he has the note that he signed that shows the lender, creditor as First Union. There's a HUD which shows that the previous mortgage was paid off through these funds which match up $180,000. And we have the itemization of finance which shows creditor First Union National Bank. The disclosure says creditor, First Union National Bank. I have copies of all those here, which we have produced to

Mr. Varnado in this case. I'm happy to show the Court.

And when I was pointing that out to Mr. Varnado that here's the actual funding going to the closing attorney he told me again -- he used his word, he was flabbergasted because I didn't show that it was really First Union's money that went to the closing attorney. I'm not sure what I can do there.

THE COURT: I'm going to overcome that one. We have no case or controversy if it didn't exist, so I won't throw the case out on that basis. What I think I heard him driving at when he was referring to the vaults was where the documents were stored. Do we have that record?

MR. LANEY: We do. It was stored. He took Tracy Thomas' deposition. And the E-card notes, she was looking through the E-card notes says she can see where it was taken out of the vault, I believe in Roanoke, Virginia is where it was held. It was checked out at a certain time and checked back in. It's now, this question goes who is the custodian. We are. We have it right here. Currently Mr. Hawk, I don't trust myself with it. So we have the original note. Like I said, there's no long malange. There's no assignment of mortgage assigned.

THE COURT: And on the face of it no assignment's been recorded and there's no malange on the note?

MR. LANEY: That's right.

MR. VARNADO: And that's really important because it's a blank endorsed document in their possession right now. And there's another document said it went to a pool. And most pools are governed by New York or Delaware trust law. You got -- you can't have them be blank endorsed.

THE COURT: Well, y'all got to take that gal's deposition or whoever that person is and explain that.

MR. VARNADO: Your Honor, I just respectfully --

THE COURT: Bring them in here if you want, but back to my story we we're talking about last time if they're holding the note and the note came out of, what, First Union. Does it say First Union on there?

MR. LANEY: Yes, sir, Your Honor.

THE COURT: So there'll be somebody who'll have to explain that sale of the note. I'm okay with you on that. I got that. You're going to have to explain that. Where the documents have been held, note, mortgage, all that kind of stuff, you're entitled to that.

MR. VARNADO: Can I see the general ledger for his file?

THE COURT: How it got funded out, What kind of general ledger do you have separate apart from what we looked at?

MR. LANEY: I don't think I have anything other than this, Your Honor. I'll make inquiry to make sure

there's not anything else, but my understanding is this would constitute the general ledger.

THE COURT: For the funding of the loan, right?

MR. LANEY: Yes, sir. All the documents we have produced are what we would be able to rely on to say we funded it and these are the payments that were made.

MR. VARNADO: Judge, if I could just briefly, briefly be heard. This document has a number on it. If he would confirm that I've given you every document associated with the general ledger number then I've see the general ledger. I just feel I've seen this one little snapshot of it.

THE COURT: All right. Get you to confirm that.

MR. LANEY: Yes, sir.

MR. VARNADO: We're making headway, Judge.

THE COURT: I've got three. That means we've only got one more issue to deal with, right?

MR. VARNADO: I think we kind of subsumed two and three, because I was talking about accounting ledgers and books. So Mr. Laney's going to make an inquiry to see if there's more general ledger.

THE COURT: Right.

MR. VARNADO: Records that would show or disprove the sale, so they'll produce a witness.

THE COURT: Right.

MR. VARNADO: And they will produce these E-card documents. We have a real dispute over what Ms. Thomas said or didn't say, but it'll come out in the wash. I think that the one thing that I didn't hear you say, Judge, and I would respectfully request that it be innumerated in the order is that we would get the codes and rubiks for the ACLS report so that we can understand what it means before we show up and take this guy's deposition or this lady's deposition, whoever it is. And I don't think it would should be my eyes only, you know, it's non-discovery.

THE COURT: You indicated that was proprietary. How about providing them something in particular ahead of time that explains those two codes, the sale and the purchase?

MR. LANEY: I have no problem with that.

THE COURT: And then to the extent y'all want to go somewhere, isn't that the biggest issue here from that? Isn't that where we're really going with this thing?

MR. LANEY: I think it is, Your Honor.

THE COURT: If from's some misapplication I'm going to anticipate that whoever y'all produce for the deposition is going to know those or at least have a cheat sheet that allows that person to know those, because there are lots of numbers on there.

