

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
In the Court of Common Pleas for the Ninth Circuit

The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2019-000671

RECEIVED  
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SC Court of Appeals

Tammy C. Richardson .....Respondent,

v.

Halcyon Real Estate Services, LLP and McCabe, Trotter &  
Beverly, P.C. .... Defendants,

Of whom McCabe, Trotter & Beverly, P.C. is the .....Appellant.

**RECORD ON APPEAL – VOLUME 2 OF 3**

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February 7, 2020

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**Deposition of:**

**Haylen Gatling**

---

**Tammy Richardson**

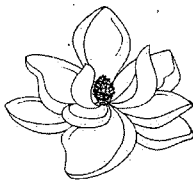
**vs.**

**McCabe Trotter**

**Case #: 2016-CP-18-01001**

**January 15, 2019**

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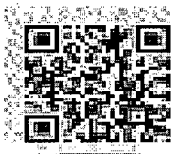
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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT  
CASE NO. 2016-CP-18-01001

TAMMY C. RICHARDSON, )  
Plaintiff, )  
vs. )  
MCCABE, TROTTER & BEVERLY, P.C., )  
Defendant. )

\* \* \* \* \*

VIDEOTAPED  
DEPOSITION OF: HAYLEN GATLING  
DATE TAKEN: Tuesday, January 15, 2019  
TIME: 10:00 a.m.  
PLACE: Rogers Townsend & Thomas, PC  
1221 Main Street, 14th Floor  
Columbia, SC  
REPORTED BY: TERI L. SAMPSON, RPR,  
Notary Public and Certified  
Live Note Reporter

\* \* \* \* \*

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STEPHANIE TROTTER

## I N D E X

WITNESS: HAYLEN GATLING

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# S T I P U L A T I O N S

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1 COLUMBIA, SOUTH CAROLINA, TUESDAY, JANUARY 15, 2019

2 10:06 A.M.

3 P R O C E E D I N G S

4 - - - - -

5 (DEPOSITION NOTICE & SUBPOENA MARKED

6 PLAINTIFF'S EXHIBIT NO. 1 FOR I.D.)

7 VIDEOGRAPHER: Good morning. We are now on  
8 the record. Today's date is January 15th, 2019. The  
9 time is approximately 10:06 a.m. This is the video  
10 deposition of Haylen Gatling, taken by counsel for the  
11 plaintiff. The location today is 1221 Main Street in  
12 Columbia, South Carolina.

13 My name is Douglas Browne, legal videographer  
14 representing VidSouth Production. I am familiar with  
15 the provisions of Rule 30(h) pertaining to videotaped  
16 depositions. This deposition is taken in the matter of  
17 Tammy C. Richardson versus McCabe, Trotter & Beverly,  
18 P.C., Case No. 16-CP-18-1001.

19 Counsel present, please introduce yourselves  
20 for the record.

21 MR. KAHN: My name is Justin Kahn. Myself and  
22 Mary Leigh Arnold are present on behalf of the  
23 plaintiffs.

24 MR. COUNTRYMAN: Andy Countryman. I represent  
25 the defendant.

1 VIDEOGRAPHER: In accordance with Rule  
2 30(h)(3), the witness has the right to be shown the  
3 videotaped deposition unless waived by the witness and  
4 the parties. The court reporter today is Teri Sampson  
5 of Magnolia Reporting. Would the court reporter please  
6 swear in the witness and we may begin?

7 WHEREUPON,

8 HAYLEN GATLING,  
9 being first duly sworn, testified as follows:

10 EXAMINATION

11 BY MR. KAHN:

12 Q Good morning, my name is Justin Kahn. I am an  
13 attorney here on behalf of Mrs. Richardson in this  
14 class action matter. Myself and Mary Leigh Arnold are  
15 present. Also, the record should reflect Stephanie  
16 Trotter is present in this deposition today.

17 During -- have you had a deposition before?

18 A No.

19 Q All right. What should I call you, Haylen or  
20 Miss Gatling? Tell me what you prefer.

21 A Haylen is fine.

22 Q All right. Haylen, have you had a deposition  
23 before?

24 A I have not.

25 Q All right. There are some rules that I need

1 to tell you about for depositions. One of which is, at  
2 any time during the deposition, you can't hear me or  
3 don't understand a word I've used, or don't understand  
4 my question, if you would, stop me and tell me you  
5 don't understand the question before you answer it.  
6 Okay?

7 A Okay.

8 Q Also, if you give verbal responses, that will  
9 help the court reporter, who is sitting to your right,  
10 who needs to take down everything that everybody is  
11 saying. I know it's very tempting, like you're doing  
12 right now, to nod your head, and that works in  
13 conversations. But the court reporter needs to take  
14 down accurately what everybody is saying. Okay?

15 A Okay.

16 Q So if from time to time I ask you for a verbal  
17 response, I'm not being mean. It's just the court  
18 reporter needs to have clarity, and we all need to make  
19 sure everybody is using the right words, and that the  
20 words are being taken down properly. Okay?

21 A Okay.

22 Q Also, if at any time during the deposition you  
23 need to stop and take a break, just let us know.

24 A Okay.

25 Q All right. There is no requirement to sit



1 through and answer all of my questions until the end.  
2 You're welcome to put up a time-out signal or just tell  
3 me you would like to take a break. It's not a big  
4 deal. Although, we may want to finish the particular  
5 area that we're in, if that will work out. Okay?

6 A Okay.

7 Q Also, if you would, from time to time during a  
8 deposition I may ask you a question, and you may not  
9 remember all the facts, or you may not remember an  
10 answer to it, and later on in the deposition you  
11 remember something. If you would, if that happens  
12 during this deposition, that is, if later on, if you  
13 answer a question early on, no or I don't remember or  
14 whatever it is, and later on you end up remembering a  
15 fact about the question, would you let us know so that  
16 we can know the information you have about that?

17 A Okay.

18 Q Does that make sense?

19 A Yes.

20 Q From time to time, the lawyer for your -- for  
21 the law firm McCabe Trotter may make an objection. And  
22 under our rules, unless he instructs you not to answer  
23 the question, you are to answer the question subject to  
24 his objection, and the judge can rule on that later on.  
25 Okay?

1 A Okay.

2 Q So from time to time, I may ask a question;  
3 the lawyer thinks for one reason or another that the  
4 question is not something that's proper under the  
5 rules; then a judge will rule on that. But you are to  
6 answer subject to that unless he instructs you not to;  
7 okay?

8 A Okay.

9 Q Could you give us your full name, please?

10 A My name is Haylen Kelsey Gatling.

11 Q And also, I hear the air conditioner above us,  
12 it's sort of loud. And I'm going to re-emphasize, if  
13 at any time you don't hear me because of that noise,  
14 please stop and let me know. I want to make sure  
15 you're answering the questions I'm asking, and I don't  
16 want you to guess. Okay?

17 A Okay.

18 Q All right. And what -- when were you born?

19 A December 21st, 1988.

20 Q All right. Can you tell me generally about  
21 your educational background, please?

22 A I went to high school and graduated from the  
23 University of South Carolina.

24 Q Okay. What year was that that you graduated?

25 A 2011.

1 Q All right. And did you have a particular  
2 major?

3 A Political science.

4 Q And did you work any in college?

5 A Yes.

6 Q What did you do?

7 A I was a waitress, I also worked as a paralegal  
8 for another law firm, and I was a bartender.

9 Q Okay. And what law firm was that that you  
10 were a paralegal?

11 A Lewis & Babcock.

12 Q Cam Lewis?

13 A Uh-huh.

14 Q All right. That's one of those where you have  
15 to say yes, but that's all right. I know --

16 A Yeah. Yes. Yes. Cam Lewis.

17 Q We'll get you in that habit. And after you  
18 worked for Lewis & Babcock, did you have any other jobs  
19 working as a paralegal for any kind of legal -- law  
20 firm?

21 A Not until I started with McCabe, Trotter &  
22 Beverly.

23 Q All right. What did you do at Lewis & Babcock  
24 in terms of -- you said you were a paralegal. What  
25 kinds of things did you do? I don't think they do

1 collections work. So what kind of work --

2 A I was a runner at Lewis & Babcock.

3 Q Okay. All right. By runner, you would take  
4 documents for filing or to be -- what did you do as a  
5 runner?

6 A Anything the attorneys needed me to do.  
7 Mostly, it was running errands.

8 Q All right. When you were working for Lewis &  
9 Babcock, did you do any kind of work associated with  
10 any kind of debt collection?

11 A I did not.

12 Q I think you said -- well, when did you start  
13 working at McCabe Trotter approximately?

14 A October 2012.

15 Q Okay. And when were you at Lewis & Babcock  
16 approximately?

17 A 2007 to 2008, I believe.

18 Q Okay. And what did you do in between working  
19 for Lewis & Babcock and McCabe Trotter, what kinds of  
20 work?

21 A I was a waitress.

22 Q Okay. Here in Columbia?

23 A Yes.

24 Q And how did you learn about the job opening at  
25 McCabe Trotter in October 2012?

1 A I believe I found it online and applied.

2 Q All right. Did you interview with anyone?

3 A I did.

4 Q And who did you interview with?

5 A I interviewed with Stephanie Trotter.

6 Q All right. What did you understand your job  
7 responsibilities to be at the time you were  
8 interviewing?

9 A Preparing liens and taking homeowner payments.

10 Q Did you understand you were going to work for  
11 a law firm that engaged in debt collection at that  
12 time?

13 A I did.

14 Q In terms of preparing liens, tell me about  
15 that. What does that mean?

16 A Our clients turn delinquent homeowners over  
17 for collections, and we prepare a lien.

18 Q Okay. And do you all have a computerized  
19 system for doing that? How does that work?

20 A We do. There's a template that we utilize.

21 Q All right. By template that you utilize, what  
22 do you mean?

23 A Our system has a template depending upon the  
24 county, that has the appropriate information the county  
25 requires.

1 Q Okay.

2 A That we input the information after compiling.  
3 We get the property card. We confirm there's no  
4 mortgage foreclosure pending.

5 Q Okay.

6 A And send it to Stephanie for review.

7 Q Okay. It looks like you all have a  
8 computerized system that you all use to keep up with  
9 each file?

10 A Yes.

11 Q And in that system, it looks like it keeps  
12 track of all the work done and the people working on  
13 the file?

14 A It depends. You don't have to log in to the  
15 system. It just depends. I mean, it's not going to  
16 show it if I'm reviewing something on paper.

17 Q Before preparing for today's deposition, did  
18 you talk with anyone?

19 A I spoke with our attorney.

20 Q Who else?

21 A Just our attorney.

22 Q Was Stephanie Trotter there?

23 A Yes, she was there.

24 Q Have you talked with anyone in the office  
25 about these depositions?

1           A     Only Stephanie and the attorney and the other  
2     girl that's going to be in the depositions.

3           Q     Okay. And when was that discussion?

4           A     Last Thursday.

5           Q     Okay.

6           A     Or last Wednesday or Thursday, I think.

7           Q     All right. So you, Stephanie Trotter, and  
8     who?

9           A     Theron. Theron.

10          Q     Theron Coetzee? Were those the people having  
11     this discussion last Thursday?

12          A     It was Stephanie, Theron, and our attorney,  
13     Andy.

14          Q     Okay. And what documents did you all review?

15          A     There was just one document that I took a look  
16     at. I don't remember exactly what it was.

17          Q     Okay.

18          A     I think it was the -- I think it was a notice  
19     of lien for Miss Richardson.

20          Q     Okay. Did you look at anything else?

21          A     No.

22          Q     Did you review any deposition testimony?

23          A     Andy gave us some examples of --

24                 MR. COUNTRYMAN: Don't talk about what I told  
25     you or what I gave you. You can talk about what you

1 reviewed.

2 A (Continuing) I did not review any specific  
3 depositions.

4 Q Did you review any videos?

5 A No.

6 Q Did you review any of the policies or  
7 procedures of McCabe Trotter?

8 A No.

9 Q Did you review any employment file?

10 A An employment file?

11 Q Uh-huh.

12 A No.

13 Q When you said you reviewed, what -- can you  
14 describe to me the documents that you reviewed  
15 associated with Miss Richardson?

16 A I believe it was just the demand letter and  
17 notice of lien.

18 Q Okay. Anything else?

19 A No.

20 Q Is there a reason you all didn't provide that  
21 to me as the Plaintiff's Exhibit No. 1 subpoena  
22 requires you all produce it to me?

23 A I don't know.

24 MR. COUNTRYMAN: Do you not have that?

25 BY MR. KAHN:



1 Q Is there a reason you didn't produce the items  
2 required by the subpoena?

3 A I don't know.

4 Q Did someone tell you not to produce them?

5 A I don't know the answer to that question. I'm  
6 sorry.

7 Q In front of you is Plaintiff's Exhibit No. 1,  
8 which is a deposition notice and subpoena. Have you  
9 seen that document before?

10 A I have not.

11 Q Do you understand your attorney accepted that  
12 on your behalf?

13 A Yes. I see where it says "Care of Andrew  
14 Countryman."

15 Q Is there a reason why you didn't produce the  
16 items required by that subpoena?

17 MR. COUNTRYMAN: Justin, you have those  
18 documents. This is ridiculous. She already said she  
19 didn't see the subpoena. If you have an issue with  
20 that, you can take it up with me. I would ask you to  
21 quit badgering her about it.

22 BY MR. KAHN:

23 Q Is there a reason you didn't produce the  
24 documents required by the subpoena?

25 MR. COUNTRYMAN: You have the documents,

1 Justin. They have been produced.

2 BY MR. KAHN:

3 Q Under our rules, you have to answer the  
4 question.

5 A I don't know.

6 Q Okay. Do you think one is required to obey  
7 court subpoenas?

8 MR. COUNTRYMAN: Objection.

9 A (Continuing) I don't know.

10 Q Are you familiar with court procedures?

11 A I am not.

12 Q What -- I think you said the letter. And what  
13 else did you review, I'm sorry, for Miss Richardson?

14 A I believe it was the demand letter and notice  
15 of lien.

16 Q Did you review anything else other than the  
17 demand letter and notice of lien for Miss Richardson?

18 A I did not.

19 Q Did you make any notes?

20 A I did not.

21 Q Was anything highlighted?

22 A In the document?

23 Q Yes, ma'am.

24 A Not that I recall.

25 Q Other than -- have you talked with anyone

1 other than Miss -- I think you said this meeting was  
2 last Thursday; is that right?

3 A I think it was. I believe it was last  
4 Thursday.

5 Q Did you talk with Miss Trotter about anything  
6 to do with this case before last Thursday?

7 A She told me that we were going to have a  
8 deposition.

9 Q Okay. Did she tell you anything to review?

10 A No.

11 Q Let's talk about the computerized system you  
12 all were using. You said you've worked there since  
13 2012. Has the process for collecting on homeowner's  
14 associations basically been the same since October 2012  
15 through -- really through now?

16 A Yes, I believe so.

17 Q Okay. And what kind of training did you  
18 receive in October -- oh, you were hired in 2012,  
19 October?

20 A Yes.

21 Q And when you started working there, what kind  
22 of training did you receive?

23 A I sat with another employee there, and she  
24 took me through all of the steps that are required.

25 Q Okay. Who was that other employee?

1 A Her name is Sheri Self.

2 Q Have you spoken with Sheri Self about this  
3 case or the deposition?

4 A I have not.

5 Q So before you started working there, I guess  
6 Sheri Self had worked there before you?

7 A Yes.

8 Q Was -- about how many people do what you do in  
9 terms of collecting information from the homeowner's  
10 associations and send out these form letters?

11 A Like how many people are on the team?

12 Q Yes, ma'am.

13 A At the time, it was just Sheri and I.

14 Q All right. That was -- so that's in 2012?

15 A Yes.

16 Q All right. And after that, if we move forward  
17 in time, how many people are on the -- you called it  
18 the team. Did it grow?

19 A There are several members to the HOA team; but  
20 as far as preparing the liens, there's only two people  
21 that do it now.

22 Q All right. Tell me what an "HOA team" means,  
23 please.

24 A It's just the people that I understand to be  
25 working on the HOA collection files.

1 Q What are the different tasks that they have,  
2 or how do you all organize that?

3 A Well, two people are in charge of opening  
4 files and preparing the liens for Stephanie's review.  
5 Up until November, I was the HOA collector. Now, I  
6 handle the payments and any, you know, random homeowner  
7 questions. I also handle the payoff email.

8 Q When you say "November," are you talking about  
9 November 2012 or November 2018?

10 A November 2018. An additional person was hired  
11 to answer the phones.

12 Q Okay. So from October 2012 through basically  
13 November of 2018, there were two people in charge of  
14 opening files and creating liens?

15 A Yes. There's always been about -- as long as  
16 I've been there, there's just been about -- there's  
17 been two people in charge of that.

18 Q Okay. And the process from documents we've  
19 seen, and tell me if I'm right, involve a homeowner's  
20 association or management company sending in a new file  
21 request for something to some email? Or how does that  
22 work?

23 A So when a homeowner becomes delinquent, after  
24 the time frame has expired for them to pay the  
25 association, their account gets turned over by the

1 management company, or the HOA directly.

2 Q Okay. When you say "turned over," what do you  
3 mean?

4 A They send a request with a statement to a new  
5 file request.

6 Q Okay.

7 A And ask us to take the action, whether it be  
8 prepare a lien, or prepare a lien and foreclosure.

9 Q All right. So basically, the homeowner's  
10 association or management company send to this email  
11 address a new file request.

12 A Uh-huh.

13 Q A request for you all to file a lien, and they  
14 attach the current statement of the homeowner's  
15 association?

16 A Yes, and any delinquent letters.

17 Q Okay. Is anything else sent other than  
18 basically the statement and the request to begin?

19 A It depends upon the HOA.

20 Q Okay. Typically, are you all getting a  
21 current statement and a request to begin in order to  
22 input that information into you all's system?

23 A Yes.

24 Q All right. And there's two of you all  
25 involved with inputting that information into the

1 system?

2 A Yes.

3 Q And that's the way it's been since October of  
4 2012?

5 A Yes.

6 Q And how many requests might you all receive at  
7 a time? Has there been as many as 150?

8 A I'm not exactly sure of a number. It can be  
9 just a couple, or it could be dozens. It just depends  
10 on the size of the HOA and the number of delinquent  
11 owners.

12 Q I'm talking about on a particular day that may  
13 be from different homeowner's associations as opposed  
14 to one particular association.

15 A Oh, I'm not really sure.

16 Q It could be hundreds?

17 A Maybe not hundreds in a single day.

18 Q More than 150 in a single day?

19 A Potentially.

20 Q Okay. I mean, have you experienced that  
21 before, where after around sort of March, April, May of  
22 a particular year, you all are getting in a bunch of  
23 these requests from different associations throughout  
24 the state?

25 A Yes.

1 Q Okay. And from what I understand, you all are  
2 not only sending these requests out really to South  
3 Carolina homeowner's associations, but also North  
4 Carolina and Georgia?

5 A I don't know. I don't handle any North  
6 Carolina. I don't --

7 Q Okay.

8 A I don't believe we handle anything in Georgia.  
9 I don't know, though.

10 Q Okay. I didn't understand that. So are the  
11 two people involved with you all's office in processing  
12 these requests and current statements only doing it for  
13 South Carolina, or are they also -- are you all --  
14 you're not doing anything with North Carolina?

15 A It's mostly South Carolina. I don't -- I  
16 haven't heard about any recent North Carolina requests.

17 Q You say "recent." Have you been involved with  
18 sending out any letters associated with North Carolina  
19 properties?

20 A Ever?

21 Q Yes.

22 A Yes.

23 Q Okay. And does that relate to the North  
24 Carolina homeowner's associations as well?

25 A Yes.



1 Q Okay. That's what I'm trying to understand  
2 is, from time to time, the two of you all are handling  
3 requests, not only from South Carolina homeowner's  
4 associations, but North Carolina associations as well?

5 A Yes.

6 Q And that's what I was trying to get at, the  
7 numbers. So on a particular day, although one  
8 particular association may have a few to several dozen  
9 requests, you all may get in hundreds of requests on a  
10 particular day from all kinds of associations; right?

11 A Possibly.

12 Q Okay. When you say "possibly," that's a  
13 potential for it to have happened, but it may not  
14 happen every day; is that right?

15 A Yes. I would say that's fair.

16 Q Okay. Do you know the most amount of requests  
17 that have come in on a particular day?

18 A I do not.

19 Q But it certainly could be in the hundreds?

20 A It could be.

21 Q Okay. And there are just two of you all that  
22 are processing those?

23 A When we get really busy, sometimes I jump in  
24 and assist.

25 Q Okay. I thought that's what you were doing,

1 so I'm confused. Help me understand that.

2 A I've been the HOA collector for a few years  
3 now. I was on the lien team as processing liens; but  
4 in, I don't remember the year, maybe 2015 --

5 Q Okay.

6 A -- I became the HOA collector. So when  
7 we're -- if we're extremely busy, then I will assist  
8 with preparing the liens.

9 Q All right. Thank you. So the lien team  
10 consists of two people?

11 A The lien team, yes, there's generally two  
12 people.

13 Q All right. And the lien team of two people  
14 may have to handle hundreds of requests a day?

15 A Potentially.

16 Q Okay. And from time to time, if they get  
17 overwhelmed or busy, you have to jump in to help them  
18 process these liens?

19 A Yes.

20 Q Okay. Is there anyone else other than you  
21 that helps out from time to time in processing these  
22 liens?

23 A Stephanie.

24 Q Okay. And when she jumps in to help, she  
25 would enter information in the computer system; right?

1 A Uh-huh.

2 Q Yes?

3 A Yes.

4 Q And then her name would appear or her initials  
5 would appear in the system?

6 A Yes.

7 Q All right. And every time that a member of  
8 the lien team, or anyone else in the office, is going  
9 into the computer system to do something on the file,  
10 then their initials appear along with the time that  
11 they were taking whatever action; right?

12 A Yes, if they take an act- -- if they take an  
13 action.

14 Q Okay. And that's part of the history report?

15 A Yes.

16 Q Okay. We've been provided a history report in  
17 this case. I don't know if you knew that.

18 A I did not know.

19 Q Okay. Have you seen history reports from time  
20 to time to show you what is taking place in a  
21 particular file?

22 A Yes, I have seen those.

23 Q What kind of reports do you all routinely run  
24 on the status of matters?

25 A We can run a collection report. It depends on

1 what the client is looking for.

2 Q Okay. What's a collection report?

3 A It's just a -- it's the current status of all  
4 the open file -- or all the files that we have under a  
5 particular association.

6 Q All right. And do you all have the ability,  
7 not only to run a report for a particular association,  
8 but for what I'll call the inventory of files you have  
9 in your office?

10 A For -- for every -- you're saying a report for  
11 every file we have in our office?

12 Q Uh-huh.

13 A Yes, I believe it has that capability.

14 Q Okay. And from time to time, do you all have  
15 regular meetings, whether weekly or at regular  
16 intervals, to talk about the status of how many matters  
17 are pending?

18 A I'm sorry, can you ask that one more time?

19 Q Sure. From time to time, it sounds like at  
20 any given time, you all could have hundreds, if not  
21 thousands, of outstanding liens that you all have in  
22 process, that are active; right?

23 MR. COUNTRYMAN: Object to the form.

24 BY MR. KAHN:

25 Q That's one of the objections to the form. You

1 can answer subject to the objection.

2 A Yes, I would say so.

3 Q Okay. And do you all -- from time to time,  
4 does somebody run a report and check on the status,  
5 sort of go over what the status is of these hundreds of  
6 thousands of outstanding liens to figure out what's  
7 going on with them?

8 A If necessary, yes.

9 Q Okay. What would make it necessary?

10 A If the client is asking for an update.

11 Q Does the office from time to time, itself, run  
12 these reports to sort of check on the status to see if  
13 things are being processed timely?

14 MR. COUNTRYMAN: Object to the form.

15 A (Continuing) That I don't know.

16 Q Okay. So you've never seen or been a part of  
17 any kind of meeting where there's been any kind of  
18 discussion about what the status of files are in the  
19 office?

20 MR. COUNTRYMAN: Object to the form.

21 A (Continuing) I'm sorry, I guess I don't really  
22 understand. You're asking if they've called a meeting  
23 just to discuss the status of accounts?

24 Q Sure. From time to time, does the office have  
25 a meeting to discuss the status of the accounts?

1 A Nothing formal.

2 Q Okay. Well, what's an informal meeting?

3 A Stephanie will come to us and ask about a  
4 potential -- or a particular client. But I don't  
5 handle liens anymore, so I would be --

6 Q Okay. Well, I'm asking about the time that  
7 you were working on the lien team, if that helps. When  
8 you were working on the lien team, from time to time,  
9 would you all have meetings to talk about the status of  
10 various files?

11 A I believe so. I mean, I can't remember a  
12 specific.

13 Q Would there be a printout or report about the  
14 status of various files for people to go through and  
15 sort of check off, hey, this has been cleared up, or  
16 this is no longer open, or hey, it turns out that the  
17 homeowner was right, money is not owed, something like  
18 that, any kind of discussion about that?

19 MR. COUNTRYMAN: Object to the form.

20 A (Continuing) No. If there's an issue, then  
21 Stephanie would just email us.

22 Q Okay. And when she emails you, that email is  
23 captured as part of the file; right?

24 A It's supposed to be, yes.

25 Q Okay. Well, that's the way your system is

1 supposed to work?

2 A Well, I don't know about that. You have the  
3 ability to email outside of the system. You're  
4 supposed to save it to the file.

5 Q Part of the process you all have, or the  
6 routine is, when there's communication about a  
7 particular file that you all are working on, that is  
8 supposed to be captured into the system related to the  
9 particular HOA file?

10 A We are supposed to save that email to the  
11 file, yes.

12 Q And why is that?

13 A Just for the record.

14 Q So everybody can know what's going on in the  
15 file; right?

16 A Yes.

17 Q And know who's working on the file; right?

18 A Well, I mean, you can work on the file without  
19 sending an email about it. But, yeah. Yes, if you've  
20 done anything on the file, if there's an email, then  
21 it's supposed to be in the file.

22 Q Okay. And that's the procedure you all -- the  
23 rule you all have at your law firm, that if there's an  
24 email about the file, it's supposed to get into the  
25 file; right?

1 MR. COUNTRYMAN: Object to the form.

2 A (Continuing) Yes.

3 Q And about what time does your day typically  
4 start as part of the lien team?

5 A When I was on the lien team?

6 Q Uh-huh, yes.

7 A I would get in about 8:30. And I handled new  
8 file requests, so I would check new file requests for  
9 new accounts.

10 Q All right. So then about what time would you  
11 leave, typically?

12 A If it was the busy season, then I was allowed  
13 to get overtime and I would leave later.

14 Q Okay. I don't know what that means. It terms  
15 of --

16 A We could get over- -- we could get overtime,  
17 so sometimes I would leave at 6:00 or 7:00.

18 Q Okay.

19 A But mostly 8:30 to 5:30.

20 Q So your normal day was 8:30 to 5:30?

21 A Yes.

22 Q And when you were there as part of the lien  
23 team, you were there processing a new file request,  
24 entering the information in the system so that these  
25 form letters could be generated to go out, typically?



1           A     Yes, and answering any questions that the  
2     client might have.

3           Q     Okay. And "the client" being the homeowner's  
4     association?

5           A     Yes.

6           Q     And typically, that would be through email or  
7     by phone?

8           A     Sometimes by phone, but mostly through email.

9           Q     All right. And when the client emailed you  
10    about an account, that email is supposed to be captured  
11    as part of the file?

12          A     Not necessarily.

13          Q     Okay. Well, what would you do with that  
14    client email, where would that be?

15          A     It would stay in new file request. It would  
16    stay in the new file request email.

17          Q     I think I understand. Let's back up. I may  
18    have misunderstood something. Let's go through a  
19    typical day when a new file request comes in. You show  
20    up at the office around 8:30, and you have access to  
21    the new file request email?

22          A     Yes.

23          Q     And that's an incoming email into you all's  
24    law firm?

25          A     Yes.

1 Q And that -- various homeowner's associations,  
2 whether through the management companies of the  
3 homeowner's association itself, will email to the  
4 address new filer request?

5 A New file request.

6 Q New file request at McCabetrotter.com?

7 A Uh-huh.

8 Q Yes?

9 A Yes.

10 Q And that email will be from the homeowner's  
11 association to the law firm, saying here's a copy of  
12 the current homeowner account, and please begin the  
13 process to start the lien, generally?

14 A Yes. Yes.

15 Q All right. And so when you show up in the  
16 morning, nobody has been checking those emails  
17 overnight; right?

18 A Right.

19 Q So you show up at 8:30, and you would have a  
20 bunch of these emails; right?

21 A Right.

22 Q And you said something about during the busy  
23 season. What period of time is that, approximately?  
24 March to June?

25 A I would say anywhere from March to June, yes.

1 Q Okay. And --

2 A Or July -- well, March to July.

3 Q Okay, March to July. And that's typically  
4 because there's about 90 days from the beginning of the  
5 year. Things pick up around the beginning of March,  
6 and different homeowner's associations have different  
7 days when assessments fall due and that's -- is that  
8 why that works out that way, or why?

9 A I don't know the exact time frame.

10 Q So basically, the busy season is from  
11 basically March through July?

12 A Yes.

13 Q So if you show up during the busy season and  
14 you open up the email, you may have more than 100 email  
15 requests from different associations to process liens?

16 A Potentially, yes.

17 Q Okay. And do you have any understanding about  
18 what the turnaround time is supposed to be for you  
19 all's law firm to get these things processed?  
20 Approximately 48 hours?

21 A I'm sorry, will you ask that one more time?

22 Q Sure. Approximately what is the turnaround  
23 time from the time that the lien request comes in to  
24 the time you're supposed to get these letters out?  
25 Approximately 48 hours or so?

1 A I would say that's fair.

2 Q Okay. And so during this two-day period of  
3 time or so, the two members of the lien team are  
4 supposed to go through these various emails, go through  
5 the current account statement, get the information from  
6 the account statement, put it into the computer system,  
7 in order for the computer system to then generate and  
8 print these form letters that are going out?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) Well, we have to get the property  
11 card from the tax site, make sure that there's not any  
12 pending mortgage foreclosure. Assuming there's no  
13 issues with the statement, and depending how busy it  
14 is, I mean, if we have hundreds of requests, I would  
15 help. So there would be three of us processing.

16 Q Okay. And so from time to time, it sounds  
17 like you all do have hundreds of requests a day; right?

18 A Occasionally. That's busy -- during the busy  
19 season, though.

20 Q Okay. And that's basically from March through  
21 July is the busy season?

22 A Yes.

23 Q And the -- walk me through, if you would, the  
24 process of an email coming in. Say it's 8:30. You  
25 show up to your desk, open up the computer, or maybe

1 it's on, I don't know, and you start checking email.  
2 Tell me, walk me through that process, please, of going  
3 through these requests.

4 MR. COUNTRYMAN: Object to the form.

5 A (Continuing) I go through client by client,  
6 association -- well, association by association. I  
7 print off the requests in question. I confirm the  
8 property address, and the number of requests with the  
9 client. I then go through and pull the property cards  
10 for all of them and confirm that the names match the  
11 statements. I then check for mortgage foreclosure.  
12 Assuming there are no issues, I then start opening up  
13 the files in our system.

14 Q Okay.

15 A You assign them a number.

16 Q Does the system handle assigning a number?

17 A No, we do that.

18 Q Okay. Now, let's walk through some of the  
19 things you've told me to make sure I understand. The  
20 first thing is you print off -- when you say you print  
21 off the request, is that printing off the statement  
22 that comes with --

23 A Yes.

24 Q -- the attachment?

25 A Yes.

1 Q All right. So when the email comes in, you  
2 print off the current statement that's sent as part of  
3 the email?

4 A Yeah. You just -- you don't print off the  
5 email. You just print off the statement that comes  
6 with it.

7 Q All right. And that statement is the current  
8 statement that the homeowner's association has sent to  
9 you all to process?

10 A Correct.

11 Q All right. So you print off a physical copy  
12 of that statement, and you then -- you said you confirm  
13 something about the address? I'm sorry.

14 A Well, we stamp it with the day's date that we  
15 printed off, and stamp it with what sort of request it  
16 is, be it a lien or a lien and foreclosure.

17 Q Okay.

18 A We then confirm the property address and any  
19 sort of alternate mailing address that may be there.

20 Q Okay. Now, when you say "we," that's the two  
21 of you all? The two --

22 A Yeah, whoever is working on the liens at that  
23 time.

24 Q The lien team?

25 A Uh-huh.

1 Q That's L-I-E-N team?

2 A Yes.

3 Q All right. So you all confirm the property  
4 address. You all have sort of memorized websites for  
5 the various counties in South Carolina so you can  
6 easily pull that up?

7 A Well, we save them. I save them. I bookmark  
8 the websites.

9 Q All right. For people who may not be familiar  
10 with the fact, that anyone can go to various county  
11 property websites to pull up property information;  
12 right?

13 A I believe so.

14 Q Well, it sounds like what you've done is  
15 you've bookmarked -- there's 46 counties in South  
16 Carolina, and what you've done is you've bookmarked  
17 them in your browser so that when one comes in for a  
18 particular county, you can jump to that county's  
19 website and type in the address to confirm this  
20 information; right?

21 A Correct.

22 Q And that's a relatively quick process? How  
23 long does that take you?

24 MR. COUNTRYMAN: Object to the form.

25 A (Continuing) It depends on the county. It

1 depends upon how many lien requests there are for that  
2 particular county.

3 Q I'm -- let's just walk -- what I'm trying to  
4 do is sort of walk through one particular request at a  
5 time.

6 A Oh, okay.

7 Q All right. So it sounds like the email comes  
8 in, you open it up?

9 A Uh-huh.

10 Q You print off the current account statement?

11 A Yes.

12 Q You then do some kind of stamp to the current  
13 account statement?

14 A Yes.

15 Q So you all know when the file came in and was  
16 printed, I guess?

17 A Yes.

18 Q Then you log into a bookmarked website or go  
19 to a bookmarked website to look up the person and the  
20 address?

21 A Yes.

22 Q And make sure that it matches what's on the  
23 statement?

24 A Yes.

25 Q And that -- how long does that take you? Is



1 that pretty quick?

2 A It depends upon who's working on it. It could  
3 take just a few minutes.

4 Q Okay. And then after that -- you said  
5 something about a property card. What does that mean?

6 A You print -- it's the information off of the  
7 tax assessor's site.

8 Q Is that the same about the -- same address as  
9 the property address? I'm just trying to understand.  
10 I thought you said you bookmark some site to go to  
11 confirm addresses. Is that the same place or not?

12 A Yes. It's for that particular county. It's  
13 the tax assessor's site for that particular county.

14 Q Oh, the tax assessor's. I apologize. I was  
15 thinking property. But you must be going to the tax  
16 assessor's page.

17 A Yes.

18 Q Okay.

19 A And we print off what I know to be the  
20 property card.

21 Q Okay. All right. So it sounds like you all  
22 print off the current account statement. Then you jump  
23 to a bookmarked tax assessor's website for a particular  
24 county and confirm that the person's name is still on  
25 that property?

1           A     Correct. In the name that matches what the  
2     association has.

3           Q     All right. And then it sounds like, what  
4     we've gone through now, you print off the request,  
5     confirm the property address, and the property cards.  
6     That's all part of that one process we've talked about?

7           A     Yes.

8           Q     Okay. And then something -- oh, make sure  
9     they're not in foreclosure. Where do you do that?

10          A     The judicial site.

11          Q     Okay. So then --

12          A     South Carolina judicial site.

13          Q     Do you have those bookmarked as well?

14          A     I have that bookmarked, yes.

15          Q     Okay. So then you would go to the state or  
16     the county court website to make sure there's not a  
17     foreclosure in process already?

18          A     The judicial website, yeah, for that  
19     particular county, yes.

20          Q     All right. And do you print off anything from  
21     that?

22          A     I do not.

23          Q     Okay. And then what do you do? You said  
24     something about -- oh, and then you open the filing  
25     system?

1           A     Yes. Assuming there are no issues with it,  
2     then we would assign it a number and open it up in our  
3     system.

4           Q     Okay. And that process takes you anywhere  
5     from one to 10 minutes or something per file, or less?

6           MR. COUNTRYMAN: Object to the form.

7           A     (Continuing) It really just depends. It  
8     could -- it depends on how complicated the statement  
9     is.

10          Q     Okay. Well, if it's a simple statement, about  
11     how long? Under five minutes?

12          A     I would say that's fair.

13          Q     So typically it's under five minutes for you  
14     to do this part of the process before you open up the  
15     file?

16          MR. COUNTRYMAN: Object to the form.

17          A     (Continuing) Yes.

18          Q     Okay. Then when you open up the filing  
19     system, now you log into you all's particular  
20     collections system, homeowner association collections  
21     system. I don't know what it's -- I can't remember  
22     what it's called. Collection Max? Or I can't remember  
23     what it was called at the time.

24          A     CollectMax.

25          Q     CollectMax. Is that the system you all were

1 using?

2 A Yes.

3 Q Okay.

4 A Up until September 2016.

5 Q Okay. All right. So everything we're talking  
6 about so far was what you all were doing before  
7 September 2016.

8 A Oh, okay.

9 Q Is that right?

10 A Yes. Well, the system is the same. But, yes.

11 Q Okay.

12 A Well, the system for doing it is the same.

13 Q And the process is the same that we've talked  
14 about?

15 A Yes.

16 Q All right. So once you've printed it up and  
17 gathered this information, is this sitting at your own  
18 desk that you do this, and you've got a printer? Or is  
19 there some printer down the hall? How does that work?

20 A We have a printer designated for the HOA team.

21 Q Okay. So just one printer you all share?

22 A Yes.

23 Q All right.

24 A Well, there's a Xerox machine and a printer,  
25 yes.

1 Q Is the team sitting in one room or separate  
2 rooms, or how does that work?

3 A We have our own offices.

4 Q Okay. And does somebody bring you the stuff  
5 that's printed off, or how does that work?

6 A No. You print off your own documents.

7 Q Okay. Is that right at your own desk or down  
8 the hall? I don't -- I'm trying to understand the  
9 setup.

10 A You print it off to your own -- you all print  
11 on the same printer, but we have our own, like, print  
12 jobs. All of your jobs go in a list, that they come  
13 from a particular person.

14 Q Okay. Then it sounds like after you've  
15 confirmed the information, you then begin the process  
16 of opening up the file in you all's CollectMax system?

17 A Yes.

18 Q All right. And that process involves you  
19 entering the information from the statement into the  
20 system?

21 A Yes.

22 Q And that's the current -- the current  
23 statement that was received as part of the new file  
24 request email?

25 A Yes.

1 Q All right. Do you -- I'll call it manually  
2 because I don't know what else. Do you literally look  
3 at the statement, and then type in the numbers into the  
4 system; is that how it works?

5 A Yes. You use the information from the  
6 property card and the statement to open up the file.

7 Q Okay. So what happens as part of the system,  
8 the information from the property card is used to  
9 populate the form letters that are going out; right?

10 MR. COUNTRYMAN: Object to the form.

11 BY MR. KAHN:

12 Q Let's try it this way. When you open the  
13 file --

14 A Uh-huh.

15 Q -- you type in the names of the people into  
16 the file who you've received the current account  
17 statement from; right?

18 A Well, they have -- they all have their own  
19 client tabs.

20 Q Okay. So each homeowner's association has a  
21 different section or --

22 A Yes.

23 Q So within that client section, you would open  
24 up a new file within that section?

25 A Yes. Under a particular client number, yes.

1 Q All right, client number. And then as part of  
2 that client number, you would then enter in a new file,  
3 which would consist of a new homeowner name?

4 A Yes.

5 Q And that homeowner name and address would come  
6 from the property card and statement you got?

7 A Yes.

8 Q And that's part of opening up the file?

9 A Yes.

10 Q Then you, as part of the -- when you enter  
11 that information about the name of the homeowner and  
12 their address --

13 A Yes.

14 Q -- that information that you enter there  
15 eventually ends up in these form lien letters that you  
16 all send out; right?

17 MR. COUNTRYMAN: Object to the form.

18 A (Continuing) Well, they're in the system, and  
19 you can -- yes. And you can print a lien from that  
20 information, yes.

21 Q Okay. So basically, what's happening is, you  
22 as part of the lien team, you enter information into  
23 the computer system that comes in, and that information  
24 that you capture is eventually populated into these  
25 form letters you all are sending out?

1 MR. COUNTRYMAN: Object to the form.

2 A (Continuing) Yes. If the request is for it to  
3 be a lien, yes.

4 Q I'm sorry. I understand now. Let's use the  
5 lien example.

6 A Okay.

7 Q If that helps. So for purposes of the lien,  
8 the information that comes in via the email has  
9 information, let's assume, from the homeowner's  
10 association or management company, we want you to file  
11 a lien, and here is our current account statement of  
12 this homeowner; right?

13 A Yes.

14 Q Then we go through the steps that you've  
15 talked about, about going to the websites to confirm  
16 the tax information, that there's no lawsuit pending  
17 against them. And if everything is clear, you then  
18 would open up the file and enter the information into  
19 the system that consists of the person's name, address,  
20 homeowner's association, and you then enter the amounts  
21 that are on the statement into you all's system?

22 MR. COUNTRYMAN: Object to the form.

23 A (Continuing) Yes.

24 Q Okay.

25 A And any alternate mailing address or --



1 Q Okay. But that's all part of this process;  
2 right?

3 A Yes.

4 Q Is the way you all regularly do it, or did it?

5 A Yes.

6 Q The -- is the next step, after putting this  
7 information in, is to then print out these form letters  
8 and notices?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) Yes. After we input the  
11 information into our system, we print off the demand  
12 letter and notice of lien for Stephanie to review.

13 Q Okay. Now, from time to time, Stephanie is  
14 not in the office. She may be in court, on vacation,  
15 out of the office; right?

16 A Yes, from time to time.

17 Q And if that's the case, then she's not there  
18 to review the stuff; right?

19 A Maybe not at that exact time, no.

20 Q Okay. And from time to time, do other people  
21 review it?

22 A Dean Hayes.

23 Q Okay. Now, how long has Dean been there?

24 A Over a year, at this point.

25 Q Okay. This is 2000 -- well, it just turned

1 2019.

2 A Uh-huh.

3 Q So did he start working there in 2017 or '18?

4 A I'm not sure of the exact date.

5 Q Well, I'm trying to talk about from at least  
6 September or so of 2016 back.

7 A Oh. Oh, okay.

8 Q That's all right. So how would that work if  
9 Stephanie wasn't there?

10 A Then nothing would happen.

11 Q Okay. From time to time, did other lawyers  
12 send out or sign notice of liens?

13 A Not that I know of.

14 Q Were you aware that Jamie McSweeney --

15 A Oh, yeah, Jamie.

16 Q Okay. So from time to time --

17 A I forgot about Jamie.

18 Q That's all right. So from time to time, Jamie  
19 McSweeney might sign a notice of lien; right?

20 A Yes.

21 Q All right. And so would that be one way that  
22 things would happen in terms of somebody else reviewing  
23 it?

24 MR. COUNTRYMAN: Object to the form.

25 A (Continuing) Yes. One of the attorneys,

1 whether it was Stephanie, sometimes Jamie did it, and I  
2 think Joel Deason actually reviewed some liens one time  
3 as well.

4 Q Okay.

5 A And signed them.

6 Q All right. Now, when you print, it seems to  
7 me that there is sort of three categories or kinds of  
8 documents that are printed as part of the lien process.  
9 There's the letter, there's the 1692g notice, and  
10 there's the lien. Is that right?

11 A I don't know what a -- I don't know what that  
12 is.

13 Q Okay, so you don't know what that is. You  
14 don't know what a 1692g notice is?

15 A I do not.

16 Q And you've worked for this debt collection law  
17 firm since --

18 A October of 2012.

19 Q And do you not know what a 1692 notice is?

20 A I do not.

21 Q Have you ever had any training about a 1692  
22 notice?

23 A Not as far as I know.

24 Q From time to time, have you had any training  
25 about the Fair Debt Collection Practices Act?

1 A Yes.

2 Q And what takes place at that training and how  
3 often is that, approximately?

4 A I believe we've had it once a year.

5 Q Okay. And what happens at those?

6 A We meet and discuss the FDCPA.

7 Q And by "FDCPA," you mean the Fair Debt  
8 Collection Practices Act?

9 A Yes.

10 Q And when you say you meet and discuss it, what  
11 does that encompass or what does that involve?

12 A We've had firm meetings where we go over the  
13 FDCPA.

14 Q Okay. And how long is that meeting, 10, 15  
15 minutes?

16 A I think it took an hour. I would say probably  
17 about an hour.

18 Q Is there any kind of presentation? Or do you  
19 have materials? Or how does that work?

20 A Yes, we -- yes, there was a --

21 Q PowerPoint?

22 A Yes, there was PowerPoint.

23 Q And do you receive any handouts? Or is it  
24 just on a slide show?

25 A I believe we have received a handout.

1 Q Okay. And what have you learned from -- so  
2 you have these annual FDCPA training meetings for about  
3 an hour a year?

4 A I believe so.

5 Q And who runs those or who leads those?

6 A Stephanie Trotter.

7 Q And what kinds of things do you all talk  
8 about?

9 A She goes over the Fair Debt Collection  
10 Practices Act and discusses what we can and can't do  
11 insofar as -- well, what I can and can't do when I was  
12 collecting.

13 Q Okay.

14 A Not being able to call after 7:00 p.m. You  
15 know, what we can and can't say.

16 Q Okay. What do you understand the purpose of  
17 that act or law is?

18 MR. COUNTRYMAN: Object to the form.

19 A (Continuing) I guess to be sure we're not  
20 harassing homeowners.

21 Q Okay. And you've learned that the Fair Debt  
22 Collection Practices Act applies to McCabe Trotter  
23 because you all regularly collect consumer debts?

24 A I -- I believe so.

25 Q Have you ever learned that the Fair Debt

1 Collection Practices Act applies to McCabe Trotter?

2 A Yes.

3 Q Okay. Have you ever had a lien filed against  
4 you for whatever reason?

5 A Yes.

6 Q And how did -- what did that involve?

7 A I had a tax lien filed against me.

8 Q Okay. And how did that make you feel?

9 A I was upset over the money. But...

10 Q Okay. Were you upset that this public record  
11 existed saying you owed money?

12 A Not particularly. I was just upset over the  
13 amount of money it was.

14 Q Okay. What were the circumstances behind --  
15 was it a tax lien?

16 A Yes. The individual that used to prepare my  
17 taxes, I was list- -- he listed me as full-time, which  
18 I was. I was taking 12 hours. But in order to get the  
19 tuition tax credit, you have to take 15 hours, which  
20 apparently he did not understand. And so I was  
21 audited, and they then put a tax lien on me for that.

22 Q I meant to ask you when you were talking  
23 about -- you were talking about the hours you worked,  
24 about 8:30 to 5:30, and you talked about overtime. Are  
25 you paid hourly?

1 A Yes.

2 Q What about do you make a -- when you were on  
3 the lien team, about what were you making an hour?

4 A I started out at \$12 an hour.

5 Q Okay. And what did you end up at,  
6 approximately?

7 A Fifteen maybe.

8 Q Okay. Do you make a different amount now, or  
9 is that --

10 A I do. I make a different amount now.

11 Q And about what do you make now per hour?

12 A I believe it's 21.

13 Q Okay. And you've been making about \$21 an  
14 hour since around the time you went to the homeowner --  
15 about how long have you been making \$21 an hour?

16 A Since January the 1st.

17 Q Oh, of this year?

18 A Yes.

19 Q Okay. Before January 1st of this year, were  
20 you making about \$15 an hour?

21 A I was making \$20.35.

22 Q All right. When you were on the lien team,  
23 you were making 12 to \$15 an hour?

24 A Yes.

25 Q And that -- you were on the lien team

1 approximately when? You said October of 2012 through  
2 about September of 2016, roughly?

3 A October 2012 to July 2015, maybe. I can't  
4 remember exactly when Anita left.

5 Q Who is, I'm sorry, Anita?

6 A Anita, she was the collector for the firm. I  
7 took over her position.

8 Q Okay. I misunderstood. I thought I heard  
9 2016, but I may have misunderstood. So what years were  
10 you on the lien team, you and this other person,  
11 approximately? October 2012 through when?

12 A Through July 2015.

13 Q All right.

14 A I'm still considered on the HOA team, but I  
15 don't handle liens every day anymore.

16 Q All right. Do you all have any kind of  
17 support staff to help you with printout and mailing  
18 things, or is it you all's responsibility to stuff  
19 these envelopes?

20 A We are responsible for stuffing envelopes.

21 Q So literally the lien team, the people that  
22 are sending out these hundreds or thousands of letters,  
23 are just the two of you all?

24 MR. COUNTRYMAN: Object to the form.

25 A (Continuing) And if it -- if we have that



1 many, then there's going to be three people working on  
2 it.

3 Q Okay. So if you have thousands of letters,  
4 there's three people that are responsible for going  
5 through the various emails, for entering the  
6 information, printing it, stuffing envelopes, and  
7 getting materials out?

8 MR. COUNTRYMAN: Object to the form.

9 A (Continuing) Yes. Again, I don't know about  
10 exact numbers. But, yes.

11 Q Okay. In terms of the FDCPA training, you  
12 learned and recognized that as a debt collector, you  
13 all cannot lie, even a little bit; right?

14 A Correct.

15 Q And that as a debt collector, you can't add  
16 charges to collect on amounts not authorized by  
17 contract; right?

18 MR. COUNTRYMAN: Object to the form.

19 A (Continuing) That -- that part, I don't know  
20 exactly.

21 Q Okay. So as part of your training, did you  
22 ever learn that you can't add charges not authorized by  
23 contract?

24 A I don't know. I would have to ask Stephanie.

25 Q Okay. Did you ever learn that charging

1 somebody or stating incorrect balances is a violation  
2 of the Fair Debt Collection Practices Act?

3 MR. COUNTRYMAN: Object to the form.

4 A (Continuing) Yes.

5 Q Okay. And what did you learn about that being  
6 a violation?

7 A We have to ensure that the numbers are correct  
8 before providing a payoff.

9 Q Is it just the numbers or whether or not the  
10 numbers line up with the categories as well?

11 MR. COUNTRYMAN: Object to the form.

12 BY MR. KAHN:

13 Q So, for example, if an assessment amount  
14 should be \$500, but you put down 550 or 450, that would  
15 still be a violation because you stated the incorrect  
16 balance; right?

17 MR. COUNTRYMAN: Object to the form.

18 A (Continuing) Right. The numbers have to be  
19 correct.

20 Q Okay. Well, not only the numbers, but what  
21 they are associated with, that is the amount next to  
22 the number -- I'm sorry, the value next to the number.  
23 So, for example, let's use assessment as a value.

24 A Okay.

25 Q Okay. So there's a category of assessment.

1 A Uh-huh.

2 Q You, as a debt collector, cannot state the  
3 wrong value of that assessment, or you would be in  
4 violation of the act is what you have learned; right?

5 A Yes.

6 Q Okay. And adding charges not authorized by a  
7 contract would also be in violation of the Fair Debt  
8 Collection Practices Act is something else you've  
9 learned; right?

10 MR. COUNTRYMAN: Object to the form.

11 A (Continuing) I would say so.

12 Q Well, have you learned that?

13 A I mean, I don't have it memorized exactly. I  
14 would have to ask Stephanie.

15 Q Okay. But in terms of your training, do you  
16 recall ever learning that adding charges not authorized  
17 by the contract would violate the Fair Debt Collection  
18 Practices Act?

19 MR. COUNTRYMAN: Object to the form. Asked  
20 and answered three times.

21 A (Continuing) I don't know what the contract  
22 is. I don't read the contracts to see what charges are  
23 or are not allowed.

24 Q Okay. And the way you used the word  
25 "contract," are you talking about the covenants?

1           A     Whatever you mean by "contract." I don't  
2     know. We give it to Stephanie to review.

3           Q     You give what to Stephanie to review?

4           A     We give her the liens and demand letters to  
5     review.

6           Q     Okay. Well, when you put the information in,  
7     are you ever checking to see whether or not the charges  
8     that are on the statement that you receive in the email  
9     are authorized by the covenants?

10          A     No. If there's a question, I ask Stephanie.

11          Q     Okay. If you don't have a question, you don't  
12     ask; right?

13               MR. COUNTRYMAN: Object to the form; double  
14     negative.

15          A     (Continuing) No. If it's just a standard --  
16     if I don't have any questions, I do not ask Stephanie.

17          Q     Okay.

18          A     Because she's going to review it anyways.

19          Q     All right. Have you learned what the  
20     violations are for violating the Fair Debt Collection  
21     Practices Act?

22               MR. COUNTRYMAN: Object to the form.

23          A     (Continuing) We have been told, but I don't  
24     remember exactly what they are.

25          Q     Okay. Is one of the things you've been told

1 that a person is entitled to no harm to their credit?

2 A I can't remember.

3 Q Is one of the things that you've been told  
4 somebody is entitled to in terms of harm is the  
5 emotional impact it has on them?

6 A I can't remember.

7 Q When you have these PowerPoint training  
8 seminars, are you ever quizzed on or tested on the  
9 material to see if you have learned it?

10 A No.

11 Q Do you have any idea how much time per matter  
12 Stephanie spends on any particular lien?

13 A I do not.

14 Q What's the most -- do you ever see her sign  
15 documents?

16 A I've seen her sign documents, yes.

17 Q Have you ever seen her sign notice of liens,  
18 or is that somebody else?

19 A Yes.

20 Q Who in the office has the ability to sign on  
21 her behalf?

22 A No one.

23 Q Do you all have a stamp in the office that  
24 allows you all to sign her name?

25 A No.

1 Q Has anyone ever signed her name to a document  
2 other than her?

3 A No.

4 Q Have you -- do you know how many letters she  
5 will sign on a particular day? I mean, would it be  
6 hundreds?

7 A I -- I don't know an exact amount. I guess it  
8 could be hundreds.

9 Q Okay. And you realize she's not signing the  
10 letters; she's signing the notice of liens?

11 A She's signing the notices of liens, yes.

12 Q All right. So she could be signing hundreds  
13 of notices of liens in a particular day?

14 A She could be, yes.

15 Q And that's been the -- something you were  
16 aware of since the time of October of 2012 through at  
17 least July of 2015, while you were working on the lien  
18 team?

19 A Yes.

20 Q The -- we were talking about -- I think we had  
21 gotten to the print- -- I'm jumping back now to this  
22 process.

23 A Uh-huh.

24 Q Is there a particular time by which you all  
25 have to get the information you all have printed out on

1 a particular day in order to make the mail run,  
2 approximately?

3 A We try to get everything out as quickly as  
4 possible. We don't hold anything.

5 Q Okay. Well, I'm not suggesting you're going  
6 to hold anything. But in terms of "quickly as  
7 possible," that's because you sort of -- you've got  
8 this timeline of about a two-day turnaround in order to  
9 get the stuff out?

10 A There isn't an exact time frame, but I would  
11 say 24 to 48 hours.

12 Q Okay. So typically when, from the time the  
13 email comes in with the homeowner's statement,  
14 typically you all are trying to get the lien letter out  
15 within 24 to 48 hours?

16 A Yes.

17 Q And that could be just the two of you all  
18 going through hundreds of these emails in order to do  
19 that, during the busy season?

20 A Yes, or three people.

21 Q Or three people. All right. And how does it  
22 work when you -- we've talked about an individual --  
23 let's -- we've been going for about a little over an  
24 hour. Do you want to take a quick break?

25 A Sure.

1 Q Okay. We'll take a quick break.

2 VIDEOGRAPHER: We will now go off the record.

3 The time is approximately 11:10 a.m.

4 (The deposition recessed briefly.)

5 VIDEOGRAPHER: We are now back on the record.

6 The time is approximately 11:22 a.m.

7 BY MR. KAHN:

8 Q All right. We're back from a break. Are any  
9 of the answers you've given so far that you feel you  
10 need to modify or change?

11 A No.

12 Q Okay. The -- I'm going to go back to part of  
13 this lien team, and I'm going to try to understand  
14 how -- who of the two members is assigned to work on  
15 which files. It sounds like the different homeowner's  
16 associations -- how does it work? An email comes in --

17 A Uh-huh.

18 Q If you're the only one checking the new file  
19 request, do you pass one off to the other lien team  
20 member? Or how does that work? Does that make sense?

21 A When we're really, really busy, one person is  
22 in charge of new file requests, printing them all,  
23 printing off the requests, stamping them, confirming  
24 the number of requests with the association, and then  
25 you put it in the, quote/unquote, "to-do box," the lien



1 to-do box.

2 Q Okay.

3 A And then the other member of the team will  
4 start processing them by the -- by association.

5 Q Is there a mechanism by which a team member is  
6 assigned an association, or it's just hap- --

7 A No.

8 Q Haphazard is not the right word. Is it just  
9 random, or it's just however it happens to work out?  
10 There's no plan as to who gets which association?

11 A No.

12 Q All right. In terms of the stamp that you  
13 mentioned, it sounds like -- is there a physical copy  
14 of the -- a physical file that is kept for each of  
15 these lien matters, or not?

16 A No.

17 Q You talked about --

18 A It's all electronic.

19 Q You talked about stamping something when it  
20 comes -- when it's printed.

21 A We're stamping the statement.

22 Q Ah, all right. An email comes in with a  
23 current account statement. You print that off and you  
24 stamp it?

25 A Uh-huh.

1 Q A physical stamp?

2 A Yes.

3 Q And then what do you do with that stamped  
4 statement?

5 A It goes with -- assuming it's by itself or  
6 with other requests for that same association, you put  
7 them together, and you put them in the to-do box.

8 Q All right. Is that a physical to-do box or an  
9 electronic to-do box?

10 A A physical to-do box.

11 Q Okay. And does that information -- do those  
12 papers ever then get themselves scanned in somewhere,  
13 or not?

14 A When I was handling it, no.

15 Q Okay. Is it now?

16 A Yes, I believe they do that now.

17 Q All right. So what happens if -- or when the  
18 information that you receive via email, this current  
19 statement, is printed and stamped and goes in the  
20 physical to-do box, what happens to that document? Is  
21 that -- where does that document go?

22 A The statement that's been stamped?

23 Q Correct.

24 A It gets put with the property card.

25 Q Okay.

1           A     And then it gets given to Stephanie with a  
2     copy of the demand letter and notice of lien for her to  
3     review.

4           Q     Okay. So where does it go after that?

5           A     I believe they get recycled.

6           Q     Oh, so they shred them?

7           A     Yes.

8           Q     All right. So basically, once the letter goes  
9     out --

10          A     Uh-huh.

11          Q     -- the information that the letter was based  
12     on is shredded?

13          A     Well, there's an electronic copy of the  
14     statement and new file request. But the physical one  
15     gets shredded, yes.

16          Q     Okay. Well, how long -- when there are these  
17     hundreds of notice of liens that are generated, it  
18     sounds like they could be several feet tall, this  
19     entire stack of them; right?

20                 MR. COUNTRYMAN: Object to the form.

21          A     (Continuing) I've never measured, but they  
22     get -- they get pretty tall, yes.

23          Q     Are they put in boxes, or what?

24          A     They're put in the lien box for Stephanie, the  
25     signed box for Stephanie to sign.

1 Q Okay. And how many boxes might there be for  
2 her to sign on a particular day?

3 A I'm not exactly sure.

4 Q Okay. I mean, could it be as many as 10  
5 boxes?

6 A Maybe not as many as 10.

7 Q I don't know. Six, seven, eight? Like  
8 banker-size boxes?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) I'm not sure.

11 Q All right. Well, when you describe the boxes,  
12 are they like banker-size boxes like you get at  
13 Staples?

14 A It's just a -- it's just a box. I don't --

15 Q Like a file box; right?

16 A No. I mean, it's just a -- it's just a box  
17 with a handle on it. Like, I'm not sure what the  
18 dimensions on it are.

19 Q Okay. Do they hold, like, a series of folders  
20 and they're --

21 A No, they're laid in it. They're laid in it.

22 Q Okay. They're stacked up?

23 A Yes, they're stacked up.

24 Q Gotcha.

25 A Uh-huh.

1 Q Gotcha, all right. So, but the height of that  
2 box might be as high as a folder itself? So it could  
3 hold a folder if it was standing up?

4 A Possibly.

5 Q Okay. But they're laid in the full -- in the  
6 box face -- or horizontally?

7 A Yes.

8 Q Okay. And that box contains a stack of  
9 horizontal files of things for Stephanie to sign?

10 A Yes.

11 Q All right. And she could have several boxes  
12 to sign at a time?

13 A Potentially.

14 Q Okay. And where -- who -- how do these boxes  
15 of information get created? Is it you and the other  
16 member of the lien team are putting them in these  
17 boxes?

18 A Yes. Once you've prepared the lien and  
19 printed it out, you put it together with the property  
20 card and the statement, and you put it in the box for  
21 Stephanie to review.

22 Q Okay. And you and the other team member are  
23 in your own rooms?

24 A Yes.

25 Q And you all each have boxes that you fill up

1 with the information?

2 A No. There's one box.

3 Q One box.

4 A One person holds onto the box. And when  
5 you're done with your lien for that particular  
6 association, you go and put it in there after you print  
7 off your job list.

8 Q Where is "there"?

9 A In whatever office the box may be in.

10 Q Okay. From time to time, there's more than  
11 one box it sounds like?

12 A No, just one box. It might be in one person's  
13 office versus another.

14 Q Okay. So walk me through that process,  
15 please, then. Is a box filled up and then sent to  
16 Stephanie to review? Or how does that work throughout  
17 the day?

18 A Well, when I was doing it, we would stop  
19 around a certain time, maybe around 3:00 or 4:00.

20 Q Okay.

21 A And then take the box to her.

22 Q Okay.

23 A And put it in her office.

24 Q All right. And then, so basically from  
25 around -- do you take lunch?

1 A Yes.

2 Q Okay.

3 A Unless it was really busy season, and then I  
4 would skip lunch for overtime.

5 Q Ah. What is -- how did the overtime work?

6 A We --

7 Q You keep mentioning overtime.

8 A We were allowed to get -- if you were on the  
9 lien team, you were allowed to get up to five hours  
10 overtime a week during the busy season.

11 Q Okay. And so you would get paid extra to  
12 process more of these lien letters, and other letters  
13 and other documents that needed to go out, during the  
14 busy season?

15 MR. COUNTRYMAN: Object to the form.

16 A (Continuing) We would get to work longer, yes.

17 Q And get paid more?

18 A Yes. I think it's time -- time and a half, I  
19 think.

20 Q Okay. And who -- did you ever work weekends,  
21 or no?

22 A No.

23 Q Did Stephanie ever work weekends?

24 A I don't know.

25 Q Were there certain days when Stephanie wasn't

1 there, whether it was vacation or court appearances?

2 A Yes.

3 Q And what would happen with the boxes of  
4 information on those days?

5 A They would sit in her office until she came  
6 and signed them.

7 Q Okay.

8 A Sometimes she would take them home.

9 Q All right. When -- so you mentioned starting  
10 around 8:30. And you're trying to get these boxes of  
11 information to Stephanie by 3:00 or 4:00 in the  
12 afternoon?

13 A Uh-huh.

14 Q Yes?

15 A Yes.

16 Q And who was in charge of mailing out the  
17 information once they were signed?

18 A Sheri and I.

19 Q Oh, so the lien team, after Stephanie signed  
20 them, would then have to stuff the envelopes and send  
21 them out?

22 A Yes.

23 Q All right. And is there a post office nearby?  
24 Or did you and -- I'm sorry, you said who?

25 A Sheri.



1 Q Sheri. I'm sorry. So you and Sheri would  
2 then -- would you all drive these to the post office?

3 A No. The runner takes the mail.

4 Q Okay. And so you all, you and Sheri, as part  
5 of the lien team, have to wait for Stephanie to sign  
6 it, then stuff them, and then give them to the runner  
7 in order to get into the mail that day; right?

8 A Yeah. Well, after Stephanie would sign --  
9 signs everything, you have to make copies and put  
10 stamps or put the certified mailing numbers on it.

11 Q Okay.

12 A And then you stuff the envelopes and send it  
13 out.

14 Q All right. And what period of time did you  
15 all allocate or leave to get the mail out that day? It  
16 sounds like you all were trying to get the stuff to her  
17 by 3:00 or 4:00; right?

18 MR. COUNTRYMAN: Object to the form.

19 A (Continuing) You had to start early.

20 Q And then -- when I say "stuff," that's all the  
21 information that was there for her to review and sign.  
22 you all were trying to get it to her by 3:00 or 4  
23 o'clock in the afternoon?

24 A Yes.

25 Q And then would you all -- who was -- I want to

1 make sure I understand. You and the other team member  
2 would begin opening up the emails at the beginning of  
3 the day, start printing off the information, enter the  
4 information into the electronic file, which would then  
5 result in the various form letters being printed, and  
6 you all would put that package together?

7 A Yes.

8 Q For each homeowner; right?

9 A Yes.

10 Q You would then take that package and put it  
11 into a box, and that box would stack up throughout the  
12 day, to present to Stephanie by 3 o'clock or so?

13 A Yes.

14 Q That was typically how that worked?

15 A Yes.

16 Q And you and Sheri would have to wait for her  
17 to sign the documents in order to then make copies, add  
18 whatever postage information is necessary, scan them  
19 in, then fold them to send out for the runner by the  
20 end of the day?

21 A Or the next day, yes.

22 Q Okay. Now, what time, approximately, did you  
23 get the information back from Stephanie? How long did  
24 that take?

25 MR. COUNTRYMAN: Object to the form.

1 A (Continuing) I don't know exactly.

2 Q I mean, was it one minute? Two minutes? Ten  
3 minutes?

4 A It depends on how many there were, and if she  
5 was there. I mean, it just depended.

6 Q Okay. Well, she was there, about how long  
7 would it take for her to go through a box,  
8 approximately?

9 A A couple of hours, maybe.

10 Q Okay. So that's from 3:00 to 5 o'clock;  
11 right?

12 A I would say, yes. If she got the box at 3:00,  
13 then, yes.

14 Q Okay. And so within that two-hour period of  
15 time, she would go through what could be hundreds of  
16 documents to sign to get out to get to you all?

17 A It could be, uh-huh, or we would do them the  
18 next day.

19 Q Okay. But you certainly seen her go through a  
20 box of documents within a couple of hours, to sign?

21 A Yes.

22 Q And that box would have hundreds of documents  
23 in there?

24 A Potentially. I don't know the exact number.

25 Q Okay. And after she signed them, did she put

1     them back in a box? Or how did that work?

2           A     Yeah, she put them back in the box after they  
3     had been signed.

4           Q     And then where would they go?

5           A     She would give them to either me or Sheri.

6           Q     Okay. Now, when you and Sheri got them,  
7     what -- were you or Sheri ever in the room when she was  
8     going through, signing them?

9           A     Sometimes.

10          Q     Okay. Who else would be in the room?

11          A     It really just depended. If I had a question  
12     to ask her or --

13          Q     All right. So typically, the two members of  
14     the lien team might be in the room?

15          A     Normally, just one of us.

16          Q     Okay. And would anybody else be in the room  
17     when she's signing these documents?

18          A     Potentially, if they had a question for her.

19          Q     Well, assuming there was no question, it would  
20     be you all would bring the box to Stephanie in the  
21     room. She would then sign them by herself. And then  
22     would she give you all the box? Or how did that work?

23          A     Yes, or she would bring the box to us.

24          Q     Okay. And then what would happen?

25          A     We would then process them to get them out.

1 Q Okay. Now, once you all got the box back,  
2 were there other people involved in the process about  
3 signing any additional places that needed to be signed?

4 A Sometimes.

5 Q Okay. And, like, who would that be? Like,  
6 Glenda?

7 A Sometimes Glenda, or someone else that was a  
8 notary.

9 Q Okay. And where would Glenda be? Would she  
10 be in you all's office? Or where would she be?

11 A Sometimes. It just depended. Sometimes I  
12 would take them to her, or she would come to me.

13 Q Okay. When you say "take them to her," after  
14 Stephanie signed this box, you would then take the box  
15 to Glenda, the notary, to have her sign them?

16 A It would be witnessed, and then notarized,  
17 yes.

18 Q And when that was being done, Stephanie would  
19 be either in her office or already had left?

20 A Possibly.

21 Q Okay. And that's typically the way it worked?

22 MR. COUNTRYMAN: Object to the form.

23 A (Continuing) More or less, yes.

24 Q Okay. Now, if -- what was the process for you  
25 all having the notary or other witnesses sign the

1 documents? Were there just other people in the office  
2 who may or may not have been in the office that day?