MR. LANEY: I certainly hope so.

THE COURT: But I think ahead of time y'all need to be able to make sure those, it's conceivable that there was a mistake, but that's just me. Okay.

MR. VARNADO: Your Honor, I'm just going to just ask you to please reconsider. If I can only for those two and I don't have the whole cheat sheet then I am totally --

THE COURT: They're going to produce you a witness with a cheat sheet and/or not cheat sheet knowledge. Okay? If you randomly pick some other entry in there you want to make a verification that that is what it says it is that person is going to have to be able to answer that question. Okay?

MR. VARNADO: And can they show me the document too or not?

THE COURT: They don't have to. They don't have to. If you find it used in different ways in different places, I saw lots of numbers on that thing.

MR. VARNADO: That's true, Judge. Then I'll have to come back and then ask to see more of these.

THE COURT: Yeah. They may have some code, what was that code breaker thing in World War II, where you had a random number every time you go through there. I mean, that might be what's going on there.

MR. VARNADO: There's missing First Union National Bank records that have never been produced, payout

information, loans, just gone. That needs to be produced. They've objected to it. I don't know why they've objected to it. Either it exists or it doesn't exist.

THE COURT: So missing First Union data; is that what you're telling me?

MR. VARNADO: Yes, sir.

MR. LANEY: Your Honor, this loan was originated 2002, March of 2002. The lawsuit was brought in 2011. We have produced what we have. I'll certainly make sure so I can stand in front of this Court and say there's been no stone unturned. I mean, if there's something from First Union, the old First Union days that would relate, but the systems were converged. And again, when we produce our deponent he'll be able to explain those to him. There is entries that show from the inception of this loan and accounts for all the payments and activity for the first 18 months as well. But as far as other records we have produced everything that was retained in our file during those nine years, Your Honor.

MR. VARNADO: They got to have them, Judge. I mean, they got to have them. They got to have them. They can't not have them. That's a big problem.

THE COURT: I don't know where they went. They would be somewhere, so you can explain. I think that's explicable too. Here's my first point of inquiry. You made

reference that there was previous foreclosure actions brought too, I think you said. When were those brought and what records were provided at that time, if any?

MR. VARNADO: You know, what happened was was we got some --

THE COURT: Let me stop you there and get an answer to the question. So whatever time the first action was brought they would have had to --

MR. LANEY: 2007 was the first foreclosure action, Your Honor. And then 2009 there was a second one. Mr. Bentrim represented himself in both of those actions. They were not handled by our law firm, so I do not have personal knowledge of those lawsuits other than what I've looked in the records. And it appears that there was a resolution that resulted in dismissal of the first one. The second one I believe actually came in front of Your Honor and a witness was not produced. And so you dismissed it without prejudice. I believe that's what the record shows. It was handled by different law firm. And then this lawsuit was brought in 2011. As far as the discovery or documents or anything between those that has not been, --

THE COURT: Both of them would have been captioned Wachovia versus Bentrim though, correct?

MR. LANEY: That's correct.

THE COURT: That was the time period was Wachovia

was holding it?

MR. LANEY: That's correct, Your Honor.

THE COURT: So y'all should be able to get ahold of that stuff.

MR. LANEY: Yes, sir.

MR. VARNADO: You know, Judge, in response to that this is another critical thing is they had produced -- in the 2009 case they produced this Chris statement. This is called a Chris statement. Tracy Thomas testified about this. It doesn't match the Chris statement that they produced in this case.

THE COURT: That's good fodder for cross examination I would say. I can't fix that today, but that sounds pretty powerful on cross examination. I will look forward to that.

MR. VARNADO: I agree, Your Honor. I would agree. I just think that they need to say that they have produced everything, that they're not holding back based on objections or sort of wiggle room stuff that if they got it they're going to produce it, just like you have on the other things.

I did ask some specific questions about the kind of dovetails in the vault records dealing with this -- Ms. Tracy Thomas testified that there was a lady down in Jacksonville named Brandy Vine (ph) who was subordinate to

her who got the note out of the vault. And I asked them to tell me about how Brandy got it, tell me about how Brandy asked for it, tell me about what Brandy did with it. Objection, objection, objection. I think it -- that's exactly why I'm asking you, and I think you've ordered them to turn over the records which show when it came in and out of the vault.