3 MR. COUNTRYMAN: Object to the form.

4 A (Continuing) I'm sorry, will you --

5 Q Sure. After Stephanie signs the documents --

6 A Uh-huh.

7 Q -- and you get the box of documents that she  
8 has signed --

9 A Yes.

10 Q -- where do you then take them to have them  
11 either witnessed or notarized? Is that somewhere else  
12 in the office?

13 A If I was notarizing them, I would take them to  
14 my office.

15 Q Okay. And if somebody else was notarizing  
16 them, would they be in their office?

17 A Yes.

18 Q Okay. And that would already be after  
19 Stephanie had signed these documents?

20 A Yes.

21 Q Okay. And when Stephanie wasn't there that  
22 day, who would notarize them?

23 A If she wasn't there, they wouldn't be signed.

24 Q Okay.

25 A We can't sign it until she signs it.

1 Q Okay. After she signs them, would she ever  
2 leave the office?

3 A Possibly.

4 Q Okay. And even though she may have left the  
5 office, you all would still be in the process of  
6 notarizing, witnessing it, and getting the documents  
7 ready to be mailed out?

8 A Yes. After she had signed them, yes.

9 Q Okay. And that's typically how it worked?  
10 MR. COUNTRYMAN: Object to the form.

11 A (Continuing) Yes. Sometimes she would be  
12 there; sometimes she wouldn't be.

13 Q Okay. In terms of the -- I think you already  
14 answered the question about the hard copy of the stuff.  
15 That's not very descriptive. It sounds like after  
16 Stephanie signed certain papers, you all would get the  
17 box or boxes back, and then pull out the stuff that you  
18 didn't need anymore, including like the stamped  
19 statement, and shred it?

20 A Or Stephanie would shred it. Either Stephanie  
21 would or we would.

22 Q Okay. All right. What -- did Sheri Self ever  
23 provide you any training about Fair Debt Collection  
24 Practices Act?

25 A How so? What sort of training?

1 Q Well, I'm just asking you. You said -- I  
2 thought you said -- when you first started in October  
3 of 2012, I thought you said you were working with Sheri  
4 Self.

5 A Yes. She trained me on how to prepare the  
6 liens.

7 Q Ah, I misunderstood. She didn't train you  
8 with anything to do with the Fair Debt Collection  
9 Practices Act, just on how to use the computer system  
10 to generate these form letters?

11 A Yes. I mean, she would go over scenarios of  
12 what we could and could not do, but I didn't always  
13 associate that with being a part of the FDCPA. I don't  
14 have the FDCPA memorized, unfortunately.

15 Q I'm not suggesting you do. I just didn't know  
16 where you received the training for the Fair Debt  
17 Collection Practices Act. It sounds like the only  
18 training you may have received would be when Stephanie  
19 presented this annual PowerPoint presentation, and not  
20 any information from Sheri Self. Is that right?

21 A Yeah. I mean, she would tell me some things,  
22 but I didn't associate it with being the -- I didn't  
23 associate it with being FDCPA training.

24 Q Okay. Now, we've been talking about sort of  
25 the lien process. Is the process we've been describing



1 similar when there's a foreclosure matter, in terms of  
2 the way the documents are generated and printed and put  
3 into boxes for Stephanie to sign? Is it generally the  
4 same?

5 A Yes. They're sent to new file request, and  
6 they get printed off. And with the particular request,  
7 they get stamped, and then the document prepared and  
8 sent to the attorney for review.

9 Q Okay. And the boxes of documents that  
10 Stephanie may get may consist of both lien -- notice of  
11 liens as well as complaints to sign?

12 A No. There's a separate complaint box.

13 Q Okay. Thank you for clarifying that. So as  
14 part of the lien team, you're not only generating  
15 notice of liens that are going to go in one box for her  
16 to sign, you all are also printing off complaints for  
17 her to sign?

18 A Yes, at separate times.

19 Q Okay. And those complaints would go in a  
20 different box?

21 A Yes.

22 Q All right. So earlier, when I asked you about  
23 boxes, she could actually have multiple boxes of  
24 complaints and multiple boxes of notice of liens to  
25 review, to get out; is that right?

1           A     Potentially. But that never really happened  
2     at the same time.

3           Q     Okay. I'm just trying to understand. Like on  
4     a busy day, how would that work? Would there -- there  
5     could be multiple boxes of liens and one box of  
6     complaints? Or how would that work?

7           A     There's a box of liens. There's the lien box  
8     and there's the complaint box.

9           Q     Okay. When you are going through your normal  
10    day of processing information for homeowner's  
11    associations, at any given moment, you could be  
12    printing off lien documents, in terms of the right to  
13    cure letters and so on, or you could be printing off a  
14    complaint?

15          A     The foreclosure request, yes.

16          Q     Okay.

17          A     But it -- they don't -- we don't get emails  
18    asking hey, prepare a complaint. It's -- the client  
19    asks us to proceed with foreclosure.

20          Q     Okay. Thank you for clarifying that. So what  
21    would happen would be, in terms of the new file  
22    request, you would get in something from the  
23    homeowner's association with the current account  
24    statement requesting you to start the lien process?

25          A     Correct.

1 Q And you described that lien process for us,  
2 where you go to the various websites, print the  
3 information, put them in a box by around 3:00 for  
4 Stephanie to look at, in order to try to get the  
5 information out that day. That's part of the lien  
6 process we talked about; right?

7 A Yes.

8 Q All right. During that same day, from time to  
9 time, you may get E-mails from homeowner's associations  
10 saying please proceed with a foreclosure action?

11 A Yes. They would ask for foreclosure, but the  
12 first step we do is not to prepare the complaint. We  
13 send what's called an intent to foreclose letter.

14 Q Okay. Those intent to foreclose letters, do  
15 you print those as well; that is, your lien team?

16 A Yes.

17 Q All right. And those letters I've seen are  
18 not signed by the attorney. So I guess they don't go  
19 in a box for her to sign and review?

20 A No.

21 Q Is that right?

22 A Correct.

23 Q All right. So the intent to foreclose letters  
24 are documents you and the other paralegal print?

25 A Yes.

1 Q And you all stuff those and go out without  
2 Stephanie looking at them; is that right?

3 A Correct, because it's a form letter. Yes.

4 Q Okay. What are the other kinds of letters  
5 that you and the other member of the lien team would  
6 print that Stephanie would not review to go out with  
7 her name at the bottom?

8 A Well, Sheri didn't really handle -- I would do  
9 payment plan letters. Sheri would do missed payment  
10 plan letters and payment plan cancellation letters, or  
11 verification of debt, or a remaining balance letter.

12 Q All right. I wrote down payment verification  
13 of debt, remaining balance, and I think something --  
14 oh, you said missed payment letters?

15 A Yes. There's the payment plan letter, a  
16 missed payment plan letter, payment plan cancellation  
17 letter, remaining balance letter, and verification of  
18 debt.

19 Q Okay. How about the intent to foreclose  
20 letter?

21 A Yes, and the intent to foreclose letter.

22 Q All right. I think it sounds like there  
23 are -- it sounds like there's at least six to ten kinds  
24 of form letters that you all generate with Stephanie's  
25 name on them that go out from you all's office without

1 her reviewing. Is that right? If you need to say them  
2 out loud, that will help me, because I want to make  
3 sure I'm counting them right and identifying right. I  
4 thought I heard you say a payment letter?

5 A There's a payment plan letter. After I set  
6 someone up on a payment plan, I send them what's called  
7 a payment plan letter there. There's a missed payment  
8 plan letter, a remaining balance letter, payment plan  
9 cancellation letter, verification of debt, an intent to  
10 foreclose letter, and there's the intent with the FDCPA  
11 notice as well. We have to send that if we have not  
12 prepared the lien.

13 Q Tell me about that letter again. I'm sorry,  
14 the intent to what?

15 A It's an intent to foreclose letter, and we  
16 send it with a copy of the FDCPA notice.

17 Q Ah. If you have not previously communicated  
18 with them?

19 A Correct.

20 Q So it sounds like there's at least seven  
21 different kinds of letters that you or the other  
22 paralegal in the office would send out with Stephanie's  
23 name on them, that you all have printed, that she does  
24 not review. Is that right?

25 A Correct.

1 Q And those go out routinely throughout the day  
2 as part of you all's collection practice?

3 A Yes.

4 Q The information that goes into those letters  
5 is not reviewed by her, either, I guess, because it's  
6 printed by you all; is that right?

7 MR. COUNTRYMAN: Object to the form.

8 A (Continuing) Right. It's a -- it's a form  
9 letter that she has previously approved, and then we  
10 input the appropriate information.

11 Q The form letter itself has been previously  
12 approved?

13 A Correct.

14 Q Not the details of it?

15 A Correct.

16 Q So a letter with details specific to a  
17 particular homeowner or consumer are going to that  
18 homeowner or consumer on your law firm letterhead, with  
19 her name at the bottom, even though she has not  
20 reviewed that particular letter; is that right?

21 MR. COUNTRYMAN: Object to the form.

22 A (Continuing) Correct.

23 Q And how many times have you generated letters  
24 like that since you've been there? Would it be  
25 thousands of times, you and the other team member?

1 A Potentially, yes.

2 Q Thousands?

3 A I would say so.

4 Q Would those letters ever go out with her name  
5 on it when she wasn't even in the office?

6 A Those particular letters, yes.

7 Q Is that sort of a daily occurrence kind of  
8 thing?

9 A That she's not in the office, or that the  
10 letters go out?

11 Q That the letters would go out like that.

12 A That the letters would go out.

13 Q Yes?

14 A Yes.

15 Q All right. So how many different kinds of  
16 letters -- I think you've described seven or eight  
17 different kinds. What other kinds of documents would  
18 go out to be -- the right to cure letter and the  
19 complaint, are those the two documents that Stephanie  
20 would sign? I'm sorry, she wouldn't sign the right to  
21 cure letter. She would sign the notice of lien and the  
22 complaint; is that right?

23 A I believe so, yes.

24 Q The --

25 A Yes.

1           Q     It sounds like there's also -- from what I  
2     recall, in going through the files, and tell me if I'm  
3     right, there's some other kinds of letters that may be  
4     generated by your law firm that have her name on them  
5     that she may not have reviewed. And tell me if I'm  
6     right, the service of process letter, that is the  
7     letter that goes on top of the complaint after it's  
8     come back from the court, that has her name at the  
9     bottom. That would be a letter that you all would  
10    generate that she would not review, that would then go  
11    to be served on the consumer; right?

12          A     Yes. It's a cover letter that we send with  
13    the process server.

14          Q     All right. So that cover letter has  
15    Stephanie's name at the bottom; right?

16          A     I'm not sure. I would have to see a copy of  
17    it.

18          Q     I'll show you some examples of that. But  
19    assuming it has her name at the bottom, those are  
20    letters that would be generated by you and the other  
21    team member?

22          A     The foreclosure paralegal handling it, yes.

23          Q     As part of the lien team. Oh, I'm sorry,  
24    there's a foreclosure --

25          A     She's on the lien team, too, yes.



1 Q Okay. All right. So --

2 A The HOA team.

3 Q Okay. How many people are on the HOA team?

4 A Five -- four or five. No. Four or five.

5 Five, I think.

6 Q Well, approximately during the time period of,  
7 let's say, 2012 through --

8 A Four.

9 Q -- 2016. So about four. So two would be on  
10 the lien team and two on the foreclosure team; is that  
11 how it worked?

12 A There's two, what we call, "lien girls." And  
13 then there's the collector. And then there's, like,  
14 the foreclosure paralegal.

15 Q Ah. Thank you. All right. So the two "lien  
16 girls," as you call them, would -- there are four  
17 members of the HOA team?

18 A Yes.

19 Q That would be typically two -- you called them  
20 "lien girls" just because they've been women?

21 A Yes.

22 Q All right. A collector?

23 A Yes.

24 Q Is that a man or a woman?

25 A That was Anita.

1 Q Okay. That's a woman?

2 A Yes, it was a woman at the time.

3 Q All right. And then a foreclosure paralegal?

4 A Yes.

5 Q Is that a man or a woman?

6 A That was a woman, Sheila.

7 Q Okay. So would Sheila also generate -- who  
8 would generate the letters, the cover letters, that  
9 would go with the complaint to be served on the  
10 consumer that had Stephanie's name at the bottom?  
11 Would that be the foreclosure person, or would that be  
12 you?

13 A I think the foreclosure paralegal, I think. I  
14 was only doing liens at that time.

15 Q Okay. All right. So as part of the process,  
16 a letter routinely could leave you all's office that  
17 had Stephanie's name on the bottom that she had never  
18 reviewed; is that right?

19 A Yes.

20 Q And that was happening the entire time as part  
21 of this collection practice for these homeowner's  
22 associations?

23 MR. COUNTRYMAN: Object to the form.

24 BY MR. KAHN:

25 Q While you were working there?

1           A     Yes. There would be letters that she had not  
2 reviewed that were sent out, yes.

3           Q     With her name on the bottom?

4           A     Yes.

5           Q     And the letters she had not reviewed with her  
6 name on the bottom included statements to homeowners or  
7 consumers about how much money they owed; right?

8           A     Depending upon the type of letter, yes.

9           Q     Okay. And those letters that had her name at  
10 the bottom may also be telling the consumers that the  
11 amount of debt had been verified with the homeowner's  
12 association; right?

13          A     Yes.

14          Q     And who was responsible for verifying that  
15 debt with the homeowner's association, would that be  
16 you and the other lien girl?

17          A     We'd get the information from the statement --

18          Q     Okay.

19          A     -- that the association sends us.

20          Q     When you say "we," that's the two lien people?

21          A     If it was a lien document, yes.

22          Q     Okay. As part of that process, Stephanie is  
23 not involved with that verification process. That's up  
24 to the lien people; right?

25          A     We get it from the statement, yes.

1 Q Okay. So a letter is going out from  
2 Stephanie, with her name at the bottom, that's telling  
3 the consumer the amount of the debt that has been  
4 verified, even though she has not personally been  
5 involved with that verification process because you as  
6 the paralegals are the ones that have done that; right?

7 A Well, she reviews it when we give her the --  
8 we give her the statement.

9 Q That's in the very beginning, when the first  
10 lien letter goes out; right?

11 A Yes.

12 Q I'm talking about the verification letter.

13 A The verification of debt letter? Just the  
14 verification of debt letter?

15 Q Correct.

16 A Yes. I get a statement from the association  
17 and confirm the balance, and then send it out.

18 Q Okay. And what -- let me make sure I  
19 understand. What happens is, if somebody, that is, a  
20 consumer, asks the law firm, the debt collector, to  
21 verify the debt, you as the paralegal would look at the  
22 statement from the homeowner's association and generate  
23 this form letter that has Stephanie's name at the  
24 bottom, and send it to the consumer to let them know  
25 that the debt has been verified?

1 A Yes.

2 Q And that's the way that worked?

3 A Yes.

4 Q And would the same thing happen on the  
5 foreclosure side? When a -- somebody had asked to  
6 verify the debt, and the matter had started in the  
7 foreclosure process, and somebody --

8 A The process -- yes, the process is the same.  
9 They contact us, asking for some sort of verification  
10 of the debt. I get an updated statement from our  
11 client. I update the numbers and send the verification  
12 of debt letter.

13 Q Okay. And that process takes place without  
14 the attorney involved; right?

15 A Yes.

16 Q Also, there is a --

17 A Unless I have a question. Then I have to ask  
18 Stephanie about it.

19 Q Okay. But routinely, letters would go out  
20 with her name at the bottom where you haven't asked her  
21 a question?

22 A Routinely, yes.

23 Q With the intent to foreclose letter, that also  
24 has her name at the bottom; right?

25 A I would have to look at it. I believe so.

1 Q Okay. And you all would send a letter like  
2 that to a consumer, letting them know there was an  
3 intention of the homeowner's association to foreclose;  
4 right?

5 A Yes. They intend to foreclose it, yes.

6 Q And that letter would go out with Stephanie's  
7 name at the bottom without her having reviewed that  
8 letter; right?

9 A Yes. I believe it has her name on the bottom,  
10 yes.

11 Q And you could see the consumer who is  
12 receiving that letter thinking that a lawyer has  
13 reviewed those letters; right?

14 MR. COUNTRYMAN: Object to the form.

15 A (Continuing) I'm not sure what they're -- I'm  
16 not sure what the consumer thinks when they get it.

17 Q What do you think a consumer thinks when they  
18 get a letter from a law firm with a lawyer's name at  
19 the bottom? Do you think the consumer rightfully  
20 believes that a lawyer has looked into the matter  
21 before sending out the letter?

22 A I don't know.

23 MR. COUNTRYMAN: Object to the form.

24 BY MR. KAHN:

25 Q You don't know?

1 A I don't know.

2 Q The payment plan letters, is it -- for all  
3 these other kinds of letters you identified, these  
4 other seven or eight letters, it's the same kind of  
5 thing, where her name appears at the bottom but she  
6 hasn't reviewed it; you've simply looked at the  
7 statement and are sending out the letters?

8 MR. COUNTRYMAN: Object to the form.

9 A (Continuing) Yes.

10 Q Okay. From time to time -- I want to jump  
11 back into the notice of lien process for a moment.

12 A Okay.

13 Q I just want to understand this process. You  
14 have already described how you get the email, you print  
15 up the information, you put it in the box for Stephanie  
16 to sign, and then you all run off copies. How many  
17 copies do you all make of a particular file? A  
18 particular lien letter I'll call it.

19 A Depending upon who's doing it, two or three.

20 Q What do you mean "Depending on who's doing  
21 it"?

22 A Some people like to have a third copy that  
23 they scan separately after they've sent out the notice  
24 of lien. I thought it was a waste of paper, so I'd  
25 only do two copies, one to send via regular mail and

1 one to send via certified mail.

2 Q Okay. So typically, when you all are sending  
3 out these notice of lien letters, you all are sending  
4 two to the consumer at a time, one that's certified and  
5 one that's by regular U.S. mail?

6 A Correct.

7 Q And then at the time you were sending a letter  
8 to the consumer with the notice of lien attached to it,  
9 you all are also sending the notice of lien to be filed  
10 with the county office?

11 A Yes.

12 Q How many at a time might you all send to a  
13 particular county? Or that just varies?

14 A It varies.

15 Q Do you all group them by counties? So you  
16 send out, like, one letter with a whole stack of them  
17 to be filed in a particular county? Or do you send out  
18 individual letters for each item?

19 A Well, a letter, we don't send a letter to the  
20 county. We send liens to the county to be filed.

21 Q Okay.

22 A Whatever the county requires.

23 Q Okay. And you're going to have to include a  
24 check for that; right?

25 A Yes.



1 Q Okay. So would you send an individual lien to  
2 the county? Or if you had a stack of them to send to a  
3 particular county, you would send them all together,  
4 and then include one check?

5 A Yes, generally.

6 Q After it's sent off to the county, those  
7 documents come back to you all's office that have been  
8 marked filed?

9 A Yes.

10 Q When you send them to the county, you send  
11 them one or two to be marked and sent back? Or how  
12 does that work?

13 A Well, it -- it depends upon the county. It  
14 depends on how many have to go.

15 Q Oh, different counties have different rules  
16 about that?

17 A Yes. I think some counties require a copy,  
18 and some counties don't require a copy.

19 Q Okay. So depending on which county is  
20 involved, you all would send whatever necessary number  
21 of copies that are required, and the documents come  
22 back to you all that have been filed?

23 A Yes, I believe so.

24 Q Do you all -- what do you all do with those  
25 documents?

1 A They get scanned into the file.

2 Q Okay. Is that all part of the lien team?

3 A I handled it sometimes, but mostly it was  
4 Sheri Self. She liked to do it.

5 Q It sounds like the tasks that the lien team is  
6 involved in, these two people, are, in a typical kind  
7 of day, are anything from getting the emails to the new  
8 file request, printing up the statements, entering the  
9 information into the computer, generating these form  
10 letters, printing up the information, and getting them  
11 out. Is that typically what you all's day is about?

12 A Yes. I would say that's fair.

13 Q Has anybody in your office been reprimanded or  
14 told that something they were doing was not proper in  
15 terms of these collection matters?

16 A I can't think of a specific example. I'm sure  
17 it's happened, but I can't think of a specific example.

18 Q Okay. Have you ever been reprimanded, either  
19 verbally or in writing, about something you did or  
20 failed to do about these collection matters?

21 A I'm sure I have, but I can't think of a  
22 specific example, though.

23 Q I mean, like, what kind of matter would it be?  
24 Like, what was an example of something that someone may  
25 have told you you didn't do something right? What did

1 it -- what did it relate to? What kind of thing did it  
2 relate to?

3 A Maybe printed off the wrong form letter.

4 Q Okay.

5 A Different counties require different  
6 information on the notice of lien itself.

7 Q So nobody has ever reprimanded you or told you  
8 don't send out a letter as if it's from an attorney,  
9 even though it's not from an attorney?

10 A I don't believe I've ever been told anything  
11 like that, no.

12 Q Okay. From time to time --- from time to  
13 time, a consumer may contact you all about one of the  
14 documents that they have received; right?

15 A Okay. Yes.

16 Q And would the consumer be directed to a member  
17 of the lien team if it related to a lien?

18 A No. They have to speak with a collector.

19 Q Okay. And who is -- what does that mean?  
20 Tell me how that process evolves.

21 A At the time -- well, when I first started, it  
22 was -- I don't remember what her name was. Melanie  
23 or -- I don't remember what her name was. She -- she  
24 wasn't there for -- she wasn't there for a very long  
25 time after I started. But they have to speak with a

1 collector. They can only speak with a collector or one  
2 of the attorneys.

3 Q Okay.

4 A People on the lien team aren't allowed to  
5 speak with homeowners.

6 Q Do members of -- do you know why that is?

7 A They're not authorized to do so.

8 Q Is it because they're busy printing off these  
9 forms and --

10 A No. They just haven't been trained on how to  
11 speak with homeowners.

12 Q What kind of training is involved with about  
13 how to speak to a homeowner?

14 A When I was the collector, you go over what you  
15 can and can't say. You give them the balance.  
16 Instruct them how to make a payment.

17 Q I'm listening.

18 A Really, just answer questions about the debt.  
19 We can't tell them what to expect or what can happen.

20 Q Okay.

21 A I mean, we can't -- we can't advise them at  
22 all.

23 Q Okay.

24 A All we can do is tell them about the debt  
25 that's owed.

1 Q So it wouldn't be proper to provide advice to  
2 a consumer about how they should handle one of these  
3 matters; is that right?

4 MR. COUNTRYMAN: Object to the form.

5 A (Continuing) Correct. We can't advise them.

6 Q Okay. Why is that?

7 A Because we're not attorneys. The collector is  
8 not an attorney. And we represent the HOA, not them.

9 Q Do you think an attorney could advise them;  
10 that is, somebody working for you all's firm could  
11 advise a consumer?

12 A No. We represent the association.

13 Q So an attorney for the association should not  
14 be providing advice to the consumer about how they  
15 should handle it; right?

16 MR. COUNTRYMAN: Object to the form.

17 A (Continuing) I wouldn't think so. I don't  
18 know of a specific time that happened.

19 Q The -- going back to the process of generating  
20 these form letters, it sounds like when the statement  
21 comes in to open up a new file, that on the statement  
22 may be various amounts that the homeowner's association  
23 claims are owed, for example, assessments or interest  
24 or fines; right?

25 A Yes. Those are some of the potential charges,

1 yes.

2 Q Okay. When you are taking the information  
3 from the statement you have printed, the lien team and  
4 no one in your office is going through and saying oh,  
5 look, here's an assessment, I'm going to look at the  
6 covenants to see if that amount is the right amount.  
7 Is that right?

8 MR. COUNTRYMAN: Object to the form.

9 A (Continuing) No, the -- no, us lien -- the  
10 lien team members, we do not do that.

11 Q Okay. And the same thing for the interest  
12 rate. When the statement comes in, if the statement  
13 has an amount of interest stated there, a member of the  
14 lien team in you all's office doesn't look at the  
15 covenants to see if the amount stated is proper under  
16 the covenants; right?

17 A Correct.

18 MR. COUNTRYMAN: Object to the form.

19 BY MR. KAHN:

20 Q Is that right?

21 A That's correct.

22 Q And the same thing with fines. If there's a  
23 fine amount stated, you or another member of the lien  
24 team or someone in the office doesn't look at the  
25 covenants to determine whether or not those fines are

1 even authorized under the covenants; right?

2 MR. COUNTRYMAN: Object to the form.

3 A (Continuing) Correct.

4 Q When the amount of attorney's fees is stated,  
5 you and a member of the lien team or someone else in  
6 the office doesn't look and see whether or not the  
7 covenants authorize either that amount of attorney's  
8 fees or -- doesn't even look at that; right?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) Right.

11 Q you all don't look at that; right?

12 A We don't look at the covenants, no.

13 Q Okay. So as part of the process of generating  
14 the notice of lien letters that go out to the  
15 consumers, you all's office is not looking at the  
16 covenants; right?

17 MR. COUNTRYMAN: Object to the form.

18 A (Continuing) The lien members are not -- the  
19 people on the lien team are not looking at the  
20 covenants before we prepare the lien, no.

21 Q Okay. And as part of the process of printing  
22 up these lien packages that you present to Stephanie,  
23 you all aren't printing out a section of the covenants  
24 for her to look at, are you?

25 A No.

1 Q And do you know of anyone who, before these  
2 lien letters are going out, are determining whether or  
3 not the covenants are authorizing the amounts stated in  
4 the lien letters to be charged to the consumers?

5 MR. COUNTRYMAN: Object to the form.

6 A (Continuing) I'm sorry, will you say that one  
7 more time?

8 Q Sure. Before these lien letters go out, do  
9 you know of anyone in you all's office that is looking  
10 at the amounts stated in the letters to determine if  
11 the covenants authorize those amounts?

12 A I don't know.

13 Q Okay. And when you say you don't know, you  
14 don't know of anyone that's doing that; right?

15 A I don't know if --

16 MR. COUNTRYMAN: Object to the form.

17 A (Continuing) I don't know if anyone is or not.

18 Q Okay. Well, you certainly are not.

19 A No.

20 Q Is that right?

21 A Correct. I don't review the CCRs.

22 Q All right. By "CCR," you mean covenants and  
23 restrictions?

24 A Yes.

25 Q All right. Is that the same for all the



1 members of the lien team, the two people?

2 A Correct.

3 Q All right. So before you all are generating  
4 these lien letters that go out to the consumers, your  
5 team is not reviewing the covenants or CCRs to  
6 determine anything about whether or not the information  
7 in the letter is within the covenants; right?

8 MR. COUNTRYMAN: Object to the form.

9 A Correct, the members on the lien team are not  
10 doing that.

11 VIDEOGRAPHER: Ten minutes, counselor.

12 MR. KAHN: Let's just go off the record a  
13 second.

14 VIDEOGRAPHER: We will now go off the record.  
15 The time is approximately 12:07 p.m.

16 (The deposition paused briefly.)

17 VIDEOGRAPHER: We are now back on the record.  
18 The time is approximately 12:08 p.m. This concludes  
19 Video No. 1 in the video deposition of Haylen Gatling.  
20 The time is approximately 12:08 p.m. We are now off  
21 the record.

22 (The deposition recessed for a lunch break.)

23 VIDEOGRAPHER: We are now back on the record.  
24 Today's date is January 15th, 2019. The time is  
25 approximately 1:07 p.m. This is Video No. 2 in the

1 video deposition of Haylen Gatling.

2 BY MR. KAHN:

3 Q Miss Gatling, we're back from lunch now. We  
4 were talking about the process of the collections that  
5 took place at McCabe Trotter, and a lot of focus, at  
6 least in my mind, had been on the lien process. What I  
7 would like to do is ask you a few more questions about  
8 that, and then talk a little bit more about the  
9 process.

10 You had mentioned that when you all prepare  
11 documents for Stephanie to review and put in this box,  
12 or the boxes, is there a particular order in which you  
13 put the documents; so, for example, is the page for her  
14 to sign on top? Or how is it organized, the stack of  
15 materials? Do you all have a particular way to do  
16 that?

17 A I always put the property card and the  
18 statement on top.

19 Q Okay.

20 A Some people staple it all together. I paper  
21 clip it all together.

22 Q Okay. Well, it seems to me that if somebody  
23 has got a box of stuff to sign and you've got to look  
24 for the signature page, that would take some time. Do  
25 you all put a little "sign here" kind of thing to make

1 it easier for the lawyer to figure out where to sign?

2 Or how does that work?

3 A No.

4 Q Okay. The -- you mentioned a stamp, and I  
5 want to make sure I understand. I think you said you  
6 stamp the statement when it's printed and comes in from  
7 the email. That has the time that you all printed off  
8 the statement?

9 A It has the date and what sort of request it  
10 is.

11 Q All right. So there's a stamp that might be  
12 lien request and date versus a stamp that says  
13 foreclosure and date or something? Or how does that  
14 work?

15 A Yes. There's one that's for the lien.  
16 There's one for the lien and foreclosure.

17 Q Okay.

18 A I want to say there's one for foreclosure, but  
19 I'm not sure. I haven't --

20 Q Okay. So what's the purpose of stamping it  
21 that way?

22 A To identify what sort of request it is.

23 Q Oh, and it also helps you all figure out which  
24 box to throw it in?

25 A Yes.

1 Q In terms of the -- can you help me understand?  
2 I know you all recently moved offices. What -- how was  
3 you all's -- how was you all's offices set up? The two  
4 members of the lien team, are you all in adjoining or  
5 offices next to each other, or what? Where were you  
6 all?

7 A We were in offices next to each other.

8 Q Okay. And was there a door adjoining you all,  
9 or no?

10 A There was a -- we shared a wall.

11 Q Was it like a cubicle, or like a physical  
12 wall?

13 A They were separate offices.

14 Q Okay. Thank you. Now, the members, you said  
15 there was a collector and a foreclosure person?

16 A Yes.

17 Q Did they have separate offices, or no?

18 A Yes.

19 Q Okay. Were you all all in the same area?

20 A Yes. We're all on the same floor, all in the  
21 same area, just a short walk from each other.

22 Q Okay. And where is Stephanie Trotter's office  
23 in relationship at the time, a different floor?

24 A No. Just down the hall.

25 Q Okay. Now, it sounds like there are other

1 people who may be involved with either witnessing or  
2 notarizing documents. Where were their offices?

3 A On the same floor.

4 Q But they weren't in the same office as either  
5 Stephanie or the other members of the HOA collection  
6 team?

7 A We all have our own offices.

8 Q Okay. So was there sort of a pattern that you  
9 all use to move documents around from place to place?  
10 So, for example, you all -- it sounds like you and the  
11 other lien person would print documents, and you all  
12 each have a box in your office for documents to go  
13 into? Or actually, it sounds like two boxes. One  
14 would be a lien box and one would be a foreclosure box?

15 A One is for the liens and one is for the  
16 complaints, but they were seldom worked on at the exact  
17 same time.

18 Q All right. Would -- would you all ever  
19 partially or fill up boxes the same day? That is,  
20 would you -- could you be working on a lien the same  
21 day you were working on a complaint?

22 A Yes.

23 Q Okay. So you all would have two boxes for  
24 that in each of you all's offices?

25 A No, just the one box.

1 Q All right. Maybe I misunderstood. I thought  
2 you said there was a box for --

3 A There's not a box per office. It's one box  
4 for the liens and one box for the complaints. And  
5 whoever was working on the liens had the lien box;  
6 whoever was working on the complaints had the complaint  
7 box.

8 Q Oh, so it sounds like in any given day, one  
9 person may be working on liens, and the other person  
10 would be working on the complaints?

11 A Yes.

12 Q Would that be the lien team, or somebody else?

13 A The lien team.

14 Q Okay. So I'm -- then I'm confused. Because I  
15 understood there were four people on the team. That  
16 is, two lien team members, a collector, and a  
17 foreclosure person?

18 A Yes.

19 Q And it sounds like you've worked in one  
20 capacity or another in all the different sort of --

21 A Except for the foreclosure paralegal.

22 Q All right. So you have worked -- tell me what  
23 you understand the duties are of these different team  
24 members.

25 A Both Sheri Self and I were able to prepare

1 liens and prepare complaints. After that, it went to  
2 the foreclosure paralegal.

3 Q Oh, so once it got into litigation itself, it  
4 went to the foreclosure paralegal?

5 A Not -- I mean, they weren't all litigated  
6 files.

7 Q All right. So you and Sheri Self, or whoever  
8 the other lien team member would be, would generate  
9 these various form letters that we've talked about,  
10 including the liens and these other eight or so  
11 documents you told us about, along with complaints?

12 A Yes.

13 Q Once the complaint had been signed and filed  
14 with the court, would the foreclosure person then deal  
15 with that particular file? Is that how it worked? I'm  
16 just trying to understand.

17 A Sheri and I both handled it, depending --  
18 through serving the complaint, through service of the  
19 complaint. And that is when, I believe it was, Sheila  
20 took over.

21 Q All right. So that's sort of when the --

22 A The foreclosure -- what I consider to be  
23 the -- what I know to be the foreclosure paralegal,  
24 would take over.

25 Q So that's after service of the complaint?

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1 A Uh-huh, yes.

2 Q All right. So before the complaint is served,  
3 there would be just two people working on the  
4 homeowner's association collection matters in you all's  
5 law firm that were not -- that was not an attorney?

6 A Depending upon how busy we were, sometimes  
7 there were three. If we were really busy, Stephanie  
8 would assist as well.

9 Q Tell me about the printing of the complaints.  
10 Well, let's see, we've talked about the lien process.  
11 And you've talked about generating these various other  
12 kinds of letters. Is there anything else the two of  
13 you all would do other than the complaint?

14 A I would handle payments.

15 Q Okay. All right. What's involved with  
16 handling payments?

17 A Accepting incoming checks, whether they were  
18 operating versus trust checks. Applying them to the  
19 homeowner's account, if I could, or giving them to  
20 Stephanie to review. If I could apply it to the  
21 account, then I would either send a remaining balance  
22 letter or paid it in full. I would close out the  
23 account.

24 Q All right. When you say you would send a  
25 remaining balance letter --



1 A Uh-huh.

2 Q -- that's a letter you would generate that  
3 would have the attorney's name at the bottom and be  
4 sent out without the attorney reviewing it; right?

5 A Yes, that's one of those letters.

6 Q Okay. And that remaining balance letter  
7 reflects your application of the check that came in to  
8 the balance that you all are claiming is owed?

9 A Correct.

10 Q Okay. In terms of generating these -- let's  
11 go back now in terms of the intent to foreclose letter.  
12 That's a letter that you as a lien team member  
13 paralegal literally pushes a button and spits out the  
14 letter, the form letter?

15 A We input the numbers and check all the  
16 property card information, confirming the homeowner's  
17 name, the property address, TMS number.

18 Q Maybe I said that wrong. That sounds like the  
19 lien letter. I was talking about the intent to --  
20 let's say the lien letter has gone out --

21 A If we prepared the lien, then, yes, we would  
22 check the -- and if the client has authorized us to  
23 move forward with foreclosure, then we send what's  
24 called an intent to foreclose letter.

25 Q All right. And that intent to foreclose

1 letter is a letter generated by you or the other  
2 paralegal on the lien team?

3 A Yes.

4 Q And that's printing a letter that is  
5 generated -- it's a form letter; right?

6 A Correct.

7 Q And that's based on the information that you  
8 had previously entered into the system?

9 A Correct. If we prepared the lien, then, yes.

10 Q And by if you had prepared the lien, that  
11 means there are some files you get where you all may  
12 not have prepared a lien. But if you have prepared the  
13 lien, then -- is that what you're talking about?

14 A Yes. The information is already in the  
15 system.

16 Q Okay. So the information is already in the  
17 system, and you sent out the notice of lien to the  
18 consumer, and they have not paid. Then with the  
19 homeowner's association permission, you as a paralegal  
20 would send a letter to the homeowner, indicating that  
21 if you don't take certain actions, you all are going to  
22 initiate foreclosure proceedings?

23 A The Board of Directors has to vote to  
24 foreclose, and it's at their instruction that we then  
25 proceed with that step, yes.

1 Q Okay. But assuming you've gotten permission  
2 to notify the consumer of the intent to foreclose --

3 A Uh-huh.

4 Q -- you as the paralegal are generating a  
5 letter, that's a form letter, to send to the consumer,  
6 telling him that; right?

7 A That is correct.

8 Q That letter goes out with Stephanie's name at  
9 the bottom?

10 A I would have to look at a copy. But, yes, I  
11 believe it does.

12 Q And that letter is not reviewed by Stephanie  
13 before it goes out; right?

14 A No, it is not.

15 Q I'm correct, it's not reviewed by her; right?

16 A Not unless there's a potential issue.

17 Q Okay.

18 A If it needs her review, then she reviews it.

19 Q Okay. But generally, it's not reviewed by  
20 her; right?

21 A Correct.

22 Q And you understand how much you all are  
23 charging for that letter to go to the consumer?

24 A The attorney's fees are \$150 for that letter.

25 Q Okay. And you all are charging \$150 for

1 attorney's fees, even though the attorney has not  
2 looked at that letter; right?

3 A I'm not completely sure what the attorney's  
4 fees may encompass, but that's the charge.

5 Q Okay. That charge of \$150 is being put on the  
6 letter as being owed as attorney's fees, even though  
7 the attorney has not looked at that particular letter;  
8 right?

9 A I don't know.

10 Q Well, I thought you've said that those letters  
11 are generated by you.

12 A Yes, they are generated by me, but they  
13 don't -- it's just -- they're just called attorney's  
14 fees. I don't know exactly what the attorney's fees  
15 encompass.

16 Q Okay. Well, do you know of anything that the  
17 attorney has done at the time that letter has gone out  
18 other than you generating that letter?

19 A On that exact file? No, I do not know.

20 Q Okay. At the time -- let's go back to the  
21 lien letter itself. On the lien letter is a line item  
22 for attorney's fees. Are you familiar with that?

23 A On our letter, yes.

24 Q Okay. And that -- do you know how much the  
25 law firm is charging the association to send out that

1 letter?

2 A The attorney's fees are \$425 on most files.

3 Q That's what you're telling the consumer;  
4 right?

5 A That is correct. That's the charge, \$425.

6 Q Right. And you understand that your law firm  
7 is sending a bill or an invoice to the homeowner's  
8 association for somewhere between 50 and \$65?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) I'm not familiar with the  
11 billing.

12 Q Oh, you're not?

13 A No. I don't handle the billing.

14 Q Okay. Do you not enter into the system the  
15 fact that the law firm is charging \$65 to the  
16 homeowner's association?

17 A We prepare what's called a lien retainer.

18 Q Okay. And is that a bill that is sent to the  
19 homeowner's association, indicating how much the  
20 homeowner's association is to pay you all for preparing  
21 that notice of lien to go out?

22 A Yes.

23 Q Okay. And that amount that you're charging  
24 the homeowner's association to send out the lien letter  
25 is \$65 to \$50, somewhere in that range?

1 A Yes.

2 Q And you're telling the consumer, at that time  
3 that you're charging the homeowner's association 50 to  
4 \$65, that the consumer owes attorney's fees of \$425;  
5 right?

6 A We don't tell the homeowner that we're sending  
7 the HOA a bill for 50 to \$65.

8 Q Right. So you don't give the consumer the  
9 information that you're billing the homeowner's  
10 association 50 to \$65. You tell the homeowner they owe  
11 425; right?

12 A If that's what the attorney's fees are in the  
13 file, yes.

14 Q Okay. So even though the law firm is billing  
15 the association 50 to \$65 for attorney's fees, you all  
16 are telling the consumer, in this lien letter, that  
17 they owe 425; right?

18 A Yes. Those are the fees on the file, yes.

19 Q When you say "The fees on the file," those are  
20 the fees that you as a paralegal enter to be on the  
21 file; right?

22 A Correct, either 375 or 425.

23 Q Okay. And that's not based on work done by  
24 the lawyer, that's based on what you put into the file?

25 A It's based on what I've been instructed to put

1 in the file, yes.

2 Q Okay. Do you know what work other than the  
3 lawyer signing the lien letter is done, typically, in  
4 these lien collection matters?

5 A I do not.

6 Q So is it fair to say that the only work you  
7 know of that the lawyer typically does in sending out  
8 these lien letters is signing the notice of lien?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) I wouldn't say that. I know that  
11 more goes into it than a signature. But as far as  
12 exactly what I know goes into it, no, I don't know  
13 exactly what goes into it.

14 Q All right. Well, from the time that you print  
15 the letter and the accompanying documents --

16 A Uh-huh.

17 Q -- the attorney hasn't done anything,  
18 generally; right? That's you getting this email in  
19 with a statement to generate the letter; right?

20 A The attorney has not handled that particular  
21 file, yes.

22 Q Okay. And the only handling that the attorney  
23 does, typically, with these lien letters is signing the  
24 notice of lien that you have prepared; right?

25 MR. COUNTRYMAN: Object to the form.

1           A       (Continuing) Well, she reviews it and signs  
2     it.

3           Q       Right. Other than that review and signing it  
4     in this box, you don't know of any other work the  
5     attorney typically does in these files before that  
6     letter goes out; right?

7                   MR. COUNTRYMAN: Object to the form.

8           A       (Continuing) I don't know.

9           Q       Okay. Could you -- do you -- have you ever  
10    seen Stephanie sign one of those notice of lien  
11    letters?

12          A       She signs the notices of lien, yes. I've seen  
13    her do it.

14          Q       Thank you for that distinction. There's a  
15    notice of lien that is signed, not the letter; right?

16          A       Correct.

17          Q       When she signs one of those notice of liens,  
18    does it take, like, a second?

19          A       The actual signature itself?

20          Q       Yes.

21          A       Yes.

22          Q       Okay. And other than that second of signing  
23    it, can you tell us how many other seconds she spends,  
24    generally, in going through one of these letters before  
25    it goes out?



1 A I don't know.

2 Q Would it be under a minute, based on the  
3 stack?

4 MR. COUNTRYMAN: Object to the form.

5 A (Continuing) Probably more than a minute, but  
6 I don't have an exact time frame that she spends on it.

7 Q Okay. Would it be less than two minutes?

8 MR. COUNTRYMAN: Object to the form.

9 A (Continuing) I don't think so. I would assume  
10 it would be more, but I've never --

11 Q Okay. You've said you've been there and  
12 you've seen it. Is it under three minutes?

13 A I've never timed her. I don't know exactly  
14 what amount of time she would spend looking at it.

15 Q Okay. Well, give us your best guess. One to  
16 three minutes?

17 MR. COUNTRYMAN: Object to the form.

18 A (Continuing) Depending upon the complexity of  
19 the statement, anywhere from two to five minutes,  
20 maybe.

21 Q Okay. And that's -- Okay. And that's  
22 generally your own observation and experience in  
23 watching her, from time to time when you have watched  
24 her, go through these. It's somewhere in the range of  
25 two to five minutes?

1           A     That's my guess, yes, anywhere from two to  
2     five minutes.

3           Q     Okay. And that's based on your observations?

4           A     Well, you want a -- you want a -- me to guess  
5     a time. So I would guess two to five minutes.

6           Q     Sure. But that's based on you seeing it take  
7     place; right?

8           A     Yes.

9           Q     Okay. And that's been the same since you've  
10    been there in October of 2012 through the present?

11          A     I believe so.

12          Q     Okay. Now, in terms of the complaint, is it  
13    the same kind of amount of time? When you all print  
14    off these complaints, there's a couple of spots to  
15    sign. Is it typically she's going through those in two  
16    to five minutes as well?

17          A     The complaints take a little longer.

18          Q     Okay. So under 10 minutes?

19          A     Again, depending upon the complexity of the  
20    statement, I would say about 10 minutes.

21          Q     Okay. So generally the amount of time she  
22    spends going through the complaints that you all  
23    prepare for her to review, it's no more than 10  
24    minutes, typically?

25               MR. COUNTRYMAN: Object to the form.

1           A       (Continuing) If I had to hazard a guess, I  
2       would say maybe 10 minutes.

3           Q       Okay. And that's the way it's been since  
4       around October of 2012 through the present,  
5       approximately?

6           A       I guess so.

7           Q       Okay. When you say you guess so, that's based  
8       on what you believe to be the case based on your having  
9       been in the firm; right?

10          A       If I had to guess how much time it took her to  
11       look through a complaint, just a typical complaint, I  
12       would say about 10 minutes.

13          Q       Okay. Well, thank you. And that's been the  
14       way from when you started there in October of 2012  
15       through the present?

16          A       Well, I didn't watch her do the complaints  
17       when I first started.

18          Q       Okay. Well, from whatever time period you  
19       have observed it?

20          A       Yes.

21          Q       Okay. Now, do you know of any other work  
22       before the complaint goes out other than the three to  
23       five minutes or 10 minutes the attorney has spent  
24       typically going through a file?

25          A       I don't know.

1 Q Do you know why -- strike that. It sounds  
2 like you're aware that different homeowner's  
3 associations are charged different amounts, somewhere  
4 between 50 to \$65, for your law firm to send out these  
5 lien letters; right?

6 A Yes.

7 Q And you know that because that's the amount  
8 you enter into you all's system in order to generate  
9 the -- you called it a lien retainer bill?

10 A Yes, that's the amount that I've been  
11 instructed.

12 Q Okay. And who instructed you to charge the  
13 homeowner's associations between 50 to \$65?

14 A Stephanie Trotter.

15 Q Okay. And at the time you are putting the  
16 information into the computer system to generate the  
17 65 -- or 50 to 65-dollar bill for the homeowner's  
18 association, you're putting information into in the  
19 system to tell a consumer they owe 375 to \$425 in  
20 attorney's fees; right?

21 A The lien is done first, and then the lien  
22 retainer.

23 Q Okay. So it sounds like what's happening is  
24 you are generating a letter that says a consumer owes  
25 anywhere, in terms of these lien letters, between 375

1 to \$425 first, before you then generate a bill for the  
2 homeowner's association that charges them 50 to \$65 for  
3 that attorney's fees work; right?

4 A Yes. The notice of lien comes first.

5 Q Okay. So first, you tell the consumer they  
6 owe typically \$425 in attorney's fees; right?

7 A If it's a 425-dollar file, yes.

8 Q Okay. And after you tell a consumer they owe  
9 \$425 to the homeowner's association for attorney's  
10 fees, you tell and generate a bill to the homeowner's  
11 association for \$65 for this attorney lien fee?

12 MR. COUNTRYMAN: Object to the form.

13 BY MR. KAHN:

14 Q Right?

15 A Yes. We send the association a lien retainer  
16 for \$65, assuming it's a file that charges \$425.

17 Q Okay. Now, it sounds like there are other  
18 files where you may charge a homeowner's association  
19 \$375?

20 A Correct.

21 Q I'm sorry, you charge the -- you tell the  
22 consumer that the association is being charged \$375;  
23 right?

24 A Right. I'm not sure of the exact wording in  
25 the notice of lien -- or the demand letter, rather.

1 But, yes.

2 Q Is it your understanding from the letter that  
3 the consumer is to believe they owe the association  
4 anywhere from 375 to \$425 in attorney's fees that the  
5 association is required to pay?

6 A I don't -- I don't memorize the letter. I'm  
7 not exactly sure what the wording of it is.

8 Q All right.

9 A I know they pay it to our office because we're  
10 collecting it for the association.

11 Q All right. So when you say they pay it to  
12 your office, you're talking about the consumer?

13 A That's correct.

14 Q The association only pays your office 50 to  
15 \$65?

16 A Correct.

17 Q Even though, at the same time, you're telling  
18 the consumer they owe anywhere from 375 and 425 for  
19 attorney's fees?

20 A Correct.

21 Q Do you know why you don't tell the consumer,  
22 as part of the letter you are sending them, that the  
23 law firm is charging the homeowner's association 50 to  
24 \$65, but you believe that the reasonable attorney's  
25 fees ought to be 375 to 425 for that work?

1 MR. COUNTRYMAN: Object to the form.

2 A (Continuing) I don't know.

3 Q Would that be truthful?

4 A Yes. I don't know why we do it that way.

5 Q Okay. Why do you think it's truthful to tell  
6 the homeowner that the law firm is charging 50 to 65  
7 bucks to the homeowner's association, and then telling  
8 the consumer they owe 375 to 425? Why would that be  
9 more truthful to tell the consumer?

10 MR. COUNTRYMAN: Object to the form.

11 A (Continuing) The lien retainer is what we  
12 charge the HOA directly to help defray the initial  
13 cost.

14 Q Okay. Well, is there a reason you don't tell  
15 the consumer, at the time you're sending out the  
16 letter, we're charging the homeowner's association 50  
17 to \$65, but we think you ought to pay 375 to 425?

18 A No. I didn't type up the letter.

19 Q Sure. But you agree that would be a truthful  
20 statement to tell the consumer?

21 MR. COUNTRYMAN: Object to the form.

22 A (Continuing) Do I think it's truthful to tell  
23 them what we tell them?

24 Q No. Do you think it would be a truthful  
25 statement to tell the consumer, dear consumer, you

1 know, we think you owe this amount for assessments and  
2 past-due amounts; we have charged the homeowner's  
3 association, let's say, \$50, but we believe you owe  
4 attorney's fees of 375? Would that be a more truthful  
5 statement than what information you're providing them?

6 MR. COUNTRYMAN: Object to the form.

7 A (Continuing) No, I don't think so.

8 Q Okay. Why is that?

9 A Because if for some reason the association  
10 takes payment, the association gets billed for the full  
11 amount of the attorney's fees.

12 Q But if the association doesn't get payment,  
13 then the law firm is not charging the association any  
14 additional attorney's fees; right?

15 MR. COUNTRYMAN: Object to the form.

16 A (Continuing) I'm sorry, will you say that one  
17 more time?

18 Q Sure. If the consumer does not pay, that is,  
19 if you all don't collect the money from the homeowner,  
20 then the law firm doesn't charge the association any  
21 additional money; right?

22 MR. COUNTRYMAN: Object to the form.

23 A (Continuing) I'm not sure.

24 Q Oh, you don't know that?

25 A No. I don't handle the billing.



1 Q Were you aware that the law firm doesn't  
2 charge homeowner's associations money if they don't  
3 collect from the consumer?

4 MR. COUNTRYMAN: Object to the form.

5 A (Continuing) I don't handle any part of the  
6 billing, so I don't know.

7 Q Who does that?

8 A Accounting and the attorneys.

9 Q Okay. If the law firm did not charge the  
10 association more than the 50 or \$65, if they don't  
11 collect the money from the homeowner, do you think it's  
12 information the consumer ought to know before deciding  
13 to pay the money claimed owed?

14 MR. COUNTRYMAN: Object to the form.

15 A (Continuing) I'm sorry, will you ask that one  
16 more time?

17 Q Sure. If the law firm is not charging the  
18 homeowner's association more than this initial 50 to  
19 \$65 to send out these lien letters, if they don't  
20 collect money from the consumer, do you think it would  
21 be fair and truthful to tell the consumer the  
22 association does not owe more than 50 to \$65 if we  
23 don't collect the money from you?

24 MR. COUNTRYMAN: Object to the form.

25 A (Continuing) I don't -- I've never really had

1 an opinion about it.

2 Q Okay. You agree that would be the truth?

3 A I think it depends upon the situation.

4 Q Okay. What situation would it depend on?

5 A I mean, I don't know if any other work has  
6 been done. I don't know what the agreement is between  
7 the association and our office.

8 Q How do you know how much to tell the consumer  
9 what the attorney's fees are if you don't know the  
10 agreement between the law firm and the association?

11 A Because I've been instructed that certain  
12 files get 425 and other files get 325 -- 375, excuse  
13 me.

14 Q Okay. And who has given you that instruction?

15 A Stephanie Trotter.

16 Q Is that built into the particular homeowner's  
17 association computer file, that it automatically  
18 populates with that number?

19 A No. You have to know which association.

20 Q Different associations tell the consumer  
21 different amounts of attorney's fees are owed for the  
22 same work you all are doing; right?

23 A I'm not sure what the association has billed  
24 or what they tell the homeowners.

25 Q Well, it sounds like sometimes you tell a

1 consumer, \$375 in attorney's fees is owed as part of  
2 this lien letter; right?

3 A It depends upon what their -- what association  
4 they are a part of, yes.

5 Q Right. At the same time, you could be telling  
6 a different consumer that's part of a different  
7 association they owe 425 in attorney's fees; right?

8 A Yes. If it's a different association, yes.

9 Q Even though those letters may have been  
10 generated by you within five minutes of each other;  
11 right?

12 A Possibly, yes.

13 Q Okay. Well, why are you telling the consumer  
14 that they owe one association 375, but a different  
15 consumer may owe a different association 425?

16 A That's how I've been taught to do it.

17 Q Okay. Is the work any different that's done  
18 by you or the team for the 375 versus the 425?

19 A The statements are normally longer and more  
20 complicated.

21 Q By "The statements," what do you mean?

22 A The numbers, the assessments, the charges, the  
23 statement that we get from our client.

24 Q Oh, from the homeowner's association?

25 A Uh-huh, yes.

1 Q All right. But the letter itself has the  
2 same --

3 A It's the same form letter, yes.

4 Q You all just drop in a different number for  
5 attorney's fees depending on which association it is?

6 A Yes. Depending on which association it falls  
7 under, yes.

8 Q Okay. And -- but is the work any different  
9 done by the attorney?

10 A I'm not exactly sure what work the attorney  
11 does on it.

12 Q Okay. Well, from what you've seen, the work  
13 the attorney does is after you have prepared it, they  
14 sign it, and then you all mail it; right?

15 A From what I've seen, it's reviewed and signed  
16 by the attorney.

17 Q Okay. And that's the thing that takes place  
18 in under 10 minutes?

19 A It can, yes.

20 Q Okay. And most of the time it does; right?

21 A Yes.

22 Q In terms of the for -- the complaint process,  
23 what -- talk -- walk me through, please. Let's assume  
24 you've moved on from the lien letter, you've moved on  
25 from telling the consumer they may be foreclosed upon,

1 if that's what you all have been instructed, and let's  
2 now move on to the point in time which you all are  
3 going to initiate a foreclosure proceeding. Okay?  
4 Could you walk me through the steps of that, please,  
5 from what the lien team does?

6 A Well, I haven't done it in about three years.  
7 But from what we --

8 Q This is 2019. So you were doing it in 2014  
9 and 2015; right?

10 A Yes. Up until I became the collector, yes.

11 Q Okay. So walk me through, please, the  
12 process, at least from 2012 through 2015, when you were  
13 doing that, what the process was for the lien team to  
14 generate the complaint.

15 A If the association had already authorized  
16 foreclosure when they turned the account over for the  
17 lien, they would generally say "Please lien and  
18 foreclose." The lien would already be in place, and  
19 there would have been a -- an action code on the file  
20 set 30 -- I believe 30 to 45 days out, to send an  
21 intent to foreclose letter. Well, if it was lien and  
22 foreclose, then the intent to foreclose information was  
23 already part of the lien notice that was sent. And if  
24 we didn't receive a response --

25 Q I'm sorry. Help me understand that. I'm

1     sorry.

2           A     If the association -- there's a couple of  
3     different forms.

4           Q     Okay.

5           A     There's just a lien by itself.

6           Q     Okay.

7           A     And then there is a different form that's the  
8     lien and foreclosure. It includes the foreclosure  
9     information.

10          Q     When you say there are a couple of different  
11     forms, I don't understand what you're saying.

12          A     There's one for -- there's one form that's the  
13     lien, one format, one form letter.

14          Q     Oh, form letter that you all send out. I'm  
15     sorry.

16          A     Yes.

17          Q     I thought you were saying a form filled out by  
18     the HOA. That's -- I misunderstood.

19          A     No.

20          Q     I'm sorry.

21          A     No.

22          Q     So help me, then, again with that. I'm sorry.

23          A     So if we placed a lien and the association  
24     wants to proceed with foreclosure --

25          Q     Okay.

1       A     -- they send us an updated statement.  They  
2     ask us to please proceed with foreclosure.

3       Q     Okay.

4       A     We update the numbers.  We check mortgage  
5     foreclosure.  We confirm that the owner isn't on a  
6     payment plan, and that there aren't any holds on the  
7     account.  You know, maybe there's any -- that we're not  
8     waiting on any sort of correspondence.  Assuming all of  
9     that is clear, then we would -- and that the intent to  
10    foreclose letter has been sent, then we would order  
11    what's called a title abstract.

12      Q     Okay.  And what's a -- so up until the point  
13    in time that you all are getting ready to foreclose, no  
14    title abstract has been ordered; right?

15      A     Correct.

16      Q     Okay.  And then tell me what happens after  
17    that.

18      A     We order a title abstract.  Assuming, again,  
19    that the owner has not contacted our office, then we  
20    get the title abstract back.  It gets reviewed by the  
21    attorney.  Once it's been reviewed and approved by the  
22    attorney, we then prepare the summons and complaint.

23      Q     Okay.  Okay.  Now, when the title work comes  
24    back, which attorney reviews the title work?  Or the  
25    title abstract, I'm sorry.

1           A     When I was preparing complaints, it was  
2     Stephanie.

3           Q     Okay. And is that -- does that go in some  
4     kind of box for review as well, title abstracts?

5           A     Yes. There was a folder, the to-be-reviewed  
6     folder.

7           Q     Okay. That to-be-reviewed folder, did it  
8     segregate between title abstracts versus complaints  
9     versus lien?

10          A     No. It was just for title abstracts.

11          Q     Okay. And how many of those at a time would  
12     she be reviewing?

13          A     I have no idea.

14          Q     I mean, did you -- did they come through you,  
15     or did they go directly to her?

16          A     They came through two diff- -- I had access to  
17     it, and then Sheri Self also had access to it.

18          Q     So it's still the lien team would get the  
19     abstracts in, and then --

20          A     We were sent -- we were sent a link by the  
21     title company that we used.

22          Q     Ah. So --

23          A     And we would download them.

24          Q     All right. So the abstract work would be done  
25     off site by a title abstractor. They scan in the work



1 and send you all a link; is that the rough idea?

2 A Yes, I believe so.

3 Q Okay. And so you would then forward that link  
4 to Stephanie, or would you print it?

5 A We would download the files to the  
6 to-be-reviewed folder.

7 Q Okay. When you say download, that's download  
8 and print?

9 A No, we would not print them. They would be  
10 downloaded electronically.

11 Q Oh, as a pdf or something?

12 A Yes.

13 Q And that pdf, would it be printed for her to  
14 review, or just --

15 A Not by me. She may have printed them on her  
16 own.

17 Q Oh, so the -- typically, you would download  
18 the pdf. When you say put it in a folder, I thought  
19 physical folder. You meant an electronic folder?

20 A Yes, it's an electronic folder.

21 Q Because everything we had been talking about  
22 before, in my mind, had been printed things. It sounds  
23 like --

24 A No, we don't have files on liens. We don't  
25 have foreclosure files. We don't files, like physical

1 files, on liens. It's not until we get to the  
2 foreclosure process that it has a physical file. So up  
3 to that point, it's all electronic. It's still -- it's  
4 still electronic.

5 Q Okay. So the link comes to the lien team, you  
6 download the -- you click on the link and it becomes a  
7 pdf, which you then put in an electronic folder for  
8 Stephanie to review?

9 A Yes.

10 Q Do you have access to that to-be-reviewed  
11 folder? Like, can you click on it and see what's in  
12 there?

13 A Yes.

14 Q Okay. And at any given point in time, could  
15 there be 50 to 100 documents to review? Or, I mean --

16 A There could be.

17 Q Okay. So do you know what time period  
18 generally the review of the abstract is? I mean, is  
19 it --

20 A I don't know. That's handled by the attorney.

21 Q Okay. So typically, let's say you download  
22 the pdf, put into the to-be-reviewed folder, electronic  
23 folder, for an attorney to review, what is the next  
24 step in that process? They say yes, file the  
25 foreclosure -- or I'm sorry, draft the complaint? Tell

1 me what happens.

2 A If she -- if she has reviewed the abstract and  
3 there's no issues with it, assuming everything is fine,  
4 then she puts it in the reviewed folder. Again, that's  
5 the electronic. Which we would check, I would say,  
6 probably once a week. When I was doing it, I think it  
7 was on Wednesdays when I would prepare complaints.

8 Q Okay. So there's a particular day where  
9 complaints are prepared? It seemed like they fell on  
10 particular days?

11 A That's how I did it when I was doing it.

12 Q So wednesday was, like, complaint day?

13 A For me, yes.

14 Q Was there a different day that was complaint  
15 day for the other lien team member?

16 A I don't know.

17 Q Okay. So tell me the process, then, of --  
18 assuming Stephanie has put the abstract in the reviewed  
19 folder, is it like a Dropbox kind of thing, or --

20 A I think so. I'm not very computer literate,  
21 so I -- but I think, yes.

22 Q So basically, you --

23 A It's a folder that I have access -- that she  
24 and I and Sheri Self --

25 Q Share?

1           A     -- yeah, would have -- yes, it's a shared  
2     folder.

3           Q     Okay.  So conceptually, although it's  
4     electronic, it's like paper.  If you have an abstract  
5     that comes in, you download it as a pdf, it's like a  
6     file.  You take that download and put it in the  
7     to-be-reviewed folder, which the attorney has access  
8     to?

9           A     Yes.

10          Q     Once the attorney does whatever they do with  
11     it, they then drop it into the reviewed folder.  Once  
12     you see something in the reviewed folder, although you  
13     don't know what the attorney has done, you know it's  
14     now time for you to generate the complaint?

15          A     Yes, that the title abstract has been approved  
16     for us to move forward.

17          Q     Is there any kind of marking or documentation  
18     that anybody has put on the pdf to let you know the  
19     attorneys approved it other than simply putting it in  
20     the reviewed folder?

21          A     No.

22          Q     Do you have any idea what the lawyer does in  
23     going through the abstract before putting it in the  
24     reviewed folder for you to generate the complaint?

25          A     I don't know.

1 Q Do you know how much time the lawyer spends?

2 A I don't know.

3 Q So let's assume now there's one or more title  
4 abstracts in the reviewed folder. Walk us through the  
5 process of you generating the lawsuit, please.

6 A Well, I would pull an updated statement and go  
7 through the system and input the necessary information.  
8 It's been so long. I had to check the -- I can't  
9 remember what it's called -- the legal description and  
10 input that; check the mortgage information, if there  
11 was a mortgage on the property; again, check the  
12 numbers; and I would print off the, what we call, the  
13 lien and foreclosure provisions for that particular  
14 association; put it all in a packet for the attorney to  
15 review, the statement, the lien and foreclosure  
16 provisions and the complaint document.

17 Q Okay. And you would then print that off and  
18 put it in the box for foreclosures?

19 A The complaint box, yes.

20 Q Complaint box, for the -- and then you and the  
21 other lien member would put whatever documents into  
22 that complaint box and give that to Stephanie sometime  
23 in the afternoon, 3:00 to 4 o'clock, or whatever?

24 A Yes. Generally, only one of us was working on  
25 one at a time. I would work on complaints and Sheri

1 would work on liens, or vice versa.

2 Q Okay. And how many complaints have you --  
3 well, typically, would that box get to Stephanie to  
4 sign and get back to you all the same day?

5 A Depending upon her workload and our workload,  
6 it could happen in the same day.

7 Q Okay. Now, what is the -- is there a  
8 particular busy season for complaints, or not? Or is  
9 that just steady throughout the whole year?

10 A Not that I recall. It really just varied.

11 Q Okay. Can you give me a rough idea of, like,  
12 the maximum and minimum amounts of complaints that  
13 might be in the box that you all send to her? Would  
14 there be as many as a hundred, or not? Or more or  
15 less?

16 MR. COUNTRYMAN: Object to the form.

17 A (Continuing) I don't -- I don't know. I  
18 never -- I never counted any of them. It could be  
19 anywhere from one to a hundred. I'm not exactly sure.

20 Q Okay. So would the box ever be full, the  
21 complaint box?

22 A Yes, there was time when it was full.

23 Q Okay. So when the complaint box was full, do  
24 you know -- you all would then take the box to  
25 Stephanie to review; and from time to time, she might

1 sign them and give you all back that box the same day?

2 MR. COUNTRYMAN: Object to the form.

3 A (Continuing) Occasionally.

4 Q Okay. So the material she had to review to  
5 sign the complaint consisted of the current statement  
6 provided to you all by the homeowner's association;  
7 right?

8 A Yes.

9 Q And everything else, you or the other lien  
10 team member generated? There's a form kind of thing;  
11 right?

12 A Well, the lien and foreclosure provisions are  
13 approved by the attorney.

14 Q What do you mean "lien and foreclosure  
15 provisions"?

16 A I believe it's the section of the governing  
17 documents that allow --

18 Q Were those already scanned in for you all just  
19 to attach?

20 A Yes.

21 Q Okay. So basically, when you all set up a  
22 homeowner's association file, as part of the process  
23 from the beginning of signing up the homeowner's  
24 association, your office would scan in the relevant  
25 provisions of the covenants to print when needed to

1 file the complaint?

2 A After it had been reviewed by the attorney,  
3 yes.

4 Q Sure. So basically, you all weren't having to  
5 go research the covenants in order to print the  
6 complaint; there was already sort of a set of the  
7 attachments ready to go with the complaint that were  
8 already reviewed once before, in the past?

9 A Yes.

10 Q So as part of your process of preparing the  
11 complaint for Stephanie, or whatever attorney, to  
12 review, you all would print out the form documents that  
13 your office generated, which would be the summons, the  
14 complaint, the civil cover sheet, and then you attach  
15 the relevant pages of the covenants that had already  
16 been scanned in from when the homeowner's association  
17 had first signed up with you all's law firm?

18 A Well, I'm not sure exactly when they were  
19 scanned in, but -- but, yes.

20 Q They had previously been scanned in. That  
21 wasn't additional work you had to do?

22 A Correct.

23 Q Okay. Now, did you, in preparing the  
24 complaint, do anything other than look at the current  
25 statement prepared by the homeowner's association in



1 order to generate the numbers that would go into the  
2 complaint? Does that make sense? Or I may not -- it  
3 sounds to me that the way you all would -- you said  
4 something about getting an updated statement. So  
5 you're contacting the association, who has asked you to  
6 file a foreclosure action, and getting the current  
7 homeowner's association account statement about what  
8 the homeowner currently owes; right?

9 A Correct.

10 Q You then look through those numbers, you as  
11 the lien team member, and then insert those numbers  
12 into you all's computer system in order to then  
13 generate the form complaint and form cover letter that  
14 goes with the complaint; right?

15 A Yes.

16 Q Okay. When you reviewed the homeowner account  
17 statement, did you ever notice that on the homeowner  
18 account statement it indicated 50 to \$65 was being  
19 charged to the homeowner's account, even though you all  
20 had sent out a letter saying 375 and 425 was owed by  
21 the homeowner?

22 A Sometimes.

23 Q Okay. So if the homeowner were to look at  
24 their current account statement when they received that  
25 lien letter from you all, they were likely to see a 50

1 to 65-dollar charge for attorney's fees as opposed to  
2 the 375 or 425 that was stated in the letter you all  
3 were sending; right?

4 A Possibly.

5 Q And you say "possibly" because it may not have  
6 made it onto the account statement at the time they're  
7 getting the letter?

8 A Correct.

9 Q Had they waited maybe a month after the law  
10 firm billed the association 50 to \$65, then it was  
11 likely that had the homeowner looked at their account  
12 statement, they would have seen a 50 to 65-dollar  
13 charge for attorney's fees, even though the law firm  
14 was saying 375 to 425 in attorney's fees was owed;  
15 right?

16 A Yes. If they received a statement from the  
17 HOA, yes.

18 Q Okay. Now, is the same thing true with the --  
19 by the time the summons and complaint gets ready to be  
20 filed? That is, the law firm would charge the  
21 association some additional money, in the range of 375  
22 to \$400, to move forward with the filing of the summons  
23 and complaint for the foreclosure? Were you aware of  
24 that?

25 A I'm sorry, will you ask that one more time?

1 Q Sure. Any time you don't understand something  
2 I'm asking, please let me know. Do you know -- let's  
3 do it this way: Do you know how much the law firm  
4 charges the homeowner's association to file the summons  
5 and complaint in a foreclosure kind of matter like  
6 we've been talking about?