And I would really ask, Judge, as part of that, it's not that there be some E-card thing. Remember, I've asked for E-card. I'm asking Ms. Thomas, show me what you're looking at. Well, it's in E-card. Well, we haven't given it to you yet. So I came to court I need E-card, Judge. You know, well, Mr. Varnado, you didn't ask for it since Ms. Baker. You need to re-ask for it, re-ask for it. Then I'm supposed to get it. Then I move to compel and I haven't gotten it yet.

And they're saying, Mr. Laney's saying well, E-card shows where all the vault stuff was. Well, I think I should be able to see the vault records from Roanoke, because Ms. Thomas didn't testify about Roanoke. She didn't. I might have asked her if it was Roanoke. I don't think she knew. Whoever, it doesn't matter. I'd like to see the vault records in Roanoke, if they are in Roanoke, whoever vault it was. And I'd like to see the stuff with Ms. Hunt, and that's been objected to. I think that's bound up in it,

Your Honor, also.

THE COURT: I think I did touch on that. That's just in the nature of the vault records, right? Where's the note being kept during the period of time, right?

MR. LANEY: My understanding is you said somebody's going to need to explain those records to Mr. Varnado to explain where the note was kept during the time period since we had it. We can do that, Your Honor.

MR. VARNADO: And Your Honor, all I'm asking for is the records from Virginia if it's in Virginia and the records in Jacksonville if they're in Jacksonville. It's just as simple as that. I'm not asking for anything other than Mr. Bentrim's notes. And that would establish a lot of things.

THE COURT: Y'all got a witness that says it was locked up tight as a drum after you got it?

MR. LANEY: We'll produce a witness --

THE COURT: Stayed there or bounced around the country for a while?

MR. LANEY: Yes.

MR. VARNADO: That will be interesting. Thank you, Your Honor. And then there was an issue of force placed insurance. And we haven't seen any force placed insurance documents, you know. We got one, I got one force placed insurance document that says that notice went to the

bank. The bank's insurance company notified itself that they were putting force placed insurance on it. Well, I need to see the force placed file, and I haven't gotten that. And I think that's relevant. I mean, you put force placed insurance on, those force placed insurance cases are coming down the pipe.

MR. LANEY: We'll look for that part of the complaint that came in if we have anything on that.

THE COURT: What time frame would that have been, do you know?

MR. BENTRIM: It was 2009, 2010.

THE COURT: Did it proceed that 2009 action or post that 2009?

MR. BENTRIM: What was going on during the 2009 action was they were having statements mailed to them, so they mailed, hey, we need evidence of insurance to themselves, and then put the maximum amount on my house.

THE COURT: And did you keep insurance in place the whole time?

MR. BENTRIM: Yes.

THE COURT: Provide that to them?

MR. BENTRIM: I was never given an opportunity because they never gave me the notice. They mailed it to themselves.

THE COURT: At least you got a time frame.

MR. LANEY: And one of the things we've asked for as part of the evidence that he had insurance. I figured that would help us as well. I think that's part of what Mr. Varnado has produced.

THE COURT: That would definitely lead to an accounting problem. If force placed insurance is being put in, I've had that plenty of times. It's getting put into effect it's going to drive up your principal balance. And if you've got your own insurance there's no need for that. And they probably have a priority interest in that insurance company anyway, they can probably take that hit.

MR. VARNADO: The last small clean up but also could be a big deal is we see this in all sorts of cases. There's compliance manuals that are internal that are not attorney/client privilege. They're compliance manuals for how people like Tracy Thomas, and I called her a robo-signer, but I won't. Mr. Laney asked me not to, but for people of her level and sophistication how they handled things. And there's compliance manuals for vault security. And I think I should see those too. I've asked for those fairly too in the motion that's scheduled before you.

Your Honor, and then the other thing I would ask is after we handle this compliance manual issue if you would indulge me. I know we've been going on for a little bit, but just a minute or two to talk to my client to make sure I

haven't forgotten anything or that we can concede something else.

THE COURT: All right. Mr. Laney?

MR. LANEY: The compliance manual is completely a proprietary document, internal. We would object to producing that. We certainly will produce to the, where the note was, somebody who can testify where the note physically was and the custodian of that during the relevant time period for this lawsuit, Your Honor.