7 A We send them a foreclosure retainer.

8 Q Okay. And do you know that amount in general  
9 terms, about?

10 A \$400.

11 Q Okay. Now that 400-dollar foreclosure  
12 retainer is sent to the homeowner's association to pay;  
13 right?

14 A Correct.

15 Q And that is the fee you all charge the  
16 homeowner's association to go forward with filing the  
17 summons and complaint and do the work associated with  
18 the foreclosure?

19 A It helps --

20 MR. COUNTRYMAN: Object to the form.

21 A (Continuing) It helps defray costs.

22 Q Costs, all right. So the \$400 the association  
23 is paying is related to potential costs the law firm  
24 may have, not attorney's fees; right?

25 MR. COUNTRYMAN: Object to the form.

1 A (Continuing) Right. I believe so, yes.

2 Q And do you know that the law firm at the time  
3 you are billing this homeowner's association \$400 --  
4 you called it a cost retainer?

5 A Foreclosure retainer.

6 Q Foreclosure retainer. That amount represents  
7 the amount your law firm is charging the homeowner's  
8 association for costs that may arise related to going  
9 forward with the foreclosure?

10 A Yes, I believe so.

11 Q And those costs include things like the filing  
12 fee of \$150?

13 A Yes, I -- yes, I believe that's the cost.

14 Q All right. And then there's a title abstract  
15 which costs around 95 to 100 bucks?

16 A I think it's \$110.00 now.

17 Q All right, it may have gone up. All right.  
18 And then there's a service to process around 50, 55  
19 bucks?

20 A It depends.

21 Q Okay. What's -- is that around, in a typical  
22 matter, around that amount?

23 A If it's a single homeowner that has a South  
24 Carolina address, I believe it's \$57.

25 Q Okay. We'll call it 60, all right, just to

1 get a rough idea. So are there any other costs that  
2 you know of that the law firm will be paying to get the  
3 lawsuit going other than the filing fee of 150, the  
4 title abstract of -- let's say it's as high as 110, and  
5 the service of about \$60? What other costs might the  
6 law firm be --

7 A So there's the title abstract 110, and then we  
8 prepare the complaint, which is anywhere -- the filing  
9 fee is anywhere from 150 to \$180.32. And then service,  
10 assuming that there's no issues and we find -- it's one  
11 individual, it would be \$57.00. And then there's a 125  
12 and then 25-dollar master-in-equity fee, I believe.

13 Q Well, okay, if it gets that far. But, okay, a  
14 master-in-equity fee is how much? I'm sorry..

15 A I believe it's \$150 total.

16 Q Okay. Okay. At the time you all are filing  
17 the lawsuit, getting the 400-dollar retainer, the only  
18 cost up until the time of service would be the filing  
19 fee of, you said, between 150 and 180, the title  
20 abstract of around 110, and the service and the typical  
21 one-person thing, 60 bucks; is that right?

22 A Up until the time of service?

23 Q Yes.

24 A Yes, those would be the costs incurred.

25 Q Okay. When -- the homeowner's association may

1 then pay you all that \$400 for the costs; right?

2 A Yes.

3 Q That 400-dollar bill does not relate to  
4 attorney's fees, it's just to defray the costs that  
5 your law firm may incur?

6 A From my understanding, yes.

7 Q Okay. Now, your law firm does not send the  
8 homeowner's association any additional attorney's fee  
9 bill at that point in time; right?

10 A I don't believe so.

11 Q All right. So from the time of sending the  
12 lien letter to the consumer through the time of filing  
13 and service of the complaint, the most the law firm may  
14 bill the homeowner's association in terms of costs and  
15 the things we've talked about would be 465 bucks,  
16 typically; right?

17 A I believe so. But again, I don't handle  
18 billing. So...

19 Q Well, you do enter that information into the  
20 system as part of creating the complaint; right?

21 A Yes.

22 Q Okay. So you're aware that those are the  
23 numbers you enter, would be the \$65 in order to  
24 generate the 65-dollar bill to the homeowner's  
25 association; right? For the lien stage?

1 A That's a separate system.

2 Q Oh, okay. I didn't realize it was a separate  
3 system.

4 A I don't enter a 65 or a 50-dollar charge into  
5 our collections software. It's 375 or 425. The  
6 billing is a separate system.

7 Q Thank you for clarifying that. The  
8 collections software helps you generate information to  
9 send form letters to consumers?

10 A Yes.

11 Q And the billing software is what your in-house  
12 records show on the books of what you all are charging  
13 your clients, the homeowner's association?

14 A I think so, yes.

15 Q Okay. So on the day that you are entering  
16 into the collections software that a homeowner owes  
17 \$425 in fees, you are entering into the billing  
18 software for the law firm that the homeowner's  
19 association owes \$65?

20 A We bill them for a 65-dollar retainer, yes.

21 Q All right. So, and that's what's going on  
22 with these two different software. So on one set of  
23 books, the collections software books, you all are  
24 telling the consumer they owe hundreds of dollars in  
25 attorney's fees; right?

1           A     The collections software reflects the full  
2     amount of the attorney's fees, and the billing software  
3     reflects only a retainer.

4           Q     Okay. And the billing software is the  
5     software that reflects actually what you have charged  
6     the homeowner's association; right?

7           A     It reflects the bill that we have sent them,  
8     yes, I believe so.

9           Q     By "sent them," you're talking about sent the  
10    homeowner's association?

11          A     Yes.

12          Q     And the collections software reflects the  
13    amount you're telling the consumer you're charging the  
14    homeowner's association; right?

15          A     I guess so, yeah.

16          Q     By "guess so," you mean yes?

17               MR. COUNTRYMAN: Object to the form.

18    BY MR. KAHN:

19          Q     Do you understand what I'm asking?

20          A     Yes. The collections software reflects the  
21    full amount of the attorney's fees. The billing  
22    software reflects the lien retainer.

23          Q     Okay. And, again, what -- because you all  
24    have got two different software packages, when you talk  
25    about the lien retainer, that's the billing software in



1    which you're generating a bill to the homeowner's  
2    association for 50 to \$65; right?  Yes?  The billing  
3    software?

4           A     Yes.

5           Q     Okay.  And you're the one entering that into  
6    the system?

7           A     Yes.

8           Q     Okay.  And as a result of you entering into  
9    the system 50 to \$65 to charge the homeowner's  
10   association, a bill is generated from your law firm to  
11   the homeowner's association for 50 to \$65?

12          A     Yes.

13          Q     In the collections software system that you're  
14   entering information into that will go to the consumer,  
15   for the attorney's fees, you're entering 375 to 425?

16          A     Correct.

17          Q     So the same day that you're entering  
18   information onto the collections software, that the  
19   attorney's fees are 375 or 425, your law firm is  
20   entering into the billing software that the homeowner's  
21   association owes 50 to \$65?

22          A     Yes.

23          Q     And at no point are you telling the consumer  
24   that the only amount charged to the association on the  
25   day the lien letter is going out is 50 to \$65.  You're

1 telling the consumer they owe 375 to 425; right?

2 MR. COUNTRYMAN: Object to the form.

3 A (Continuing) Yes. That's what the paperwork  
4 says, yes.

5 Q Okay. In terms of the foreclosure  
6 documentation that is filed with the court, are you and  
7 the other lien person involved with, for lack of a  
8 better word, copying and mailing that information,  
9 those documents off as well? Who --

10 A For getting it filed with the court, the  
11 complaint?

12 Q Yes. Who handles sort of the copying and  
13 mailing out and all of that?

14 A When I was doing it, the -- the process server  
15 service handled it. They would take it to be filed.

16 Q Is that anywhere throughout the state, or only  
17 in Columbia?

18 A No, they would take it throughout the state.

19 Q Okay.

20 A Yeah. Yes. Yeah, they would handle it. They  
21 would take it to be -- they would take it to be filed  
22 and immediately take it out for -- send it out for  
23 service.

24 Q So --

25 A Then send us the electronic copies.

1 Q So the law firm has contracted with process  
2 servers to pick up complaints to be filed and served?

3 A Yes.

4 Q And the reason why I'm asking this is because  
5 I want to understand what's going on. It seems to me  
6 when I've seen letters in the file, that it seems to me  
7 that the cover letter may have a different date than  
8 the complaint, because the complaint may have been  
9 filed. Or are you all generating -- that's why I'm  
10 trying to understand. Does that make sense? There's a  
11 cover letter that usually accompanies the complaint to  
12 say dear consumer or dear homeowner, you know, here  
13 attached is a summons and complaint --

14 A If it was -- if it was before we were using  
15 ABC Legal, then, yes, we would send it to be filed  
16 first. And then once we got the filed copy back, we  
17 would send it out for service.

18 Q Okay.

19 A I can't remember exactly what year ABC Legal  
20 started working for us.

21 Q Okay. Now, ABC Legal picks up the papers,  
22 handles the filing and service of it. In the past, you  
23 would, and when I say "you," your lien team would,  
24 print the papers; put them in a box; give them to  
25 Stephanie to sign, or an attorney; they would come back

1 to you all; you all would then make copies and send  
2 them to the court for filing?

3 A Yes.

4 Q And then when they came back from the court,  
5 you would then attach a cover letter which you would  
6 then provide to the process server to serve on the  
7 consumer?

8 A Yes.

9 Q Okay. Now, the cover letter that was  
10 generated that has Stephanie's name at the bottom would  
11 not be reviewed by her because you all would just print  
12 that when the complaints come in and attach that to the  
13 complaint to send to the consumer; right?

14 A When the filed complaint had returned from the  
15 county, yes.

16 Q Okay. So the cover letter that goes with the  
17 complaint that has Stephanie's name at the bottom would  
18 not be something she reviewed. That would be something  
19 you all would generate and send out without her review?

20 A Yes, I believe so.

21 Q Okay. And did you ever notice that there's an  
22 amount in that cover letter of how much is owed that is  
23 different than the amount in the complaint?

24 A I don't remember exactly.

25 Q All right. Well, nonetheless, the cover

1 letter that had Stephanie's name on it that listed an  
2 amount owed would go out without her review because you  
3 all were printing it after the complaint came from --  
4 after having been filed?

5 A Yes.

6 Q We'll take a quick break. We've been going  
7 about an hour. Let's take a quick break.

8 A Okay.

9 VIDEOGRAPHER: We will now go off the record.  
10 The time is approximately 2:08 p.m.

11 (The deposition recessed briefly.)

12 VIDEOGRAPHER: We are now back on the record.  
13 The time is approximately 2:15 p.m.

14 BY MR. KAHN:

15 Q You've been telling us about the people  
16 involved with the -- on the -- as part of the  
17 homeowner's association team. I'm trying to make sure  
18 I understand that. It sounds like there's four people:  
19 Two on the lien team, a collector, and the foreclosure  
20 person.

21 A Yes. At that time, yes.

22 Q And you are currently a collector?

23 A Yes.

24 Q Okay. Can you tell me what a collector does  
25 and did? What are those functions or duties or jobs,

1 tasks?

2 A Answering all homeowner phone calls;  
3 processing payments, both paper checks and electronic  
4 checks, or electronic payments; sending remaining  
5 balance letters; sending verification of debt; setting  
6 homeowners up on payment plans; updating numbers for  
7 any of the attorneys if they need it.

8 Q Okay. What --

9 A Answering client questions if they have it, if  
10 it's something I can assist them with.

11 Q Okay. What kind of calls do you get from the  
12 consumers or homeowners that you have to deal with,  
13 generally?

14 A They call -- generally, they call and complain  
15 about having received the notice of lien.

16 Q Okay. And what do you tell them?

17 A I tell them that the association turned the  
18 account over for nonpayment of the association dues,  
19 that they've incurred attorney's fees, and I offer them  
20 a payment plan.

21 Q When you say they have incurred attorney's  
22 fees, you're telling the consumer that the homeowner's  
23 association has incurred attorney's fees; right?

24 A I tell the homeowner -- I'm telling the  
25 homeowner that they have incurred attorney's fees, be

1 it 375 or 425.

2 Q When you use the word "they," I don't know --

3 A The owner. The homeowner that I'm speaking  
4 to.

5 Q So it's not the association that has incurred  
6 the attorney's fees, it's the homeowner; is that right?

7 A From my understanding, yes.

8 Q Okay. So when you all are sending out the  
9 letter telling the homeowner about the attorney's fees,  
10 you all are telling the homeowner that they have  
11 incurred the attorney's fees, not the homeowner's  
12 association?

13 A Correct.

14 Q And the -- you mentioned the idea about  
15 processing payments. Help me understand that. You  
16 said something about I think trust and operating. Help  
17 me explain that. A check comes in or a payment comes  
18 in; are you deciding whether it goes in trust or  
19 operating?

20 A If it's a payment from a homeowner, then it  
21 goes into trust.

22 Q Okay.

23 A If it's a homeowner's association paying a  
24 bill, it goes into operating, from what I understand.

25 Q Okay. So let's say, for example, the

1 400-dollar homeowner association retainer/bill has been  
2 sent and \$400 comes in, you would take that check and  
3 put it into the operating account?

4 A That goes into trust. I don't deposit it, but  
5 I know it goes into trust.

6 Q Then I'm confused. Help me understand. I  
7 thought you said something about a homeowner's  
8 association goes into operating. What did that mean?

9 A A homeowner payment goes into trust.

10 Q Okay.

11 A And then if the HOA is paying a bill, like  
12 we've invoiced them for something, then it goes into  
13 operating, from what I understand.

14 Q Right. I thought that's what I just said.  
15 Maybe I wasn't clear --

16 A The foreclosure retainer goes into trust, and  
17 they work out of that.

18 Q Okay. The foreclosure retainer, let's say  
19 it's \$400, that would go to the trust account?

20 A Yes.

21 Q The \$65 goes into what?

22 A Operating.

23 Q Okay. And that's the way it's been since  
24 you've been there in October of 2012?

25 A Yes, I believe so.



1 Q Okay. And that's because -- do you know what  
2 that \$65 -- or 50 to \$65, depending on what the  
3 association is, consists of or what that's for?

4 A I'm -- I'm not entirely sure. I think it  
5 helps defray the cost of the amount that we spend the  
6 time on it and for mailing it out and stuff.

7 Q When you say "the time on it," what do you  
8 mean?

9 A The time it takes the person to do it.

10 Q Okay. So \$65 is what you're charging the  
11 homeowner's association for the time spent by the law  
12 firm and the cost associated with getting the materials  
13 out?

14 A Yes, I believe so.

15 Q And that's the way it's been since you've been  
16 there in October of 2012?

17 A Yes.

18 Q The -- can you -- there's some names or  
19 initials I've come across. Can you help me, to the  
20 extent you can? I know it's been since 2012. But if  
21 you can, to the extent you can, remember who was on the  
22 different -- part of the team over time that would help  
23 me. It sounds like around October of 2012, it sounds  
24 like you and Sheri Self were on the lien team?

25 A Yes.

1 Q Who would have been the collector at that  
2 time, to the best of your recollection?

3 A I can't remember what her name was.

4 Q Okay.

5 A I want to say Melanie, but I don't think  
6 that's right.

7 Q Okay.

8 A I don't think her name was Melanie, but I'm  
9 not -- I can't --

10 Q Melanie Baird?

11 A No, that's Melody.

12 Q Oh, Melody. Sorry.

13 A I don't remember. Maybe her name started with  
14 an "S."

15 Q Okay.

16 A I don't know why I can't remember her name,  
17 but...

18 Q That's all right. I just want your best  
19 recollection. All right. So we've got the lien team,  
20 a collector, and then there was a foreclosure person.  
21 Do you remember who the foreclosure person was?

22 A Her name was Sheila. I can't -- I can't  
23 remember what her last name was.

24 Q Okay. And from over time, can you tell me how  
25 that team may have changed? Do you remember different

1 people that came in? Like, I think Sheri Self is no  
2 longer there.

3 A Right.

4 Q Do you know who took her place?

5 A Well, and Anita did foreclosure work, too. I  
6 can't remember what she -- when I was initially hired,  
7 there were -- there were four of them, and I was kind  
8 of hired as -- as help. And then the collector left,  
9 so then Anita took the collector's spot -- or did  
10 Sheila leave? Sheila left. Anita -- Anita became the  
11 collector.

12 Q Okay.

13 A And it was me and Sheri Self.

14 Q Okay.

15 A And then there were a couple of other people.  
16 I can't remember the time frame, though.

17 Q Okay. Some initials I've come across might  
18 ring a bell. I see -- I have seen initials GEO. Do  
19 you know whose --

20 A Ginny Oliver.

21 Q Okay. Do you know what she did?

22 A She started out as the receptionist. Then she  
23 moved to -- she took -- I think she took over the  
24 foreclosure position -- the foreclosure paralegal  
25 position when Anita became the collector.

1 Q Okay. Do you know what happened to her? Is  
2 she still there?

3 A No.

4 Q Do you know what happened to her?

5 A She went to school and got a different job.  
6 She went to graduate school, I think.

7 Q I've seen some letters from you all's office  
8 where it looks like there are initials at the bottom  
9 left that's like SCT slash and then somebody's initials  
10 like, I guess, sls or something for Self, and hkg for  
11 you. Does that make sense?

12 A Yes.

13 Q If one looks at a letter and sees the last  
14 three initials, does that tell the person looking at it  
15 that you -- for example, if the initials hkg appear  
16 there, does that tell the person looking at the letter  
17 that you would have generated that letter?

18 A Yes, or it was printed under my user name.

19 Q Ah, okay.

20 A Which, most likely, would have been me.

21 Q Right. So basically, when you see those  
22 initials following the attorney's initials, that helps  
23 somebody understand, most likely, that's the person  
24 that generated the letter -- printed the letter?

25 A Most likely, yes.

1 Q Okay. What does Theron Coetzee do?

2 A Theron?

3 Q Theron. I'm sorry.

4 A Yes. It's Theron Coetzee. She is the  
5 foreclosure paralegal.

6 Q Okay. What is -- you mentioned Melody Baird?

7 A Melody Baird was the foreclosure paralegal.

8 Q Where is Melody now?

9 A I don't know, but she no longer works with us.

10 Q All right. As part of -- if you all have a  
11 particularly good collection season or year, would you  
12 all get any kind of bonuses?

13 A I don't know that it's based off of the  
14 collections.

15 Q Okay. From time to time, you all would get  
16 bonuses?

17 A From time to time.

18 Q Okay. And that would be part of the HOA team  
19 or the whole law firm, do you know?

20 A I believe the whole law firm.

21 Q Okay. And the -- do you all ever have any  
22 kind of meetings or get-togethers, or review reports  
23 that let you know the status of how many files were  
24 currently open and pending or in collections?

25 A Not that I recall.

1 Q All right. If that was done, it may have been  
2 by the attorneys, but not by the staff; is that the  
3 idea? Or --

4 A Probably. I don't -- I don't recall a  
5 specific meeting where the attorneys told us how many  
6 open files we had or anything like that.

7 Q Was it possible under -- is it possible and  
8 was it possible under the software system to generate a  
9 report that would let you know how many open files  
10 there were and where you all were sending materials to,  
11 like who the homeowners were you all were trying to  
12 collect on?

13 A I believe the software allowed you to print a  
14 report for specific associations like -- I can't  
15 remember exactly how they were grouped.

16 Q Okay. So certainly there would have been a  
17 way to print a report based on an association, and then  
18 separately identifying which homeowners within the  
19 association you all were attempting to either collect  
20 liens on or foreclose against and those kind of things?

21 A Yes. Well, if they were on the report, then  
22 we were trying to collect for them, yes.

23 Q Well, could you go back in time to see what  
24 you all had done?

25 A I don't know.

1 Q Were any reports like that ever generated on a  
2 regular basis so you all could sort of figure out how  
3 you all were progressing?

4 A Not that I know of.

5 Q If they were done, they weren't done by you?

6 A No.

7 Q Is that right?

8 A Correct.

9 Q All right. But if somebody in the office,  
10 let's say an attorney, wanted to know how many liens  
11 had been sent out by a homeowner's association, that  
12 was the kind of report that could be generated?

13 A I believe the software allowed for that, yes.

14 Q And the same thing for kind of foreclosures  
15 pending and sort of the status of the different  
16 homeowner accounts?

17 A I believe so. I believe it -- I believe it  
18 listed it -- I believe it listed the association by  
19 status, or the associations -- yeah, the files by  
20 status, I believe.

21 Q All right. So there's a homeowner's  
22 association category and a subcategory for the  
23 individual homeowner members in which your law firm is  
24 taking action against them, whether it's --

25 A For that particular report?

1 Q Uh-huh.

2 A I believe so.

3 Q Okay. As part of the lien process, or really  
4 even part of the foreclosure process, you all, I mean  
5 the lien team, would receive an email from either the  
6 homeowner's association or a management company for the  
7 homeowner's association, telling you all to begin going  
8 forward; right?

9 A Yes.

10 Q If a management company was involved, sending  
11 you an email, with an attached current homeowner  
12 statement, you would look at that email, and then begin  
13 the process of opening up the lien file; right?

14 A Depending upon what the request was, yes.

15 Q At no time would -- routinely, you were not  
16 receiving a copy of a homeowner's association board  
17 minutes or vote stating that they have voted to now  
18 begin the process of collecting a lien and foreclosing;  
19 right? Typically, you were just receiving an email  
20 from the management company or the homeowner's  
21 association saying please start going forward and  
22 here's a statement; is that right?

23 A Yes, I believe so.

24 Q Okay. So it sounds like, typically, you all  
25 weren't checking behind the homeowner's association to



1 determine whether or not the board had actually  
2 authorized or voted on moving forward. You all were  
3 taking the word of the management company based on the  
4 email and the statement that that had taken place?

5 A Yes.

6 Q When you were receiving these statements to  
7 enter into the collections system that would be used to  
8 generate a letter or document for the homeowner, the  
9 consumer, you weren't checking the covenants to see if  
10 the charges listed were proper; right?

11 A Right.

12 Q And you weren't checking whether or not the  
13 charges that were listed were authorized by the  
14 covenants; right?

15 A Correct.

16 Q And you weren't determining whether or not the  
17 numbers given to you specifically had been calculated  
18 properly by the homeowner's association; right?

19 A No. If there was a question with the numbers,  
20 I took it to Stephanie.

21 Q Well, let's say there was a particular number  
22 that said assessments, \$800. You weren't trying to  
23 determine whether or not that \$800 had been calculated  
24 properly under the covenants; you were just looking at  
25 the number on the statement and then entering it into

1 the computer system?

2 A Correct.

3 Q That's what I meant by in terms of calculating  
4 properly.

5 A Okay.

6 Q You were assuming that the numbers listed in  
7 the statement you were given were correct and entering  
8 them into the system?

9 A Correct.

10 Q You weren't investigating to determine whether  
11 or not they were properly charged or authorized by the  
12 covenants?

13 A Correct.

14 Q Okay. You weren't determining whether or not  
15 the date of the assessment as provided to you in the  
16 statement even lined up with when the covenants said  
17 the assessments were due?

18 A Correct.

19 Q And even though you weren't checking these  
20 various things with the covenants, or whether or not  
21 the charges were authorized or proper, you would still  
22 take the information out of the statement to put into  
23 the collections software to generate a form letter  
24 telling the consumer they owe this money?

25 A Correct, I did not consult the covenants.

1 Q Do you know of anybody that consulted the  
2 covenants before you all generated these letters?

3 A Not specifically, no.

4 Q Okay. And the -- it was mentioned that last  
5 week you were reviewing some materials in order to  
6 prepare for today's deposition, and I think something  
7 about the letters sent to Miss Richardson; is that  
8 correct?

9 A I believe so, yes.

10 Q The -- did you -- is this -- this has been  
11 previously marked. I think it was a document marked in  
12 Miss Trotter's deposition. Is this -- I'll show you a  
13 document. Is that one of the materials that you  
14 reviewed last Thursday?

15 A I believe so, yes.

16 Q And let me mark that as Plaintiff's Exhibit  
17 No. 2 in this deposition, if I could.

18 (NOTICE OF CONSUMER'S RIGHT TO CURE MARKED  
19 PLAINTIFF'S EXHIBIT NO. 2 FOR I.D.)

20 BY MR. KAHN:

21 Q And is Plaintiff's Exhibit No. 2 the lien  
22 letter, sort of the typical lien letter, that we've  
23 been talking about, related to this process we've also  
24 been talking about?

25 A Yes, it looks like it.

1 Q Okay. And if you look at the second page of  
2 Plaintiff's Exhibit No. 2, do you see that "SCT/hkg"?

3 A Yes.

4 Q Does that "hkg" suggest this is something that  
5 you, Haylen Gatling, generated?

6 A Yes.

7 Q Okay. And your initials are HKG?

8 A Yes.

9 Q And there's no signature under Stephanie  
10 Trotter's name because this is a letter that you  
11 generated that she did not sign; right?

12 A Correct, she did not sign this letter.

13 Q And this -- is this the sort of typical form  
14 letter that you all would use in these homeowner lien  
15 matters that we've been talking about?

16 A Yes. This is a copy of the demand letter and  
17 notice of lien.

18 Q Okay. And it's the typical kind of letter  
19 that you all's system -- your collections system  
20 generates as part of the collection process we've been  
21 talking about?

22 A Yes.

23 Q Would this be what you provide to the lawyer,  
24 or only a part of this, as part this stack of materials  
25 that went into the lien box that you were talking

1 about?

2 A You mean do we give her the demand letter and  
3 the notice of lien?

4 Q Yes. Or do you just typically give her the  
5 lien?

6 A I think we just give her the lien from when  
7 our -- yes, I think we just give her the lien.

8 Q Right, and that's what I understood. So what  
9 happens is the lien on the page where it says MTB000074  
10 that's at the bottom right, at the top it says "Notice  
11 of Lien," do you see where I am?

12 A Yes.

13 Q Okay. So typically -- is that paper-clipped?

14 A Yes.

15 Q So typically, what you're giving the attorney  
16 to sign would just be the notice of lien which is  
17 MTB000 -- there are four zeroes, 74; right?

18 A With a copy of the statement and the property  
19 card.

20 Q Okay. So the cover letter that is part of  
21 Exhibit No. 2 that has notice of consumer's right to  
22 cure in the 1692g letter or document, that would be  
23 something you all would generate separately or later  
24 on? How would that work? Or is there a different  
25 pile? How does that work? Let's do this --

1 A It print --

2 Q Uh-huh. I'm sorry, go on.

3 A I think it prints off all together, and we  
4 just give her the lien. And pending approval, then we  
5 put it all back together.

6 Q Thank you. And that's what I understood. So  
7 what happens is, when you get the email with the  
8 current statement, you enter information into the  
9 system. You then print different documents, which  
10 appears to be a notice of lien, a 1692g notice.  
11 Remember earlier, I was asking you about 1692g or a  
12 1692 notice? Do you see where it says notice required  
13 by the --

14 A Yes. I wasn't aware of what it was called.

15 Q No problems. That's why I just want to make  
16 sure we're on the same page.

17 A Yes.

18 Q So the document beginning with Bates stamp at  
19 the bottom right, MTB, four zeroes, 71 through 73,  
20 those would be -- would that be printed as a  
21 separate --

22 A No, it all prints off together. It all prints  
23 out together.

24 Q All right. Thank you. So what it sounds like  
25 is, with Plaintiff's Exhibit No. 2 -- although, first,

1 tell me is this right. Plaintiff's Exhibit No. 2  
2 prints out all together?

3 A Yes.

4 Q Yes?

5 A Yes.

6 Q Then what you do is you pull out the document  
7 that says notice of lien, or the page, and put that  
8 into the box, the lien box?

9 A Both of those pages.

10 Q When you say "both of those pages" --

11 A Yes, the first and second page.

12 Q When you say the "second page" --

13 A The one that's behind the notice of lien.

14 Q Okay. And that's the one that has -- is the  
15 witness page, I'll call it. Is that what you're  
16 talking about, or no?

17 A Yes.

18 Q Is that right?

19 A Yes, I believe so.

20 Q I just want to make sure we're talking about  
21 the same document. How about tell me which documents  
22 of Plaintiff's Exhibit No. 2 you would typically put in  
23 the lien box for Stephanie to review and sign?

24 A The notice of lien and witness page, with the  
25 copy of the property card and the homeowner statement.

1           Q     Okay. During the time that the notice of  
2     lien, property card, and statement is in the lien box,  
3     where is the notice of consumer's right to cure and  
4     this 1692 notice, where are those?

5           A     It's on hold in the person's office handling  
6     it.

7           Q     When you say the person handling it, that  
8     would be the lien team member?

9           A     Yes, whoever -- whoever printed it off.

10          Q     So as an example, in this particular case, and  
11     as would be typical, this is what I want to understand,  
12     you would print off, as a lien team member, Plaintiff's  
13     Exhibit No. 2, the entire thing, in your office, or,  
14     I'm sorry, down the hall at the Xerox machine --  
15     machine -- wherever it is?

16          A     Right.

17          Q     You would then pull two of the pages, the  
18     notice of lien and the witness page, put them with the  
19     printed account statement that you got from the  
20     homeowner's association as part of the email, along  
21     with the property card, and you would put those  
22     documents into the lien box?

23          A     Correct.

24          Q     You kept separately the notice of consumer's  
25     right to cure and the 1692 notice; right?



1 A Yes, I believe so.

2 Q All right. So basically, of Plaintiff's  
3 Exhibit No. 2, two of those pages would go in the lien  
4 box along with the current account statement and  
5 property card for the attorney to review?

6 A Yes.

7 Q The attorney would sign the notice of lien;  
8 right?

9 A Yes.

10 Q That notice of lien would then come back to  
11 you or the other lien team member?

12 A Yes.

13 Q You would take that notice of lien and the  
14 witness page, and then take it to somebody to have them  
15 witness and notarize it or sign it?

16 A Yes, either -- if Sheri and I were both there,  
17 then we would just handle it between the two of us.

18 Q Okay. Well, it looks like there's a spot for  
19 more than two people to sign. Oh, I'm sorry. You said  
20 Sheri. I thought you said Stephanie. I apologize.

21 A Okay.

22 Q I gotcha. All right. So typically, what  
23 would happen would be, after the lawyer signed the  
24 notice of lien, you would -- she would put that in a  
25 box afterwards?

1 A She would put it back in the signed box.

2 Q Oh, the signed box, okay. You all have a  
3 different box for signed, okay.

4 A Yes. So the lien -- there's the lien box for  
5 the stuff that -- the liens to be processed.

6 Q Okay.

7 A And then after they've been processed by us,  
8 we put them in the to-be-signed box that we give to  
9 Stephanie.

10 Q Okay.

11 A After she's reviewed them and signed them, she  
12 would give them back to us.

13 Q Okay. Once you then had them, you would go  
14 down the hall or wherever, and people would then  
15 witness it and sign the witness boxes and the witness  
16 page?

17 A Yes. Someone would -- I would get someone to  
18 witness, and then someone would notarize.

19 Q Okay. Now, that witness and notary weren't  
20 necessarily in the room with Stephanie at the time  
21 she's signing this; they're signing the witness box and  
22 notarizing it later; right?

23 A Yes, sometimes.

24 Q Well, most of the time; right?

25 A Yes.

1           Q     Okay. And once you then passed it to the  
2     notary and witnesses to sign, would it be your  
3     responsibility to gather those documents back, and put  
4     them with the notice of consumers right to cure and  
5     1692 form to then further process?

6           A     Yes. Once the liens have been signed,  
7     witnessed and notarized, we would make two copies.

8           Q     Okay.

9           A     When I was doing it, all the counties required  
10    the original and a copy. We would put those separately  
11    to send to the county, with a check to be filed, and  
12    then we put a copy with the demand letter.

13          Q     Okay. Now, let's be clear. Because you  
14    weren't filing with the county all of Plaintiff's  
15    Exhibit No. 2; you were only filing the notice of lien  
16    and witness document?

17          A     Correct.

18          Q     And that notice of lien and witness document,  
19    those were the ones that Stephanie would sign, and then  
20    you would later take to somebody else to get them to  
21    witness and notarize; right?

22          A     Yes.

23          Q     Okay. And those documents that were witnessed  
24    and notarized later on would be the documents you were  
25    filing with the county?

1 A Yes.

2 Q Okay. And another copy of those documents  
3 would be sent to the consumer with the notice of  
4 consumers right to cure letter and the 1692?

5 A Another copy of the notice of lien would be  
6 sent with the demand letter.

7 Q Okay.

8 A Yes.

9 Q All right. And by "the demand letter," you're  
10 talking about this Plaintiff's Exhibit No. 2?

11 A The notice of consumers right to cure letter,  
12 yes.

13 Q Okay. And that's the process that typically  
14 took place from October of 2012 through now; right?

15 A There may be some variations on how they do it  
16 now; but when I was doing it, that's how they did it.

17 Q All right. At least through October of 2012  
18 through at least 2016, that's how it was being done?

19 A Yes.

20 Q Okay. And the -- this was sort of the regular  
21 process of the way the lien team handled it?

22 A Yes.

23 Q Okay. And the -- in terms of the statement  
24 and -- I'm sorry, the account statement that was  
25 printed and the property card, when you got that back

1 from Stephanie, I can't remember if you said she  
2 shredded that, or you all did?

3 A It depends. Sometimes she would shred it;  
4 sometimes we would shred it.

5 Q All right. So you added a new piece of  
6 information. I want to make sure I understand the  
7 overall process. It sounds like, in general terms, the  
8 way it worked is you all would get an email to the new  
9 file a request. A member of the lien team would open  
10 up that email, print the account statement, go through  
11 the steps associated with getting the consumer's  
12 information from the county agency, county tax people,  
13 would then enter that information into the collections  
14 software. You then added an attorney's fee of 375 or  
15 425, depending on the homeowner's association. That  
16 would then generate something similar to Plaintiff's  
17 Exhibit No. 2. Yes?

18 A Yes.

19 Q Then, you would take just the notice of lien  
20 page and the signature -- and the witness page, along  
21 with the printed account statement and property card,  
22 to put in the lien box for Stephanie to review?

23 A Yes.

24 Q And you and the other lien team member would  
25 do that throughout the day up until around 3 o'clock or

1 so?

2 A Yes.

3 Q Put that stuff in the box. Then take that box  
4 to her?

5 A Yes.

6 Q You all went back to doing whatever you all  
7 were doing. Stephanie would sign the notice of lien  
8 page, and then put that and the blank witness document  
9 into a box of materials for you all to pick up?