But again, I would say under the oncology it doesn't, the compliance manual for that does not help us prove any relevant issue in this case, Your Honor. We have the original note here. He wants to make sure that somehow it didn't go out of our -- we were in possession of it. I still don't think that's going to prove anything, but still, I can see where that can lead to -- so we certainly will comply with that, but the compliance manual, I think that's getting beyond the scope here, Your Honor.

MR. VARNADO: You know, Judge, just in rebuttal to that it goes directly to the point of establishing the standard and duty for the bank. It goes directly to whether or not the employees correctly handled this. Three, as you recall there was a lost note affidavit. That was submitted when -- then miraculously the note appeared again, so that impacts that. It impacts the vault records.

One thing I've done is I've handled some security cases before. And I've seen something happen where the defendant will give the index of compliance manuals. And then you say, well, I need to see these, this section, this section, this section. And you're not asking to see, you know, what the employee benefits are, you know, what their salary structure is. I could care less about that. What i want to see is compliance manuals that cover the staff who are at the level of Tracy Thomas and the people who handled the note, what compliance manuals covered them and what compliance manuals cover the vault.

They're proprietary. Well, you know, every day all across the country corporations have to give proprietary documents under confidentiality orders in discovery. And that's all I'm asking for here. Womble Carlyle produced and resigned a confidentiality agreement. So I think it's subject to that, Judge. It's fair. I mean, I don't know how -- I don't know why it wouldn't be relevant in discovery other than they just don't want to give it.

MR. LANEY: There's no issue here whether or not we were negligent in holding the note or not. He said it, the question is whether the not the note was sold or not, and being able to see where the note was during these time periods answers that question. Seeing a compliance manual doesn't go to that.

THE COURT: I'm not going to grant that. Okay. I'm going to deny you on that one.

MR. VARNADO: Can I have that minute then to confer, Judge?

THE COURT: Sure.

MR. VARNADO: Your Honor, I do not need to confirm.

MR. LANEY: Your Honor, we had talked earlier but we're sort of operating now on the vacuum of, because we don't have a current scheduling order and there's obviously a lot of discovery still to be done. Mr. Varnado has named four expert witnesses in this case who we do not yet have expert opinion reports, so those people are going to be deposed. We've identified four rebuttal expert witnesses depending on what his experts may say. We've just talked about a lot of paper getting swapped in the next, you know, 15 or so days. So I just want to make sure the Court was aware where we were so we didn't try the Court's patience by you thinking we needed to come up for trial and we were not prepared.

THE COURT: Well, usually what I do is I have sort of a pretrial hearing, take up any dispositive motions, any last minute discovery problems that may exist, and then set you for trial at that time. And trial is usually 30 to 60 days out. So that's probably what I would like to do is set

y'all up with another pretrial hearing.

MR. VARNADO: We can just keep doing discovery through that?

THE COURT: Yeah. Some time 60 days out, something like that.

MR. VARNADO: That's perfectly acceptable.

THE COURT: Does that give y'all time? If I set something for late April? I got some time in late April.

MR. VARNADO: Yes, sir.

THE COURT: And then I won't have any time until basically June for trial.

MR. VARNADO: I'm sorry. What I understand His Honor to be saying is that the Court will establish the pretrial. At the pretrial then you would determine what discovery remaining needed to be done; did I --

THE COURT: My goal is to have y'all have discovery done by then and I be taking up these dispositive motions at that time.

MR. LANEY: If he's truly going to go forward with four experts and we have to depose them and get their opinions and then allow time for our four experts to form their opinions in rebuttal of him, I don't see how in the world we can get that done in 60 days, Your Honor, even if we were really hustling hard.

MR. VARNADO: We'd like to try it in June. And

Judge, maybe we need to come back for another status conference. I mean, I want to get the thing done, but you know, we need to get these documents. We need to look at the documents. The experts need to look at the documents. We're running into potential, you know, late spring and early summer is vacation time. Maybe I'm getting too ahead of myself.

MR. LANEY: We don't want to delay it, Your Honor. I do want to do it in an orderly fashion without imposing on your schedule more than we need to.

THE COURT: So why don't I bring y'all in here in late April for a status, 28th April at 11:00 a.m. All right? And then I'm going to be heading towards June 9th on a pretrial. At that point in time we should be, y'all are ready to go and there's a case left after June the 9th then I'll be looking to set the trial date some time probably July, August time frame.

MR. LANEY: Your Honor, the final issue, we've conferred, the Court appointed Capers Barr to be the mediator in this case. We believe that Dawes Cooke may be very well situated for this particular one given the issues. We just want to make sure that was fine with Your Honor.