10 A She would put it back in the signed box.  
11 After she had signed it, she would put it back in the  
12 box.

13 Q Okay, put it back in the box. And at some  
14 point, would she call you all in to get the papers or  
15 something or --

16 A Sometimes she dropped it off; sometimes we  
17 went and picked it up.

18 Q Okay. And once you all got this box back with  
19 the document she had signed, you would then go down the  
20 hall or wherever to get people to witness it and  
21 notarize it, and then put it back together for copying  
22 and mailing out?

23 A One of us would generally go ahead and witness  
24 it, and then -- and notarize it, and then get someone  
25 else to witness it.

1 Q Okay. But that was after you all already had  
2 the box, and Stephanie would be in her office doing  
3 whatever, and you all were somewhere else; right?

4 A Yes.

5 Q Okay. And the -- in terms of an account  
6 statement, this is a -- we've had multiple copies of  
7 this, but --

8 MR. COUNTRYMAN: I'm going to have to talk to  
9 her about that.

10 MR. KAHN: I haven't even shown her what it  
11 is, yet, so hold on. Let me figure out what it is.

12 BY MR. KAHN:

13 Q There's one that's been marked as Stephanie  
14 Trotter No. 22. Let me double-check something. Right.  
15 So this is a document from Stephanie Trotter's  
16 deposition that's been Bates -- I'm sorry, that's been  
17 marked as Exhibit No. -- I'm sorry, did I read the  
18 number right? Yeah, 22. Do you see where it says  
19 Trotter 22?

20 A Yes.

21 MR. COUNTRYMAN: I want to talk to her about  
22 this under 30(j)(8).

23 MR. KAHN: I haven't finished my question, and  
24 let me at least finish my question.

25 MR. COUNTRYMAN: I'm going to talk to her

1 about it under 30(j)(8). You're giving it to her, and  
2 I told you --

3 MR. KAHN: I have previously identified this  
4 document in an email. I specifically stated the  
5 document --

6 MR. COUNTRYMAN: Justin, you --

7 MR. KAHN: Andy, let me just put on the  
8 record -- let me just put it on the record.

9 MR. COUNTRYMAN: Just give me the chance to do  
10 the same. All right? That's all --

11 MR. KAHN: I got no problem with that. I  
12 specifically stated to you last Friday, and before as  
13 part of the notice, that we may review with the witness  
14 documents previously produced in this case. On Friday,  
15 I specifically stated that we may review documents with  
16 this witness that were exhibits to Stephanie Trotter's  
17 deposition, along with other people's deposition.

18 I have handed her one of those documents from  
19 her deposition, and I don't even believe I finished  
20 asking her a question, and you have -- somehow now  
21 taking the position that you're allowed to speak with  
22 the witness about it. I think that violates the rules.  
23 You have a different position. We can let a judge take  
24 it up. And if you want to say anything about that,  
25 that's fine, but that's my position. I don't think you



1 should be allowed to talk with her, but you do what you  
2 want.

3 MR. COUNTRYMAN: May I?

4 MR. KAHN: And we'll let the judge deal with  
5 it.

6 MR. COUNTRYMAN: All right. You noticed this  
7 deposition I think in the first week of November of  
8 2018. The week after that, I sent you a letter  
9 indicating that the notice was insufficient to identify  
10 documents under 30(j)(8) as the rule is intended to  
11 identify documents that you'll use in a deposition so  
12 that a witness won't be surprised. Instead, your  
13 notice identified basically everything that had been  
14 exchanged in discovery. I didn't get any response to  
15 that letter.

16 I then received an email Friday at 6:30, again  
17 referencing every document in discovery, and including  
18 a 68-page spreadsheet of different -- a list of  
19 different documents. I don't think that's sufficient  
20 under the rule. I talked to you about that this  
21 morning before the deposition and invited you to  
22 provide me with documents so I could go over them with  
23 her. You didn't.

24 You did that again before lunch, and I gave  
25 you a letter at lunch. We had about an hour lunch, and

1 I gave you that same opportunity, which you declined.  
2 So I'm going to talk to the witness about this within a  
3 reasonable period of time as the rule provides. And  
4 if --

5 MR. KAHN: I think that absolutely violates  
6 the rule. We'll let the judge deal with it.

7 MR. COUNTRYMAN: And I don't really care what  
8 you think.

9 MR. KAHN: I understand. That's why we have  
10 judges.

11 VIDEOGRAPHER: This concludes Video No. 2 in  
12 the video deposition of Haylen Gatling. The time is  
13 approximately 2:52 p.m. We are now off the record.

14 (The deposition recessed briefly.)

15 MR. KAHN: Mr. Countryman and the witness have  
16 come back into the room. Although we have different  
17 positions on what the rule, whether or not there's been  
18 compliance with the rule, I'm now going to hand Mr.  
19 Countryman and the witness a document entitled "History  
20 Report," which has been Bates stamped marked as  
21 MTB000220, which I believe is also an exhibit to Miss  
22 Trotter's and the other depositions.

23 Although I believe I should be allowed to ask  
24 the witness questions immediately about this document,  
25 Mr. Countryman has a different position, and we can

1 take that up with the judge.

2 MR. COUNTRYMAN: We will. And just for the  
3 record, this case involves tens of thousands, if not  
4 hundreds of thousands, of documents. I had no idea  
5 what documents would be used in this deposition.  
6 Identification beforehand didn't give me that idea.  
7 That's all I've been asking for. I'm not trying to be  
8 unreasonable. I'm not trying to be obtuse, or delay  
9 things. Take a reasonable amount of time and look at  
10 this with her and we'll...

11 (STATEMENT OF ACCOUNT MARKED AS PLAINTIFF'S  
12 EXHIBIT NO. 3 FOR I.D.)

13 (HISTORY REPORT MARKED AS PLAINTIFF'S EXHIBIT  
14 NO. 4 FOR I.D.)

15 (INVOICE MARKED AS PLAINTIFF'S EXHIBIT NO. 5  
16 FOR I.D.)

17 VIDEOGRAPHER: We are now back on the record.  
18 Today's date is January 15th, 2019. The time is  
19 approximately 3:37 p.m. This is Video No. 3 in the  
20 video deposition of Haylen Gatling.

21 BY MR. KAHN:

22 Q What did you all talk about?

23 MR. COUNTRYMAN: Don't answer that.

24 MR. KAHN: Okay. We'll let the judge take it  
25 up.

1 BY MR. KAHN:

2 Q I want to hand you what I've marked as  
3 Plaintiff's Exhibit No. 3, which is a document at the  
4 top that says "Statement of Account as of 2/24/15, a  
5 document, Plaintiff's Exhibit No. 4, which is something  
6 called "History Report," and Plaintiff's Exhibit No. 5,  
7 which is a 65-dollar invoice.

8 MR. COUNTRYMAN: Can I make a quick statement  
9 for the record before you ask your question? He asked  
10 what you talked about. I directed you not to answer on  
11 the grounds of attorney-client privilege. We discussed  
12 the documents that you were given just a few minutes  
13 ago. Those are the ones that were not, in my view,  
14 previously properly identified under Rule 30(j)(8).  
15 That's something that he and I can discuss at another  
16 time. But I'm directing you not to answer that  
17 question under attorney-client privilege grounds.

18 MR. KAHN: I have a different perspective;  
19 but, again, we'll go --

20 MR. COUNTRYMAN: I just wanted it to be --

21 MR. KAHN: I understand. We'll go forward.

22 BY MR. KAHN:

23 Q The -- have you seen these documents before?

24 A Yes.

25 Q And in terms of going back to talk about the

1 process, the -- have you seen the history report that I  
2 provided to you as Plaintiff's Exhibit No. 4?

3 A You mean before now? Before today?

4 Q Yes. Have you seen this particular document  
5 before today?

6 A I don't think so.

7 Q Okay. Is this the kind of document or report  
8 that's typically generated in these kinds of lien or  
9 HOA collection matters that you have -- that you're  
10 familiar with, that you've worked with, with this law  
11 firm over the last several years?

12 A I don't use this.

13 Q All right. Do you recognize this as a  
14 document created by McCabe Trotter? Do you see the  
15 first page, where it says "McCabe Trotter"?

16 A Yes.

17 Q And it says "History report," do you see that?

18 A Yes.

19 Q Do you see "For account 12480"? Do you see  
20 that?

21 A Yes.

22 Q "Tammy C. Richardson," do you see that?

23 A Yes.

24 Q Do you see where it says "Reference No.  
25 20475/5"?

1 A Yes.

2 Q Is that same number that appears on  
3 Plaintiff's Exhibit No. -- what was the number? I  
4 think it was two, which was the letter, the lien  
5 letter?

6 A That's the same file number.

7 Q Okay. Does this suggest to you that this  
8 history report relates to Tammy Richardson and the  
9 particular file that we're talking about today?

10 A Yes.

11 Q Now, if we go through Plaintiff's Exhibit No.  
12 4, which is the history report, do you see where you  
13 get to about the third page and there's a date where --  
14 in fact, the top right, it says page 3. Do you see  
15 where I am?

16 A Yes.

17 Q Do you need a paper clip or something, if that  
18 will help?

19 A No, I took it off. I don't want the paper  
20 clip.

21 Q Do you see where at 2/26/15, so that's  
22 February 26th, 2015, at 11:33 a.m., it says, "Reference  
23 Number, New Information Added," and it's got "HKG," do  
24 you see that?

25 A Yes.

1 Q Would that suggest to you that that's you or  
2 somebody using your user I.D., entering information  
3 about this file?

4 A Yes.

5 Q At that time?

6 A Yes.

7 Q All right. And where it says "Reference  
8 Number, New Information Added," is that your way of  
9 entering into the file system that some kind of  
10 reference number is being created or entered into this  
11 history report related to this particular client file?

12 A Yes.

13 Q And what would that reference number be?  
14 Would it be that 20475/5?

15 A Yes, the file number.

16 Q Okay. And so it looks like at 11:33 a.m., you  
17 entered the file number into the system as part of the  
18 collection process; right?

19 A Yes.

20 Q You see where it says "C001" under associate  
21 or "Assoc" at the top?

22 A Yes.

23 Q What is -- do you know what "C001" stands for?

24 A I do not.

25 Q Do you know what "Assoc" stands for?

1           A     I don't know.

2           Q     Okay. Do you believe that the entered date  
3     and time is the time stamp, I'll call it, of you all's  
4     computer system that was entering the date and time at  
5     which you, HKG, or Haylen was entering information in  
6     this file?

7           A     Yes.

8           Q     All right. Below that, at 11:33 a.m., still  
9     on the same minute, it says, "Property City: New  
10    Information Added." Do you see that?

11          A     Yes.

12          Q     Property City would typically be the field in  
13    which you are entering the city where the property is  
14    located; right?

15          A     I believe so.

16          Q     And that property city field would populate  
17    into the form letter which is part of Plaintiff's  
18    Exhibit No. 2 when the form letter is generated; right?  
19    This is Plaintiff's Exhibit No. 2. Does that make  
20    sense?

21          A     I don't know. I think so.

22          Q     Okay. But that's how these fields -- this  
23    form letter is generated, Plaintiff's Exhibit No. 2,  
24    the information you enter into the system as part of  
25    the collection system from these various fields would



1 then end up in the various documents that your office  
2 is generating; right?

3 A Yes. I just don't know exactly what goes  
4 where.

5 Q Okay. But would it make sense that where  
6 you're entering the property city information, that  
7 would result in property city information being used in  
8 Plaintiff's Exhibit No. 2 to populate the form letter  
9 going to the consumer?

10 A I don't know.

11 Q Do you see where it says "Summerville"? Under  
12 Tammy C. Richardson's name, "Summerville," and then  
13 "South Carolina"?

14 A Yes.

15 Q Do you believe that probably when you were  
16 entering the information into the system, you were  
17 entering for property city, where it says "New  
18 Information Added," you were probably entering  
19 Summerville?

20 A If that's where the property is located, yes.

21 Q Okay. And then where it says "Property  
22 State," do you see at 11:33 a.m. new information was  
23 added, "HKG," are you probably entering "SC" for South  
24 Carolina into the system?

25 A Yes.

1 Q Do you understand now where I'm coming from?

2 Does that make sense?

3 A Yes, assuming that the property information is  
4 the same as the mailing information.

5 Q Okay. Do you see where it says -- oh, I see  
6 what you're saying, okay. Do you see where it says  
7 "Property ZIP"?

8 A Yes.

9 Q Would that be where you're entering the  
10 property ZIP code?

11 A Yes.

12 Q All right. That's 11:33 a.m.?

13 A Yes.

14 Q All right. And then "Property County: New  
15 Information Added," it says 11:33 a.m. Is that  
16 probably where you're entering the property and which  
17 county it's located?

18 A Yes.

19 Q So it appears in about a minute, for Miss  
20 Richardson's file, you entered the file number, city,  
21 state, ZIP and county where the property is located;  
22 right? See, based on the time stamps to the left?

23 A It looks like it.

24 Q That's typically how this process would work?  
25 You probably see a different screen when you're

1 entering it to enter the information, but this is a  
2 report generated that would reflect the kinds of  
3 information you are entering?

4 A I'm not exactly sure.

5 Q Okay. Well, let's keep going down. Do you  
6 see where it says "Open Date Was: 09/26/2014"? Do you  
7 know what that means?

8 A I do not.

9 Q Your initials appear next to that; right?

10 A It looks like it.

11 Q Do you think you could be entering into a  
12 field on the collection software system the date the  
13 file was opened as being 9/26/2014?

14 A I don't remember.

15 Q Okay. Below that, at 11:36 a.m. on February  
16 26th, 2015, do you see where it says, "MODOPN, \$0.99  
17 Open Date Correction; (Open Date was 09/26/2014.)"  
18 Transaction -- or "T#240814." Do you see that?

19 A Yes.

20 Q Do you know what that is?

21 A I don't remember.

22 Q All right. Do you see at 11:36 a.m., the next  
23 line, "Prin," which I assume stands for principal,  
24 "\$150"? Do you see that?

25 A I see that.

1 Q Do you believe that that relates to your  
2 entering into the system an assessment amount of \$150?

3 A I would have to look at the statement.

4 Q Okay. Well, that's -- you have that as  
5 Plaintiff's Exhibit No. -- I think you might have it  
6 underneath that page to your right. Right there,  
7 what's that number? The bottom left, what's the yellow  
8 number?

9 A Oh, three.

10 Q Three, all right. So typically, when  
11 you're -- would you be entering past-due assessments  
12 like that into the system for the system to add up?

13 A Yes.

14 Q Okay. So it appears that six times the number  
15 150 was entered as a principal amount by you on 11 --  
16 February 26th, 2015, from about 11:36 a.m. to about  
17 11:41 a.m.; do you see that?

18 A Yes.

19 Q Below that is a line item at 11:42 a.m. Do  
20 you see where it says "INT 164.14"? Do you see where  
21 it says "From 09/27/2014 through 02/26/2015"?

22 A Yes.

23 Q Now, does that 164.14 relate to any  
24 information provided to you by the HOA?

25 A I don't know.

1 Q Well, on the statement of account that's  
2 Plaintiff's Exhibit No. 3, is there a line item that  
3 says "Miscellaneous charges, 164.14"?

4 A Yes.

5 Q Do you believe that -- first of all,  
6 Plaintiff's Exhibit No. 3, is the kind of statement you  
7 would typically get from a homeowner's association that  
8 you would use to enter the numbers into the collections  
9 software?

10 A Yes.

11 Q Okay. And the reason you believe this is not  
12 the statement you used to enter the information into  
13 the system to generate the letter which is Plaintiff's  
14 Exhibit No. 2?

15 A We would have asked for a breakdown.

16 Q Okay.

17 A And the information as to what the MISC  
18 charges were.

19 Q Okay. Well, can you show me anywhere in the  
20 history report or in any other document that shows me  
21 that you asked Southern Magnolia's HOA for a breakdown  
22 as to the 164.14?

23 MR. COUNTRYMAN: Object to the form.

24 A (Continuing) I don't see anything in the  
25 history report.

1 Q Okay. Would that suggest to you that you  
2 didn't have a question, at least at the time you were  
3 entering it, as to what that information stood for?

4 A I don't know.

5 Q But nonetheless, the 164.14 that's identified  
6 as miscellaneous charges in Plaintiff's Exhibit No. 3  
7 has been entered into the collections software, at  
8 least that same number, where it says "INT 164.14" on  
9 Bates stamp number MTB triple zero, triple two? Do you  
10 see that?

11 A Yes.

12 Q Okay. Do you think it's likely that the  
13 164.14 appearing in the history report of McCabe  
14 Trotter's collections software system is the same  
15 164.14 that is identified as miscellaneous charges on  
16 the statement of account from Southern Magnolia's, as  
17 shown on Plaintiff's Exhibit No. 3?

18 A I don't know.

19 Q Okay. Do you see 164.14 appearing anywhere  
20 else on Plaintiff's Exhibit No. 3 to explain why 164.14  
21 appears to have been entered into you all's system  
22 under "INT" for interest?

23 A No.

24 Q Do you see where under 2/26/15 at 11:43 a.m.  
25 there's another item that says \$277?

1 A Yes.

2 Q Do you know of any place where any information  
3 you have about this homeowner's association and this  
4 particular consumer, where that \$277 number comes from?

5 A I don't know.

6 Q Is that a number you made up or did you get  
7 from somewhere?

8 A I don't know.

9 Q Okay. So it would be fair to say if you don't  
10 know, then -- well, you don't know. Do you see the  
11 next item where it says "Fee, \$425"?

12 A Yes.

13 Q Would you have entered that item as the amount  
14 of attorney's fees?

15 A Yes.

16 Q That you know?

17 A Yes.

18 Q All right. Now, at 11:43 a.m., do you see  
19 where it says "Acct"? Do you know what that stands  
20 for?

21 A I do not.

22 Q Do you see where it says "NOL Document Sent to  
23 List"? Would that stand for notice of lien document is  
24 sent to some list to be printed?

25 A Yes.

1 Q Okay. So this appears to be the way the  
2 system captures that you have sent the notice of lien  
3 letter, which would be Plaintiff's Exhibit No. 2, to  
4 you all's system to print?

5 A Yes.

6 Q Okay. And then the -- so basically, in a time  
7 period of 10 minutes, based on this history report,  
8 from 11:33 to 11:43, you have apparently entered  
9 information associated with this particular person,  
10 that has resulted in Plaintiff's Exhibit No. 2 being  
11 sent to the printer to print? Is that right?

12 A I'm sorry, are you asking me?

13 Q Yes, ma'am. Does that make sense?

14 A Yes, 11:33 to 11:43. It looks like it.

15 Q So basically, within about 10 minutes, you  
16 have entered information in this particular file, which  
17 has resulted in Plaintiff's Exhibit No. 2 being  
18 printed?

19 A Yes.

20 Q Now, if we look at Plaintiff's Exhibit No. 2,  
21 you've already told us about the last two pages, the  
22 notice of lien and witness page, not being -- I'm  
23 sorry, being sent to the lawyer to sign. Your lawyer  
24 would not have seen the notice of consumer's right to  
25 cure with these specific numbers in it, as shown on the



1 first page of Plaintiff's Exhibit No. 2, because that  
2 would still be in your office; right?

3 A She would have seen it. I misspoke earlier.  
4 It's been four years since I've prepared liens  
5 consistently. She gets -- she gets everything.

6 Q All right. So after your having a meeting  
7 with your lawyer and Stephanie Trotter, your testimony  
8 has now changed; is that what you're telling us?

9 A I misremembered. I can't remember exactly  
10 what I said earlier, but --

11 Q You misremember after having a meeting with  
12 your lawyer and Stephanie Trotter; is that what you're  
13 telling us?

14 MR. COUNTRYMAN: Object to the form.

15 A (Continuing) I now remember.

16 Q Okay. And you now remember something  
17 different than what you've been testifying about after  
18 meeting with your lawyer and Stephanie Trotter; right?

19 MR. COUNTRYMAN: Object to the form.

20 A (Continuing) Yes.

21 Q Now, walk through with me and explain to me,  
22 if Plaintiff's Exhibit No. 3 is the statement of  
23 account of 2/24/15 of this particular homeowner, add up  
24 for me, looking at Plaintiff's Exhibit No. 3, the total  
25 amount of the assessments that the homeowner's

1 association is claiming are owed.

2 A According to this statement, it's \$950?

3 Q Okay. You say that with a question. Are you  
4 certain of that?

5 A I normally do it with a calculator.

6 Q Okay. Well, do you need a calculator?

7 A This statement says total assessment -- or  
8 assessments, \$950. Those are the charge codes.

9 Q And that's on Plaintiff's Exhibit No. 3; is  
10 that right?

11 A Yes.

12 Q Now, if we look at the letter sent to the  
13 consumer, which is Plaintiff's Exhibit No. 2, you don't  
14 tell the consumer \$950 in assessments is owed, do you?

15 A No. It says \$900 in assessments.

16 Q That is an error; correct?

17 A Yes.

18 Q The consumer was told false information about  
19 their account; right?

20 MR. COUNTRYMAN: Object to the form.

21 A (Continuing) I would have to see all of the  
22 information. I think there was another statement with  
23 this.

24 Q Okay. Well, is that part of the documents you  
25 all shred as part of this process?

1           A     I don't know.

2           Q     Well, does McCabe Trotter have a document that  
3 is different than statement of account as of 2/24/15  
4 from Southern Magnolia's Homeowner's Association?

5           A     It could be in an email.

6           Q     Do you have that email?

7           A     I don't see it in front of me.

8           Q     Is that part of an email that was shredded as  
9 part of McCabe Trotter's lien filing process?

10          A     I don't know.

11          Q     Well, sitting here today, you have no  
12 documentation in front of you that supports the idea  
13 that the assessments owed by Miss Richardson were \$900;  
14 correct?

15          A     That's what's on this notice of lien, but it  
16 does not match the statement.

17          Q     And it doesn't match -- does it match your  
18 history report? If we take six times 150 for  
19 principal, that equals \$900; right?

20          A     Yes.

21          Q     And \$900 is the number that appears in the  
22 form letter, Plaintiff's Exhibit No. 2; right?

23          A     Yes.

24          Q     950 is the amount of assessments that appears  
25 in the statement of account of the association; right?

1 A Yes.

2 Q So it appears that you, HKG, entered \$900 as  
3 the amount of assessments being owed, when the  
4 statement of account for the two days prior to this  
5 letter, on February 24th, shows \$950 as being owed;  
6 right?

7 A Yes.

8 Q Now, can you tell us how far back the  
9 association is claiming those assessments go?

10 A It looks like 2010.

11 Q Okay. Now, are you aware that in South  
12 Carolina there's a statute of limitations of three  
13 years to collect on contracts?

14 A I am not.

15 Q If you tried to collect more than the time  
16 period you're supposed to collect on, would that  
17 violate the Fair Debt Collection Practices Act?

18 A I don't know.

19 Q You made no attempt to determine whether or  
20 not the numbers you were entering into the history  
21 report and ended up in the notice of consumer's right  
22 to cure were correct, did you?

23 A I don't remember.

24 Q Well, you had only 10 minutes to do it. If  
25 you weren't sure, could you have gotten some additional

1 documentation, or were you under such pressure to get  
2 the box full of documents to the attorney in time for  
3 signing and going out that day that you didn't have  
4 time to double-check and make sure the numbers were  
5 right?

6 MR. COUNTRYMAN: Object to the form.

7 A (Continuing) I don't remember. This was four  
8 years ago.

9 Q Was there anything in the history report that  
10 indicates your office received any information that  
11 shows or supports the idea that the \$900 in assessments  
12 listed in this letter as being owed were properly owed  
13 under the covenants of the association?

14 A I'm sorry, repeat the question?

15 Q Sure. Do you have any documentation that  
16 shows that the amount of assessments that your law firm  
17 stated as being owed by the homeowner were currently  
18 owed by the homeowner?

19 A I have a statement that was provided to us by  
20 our client.

21 Q And that statement that was provided to you by  
22 the client shows \$950, not the \$900 your law firm put  
23 in the letter to the consumer; right?

24 A To the homeowner, yes.

25 Q There's a line item for interest of \$164.14.

1 Do you see that on Plaintiff's Exhibit No. 2?

2 A Yes.

3 Q On Plaintiff's Exhibit No. 3, which is the  
4 statement of account of 2/24/15, there's an item that  
5 says miscellaneous charges, 164.14; do you see that?

6 A Yes.

7 Q Does it appear that you assumed that 164.14,  
8 miscellaneous charges, was interest to be inserted into  
9 the letter sent to the consumer as being owed by the  
10 consumer to the homeowner's association?

11 A I would have confirmed with the association  
12 before putting it in there.

13 Q Can you show me anywhere in the documentation  
14 that you have, as part of the history report of this  
15 file, that you confirmed with the association that the  
16 interest you stated as being owed, or your law firm  
17 stated as being owed, was in fact owed?

18 A No, not in this history report.

19 Q Where else would it be?

20 A I don't know.

21 Q It would be nowhere else; right?

22 A I don't know.

23 Q Should it be in the history report?

24 A I would think it would be. But...

25 Q Okay. So does it appear that you entered the

1 164.14 from the statement, shown on Plaintiff's Exhibit  
2 No. 3, into you all's collection system to reflect  
3 interest charges of \$164.14, as part of Plaintiff's  
4 Exhibit No. 2, that the consumer/homeowner is being  
5 told they owe interest of 164.14?

6 A I'm sorry, will you say that one more time?

7 Q Sure. If we look at the letter your law firm  
8 sent to the consumer, which is Plaintiff's Exhibit No.  
9 2.

10 A Yes.

11 Q Do you see in the first page where it shows  
12 interest, 164.14?

13 A Yes.

14 Q Where did that number come from?

15 A It would have come from the client statement,  
16 but I think there -- there's an email missing or  
17 something. I mean, the file -- it looks like we  
18 requested information back in 2014.

19 Q Are you able to tell us how the 164.14  
20 interest number appearing in the notice of consumer's  
21 right to cure, Plaintiff's Exhibit No. 2, got into this  
22 letter or not?

23 A It looks like I put it in as an interest  
24 charge.

25 Q I see that. Do you know where you got that

1 number from?

2 A I would have gotten it from the client.

3 Q Okay. And you have no documentation from the  
4 client that says put in the \$164.14 as an interest  
5 charge?

6 A I do not.

7 Q What you have is a statement dated 2/24/15,  
8 Plaintiff's Exhibit No. 3, that shows miscellaneous  
9 charges, 164.14; right?

10 A Yes.

11 Q The next item, where it says "Late Fees &  
12 Other Charges, \$277.00," on Plaintiff's Exhibit No. 2,  
13 do you see that?

14 A Yes.

15 Q How did you get that number?

16 A At the time, we were grouping late fees,  
17 administrative fees and violations as "Late Fees &  
18 Other Charges." So that would have been the late fees,  
19 admin fees, and the -- and the two admin fees.

20 Q Okay. So that would be a 150-dollar item  
21 appearing on Plaintiff's Exhibit No. 3 next to late  
22 fees, an administrative fee of \$45, an admin fee of  
23 \$7.00, and a lock-out service fee of 25?

24 A Yes.

25 Q Okay. And that's how you came up with the



1 277-dollar number in this letter?

2 A I think so. But I think there was a different  
3 statement in an email.

4 Q Okay. That email is not something that is  
5 part of this history report; right?

6 A Correct.

7 Q That email is part of the documentation you  
8 all destroy as part of the -- creating these liens?

9 MR. COUNTRYMAN: Object to the form.

10 A (Continuing) I don't know that.

11 Q I thought we went through that earlier. Email  
12 comes in. It has a statement.

13 A We don't print off the emails.

14 Q Ah. So where's the email?

15 A I don't know.

16 Q The history report doesn't reflect an email  
17 stating that \$277 is owed in late fees and other  
18 charges; correct?

19 A Correct. It was assigned a reference number  
20 after it was opened. So there wasn't anywhere to  
21 assign it before. There wasn't a file open to assign  
22 an email to. So it would have been a separate email,  
23 not through the history.

24 Q Well, this history report goes back to  
25 September of 2014, doesn't it?

1 A 9/26/14.

2 Q So the history report goes back through at  
3 least September of 2014; right?

4 A Yes.

5 Q Repeatedly, the history report shows that  
6 somebody from the law firm is trying to contact the  
7 association about getting numbers; right?

8 A Yes.

9 Q The history report does not show that the law  
10 firm ever received the numbers which appear in the  
11 consumer's right to cure, which is Plaintiff's Exhibit  
12 No. 2; right?

13 A Correct.

14 Q You have no explanation as to why the numbers  
15 appearing on Plaintiff's Exhibit No. 2 do not line up  
16 with the statement of account of the homeowner; right?

17 A It wasn't saved to the file as it should have  
18 been.

19 Q Okay. Well, why would it be important to save  
20 consumer account information in the file in case there  
21 was an error?

22 A I'm sorry, are you asking? I thought you just  
23 answered it. To avoid errors.

24 Q Okay. Well, is it fair to say, then, that the  
25 Plaintiff's Exhibit No. 2 contains multiple errors, in

1 terms of the numbers listed, as to what the homeowner  
2 owes?

3 A I don't know.

4 Q Tell me how you got the \$900 in assessments.

5 A I don't have the information. I think there  
6 was another statement. I would have asked for a  
7 breakdown.

8 Q Okay. Well, does the history report reflect,  
9 that within the 10 minutes you were working on this  
10 file, before generating Plaintiff's Exhibit No. 2, you  
11 asked anybody for a statement?

12 A No. I did not ask.

13 Q Well, did you make up the numbers, or did you  
14 just enter them wrong?

15 MR. COUNTRYMAN: Object to the form.

16 A (Continuing) We would have gotten the  
17 statement in between 9/26 and the file being opened on  
18 2/26. It was on hold prior to that.

19 Q Do you believe that Plaintiff's Exhibit No. 3  
20 represents that statement that you received from the  
21 homeowner's association, or the information you  
22 received from the homeowner's association?

23 A No.

24 MR. KAHN: Can you repeat the question I  
25 asked? I'm sorry.

1 (The record was read by the court reporter as  
2 follows:

3 "QUESTION: Do you believe that Plaintiff's  
4 Exhibit No. 3 represents that statement that you  
5 received from the homeowner's association, or the  
6 information you received from the homeowner's  
7 association?")

8 BY MR. KAHN:

9 Q If Plaintiff's Exhibit No. 3 does not reflect  
10 the information you received from the homeowner's  
11 association, do you have anything in you all's files  
12 that shows us what information you received?

13 A Not that I see in front of me, no.

14 Q You do see where you entered into the system  
15 the amounts 150, 150, 150, 150, 150 and 150, six times,  
16 do you see that, under the item "Principal"?

17 A Yes.

18 Q That adds up to 900; right? Six times 150?

19 A Yes.

20 Q And that 900-dollar number appears in  
21 Plaintiff's Exhibit No. 2 under assessments; right?

22 A Yes.

23 Q The consumer is not provided a breakdown as to  
24 how you calculated the \$900 as part of these form right  
25 to cure letters; right?

1 A No.

2 Q I am correct or I'm not correct?

3 A They are not provided a breakdown.

4 Q So if there's an error made by your law firm  
5 about how it calculated it, the consumer is not able to  
6 determine that from looking at these form letters;  
7 right?

8 A I don't know.

9 Q Well, sitting here today, are you able to tell  
10 us how you calculated it?

11 A Looking at the history report, it looks like I  
12 had a different statement.

13 Q Okay. Would the consumer know, looking at  
14 this letter, how you came up with the 900-dollar  
15 number?

16 A I don't know.

17 Q How would the consumer know how you came up  
18 with the 900-dollar number if you can't tell us?

19 MR. COUNTRYMAN: Object to the form.

20 A (Continuing) I don't know.

21 Q Do you think the consumer is entitled to know  
22 how you calculate the assessments before you file a  
23 lien against their house and threaten to take their  
24 property?

25 MR. COUNTRYMAN: Object to the form.

1 A (Continuing) I don't know.

2 Q You don't know if a consumer is entitled to  
3 have that information?

4 MR. COUNTRYMAN: Same objection.

5 A (Continuing) No, I don't know.

6 Q The interest that is stated here, do you know  
7 how that was calculated?

8 A No.

9 Q Would the consumer know how it was calculated?

10 A I don't know.

11 Q Do you think the consumer is entitled to know  
12 how the law firm that is filing a lien against their  
13 house calculates the interest?

14 MR. COUNTRYMAN: Object to the form.

15 A (Continuing) I don't know.

16 Q Would you as a consumer want to know about how  
17 a law firm that has filed a lien against your property  
18 has calculated the interest?

19 A I don't have an opinion.

20 Q You don't have an opinion. But when the state  
21 of South Carolina filed a lien against you, did you  
22 want to know how that was calculated?

23 A I knew how it was calculated.

24 Q Is that because the state told you how it was  
25 calculated?

1 A Yes.

2 Q Does this law firm tell the consumer how it  
3 calculates these numbers?

4 A No. It doesn't say in the letter, no.

5 Q And that's true of all of these form letters;  
6 right? That the numbers aren't stated how the law firm  
7 comes up with a calculation; right?

8 A I don't believe so.

9 Q Okay. Now, the late fees and other charges,  
10 do you have any idea whether or not the late fees and  
11 charges that your law firm has stated as being owed by  
12 this consumer are amounts owed under the covenants?

13 A I'm sorry, will you say that one more time?

14 Q Sure. Do you have any idea whether or not the  
15 late fees and other charges stated as being owed by the  
16 consumer, of \$277, are amounts owed under the  
17 covenants?

18 A No, I don't know.

19 Q Okay. Well, if you don't know, how is it that  
20 your law firm files a lien against the consumer?

21 A Because that's what I've been instructed to  
22 do --

23 Q By who?

24 A -- by the attorneys.

25 Q So an attorney instructed you to file a lien

1 against a consumer without knowing how the late fees  
2 and other charges were calculated by the association?

3 A They instruct -- I was instructed to file a  
4 lien based on the statement provided to me by the  
5 client.

6 Q And you filed the lien without knowing how  
7 those late charges and fees were calculated, or whether  
8 or not the covenants provided for them; right?

9 A Correct.

10 Q And that's the way you all typically do it;  
11 right?

12 A That's the way I've been trained to do it,  
13 yes.

14 Q Since you've worked there in October of 2012;  
15 right?

16 A Yes.

17 Q You mentioned a moment ago that you now do --  
18 or clump together numbers differently than you were  
19 back then. You said you were going through the account  
20 statement, and you looked at late fees and  
21 administrative charges or something, and said now you  
22 all do that differently?

23 A Yes. It's broken down into different  
24 categories now.

25 Q Okay. So now you tell the consumer how you



1 all come up with those numbers?

2 A Yes.

3 Q Okay.

4 A It provides for a clearer breakdown, yes.

5 Q All right. So the consumer is provided more  
6 information and clearer information about how you all  
7 come up with the calculations than what is shown on  
8 Plaintiff's Exhibit No. 2; right?

9 A Yes.

10 Q So now you provide the consumer with clearer  
11 information about the breakdown than you all were  
12 during the time period of October 2012 through at least  
13 2016?

14 A Yes.

15 Q If you look at Plaintiff's Exhibit No. 3, do  
16 you see where on November 24th, '14, there's is a  
17 lock-out service of \$25?

18 A Yes.

19 Q Do you have any idea what that is?

20 A I do not.

21 Q Well, not knowing what that service is, why  
22 would you tell a consumer they owe it?

23 A I prepared the document as I was -- as I was  
24 instructed to do.

25 Q And your instructions are to take the account

1 statement from the homeowner's association and enter  
2 those numbers into the system without determining  
3 whether or not the covenants actually provide for  
4 collecting those amounts; right?

5 A Correct. I'm not instructed to consult with  
6 the CCRs.

7 Q Okay. And you know of nobody who is  
8 consulting with the CCRs before these lien letters are  
9 going out; right?

10 A I don't know.

11 MR. COUNTRYMAN: Object to the form.

12 BY MR. KAHN:

13 Q Well, do you see where there's an admin fee of  
14 \$45?

15 A Yes.

16 Q Do you have any idea how that's authorized or  
17 where that comes from?

18 A I do not know.

19 Q Do you see there was an admin fee of \$7.00.  
20 Do you know what that is?

21 A I do not know.

22 Q Do you know if your law firm has ever  
23 instructed homeowner's associations or property  
24 managers to lock a consumer out of the ability to pay  
25 their homeowner's association electronically?

1 A I don't know.

2 Q If the law firm instructed the homeowner's  
3 association to lock a consumer out of the ability to  
4 pay their HOA electronically, do you think that the --  
5 that is a fair thing to tell the consumer?

6 MR. COUNTRYMAN: Object to the form.

7 BY MR. KAHN:

8 Q I'll try that again. If your law firm  
9 instructed the homeowner's association to lock a  
10 consumer out of paying their homeowner's association  
11 obligations, and the bank charges a fee for that, do  
12 you think it's fair to charge the homeowner to be  
13 locked out of paying their homeowner's association  
14 obligations?

15 MR. COUNTRYMAN: Object to the form.

16 A (Continuing) I don't have an opinion about  
17 whether or not it's fair.

18 Q Do you think as a consumer that it's fair to  
19 charge you a fee to prevent you from paying money to  
20 your homeowner's association?

21 A I don't have an opinion about whether or not  
22 it's fair.

23 Q You don't have an opinion about that?

24 A No.

25 Q Could you see why a consumer might think it's

1 not fair to be charged a fee to be prevented from  
2 paying their homeowner's association money the  
3 homeowner's association claims is owed?

4 MR. COUNTRYMAN: Object to the form.

5 A (Continuing) You want me to comment on, like,  
6 a hypothetical situation?

7 Q Sure.

8 A I don't really know. I don't have an opinion.

9 Q There's an attorney's fees amount of \$425 that  
10 appears on this notice of consumer's right to cure  
11 letter; right?

12 A Yes.

13 Q That's shown as being entered at 11:43 a.m. on  
14 February 26th, 2015, on this history report; right?

15 A Yes.

16 Q That's part of your collection software  
17 package that we talked about earlier? That's what this  
18 history report is related to, the collection software?

19 A It's related to the collection software, yes.

20 Q As part of the billing software, if you look  
21 at Plaintiff's Exhibit No. 5, do you see where your law  
22 firm generated a 65-dollar fee to the homeowner's  
23 association related to Tammy Richardson?

24 A Yes.

25 Q And this particular file?

1 A Yes.

2 Q So, and that's dated February 26th, 2015?

3 A Yes.

4 Q The day your law firm is sending a 65-dollar  
5 bill for the work done by the law firm, it is telling  
6 the consumer they owe \$425 in attorney's fees; right?

7 A The notice of lien says the attorney's fees  
8 are 425, yes.

9 Q There is no bill generated by your law firm  
10 showing \$425 for attorney's fees; right?

11 A I don't know. I don't handle billing.

12 Q Do you see anything in your system that shows  
13 that, anywhere?

14 A Well, the notice of lien states that the  
15 attorney's fees are 425.

16 Q That's information you entered; right?

17 A Yes.

18 Q Did you receive a bill from anyone saying  
19 Haylen, here's a bill for \$425 from our law firm to the  
20 association, please enter that number into the --

21 A No. I don't handle billing.

22 Q I didn't ask you if you handled billing.

23 A I wouldn't have been given a bill for it.

24 Q Right. So without being given a bill for  
25 \$425, you entered an amount of fees of \$425 of being --

1 as being owed by the consumer as attorney's fees;  
2 right?

3 A They're owed to the association.

4 Q Well, I thought earlier you said they were  
5 owed to the law firm.

6 A We collect for the association. So we just  
7 tell homeowners to make everything payable to McCabe,  
8 Trotter & Beverly, because we are collecting for the  
9 association.

10 Q Is your change in testimony related to the  
11 meeting you had with your lawyer and Miss Trotter  
12 earlier, during the break?

13 MR. COUNTRYMAN: Object to the form. Don't  
14 answer anything about what we discussed. It's  
15 privileged.

16 BY MR. KAHN:

17 Q Do you remember testifying earlier that these  
18 letters are telling the homeowner they owe the law firm  
19 \$425 in attorney's fees?

20 A I can't remember exactly what I said.

21 MR. COUNTRYMAN: Object to the form.

22 BY MR. KAHN:

23 Q When this notice of consumer's right to cure  
24 letter is being sent to the homeowner, is your law firm  
25 telling the consumer they owe the law firm \$425 in

1 attorney's fees, or are they telling the consumer they  
2 owe the homeowner's association \$425 in attorney's  
3 fees?

4 A It says that it's owed to the association.

5 Q So the consumer is being told that the  
6 association is owed \$425 in attorney's fees; right?

7 A Yes.

8 Q That is at the same time the association is  
9 being billed by your law firm \$65; right?

10 A I don't handle billing.

11 Q Do you see the bill right there for 65 bucks?

12 A Yes.

13 Q Do you know of any other document sent to the  
14 homeowner's association on February 26th, 2015, that is  
15 different than \$65?

16 A I don't know.

17 Q Have you -- when you entered the \$425 as being  
18 an attorney's fees owed by this consumer to the  
19 homeowner's association, did you have any bill from the  
20 law firm that stated \$425 was owed to the law firm by  
21 the homeowner's association?

22 A No. I was instructed that the attorney's fees  
23 were 425.

24 Q Was that orally instructed? Or was there some  
25 document that says that? Where did that come from?

1 A As part of my training.

2 Q Who trained you about that?

3 A Sheri Self.

4 Q And what did she tell you about that?

5 A If it was an MJS file, the attorney's fees  
6 were 375; anyone else was 425.

7 Q Okay. In terms of MJS files, what does that  
8 mean?

9 A Associations that are managed by MJS.

10 Q All right. MJS is a property management  
11 company?

12 A Yes.

13 Q So the law firm has a special deal with  
14 property management company MJS to put in letters to  
15 consumers that they owe 375 to the law firm, and  
16 anybody else that's working with a different property  
17 management company owes 425?

18 A I don't know exactly what the agreement is. I  
19 just know that the sums are different.

20 Q Okay. Do you know why -- well, on February  
21 26th, 2015, or around this time, would you be  
22 generating similar letters that may be going to an MJS  
23 managed property?

24 A I'm -- I'm not sure. I don't remember the  
25 exact date or --



1 Q Is it likely that sometime in this year, 2015,  
2 you would send a letter to an MJS-property-managed  
3 company stating that 375 in attorney's fees was owed?

4 A It's possible.

5 Q Is it more than possible? Is it very likely?

6 A I'm not sure. I would have to look at past  
7 history.

8 Q You were trained by Sheri Self in October of  
9 2012 --

10 A Yes.

11 Q -- that if property was -- that is,  
12 homeowner's associations were managed by MJS, that the  
13 attorney's fees to be stated as being owed were 375; if  
14 they were someone other than MJS, it was to be 425?

15 A Yes.

16 Q Have you seen any documentation that says  
17 that, or is that just something she told you?

18 A No, something I was told.

19 Q And you were told that by Sheri Self?

20 A Yes.

21 Q And Stephanie Trotter has approved that?

22 A I believe so.

23 Q Well --

24 A Yes. Stephanie reviews -- Stephanie reviews  
25 everything before it goes out, and those are what the

1 charges are.

2 Q Well, you keep saying that. Did Stephanie  
3 miss these errors?

4 MR. COUNTRYMAN: Object to the form.

5 A (Continuing) I don't know.

6 Q You don't know because you don't know what she  
7 reviewed; right?

8 A I don't know exactly what she reviewed.

9 Q Let's look at the history report, and show me  
10 where her initials first appear as having done any work  
11 on this file. Would it be around August 31st, 2015, on  
12 page 6?

13 A Well, I mean, it could be reviewed without it  
14 being noted in the system. It only notes in the system  
15 if you take some sort of action --

16 Q Okay. So --

17 A -- or do something. But it can be -- it  
18 doesn't record every time someone goes into a file.

19 Q All right. So the first time the history  
20 report reflects Stephanie Trotter took any action in  
21 this file is October 31st, 2015, on page 6 of  
22 Plaintiff's Exhibit No. -- what number is that first  
23 page, the history report?

24 A Which one? This one?

25 Q No. 4. Thank you.

1 A Oh, four.

2 Q Is that right? The first time this history  
3 report reflects Stephanie Trotter took any action on  
4 this file is on page --

5 A The first time it shows that it records her  
6 taking an action was on 8/31/15.

7 Q Okay. Do you know of any other action she  
8 took to review this file before then?

9 A No. I don't know.

10 Q Now, at the -- this -- do you know of -- first  
11 of all, you agree that the statement of account of  
12 2/24/2015, which is Plaintiff's Exhibit No. 3, and the  
13 amount you're telling the consumer is owed, as shown on  
14 Plaintiff's Exhibit No. 2, do not line up? They don't  
15 add up? They don't match?

16 A Right, the assessments do not match.

17 Q Well, does the late fees and other charges  
18 match? Do you need a calculator? You can pull out  
19 your phone if you need to do it. It's not a math quiz.  
20 You can pull out a calculator. You said you usually  
21 use a calculator.

22 A Yes. I don't have my phone.

23 Q So you've got a calculator in front of you?

24 A Yes.

25 Q Okay. So if you would, add up what the late

1 fees and other charges are as shown on the 2/24/2015  
2 statement.

3 A It adds up to -- the late fees, administrative  
4 fees, and the lock-out service add up to 227.

5 Q Okay. So that's \$50 off; right?

6 MR. COUNTRYMAN: Object to the form.

7 A (Continuing) Yes.

8 Q And the assessments is \$50 off; right?

9 A Yes.

10 Q So it looks like --

11 A From what this statement says, yes.

12 Q Sure. Now, do you see where on Plaintiff's  
13 Exhibit No. 3 it shows assessment of 150, January 1st,  
14 2015?

15 A Yes.

16 Q Do you know the assessments weren't due on  
17 January 1st, 2015?

18 A I don't know. It says 1/1/15 on the  
19 statement.

20 Q Did you bother to look at the covenants to see  
21 if that is when the assessments were due?

22 A No.

23 MR. COUNTRYMAN: Objection.

24 BY MR. KAHN:

25 Q Would it surprise you to learn that the

1 assessments weren't due on January 1st, they were due  
2 February 1st?

3 A I don't know.

4 Q Have you ever seen errors like that before?

5 MR. COUNTRYMAN: Object to the form.

6 A (Continuing) I can't remember.

7 Q So without determining when the assessments  
8 were due, what the late fees were for, what the  
9 miscellaneous charges were for, what the admin fees  
10 were for, your law firm generated a lien and filed it  
11 against this consumer's house; right?

12 MR. COUNTRYMAN: Object to the form.

13 A (Continuing) Yes.

14 Q And that's the way you all's law firm has been  
15 doing it since October 2012; right? You just get the  
16 statement from the homeowner's association and enter  
17 the information in the system and file the lien; right?

18 MR. COUNTRYMAN: Object to the form.

19 A (Continuing) We enter the information into the  
20 system, we give it to the attorney to review, and file  
21 the lien, yes.

22 Q But there's no attempt made by your other  
23 people at your firm to determine whether or not the  
24 numbers are based on the CCRs; right?

25 A No. Not on the lien team, no.

1 Q Okay. Or anybody else that you know of?

2 A I don't know.

3 Q Okay. The -- do you see where there's a  
4 statement that says "Southern Magnolia's," and it's  
5 Plaintiff's Exhibit No. 2, "Southern Magnolia  
6 Homeowner's Association is entitled to these sums  
7 pursuant to the governing documents for this  
8 community." Do you see that?

9 A Yes.

10 Q So even though you tell the consumer that your  
11 law firm has filed a lien against their house for these  
12 amounts because the association is entitled to these  
13 amounts pursuant to the governing documents, your law  
14 firm has not reviewed the governing documents before  
15 sending this letter; is that right?

16 A I don't review the governing documents.

17 Q And you don't know if anyone else on the lien  
18 team reviews them; right?

19 A I don't know. I -- I don't know.

20 Q Well, have you seen anybody else review the  
21 covenants before these letters go out?

22 A I don't know.

23 Q You don't know or no?

24 A I know that I don't review them. I don't know  
25 about other people.

1 Q Okay. Now, do you see where it says "It is in  
2 your best interest to resolve this matter  
3 expeditiously"?

4 A Yes.

5 Q Why is the law firm advising the consumer that  
6 it's in the best matter (sic) to resolve this matter  
7 expeditiously when the law firm had just filed a lien  
8 against their property in the wrong amount?

9 A I didn't create this document. I don't know  
10 why it says what it says.

11 Q Do you agree it's not in the consumer's best  
12 interest to resolve this matter expeditiously?

13 A I don't have an opinion.

14 Q Do you agree that the statement "Currently,  
15 you owe \$1,766.14" does not line up with the  
16 homeowner's association account of the consumer?

17 MR. COUNTRYMAN: Objection.

18 A (Continuing) The statement does not have the  
19 attorney's fees on it, no.

20 Q In fact, the homeowner account statement of  
21 the consumer would never have the 425. They would have  
22 the 65; right?

23 A That's not true in every situation.

24 Q How about this situation?

25 A In this situation, they don't have the

1 attorney's fees on the account. They have not been  
2 billed for them yet, it looks like.

3 Q Sure. And after the association has been  
4 billed the \$65 --

5 MR. KAHN: This is from July 31st. I can't  
6 remember if I handed you that.

7 MR. COUNTRYMAN: You can just give it to her.  
8 That's fine.

9 (STATEMENT OF ACCOUNT MARKED PLAINTIFF'S  
10 EXHIBIT NO. 6 FOR I.D.)

11 BY MR. KAHN:

12 Q I'm going to show you -- there is this. I'm  
13 going to hand you what I've marked as Plaintiff's  
14 Exhibit No. 6, which is a statement of account of Tammy  
15 Richardson from July 31st, 2015; okay? Do you see  
16 that, it's two pages?

17 A Yes.

18 Q Now, do you see where on this statement is a  
19 line item for March 13th, 2015, for attorney's fees of  
20 \$65?

21 A Yes.

22 Q Do you believe that 65-dollar charge relates  
23 to the \$65 that your law firm is charging the  
24 homeowner's association?

25 A I don't know.



1 Q What would you guess? What's the likelihood  
2 of that? You all send a bill to the homeowner's  
3 association for \$65 at the end of February of 2015,  
4 and, lo and behold, on the statement of account of the  
5 homeowner, in the middle of March, there's an attorneys  
6 fee line item of \$65. Do you think those are related?

7 MR. COUNTRYMAN: Object to the form. Justin,  
8 you know good and well that's the same thing. No need  
9 to badger her about it. We'll stipulate to that.

10 MR. KAHN: Okay.

11 BY MR. KAHN:

12 Q Your attorney has just stipulated that the  
13 65-dollar item appearing on Plaintiff's Exhibit No. 6  
14 is the 65-dollar charge related to Plaintiff's Exhibit  
15 No. 5; okay?

16 A Okay.

17 Q So accept that as true; your attorney just  
18 said that. Do you understand that?

19 A Yes.

20 Q Now, if the homeowner looks at the account  
21 statement of the homeowner's association after  
22 receiving your law firm's letter of February 26th,  
23 2015, the homeowner would not see an attorney's fees of  
24 \$425, they would see an attorney's fees of \$65; right?

25 A Yes. If they looked at the statement, yes.

1 Q And that's because the homeowner's association  
2 is telling the homeowner they owe \$65 in attorney's  
3 fees; right?

4 A If they sent them this bill, yes.

5 Q Do you have any reason to believe that account  
6 statement with the name of the client Tammy Richardson  
7 was not sent to her, with the mailing address and all  
8 of these codes down here?

9 A Tammy Richardson is not our client.

10 Q I don't think it's your client. It's the  
11 client of the --

12 A Are you referring to --

13 Q I'm sorry. You use the word "client" as in  
14 the homeowner's association. If the homeowner's  
15 association had this account information, that is, your  
16 client has this account information, which is available  
17 to Tammy Richardson, the consumer, it shows \$65 as  
18 being the attorney's fees; right?

19 A It shows a fee for \$65 for attorney's fees.

20 Q That is different than what your law firm is  
21 telling her the attorney's fees are; right?

22 A Yes.

23 Q It's about -- you've got the calculator. Is  
24 that five or six times the amount of attorney's fees  
25 that your law firm is charging the HOA?

1 A I don't have it calculated.

2 Q Let's look and see. I did 425 divided by 65  
3 and got 6.5. I'll double-check. 425 divided by 65,  
4 equals 6.538. So it appears that your law firm is  
5 telling the homeowner that they owe 6.5 times more in  
6 attorney's fees than the law firm is charging the  
7 association; is that right?

8 MR. COUNTRYMAN: Object to the form.

9 A (Continuing) The attorney's fees on this  
10 statement are 425. The bill, the initial bill that's  
11 sent to the association, is for the 65-dollar lien  
12 retainer.

13 Q The amount shown on the homeowner's account is  
14 65; right?

15 A The statement is not going to show what the  
16 full attorney's fees are until we bill the association  
17 for the full attorney's fees.

18 Q You don't bill the association for the  
19 attorney's fees of 425 unless you collect it from the  
20 homeowner; right?

21 A I don't know exactly when the bill goes to  
22 them.

23 Q Well, do you see any bill anywhere in this  
24 file where you billed the homeowner's association \$425  
25 in attorney's fees?

1 A Not in the information I've been given, no.

2 Q In fact, the only information you have is that  
3 your law firm sent a bill for \$65 to the homeowner's  
4 association, not 425; right?

5 A From what I'm looking at, yes.

6 Q Do you know of any situation where your law  
7 firm is telling a consumer \$375 or \$425 is owed at a  
8 time when your law firm has actually billed the  
9 association that exact amount?

10 A I don't know an exact situation.

11 Q Okay. Do you know why MJS receives a  
12 50-dollar discount on attorney's fees -- or, I'm sorry,  
13 do you know why a property associated with MJS, the  
14 consumers are told \$50 less in attorney's fees is owed?

15 A I do not know.

16 Q Is there any different work done for an MJS  
17 file than what you would do for a non-MJS file?

18 A I don't know.

19 Q Well, when you do work for an MJS file, do you  
20 do the same steps that you do for a non-MJS file?

21 A It depends on the account.

22 Q Well, generally, is it the same kind of work?  
23 You get the email in, you enter it into the system, and  
24 you generate the form letter?

25 A It's a case-by-case basis.

1 Q But, generally, that's what goes on; right?

2 A The lien -- the process is generally the same.

3 Q Right. And the work the attorney does is  
4 generally the same; right?

5 A I don't know what work the attorney does.

6 Q Well, do you give the attorney a different  
7 notice of consumer right to cure form letter or a  
8 notice of lien to look at in your box?

9 A No. But I don't know what work the attorney  
10 does.

11 Q We'll take a quick break.

12 VIDEOGRAPHER: We will now go off the record.  
13 The time is approximately 4:39 p.m.

14 (The deposition recessed briefly.)

15 VIDEOGRAPHER: We are now back on the record.  
16 The time is approximately 5:07 p.m.

17 EXAMINATION

18 BY MS. ARNOLD:

19 Q Hi. We've got a switching of the guard, so I  
20 get to ask you questions now. I don't know that -- we  
21 actually have met over the phone before. My real name  
22 is Mary Leigh Arnold. I go by my nickname Sammie.  
23 Please call me Sammie. Okay?

24 A Okay.

25 Q I'm going to continue on to some questions

1 that Justin was asking you. You prepare the complaint  
2 for foreclosures; correct?

3 A I used to.

4 Q Used to, right. Tell me this, who are  
5 presently your lien girls, if they're girls?

6 A Devon and Becky.

7 Q What's Becky's last name?

8 A McDonald.

9 Q And what's Devon's name?

10 A Devon's last name is Hansford.

11 Q How long have they been doing -- how long have  
12 they had that position as the lien ladies or lien  
13 girls?

14 A Becky, a little over two years, I think. And  
15 then -- or I want to say about two years, but I'm not  
16 certain.

17 Q Okay. So who does, who prepares the  
18 satisfaction of the lien?

19 A Becky does that.

20 Q Okay. And is that what one of the lien ladies  
21 do, is prepare the satisfaction when you need the  
22 satisfaction?

23 A Yes.

24 Q Okay. And when, typically, would you all need  
25 the satisfaction repaired -- prepared?

1           A     I think it's -- the system schedules it 14 to  
2     21 days from the date of full payment.

3           Q     Okay. So it tells you. You put in the system  
4     you've got -- received full payment from this consumer  
5     or homeowner, and then it tells you in 14 to 21 days,  
6     or whatever it is, okay, it's time for the satisfaction  
7     of lien to go out?

8           A     Yes. Stephanie has it set out to populate  
9     that way.

10          Q     Okay. So you all were talking about  
11     complaints being prepared, and I understood you to say  
12     that you assisted in the preparation of complaints?

13          A     Yes, I did.

14          Q     Okay. And you and Justin were looking at the  
15     history report. And if you go back a couple of more  
16     pages, kiddo, if you go to page 5 of that history  
17     report.

18          A     Yes.

19          Q     Okay. Now, in this one, it says, does it not,  
20     that it looks like Sheri Self was preparing the  
21     complaint for Mrs. Richardson; is that correct?

22          A     These are her initials, yes.

23          Q     SLS?

24          A     Yes.

25          Q     Okay. However, when you're preparing the

1 complaint, do you make a similar entry into the system  
2 that the complaint has been done?

3 A Yes. That action -- yes. That action code is  
4 completed.

5 Q Okay. And at what point in time do you enter  
6 the fee that's associated with the preparation of the  
7 complaint?

8 A It goes -- at the time, it went in after the  
9 complaint was prepared.

10 Q Okay. And so that's why we see the entry on  
11 this particular history report, on page 5, a fee of  
12 \$1,500; correct?

13 A Yes.

14 Q Okay. So is it the same or routine when you  
15 file a homeowner's complaint, with other files, not  
16 just Miss Richardson's?

17 A Yes.

18 Q Okay. So as to the \$1,500 that was entered,  
19 is it only the complaint that has been filed that  
20 relates to that, that particular fee entry?

21 A Yes. That's the fee that comes up for that  
22 action.

23 Q Okay. And after you've completed that action,  
24 you've prepared the complaint. Are there other actions  
25 that are to take place that relate to that \$1,500 fee?



1 A You mean that would incur the fee or --

2 Q No. Actions that would relate to the fee.

3 For instance, you file the -- you prepare the  
4 complaint, you give it to Miss Trotter to review, it  
5 comes back to you, you're going to spit out a letter to  
6 the clerk of court. I'm assuming, you know, for  
7 filing, you're going to spit out a letter that goes to  
8 the consumer that says oh, by the way, here is the  
9 complaint, process server is serving it on you, and  
10 then you have other actions that take place after that.  
11 For instance, the process server is going to bring you  
12 back an affidavit of service, and then you're going to  
13 have that filed with the clerk of court.

14 So after that \$1,500 is entered, what I'm  
15 asking you is what other activities relate to it other  
16 than the preparation of the complaint?

17 A I only know through serving the complaint.  
18 I've never handled it further than that.

19 Q Okay. So tell me what happens after --  
20 outside of the preparation of the complaint that you  
21 have handled?

22 A We prepare the complaint, it gets reviewed and  
23 signed and approved by the attorney, we send it to be  
24 filed, and then we send it to -- out for process via  
25 process server. We send it out for service via process

1 server.

2 Q And then does it come back from the process  
3 server?

4 A When I was doing it, yes. The process server  
5 would send us back an affidavit of service or affidavit  
6 of non-service.

7 Q Okay. And then would you do the next step,  
8 prepare a letter to go to the clerk for the affidavit  
9 of service to get recorded or filed?

10 A Yes. At that time, I believe that was  
11 still -- I was still sending the affidavits to be  
12 filed.

13 Q Okay. And then any other additional work that  
14 related to the foreclosure would relate to that fee; is  
15 that correct?

16 A I -- I don't know exactly.

17 Q Do you handle, as a collector, communications  
18 with consumers or homeowners past that stage, past that  
19 stage after they've been -- they've been served with a  
20 complaint?

21 A I never handled any of the -- anything after  
22 the dates of service. But I can provide -- as the  
23 collector, I would provide pay-offs.

24 Q So what I'm asking, as a collector, were you  
25 dealing with consumers after the point of --

1           A     Yes. I would deal with them after that point,  
2     yes.

3           Q     Okay. So even after that point, where the  
4     process is furthered in the judicial process, would  
5     that fee remain the same, the \$1,500 that you initially  
6     entered into the system?

7           A     Yes.

8           Q     So after that point, would the fee ever change  
9     when you were -- when you were dealing with the  
10    consumer as a collector?

11          A     No, not that I'm aware.

12          Q     Okay. And as the collector, were you then --  
13    would you receive payments from the consumer that  
14    included that \$1,500?

15          A     Yes.

16          Q     Okay. And is -- what do you do, kiddo, when  
17    you get the final payment? Is there something that you  
18    put into your system that then triggers certain other  
19    activities?

20          A     Yes. Assuming that a payment is full payment  
21    on the account, I mark the account as paid in full and,  
22    at the time, would set an action -- would -- you take a  
23    specific action, and it populates for the next action  
24    to take place.

25          Q     Okay. Is this -- and during the time period

1 you and I are talking about, I'm referring to the  
2 2014/2015 time period. And you had the CollectMax  
3 system at that point in time; is that correct?

4 A Yes..

5 Q And now you have the -- is it MaxPro? Or  
6 what's it called now, the system you --

7 A ReadyCOLLECT.

8 Q ReadyCOLLECT. So is ReadyCOLLECT any -- that  
9 much different from what was going under the collection  
10 system, MaxCollect (sic)?

11 A It's -- I mean, it is different. It's -- I  
12 think it's more user-friendly for us. It provides more  
13 information. It enables -- I feel like it enables us  
14 to do more things.

15 Q Okay. Tell me some of the differences so I  
16 can understand what some of those differences are.

17 A I can send a homeowner the exact transaction  
18 breakdown.

19 Q Okay. So when we -- when Mr. Kahn was asking  
20 you about the difference in what we now -- what we used  
21 to see in the right to cure letters for the category  
22 that was, I think, other charges, does -- is that  
23 further broken down under the new system?

24 A Yes.

25 Q Okay. So when you -- are you inputting

1 different variables or inputs now that you weren't  
2 putting in before, under the new system?

3 A Yes.

4 Q Okay. So are you -- tell me what some of  
5 those different variables are.

6 A The actual fines, violations, special  
7 assessments. I don't have them all.

8 Q Okay. But you -- and you can see -- you're  
9 not putting that -- you're not inputting that  
10 information anymore; correct? That's somebody else?  
11 It's the two young ladies that you just gave me the  
12 names of two minutes ago?

13 A I occasionally up- -- I still update numbers,  
14 but I don't open files anymore.

15 Q Okay. So when you update numbers, at what  
16 stage is that typically occurring?

17 A It would be after the account has been turned  
18 over for collections. It just -- it really -- it just  
19 depends.

20 Q Okay. Do you as the collector have the  
21 authority to enter into payment agreements with  
22 consumers?

23 A We have a -- we have a blanket authority for  
24 certain associations to offer a standard payment  
25 arrangement. I receive that permission from Stephanie.

1           Q     So is there some sort of -- because you have a  
2     lot of homeowner's associations. So, in my mind, it  
3     would be virtually impossible for you to keep it in  
4     your mind, but that's the way my mind thinks. Do you  
5     have some sort of form that says okay, with these  
6     homeowner's associations, we can discount it by 25  
7     bucks, and with these homeowners, we can discount by  
8     500 bucks? Is there some sort of, you know, charge or  
9     something that you can file?

10          A     I'm not authorized to have any -- make any  
11     discounts or waivers. That has to go to the attorney.

12          Q     Okay. So if -- when you submit a payment plan  
13     to a consumer, is it something that's automatically  
14     generated and goes out at the point in time that a  
15     complaint is filed?

16          A     A payment plan?

17          Q     Uh-huh.

18          A     No, the -- no, the owner has to request a  
19     payment plan.

20          Q     So it would be generated only upon contact by  
21     the homeowner?

22          A     Correct.

23          Q     Okay. And before you -- general -- what do  
24     you do when the homeowner calls and asks for a payment  
25     plan? What's your process?

1           A     Assuming that we have the authority to  
2 authorize a payment plan without consulting the  
3 homeowner's association, I update the numbers and  
4 provide them with the payment plan details.

5           Q     And when you update the numbers and prepare  
6 the payment plan, is that when you consult with  
7 Stephanie about the amounts?

8           A     Not if it's a standard payment arrangement.

9           Q     Okay. So you only consult with Stephanie if  
10 it's not a standard payment arrangement?

11          A     Correct, or if I have any questions, if the  
12 homeowner has something alternative to offer.

13          Q     Okay. And then you -- then what happens  
14 with -- if you don't have to consult with Stephanie,  
15 what happens with that payment plan? You just prepare  
16 it, and then you send it to the consumer for the  
17 consumer to sign and get back to you?

18          A     I set it up -- I set up the payment plan in  
19 our system, and then I mail out a payment plan letter  
20 for the homeowner to review and sign and then return to  
21 us.

22          Q     Okay. Does it normally, typically require  
23 that the consumer send back a payment to you, a first  
24 payment?

25          A     They don't have -- no, they're not required to

1 send the -- return the signed letter with a payment.

2 Q Oh, they're not? Okay.

3 A No.

4 Q They're just required to return the payment if  
5 they accept your payment plan?

6 A We ask that they sign and return the payment,  
7 a copy of the payment plan letter, but it doesn't have  
8 to be at the same time as they make their first  
9 payment.

10 Q And then you all retain those payment plans?

11 A Yeah. If they -- if they -- if they have  
12 returned it to us, the signed copy, then, yes, we save  
13 a copy of that.

14 Q Okay. Does that go in the hard file, or is  
15 that just scanned into the system and kept  
16 electronically?

17 A I believe it's saved electronically.

18 (VERIFICATION OF DEBT MARKED PLAINTIFF'S  
19 EXHIBIT NO. 7 FOR I.D.)

20 BY MS. ARNOLD:

21 Q Okay. Okay. I'm going to hand you what was  
22 marked as Plaintiff's Exhibit 7 and just get you to  
23 thumb through those. It's a series of letters. If  
24 you'll just thumb through them real quickly, kiddo.

25 MR. COUNTRYMAN: This is one we already went



1 over; right?

2 MS. ARNOLD: Yeah, it is, uh-huh.

3 MR. COUNTRYMAN: Which one is on top, Sammie?

4 MS. ARNOLD: This is a verification of debt.

5 MR. COUNTRYMAN: Is this extra?

6 MS. ARNOLD: Yeah.

7 BY MS. ARNOLD:

8 Q Did you have a chance to look at them?

9 A Yes, I flipped through them.

10 Q And what's been marked as No. 7, on the bottom  
11 of each of those pages, do you see MTB numbers on the  
12 bottom of them? They vary in numbers, so I won't make  
13 you list them all.

14 A I see where it's labeled "MTB class  
15 production."

16 Q Right.

17 A Then number MTB SUPP, MTB SUPP, and then a  
18 series of numbers. Yes, I see that.

19 Q Okay. And so the first one in that letter is  
20 what is called a verification of debt; correct?

21 A Yes.

22 Q Okay. And this one has your initials on the  
23 bottom of it; correct?

24 A Yes.

25 Q Okay. And it provides for Miss Trotter's

1 signature, but it does not have her signature; correct?

2 A Well, it does -- it has her name on it.

3 Q It does not have her signature on it?

4 A It does not have her signature.

5 Q Okay. And this is one of the letters that you  
6 and Mr. Kahn were talking about earlier that were  
7 letters that were signed by Miss Trotter but not  
8 reviewed. They just go out.

9 A They're not signed by -- they're not signed by  
10 the attorney, no.

11 Q They just go out. You prepared this and just  
12 sent it out; correct?

13 A Correct.

14 Q Okay. And then via the -- the next one is the  
15 process server letter is what I call it. Again, it's a  
16 letter that asks for Mrs. Trotter's signature but does  
17 not have it; correct?

18 A It has her name on it, but not her signature.

19 Q Okay. And this is another letter that was  
20 prepared by you, with your initials on it; correct?

21 A Yes.

22 Q Okay. And this is another letter that just  
23 goes out without anybody looking at it. It's going to  
24 the process server for, I guess, service? Or,  
25 actually, it's going to the consumer via --

1 A It's going to --

2 Q -- via process server?

3 A It's going to the homeowner.

4 Q Yeah, okay. But that is your -- those are  
5 your initials; right?

6 A Yes.

7 Q You prepared it?

8 A Yes.

9 Q And you sent it out?

10 A Yes. I did at the time, yes.

11 Q And then the next one, again, kiddo, is  
12 another example of a verification of debt letter. It's  
13 two pages. And again, it was prepared by you, with  
14 your initials; correct?