THE COURT: Yeah. Y'all want to go see Dawes? You want me to put Dawes in here?

MR. LANEY: Please.

THE COURT: When would y'all like to see him, before we come back here in June?

MR. VARNADO: I think we need to discuss it at the status conference. That would make sense, the status conference and pretrial.

MR. LANEY: I definitely want to see him before we come back here pretrial.

THE COURT: I'm going to go ahead and pencil both of those days in, status on the 28th and the pretrial I'm going to set that up on the 9th of June. I put Dawes in here. We'll get back for a status on April 28th and do a pretrial on June the 9th. And then just some deadlines, Dawes Cooke by the 6th of June. Y'all go ahead and notify him though so y'all can get some time in there.

MR. VARNADO: You want me to do an order judge or --

THE COURT: I got a status, but I do need y'all to come up with an order on our discovery stuff. I think you had made reference, I don't think you had one from the last time. So I want to make sure we're clear and we cover all these issues that we've got. So let me run this by y'all, make sure we know what we've done here. I've got, y'all correct me if I'm wrong, but y'all are going to make an inquiry of the IRS for the EIN number and who it was assigned to. Okay?

MR. LANEY: Yes, sir.

THE COURT: The servicing files on the plaintiff will be produced, and that's to include the correspondence file, the payment, application of payment file, anything having to do with the sale and repurchase of the note, and whatever general ledger exists. Okay?

MR. VARNADO: Yes, sir.

THE COURT: They're not required to show compliance with the OCC order, or the AG's agreement, or produce the codes and rubiks, but you are required to produce somebody who can explain what those codes and rubiks are, and especially prior to their deposition as to the sale and repurchase.

And then the vault records and explanation of the force placed insurance, done the scheduling order. Compliance manuals are not required to be produced. Okay? And then what was the other thing? There was one thing one of y'all brought up on a prior hearing.

MR. LANEY: He was going to provide us with answers to our motion to compel on the 15th.

THE COURT: That's right. And those will be looked at. If there's a problem with that y'all file a motion and we'll take a look.

MR. LANEY: Your Honor, just for clarification what are we doing with the vault records, producing a

deponent who can testify as to where it was --

THE COURT: Yeah, yeah.

MR. LANEY: Just making sure I understand.

THE COURT: If there's some list that would suffice, but if there's a person and they look at it that's fine. It may be in those codes. I don't know.

MR. VARNADO: And he'll produce the back up documentation too? Did I mishear you, Judge? I thought that you had said --

THE COURT: When you say back up documentation --

MR. VARNADO: The actual, the records themselves. So I'm not going to hear somebody that's going to say, Mr. Varnado, my name's Joe Blow, and I've looked at records that you've never seen. And I'm here to testify about records that you've never seen.

THE COURT: I'm assuming there's a list somewhere as to where it's been.

MR. VARNADO: Right. You told me no to the compliance manuals but yes to the vault records and yes to the force placed insurance file?

THE COURT: Right.

MR. VARNADO: And Your Honor, did we have the same time, is it a mutual time frame, 15 days?

MR. LANEY: Your Honor, I'll just be candid. I don't think I can produce everything that you ordered from

my side in 15 days. This is for the first time I'm going and asking my client to do, and I will not -- we'll get it as quickly as we can.

MR. VARNADO: Just, you know, this is some stuff that's been out there since Mr. Sloan asked for it back in '11.

THE COURT: I'll give him 30 days. See if you can get yours in 15 and get theirs in 30.

MR. VARNADO: The one thing you did say was they would make the inquiry to the IRS by the end of the week, Judge?

THE COURT: Yeah. That would be good. All right.

MR. VARNADO: Thank you, Judge.

MR. LANEY: Thank you, Your Honor.

(Hearing concluded at 12:45 o'clock p.m.)

STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF DORCHESTER)

I, Stacey L. Scoggan, Court Reporter and Notary Public, certify that I did have The Honorable Judge Mikell Scarborough to appear before me at 11:15 o'clock a.m. on Monday, February 10, 2014, at the Charleston County Courthouse, 100 Broad Street, Suite 266, Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 21st day of February, 2014.

/s/

Stacey L. Scoggan

Notary Public for South Carolina

My Commission Expires: February 23, 2021