15 A Yes.

16 Q It has a signature block, but with no original  
17 signature; is that correct?

18 A Yes. It has her -- it has her name on it, but  
19 no signature.

20 Q Okay. And this would have been another type  
21 of letter that goes out that Mrs. Trotter does not look  
22 at before it goes out?

23 A Correct.

24 Q Okay. And then we have, the next one is, I  
25 call this -- well, it says it up here. I call it the

1 remaining balance letter. Is that what this is?

2 A Yes.

3 Q Okay. And again, a document that was prepared  
4 by you, as we can see from your initials on the  
5 left-hand side?

6 A Yes.

7 Q And again, a letter that has Mrs. Trotter's  
8 signature but not -- typed in, but not her original  
9 signature; correct?

10 A It has her name, but not her signature, yes.

11 Q And again, this would have been another type  
12 of letter that goes out that Miss Trotter does not look  
13 at. You just -- you control and you send it out; is  
14 that correct?

15 MR. COUNTRYMAN: Object to the form

16 A (Continuing) Yeah. After receiving a payment,  
17 I sent the homeowner a remaining balance letter,  
18 yes.

19 Q Of \$9.50 on this one, yeah?

20 A Yes.

21 Q Big amount. Okay. Then the next one is the  
22 same example of another remaining balance letter that  
23 you prepared; correct?

24 A Yes.

25 Q Okay. And again, no original signature;

1 correct?

2 A Correct, her signature is not on this.

3 Q Okay. And then the next letter I refer to as  
4 the 10-day letter. Look at that and see if that's what  
5 you would call the 10-day letter, please.

6 A This is an intent to foreclose letter.

7 Q Okay. And is that what you call it, intent to  
8 foreclose, not a 10-day letter?

9 A Correct, I call it -- this is the intent to  
10 foreclose letter that we -- that we send.

11 Q Okay. And again, this is a letter that has  
12 your initials by -- as a letter having been prepared by  
13 you; correct?

14 A Correct.

15 Q Okay. And it's going out to a consumer; is  
16 that correct?

17 A Going out to a homeowner, yes.

18 Q Homeowner, yeah, okay. I call them consumers  
19 a lot of the time. A homeowner is a consumer, so you  
20 know. And this is a letter that you're sending out  
21 right before you're going to foreclose; correct? Or  
22 initiate foreclosure?

23 A The association has voted -- has authorized us  
24 to foreclose, yes. They voted on -- they voted to  
25 foreclose. That's when we send the letter out.

1 Q Okay. Is there anything in your file that  
2 has -- that shows you that the homeowner's association  
3 actually voted, or the board of directors voted?

4 A No.

5 Q It's just the email that comes in, and then  
6 you stamp it so you know when it comes in initially,  
7 that that's the way it's set up?

8 A We don't print out the mail or stamp the  
9 email. We stamp the statement with the type of request  
10 that it is.

11 Q But you don't get anything else that shows you  
12 that an actual vote took place. You just get the  
13 initial email is my understanding.

14 A Correct. We get an email from the management  
15 company or the association.

16 Q Okay. And the intent to foreclose letter is  
17 another letter that is sent out that you prepare, but  
18 Mrs. Trotter does not look over before it goes out?

19 A Correct.

20 Q Okay. And this is the letter that when we see  
21 the account history, it has a corresponding charge of  
22 \$150 when it goes out; correct?

23 A Correct.

24 Q Okay. And then the next letter, kiddo, is an  
25 example of -- to me it looks like another letter that's

1 attached to -- I'll call it the complaint letter  
2 because it's the letter that goes to the  
3 homeowner/consumer at the time the complaint has been  
4 filed. Is that correct?

5 A Yes.

6 Q Okay. And again, it has your signature -- I  
7 mean your initials, as you being the preparer of the  
8 letter; correct?

9 A Yes.

10 Q Okay. It has Mrs. Trotter's typed-in name,  
11 but not her original signature; is that correct?

12 A Correct.

13 Q Okay. And those were all letters I thought  
14 were examples of letters that you and Mr. Kahn were  
15 discussing earlier. Is that correct, you've gone  
16 through a list of letters?

17 A Yes.

18 Q It may not include all of them, but it's got  
19 some of them in there; is that correct?

20 A Yes.

21 Q Okay. Let me hand you what we'll mark as  
22 Plaintiff's Exhibit No. 8.

23 (APPROVED PAYMENT PLAN MARKED PLAINTIFF'S  
24 EXHIBIT NO. 8 FOR I.D.)

25 MS. ARNOLD: I'm getting it for you, Andy.

1 BY MS. ARNOLD:

2 Q It's the verification of debt from Mrs.  
3 Richardson's file. There you go.

4 MR. COUNTRYMAN: You mean the payment plan?

5 A (Continuing) This is a payment plan.

6 Q Payment plan, sorry. Can you identify what I  
7 have now handed you, what's marked as Plaintiff's  
8 Exhibit No. 8?

9 A This is an approved payment plan letter that  
10 was prepared for Miss Richardson.

11 Q And who was it prepared by?

12 A I don't see -- I don't see any initials.

13 Q Is that a plan that you were referring to  
14 earlier that you would typically prepare?

15 A I typically prepare payment plan letters.

16 Q Okay. Do you recall having any communications  
17 with Mrs. Richardson?

18 A I don't recall any.

19 Q Do you recall having any communications with  
20 me about Mrs. Richardson?

21 A Not that I can recall.

22 Q Okay. So would that have been a pre-approved  
23 type plan, or do you know?

24 A This would have been pre-approved -- well, I  
25 don't know.



1 Q Would you get pre-approvals? Does that come  
2 through the property management company, or does that  
3 come directly from the HOA?

4 A The property management company, if that's our  
5 point of contact.

6 Q Who is typically your point of contact, the  
7 property management?

8 A The property management.

9 Q And not the HOA?

10 A Correct.

11 Q Okay. I'm going to hand you what we're going  
12 to mark as No. 9, and just get you to look at that for  
13 me.

14 MS. ARNOLD: Here you go, Andy. This is the  
15 pleadings and the letter with Miss Richardson.

16 (PLEADINGS & LETTER MARKED PLAINTIFF'S EXHIBIT  
17 NO. 9 FOR I.D.)

18 BY MS. ARNOLD:

19 Q I ask you to look at that and tell me if you  
20 can tell me what that is, please, ma'am.

21 A This looks like the cover sheet for the  
22 process server, or that we send through the process  
23 server, and a copy of the complaint.

24 Q Is there anywhere on the complaint that  
25 identifies who prepared the complaint? What you and I

1 saw in the history that it looked like Sheri. But is  
2 there anything that identifies for me, that I can see,  
3 that's going to show me who prepared it?

4 A I don't know, not without looking over all of  
5 it. I don't know exactly what it says, word for word.

6 Q What I was looking for, is there an identifier  
7 in the document that you and I can look at and says  
8 okay, well, gosh, this was my file, I did this  
9 complaint? Or, look, it was Sheri, Sheri did the  
10 complaint? And I'm thinking of like an identifier  
11 number or symbol somewhere, you know, at the bottom of  
12 the page or the footer or something that would tell you  
13 that.

14 A Not that I -- not that I see.

15 Q Okay.

16 A Not that I see.

17 Q Do you recognize those, or do you know if  
18 those -- that was the complaint from Mrs. Richardson?

19 A It appears that it is.

20 Q Okay. And didn't it have a letter at the top,  
21 sweetheart? That's okay. This is Plaintiff's Exhibit  
22 No. 9. Whose initials are here, down at the bottom?  
23 The letter is different from -- whose initials are  
24 these, M. --

25 A Melody Baird.

1 Q Melanie (sic) Baird. And when we look back at  
2 the account history relating to the complaint, I don't  
3 see anything with Melanie's (sic) initials. Am I  
4 missing something?

5 A August the 4th, 2015, service information  
6 added, MDB.

7 Q Oh, all the way down, okay. So she  
8 prepared -- Melody prepared the letter that goes with  
9 the complaint, and the complaint was actually prepared  
10 by Sheri?

11 A Sheri prepared the complaint, and it looks  
12 like Melody sent it out for service.

13 Q Okay. So what's the process as far as the  
14 complaint when it goes into the complaint box? Is it  
15 prepared and just the complaint goes in the box and  
16 Miss Trotter looks at that; and then after she's looked  
17 at it, then the letter that goes ultimately with it to  
18 the consumer is prepared, after the fact?

19 A I can't remember.

20 Q Well, to look at our dates that we have in the  
21 account history, that would appear what's happening.  
22 And when I see these initials here on the letter versus  
23 what the account history is telling me about the  
24 complaint, would that not be reasonable?

25 A I'm sorry, what was your question?

1 Q That it would look like the letter that goes  
2 with the complaint to the consumer is prepared after  
3 the complaint actually is filed -- prepared, excuse me.

4 A The complaint -- the complaint service letter?

5 Q Uh-huh. Yes, ma'am.

6 A Yes, looks like it.

7 Q Okay. Because we have, if I read the account  
8 history correctly, it looks like on July 31st is when  
9 the complaint was filed; correct? By Sheri?

10 A It was prepared.

11 Q Prepared, I agree. Not filed, prepared. And  
12 then after it was prepared by Sheri, she sent it to  
13 Mrs. Trotter for review. About four days later, it's  
14 ready to go out in the mail, and Melanie (sic) prepares  
15 the letter that would accompany the complaint to the  
16 consumer; is that correct?

17 A Melody -- it looks like Melody prepared the  
18 service letter, yes.

19 Q Okay. And that's four days after the  
20 complaint has been prepared?

21 A Yes.

22 Q Okay. And you may have said this earlier. So  
23 is the complaint letter, as I call it, the complaint  
24 letter, a letter that is not typically reviewed by Mrs.  
25 Trotter? She gets the complaint, but she does not get

1 the complaint letter?

2 A She doesn't -- this is the letter for service,  
3 what I consider the letter for service.

4 Q Service of the complaint, right.

5 A Right. She does not get that.

6 Q Okay. Okay. And in this particular instance,  
7 this letter is set up by the signature of either  
8 Stephanie or Jamie McSweeney. Did you have other form  
9 documents that were set up for multiple signatures, one  
10 or the other?

11 A I can't remember.

12 Q Okay. How long has Jamie been gone from the  
13 firm?

14 A I can't remember.

15 Q And if you look at the letter, will you agree  
16 with me that in Exhibit No. 5, and you call it the  
17 service letter, I call it the complaint letter, but  
18 we're both talking about Exhibit No. 9, it has an  
19 amount owed that says "Includes attorney's fees of  
20 \$3,886.14;" correct?

21 A Yes, that's what that says.

22 Q Okay. And then if you go back to the  
23 complaint, if you look at paragraph -- it's usually --  
24 I thought it was usually 10. It is, paragraph 10. If  
25 you go back three pages in your packet; you went too

1 far. You don't have the complaint in your --

2 A I thought you just handed that to me. I'm  
3 sorry.

4 Q Oh, that's because I'm looking at it.

5 A Okay. I wasn't sure.

6 Q Hey, here, let me throw you a trick question  
7 there; okay? So I'm going to go back three pages.  
8 We're looking at Exhibit No. 9, and I pulled out the  
9 first page. We've already said on the first page of  
10 Exhibit No. 9 it says \$3,886.14; correct?

11 A Correct.

12 Q Okay. Then in paragraph 10 of the complaint  
13 that this letter accompanies, it has a different  
14 amount; does it not?

15 A Yes.

16 Q Okay. And does it not read, "There is now  
17 due, owing and unpaid the sum of \$1,566.14"?

18 A Yes.

19 Q And those two amounts are different, are they  
20 not; correct?

21 A Correct.

22 Q They're different by over twice the amount?

23 A I would need a calculator to see the exact  
24 difference.

25 Q Well, I just said 15 -- 1,500 times two is

1 3,000, and that amount is 3,800. So I just did easy --  
2 I was trying to do easy math. But would you agree with  
3 my simple math that I just regurgitated to you?

4 A Yes.

5 Q Okay. All right. And the consumer, you send  
6 this out, and you're sending it out to the  
7 consumer/homeowner; correct?

8 A To the homeowner, yes.

9 Q Okay. And when the consumer/homeowner gets  
10 it, they receive this letter with one amount and a  
11 complaint with a different amount; correct?

12 A This amount has a different -- this letter has  
13 a different amount than the complaint, yes.

14 Q Okay. And I'm going to hand you what we'll  
15 mark as 10. This is something that you and Mr. Kahn  
16 spoke about earlier.

17 (INVOICE MARKED PLAINTIFF'S EXHIBIT NO. 10 FOR  
18 I.D.)

19 MS. ARNOLD: Here you go, Andy. It's just the  
20 invoice for the \$400.

21 BY MS. ARNOLD:

22 Q Can you tell me what that is?

23 A The foreclosure retainer.

24 Q Okay.

25 A What I know to be the foreclosure retainer.

1 Q So you know this to be the foreclosure  
2 retainer; correct?

3 A Correct.

4 Q Do you get this, and then in turn enter any  
5 information into the system?

6 A After receiving the foreclosure retainer?

7 Q Uh-huh. Do you get the invoice? Is there  
8 anything -- what triggers you, if anything, to enter  
9 information into the system about the foreclosure  
10 retainer?

11 A I don't enter anything into the system about  
12 the foreclosure retainer.

13 Q I'm going to go back to the history report.  
14 We're back at the same time period, close to the filing  
15 of the complaint. If you look at page 4 of that  
16 history report, kiddo, do you see down towards the  
17 bottom, it's like the fourth entry from the bottom?

18 A Yes.

19 Q What's that entry say?

20 A The fourth one from the bottom says "FC  
21 Invoice \$400 Document Sent To List."

22 Q Okay. Now, that does have Sheri Self's  
23 initials by it and not yours; correct?

24 A Correct.

25 Q Okay. So you won't typically -- during your



1 course of your process, you would not enter anything  
2 into the system with regard to the 400-dollar  
3 foreclosure retainer?

4 A It depends upon who handled the file.

5 Q I'm talking about when you were handling the  
6 file relating to a complaint being prepared. Would you  
7 enter an amount relating to the foreclosure retainer?

8 A If I was ordering the title abstract, yes.

9 Q Okay. So is the title abstract, ordering the  
10 title abstract, the thing that triggers the foreclosure  
11 retainer?

12 A Yes.

13 Q Okay. So what are you doing when you order  
14 the title abstract?

15 A I'm sending a -- there's a form that prints  
16 off for the particular file. I send that to the title  
17 abstractor.

18 Q Oakbrook? Is it Oakbrook? Oakbridge? Oak  
19 something?

20 A Overbrook.

21 Q Overbrook.

22 A Overbrook is who it was.

23 Q Okay, who it was. Who is it now?

24 A It may still be Overbrook. I don't know.

25 Q Okay. So when you ordered the title work, you

1 made an entry into the system relating to that cost;  
2 correct?

3 A Yes, we would request the ab- -- the title --  
4 we would request a title abstract.

5 Q Okay. So when you request the title abstract,  
6 was that an automatic entry that went into the system  
7 about the cost of it, or was that a separate item that  
8 you had to do?

9 A Yes. It would populate the charge.

10 Q It would, okay. And then what about -- what  
11 would populate, then, the foreclosure retainer?

12 A Taking that action.

13 Q So those two things are going to happen  
14 simultaneously then, under the -- through the system?

15 A Yes.

16 Q Okay. Gotcha, gotcha, gotcha. Prior to -- or  
17 at the time you're preparing the complaint, and prior  
18 to filing the complaint, what did you do to verify  
19 military service or the lack thereof?

20 A I didn't do anything to verify military  
21 service.

22 Q Who did?

23 A I don't know.

24 Q So at the time the complaint was filed -- or  
25 you're preparing it, I'm sorry, and then sending it off

1 for filing, you haven't done anything with regard to  
2 verification of military service?

3 A Correct?

4 Q Did anybody?

5 A I don't know.

6 Q Did you ever see a charge against an account  
7 for verification of military service?

8 A Just on any -- any account?

9 Q Any account that you've dealt with?

10 A Yes, I'm sure I have.

11 Q Okay. Well, tell me why -- how that would  
12 have occurred?

13 A I don't handle -- I only handle it through  
14 service of process. I don't handle it after that. I  
15 didn't do it up to that point. Verifying military  
16 status was not done up to the point of serving the  
17 complaint.

18 Q When was verification of military service  
19 done?

20 A I don't know.

21 Q It clearly was not done at the time the  
22 complaint was filed and the complaint was served on the  
23 consumer; is that right?

24 A Not when I was doing it, no.

25 Q Okay, not when you were doing it. Is it

1 something different now?

2 A I don't know.

3 Q Okay.

4 MS. ARNOLD: I think we're about done, guys,  
5 so we'll take a real quick break.

6 VIDEOGRAPHER: We will now go off the record.  
7 The time is approximately 5:45 p.m.

8 (The deposition recessed briefly.)

9 VIDEOGRAPHER: We are now back on the record.  
10 The time is approximately 5:50 p.m.

11 EXAMINATION

12 BY MR. COUNTRYMAN:

13 Q All right. Haylen, I'm Andy Countryman. You  
14 and I know each other. I've got a couple of quick  
15 follow-up questions. If you would turn to the history  
16 report, please, which I believe is Plaintiff's Exhibit  
17 No. 4, and turn to -- I believe it's the fourth page,  
18 Bates labeled MTB000223. Do you see that?

19 A I do.

20 Q All right. Do you see the first entry at the  
21 top of that page on February 26th, 2015?

22 A Yes.

23 Q It looks like an entry that you made; correct?

24 A Correct.

25 Q It says, Image Imported with a description of

1 file, file opening material. What does that mean?

2 A It would have been any -- any information  
3 related to the opening of the file. It may be the  
4 property card and/or an email or alternate statement.

5 Q Would that include statements that would  
6 clarify or explain amounts due that were shown in the  
7 original material the firm received?

8 A Yes.

9 Q Let me show you a few things.

10 MR. COUNTRYMAN: And you can just label them  
11 consecutively. I don't know what number we're on.

12 MR. KAHN: Probably Defendant's 1.

13 MR. COUNTRYMAN: Well, I've said we can just  
14 do consecutively.

15 MR. KAHN: Oh, okay.

16 MR. COUNTRYMAN: I don't care. What are we  
17 on?

18 MS. ARNOLD: Eleven.

19 (STATEMENT MARKED PLAINTIFF'S EXHIBIT NO. 11  
20 FOR I.D.)

21 BY MR. COUNTRYMAN:

22 Q Have you seen Exhibit No. 11 before? And it's  
23 front and back. Two pages front and back, four pages  
24 total. Bates range MTB 140 through MTB 143, which  
25 means these are documents that we produced in

1 discovery.

2 A Yes.

3 Q My understanding is that these were documents  
4 that were produced to the firm after the initial email,  
5 asking the firm to open the file and proceed against  
6 Miss Richardson was received, and that this statement  
7 might have been some of the material received  
8 referenced in that entry we discussed on the history  
9 report. Do you know if that's correct?

10 MS. ARNOLD: Objection as to form.

11 A (Continuing) Yes.

12 Q Is it correct? What I said is correct, this  
13 is material that you all received as indicated on the  
14 history report MTB 223, where it says "Image Imported  
15 with a description of: file"?

16 MS. ARNOLD: Objection as to form.

17 A (Continuing) I'm not exactly certain what was  
18 in --

19 Q Is this -- I'm sorry. Is Exhibit 11 the type  
20 of material that the firm might have received?

21 A Yes.

22 Q And that material, if you look at it, what  
23 does it look like it shows, Exhibit 11?

24 A It appears to be a breakdown of charges going  
25 back to 2011.

1 Q Do you see some handwriting on it?

2 A I do.

3 Q Do you know whose handwriting that is?

4 A Mine.

5 Q And this looks to be a statement dated July  
6 31, 2014. It says that at the top right-hand corner;  
7 do you see that?

8 A Yes.

9 Q Underneath that, it says "September 25, 2014,  
10 lien request"; do you see that?

11 A Yes.

12 Q Do you know where that writing came from? It  
13 looks to me like it might be some sort of stamp or  
14 something.

15 A Yes. It would have been a stamp from our  
16 office.

17 Q Your office would have placed that stamp on  
18 this document?

19 A Yes.

20 Q What does it mean, the stamp?

21 A It means that we received this request from  
22 our client to place a lien on the property.

23 Q Does it have anything to do with when you  
24 would have received Exhibit 11?

25 A Yes.

1 Q What does it mean?

2 A It means that's the day that we printed it off  
3 to process it.

4 Q So September 25, 2014, is the date that the  
5 firm printed off Exhibit 11?

6 A Yes.

7 Q Does that mean that's when the firm received  
8 Exhibit 11?

9 A No.

10 Q Can you tell by looking at this and/or the  
11 history report whether Exhibit 11 is one of the images  
12 imported or part of the image imported, as detailed in  
13 that first entry on the fourth page of the history  
14 report?

15 A Not from what it says, no.

16 Q All right. If you'll turn to the first page  
17 of the history report for me, I think you said that  
18 Sheri's initials are the SLS; is that right?

19 A Yes.

20 Q So based on these entries, it looks like that  
21 on September 26th, 2014, she emailed Sage and asked for  
22 a breakdown of the beginning balance of 350 bucks; is  
23 that right?

24 A Yes.

25 Q Okay. I'll show you something else. We'll



1 mark that as No. 12.

2 (NOTICE OF DEBT AND INTENT TO FILE LIEN MARKED  
3 PLAINTIFF'S EXHIBIT NO. 12 FOR I.D.)

4 BY MR. COUNTRYMAN:

5 Q It's Bates labeled MTB 263 through 268. It's  
6 another two-sided document. Have you seen this before?

7 A I don't know.

8 Q Have you seen anything that looks like this  
9 before?

10 A Yes.

11 Q What does it look like it is?

12 A It looks like the beginning balance breakdown.

13 Q For what, Miss Richardson's file?

14 A For several files, two files.

15 Q And that would be the McGrew file and the  
16 Richardson files; correct?

17 A That's correct.

18 Q All right. So you think this was, these two  
19 things, which would be Exhibit 12, would have been  
20 received at the same time? Were they sent together, do  
21 you know?

22 A I do not know if they were sent together.

23 Q Is this something that the firm, to your  
24 knowledge, would have received from the property  
25 manager?

1 A Yes.

2 Q It looks to me like this is an explanation or  
3 a breakdown of the beginning balance of 350 that Sheri  
4 Self requested. Can you look at it and tell me whether  
5 that's the case?

6 MS. ARNOLD: Object to the form.

7 BY MR. COUNTRYMAN:

8 Q And I'll point your attention to MTB 266.  
9 It's one of the last page -- it's the next-to-the-last  
10 page on Exhibit 12. Do you see the Bates numbers I'm  
11 talking about, on the bottom of the page?

12 A Yes.

13 Q Sorry, I was looking at the wrong page. It's  
14 been a long day. Look at the first page or the third  
15 page, MTB 263 and MTB 265.

16 A Yes.

17 Q Those look to be clarifications provided in  
18 response to Sheri's email asking for a breakdown of the  
19 beginning balance of 350?

20 A Yes.

21 Q Is there anywhere in the history report where  
22 it's noted that this particular material, Exhibit 12,  
23 was received?

24 A It does not state that in the history report.

25 Q Could Exhibit 12 have been part of the

1 material received on February 26th, 2015, the image  
2 imported with a description of file, in that first  
3 entry on page 4 of the history report?

4 A Yes.

5 Q Do you know, is it likely, or can you tell one  
6 way or the other?

7 MS. ARNOLD: Objection as to form.

8 A (Continuing) Yes, that's most likely the file  
9 opening info.

10 Q So am I understanding your testimony correctly  
11 to be that it's more likely than not that Exhibits 11  
12 and 12 were material that the firm received on or about  
13 February 26th, 2015, that you entered or noted in the  
14 history report as "Image Imported with a description  
15 of: file"?

16 MS. ARNOLD: Objection to the form.

17 A (Continuing) Yes.

18 Q So Exhibits 11 and 12 would be material that  
19 the firm received in response to its request to the  
20 property manager to clarify the 350-dollar balance that  
21 it initially told the firm Miss Richardson owed?

22 A Yes.

23 Q Is there a way to look at the statement,  
24 Exhibit 11, and see if there's any explanation for why  
25 the initial statement contained a different number than

1 the \$900 in fees that went out in the right to cure  
2 letter?

3 A Exhibit 11?

4 Q Yeah, the statement. The July 31, 2014,  
5 statement. I'll ask this in a different way. If you  
6 look at Exhibits 11 and 12 together, does it give you  
7 any insight as to why you indicated that the  
8 assessments on the right to cure letter, Exhibit 2,  
9 were \$900?

10 A Yes. The letter dated May 18th, 2010, lists  
11 the annual dues for 2010 as \$150 with a 50-dollar late  
12 fee.

13 Q So how does that mean she owed \$900 in  
14 assessments and not 950 in assessments, as you and Mr.  
15 Kahn discussed a while ago?

16 A The information provided by the association  
17 shows that the assessments were \$150 annually, with a  
18 50-dollar late fee.

19 Q So how does that translate to a different  
20 number? Can you explain that for me a little bit  
21 better?

22 A The charges were transferred as one lump sum  
23 for -- on this -- on Exhibit 11, and given the same  
24 charge codes, under the different software, for the  
25 statement dated 2/24/15, Exhibit 3.

1           Q     Let me ask this in a different way. I think  
2     you testified earlier that when you prepared the  
3     Exhibit 2, the notice of right to cure letter, that  
4     listed \$900 in assessments, that that was an error  
5     because it should have been \$950. I'm trying to figure  
6     out if that's the case, or was the \$900 actually  
7     correct based on Exhibits 11 and 12?

8           A     The \$900 is the correct amount --

9           Q     Why?

10          A     -- in the assessments.

11          Q     How do you know that?

12          A     Because the clients -- the management  
13     company's statement, the HOA's statement, and letter  
14     state that the dues were \$150 with a 50-dollar late fee  
15     for 2011 and 2010.

16          Q     So is that something that you figured out when  
17     you were preparing the notice of right to cure letter?

18          A     Yes.

19          Q     You went over with Mr. Kahn and Miss Arnold a  
20     number of letters that the firm sends out. The ones in  
21     particular you went over with Miss Arnold were examples  
22     of letters that you testified Stephanie does not  
23     review, yet they have her name on them; is that  
24     correct?

25          A     Yes. There are several letters that Stephanie

1 does not review before they go out.

2 Q And you went over all of those with Mr. Kahn  
3 and Miss Arnold; right? And then you looked at  
4 examples of them? It's not a --

5 A Yes.

6 Q -- trick question.

7 A Yes.

8 Q Okay. All of the ones that you looked at with  
9 Miss Arnold, and all the ones that you talked about  
10 with Mr. Kahn, isn't it true that the signature blocks  
11 or the name block where Stephanie's name appears on  
12 those letters does not have any space underneath the  
13 closing? In other words, at the end of the letter, it  
14 says sincerely or truly yours or something, and then  
15 directly under that, it says Stephanie's name?

16 A Correct.

17 Q So there's no space for a signature; correct?

18 A Correct.

19 Q Is it also true that those are all letters  
20 that Stephanie has prepared, the form?

21 A Yes.

22 Q They're based on templates that she's  
23 prepared?

24 A Yes.

25 Q That she's approved?

1 A Yes. They're all approved templates.

2 Q Has she also approved the process by which the  
3 letters are populated?

4 A Yes.

5 Q Did you know that there is someone in the firm  
6 that checks the Department of Defense website to see if  
7 a particular defendant has served or is serving in the  
8 military before they're served with a lawsuit? Did you  
9 know that?

10 MS. ARNOLD: Objection to the form.

11 A (Continuing) I don't know.

12 Q Did you know that that's true?

13 A I did not know that.

14 Q And I believe the verification or affidavit of  
15 military service that you went over with Miss Arnold  
16 verifies or affirms that the document is -- strike  
17 that.

18 VIDEOGRAPHER: Five minutes, Counsel.

19 BY MR. COUNTRYMAN:

20 Q And you don't have anything to do with McCabe  
21 Trotter's fee agreements with its clients, including  
22 the homeowner's associations; correct?

23 A Correct.

24 Q You don't know anything about what the terms  
25 of those agreements might be; correct?

1 A Correct.

2 Q You don't know anything about when McCabe  
3 Trotter gets money from the law -- from the HOA,  
4 anything about the details of those agreements, do you?

5 A I do not.

6 Q And you're not a part of the accounting  
7 division at McCabe Trotter; correct?

8 A Correct.

9 Q So you would not have any knowledge as to  
10 whether -- when any client has sent any kind of bill  
11 other than what you see that Mr. Kahn presented with  
12 you earlier with today?

13 A Correct.

14 Q Is it fair to say that you have received and  
15 are familiar with -- or you've received training and  
16 are familiar with FDCPA in the capacity as a paralegal  
17 that does collections work, you just didn't know what  
18 actual statute section it was when Mr. Kahn asked you  
19 about 1692g?

20 A Yes.

21 MR. COUNTRYMAN: All right, I don't have  
22 anything else.

23 MR. KAHN: I'm going to have a couple. He's  
24 going to need to change --

25 VIDEOGRAPHER: I have three minutes left.



1 This concludes Video No. 3 in the video deposition of  
2 Haylen Gatling. The time is approximately 6:08 p.m.  
3 We are now off the record.

4 (The deposition paused briefly.)

5 VIDEOGRAPHER: We are now back on the record.  
6 Today's date is January 15th, 2019. The time is  
7 approximately 6:10 p.m. This is Video No. 4 in the  
8 video deposition of Haylen Gatling.

9 FURTHER EXAMINATION

10 BY MR. KAHN:

11 Q Mr. Countryman was asking you about some  
12 documents in this history report. He presented  
13 Exhibits 11 and 12 to you as being the documents  
14 referenced in the history report. Do you understand  
15 that?

16 A He asked if it were possible this was the file  
17 opening info?

18 Q Correct. He was asking about whether or not  
19 Exhibits 11 and 12 were the documents referenced in, on  
20 page 4, where it says "Image Imported with a  
21 description of: file opening info"; right?

22 A I believe he asked if it was possible or  
23 likely that they were.

24 Q All right. And you, sitting here today, have  
25 not accessed the computer system to see what those

1 documents in fact are; correct?

2 A Correct.

3 Q So when he's presenting these documents to  
4 you, you don't know if that's what's part of the file  
5 system or not, do you?

6 A Part of the file system?

7 Q Is what's being referred to on -- that line  
8 item he was asking about, "Image Imported with a  
9 description of: file opening info," you --

10 A I'm not certain that these documents comprise  
11 the file opening info, no, but I believe it's very  
12 likely.

13 Q Okay. And why do you say that?

14 A Because I wouldn't have opened up the file  
15 without some sort of breakdown.

16 Q You didn't open this file, did you?

17 A I wouldn't have proceeded. I prepared the  
18 lien.

19 Q You didn't open the file, did you?

20 A No. I believe Sheri Self opened the file.

21 Q Right. And you said you wouldn't have opened  
22 the file. At the time you were sending out the letter  
23 and preparing the letter dated February 26th, 2015, are  
24 you telling us you were relying on information dated  
25 July 31st, 2014?

1 A No.

2 Q Okay. Well, do you -- Exhibit No. 11 has a  
3 date of July 31st, 2014, on it. Do you see that?

4 A Yes. I would have used all of the information  
5 that we had for the breakdown.

6 Q Okay. All right. What would that information  
7 have been?

8 A It would have been the information provided by  
9 the association as to what all the charges were, as  
10 well as the updated statement.

11 Q Okay. When you say "the updated statement,"  
12 are you referring to Plaintiff's Exhibit No. 3?

13 A I believe it was three.

14 Q Okay. Well, that updated statement would be  
15 the one dated two days before the letter is being  
16 generated; right?

17 A Yes.

18 Q So the information contained on the July 31st,  
19 2014, document, and the letter dated May of 2010, which  
20 is Exhibit 12, would not have been the most current  
21 information; right? As of February 26th, 2015?

22 A Correct.

23 Q The most current information that the  
24 association had about the account would be Plaintiff's  
25 Exhibit No. 3 which is dated February 24th, 2015;

1 right?

2 A Correct.

3 Q Do you agree that it would be proper to rely  
4 on the most current information as opposed to older  
5 information when generating these right to cure form  
6 letters that are going to the consumers?

7 MR. COUNTRYMAN: Object to the form.

8 A (Continuing) Not if the current statement  
9 isn't clear.

10 Q What about the current statement, which is  
11 Plaintiff's Exhibit No. 3 that you're pointing to, is  
12 not clear?

13 A It lists several charges on the same date.

14 Q Okay.

15 A 9/23/14, as well as a charge labeled  
16 "miscellaneous."

17 Q Okay.

18 A That's kind of a red flag. We have to know  
19 where the charges come from.

20 Q Well, clarify that red flag for me. Show me  
21 how you get the assessment of \$800 as being wrong.

22 A Because of prior information provided by the  
23 association.

24 Q Walk me through that information and show me  
25 how the assessments equal \$800, please.

1           A       The assessment don't equal \$800. They equal  
2     \$900.

3           Q       Well, show me how you get there, please.  
4     Let's look at -- you're looking at Plaintiff's Exhibit  
5     No. 12?

6           A       Yeah. Southern Magnolia's Homeowner's  
7     Association --

8           Q       Yes.

9           A       -- sent out a notice dated May 18th, 2010, to  
10    Mr. and Mr. -- Mr. and Mrs. Richardson, stating that  
11    the annual dues were \$150.

12          Q       Okay.

13          A       With a 50-dollar late fee, giving them a total  
14    of \$200.

15          Q       Okay. So we have an assessment of 150 from  
16    2010?

17          A       Correct.

18          Q       That your law firm is trying to collect in  
19    2015?

20          A       Correct.

21          Q       That's a five-year-old debt, or more; right?  
22    It's more than five years old?

23          A       Correct.

24          Q       Do you know if the law authorizes you to  
25    collect debt more than five years old?

1           A     I do not.

2           Q     Okay. So we have a 150-dollar assessment from  
3     2010, along with a late fee of \$50 from 2010. Now,  
4     walk me through the rest of the process as to how you  
5     get to the numbers you did.

6           A     In 2011, the association sent the owner a  
7     notice listing the previous debt of \$150 for the  
8     assessment, and a 50-dollar late fee for 2010, with the  
9     2011 assessment of \$150.

10          Q     Okay. So I count that as \$300 in assessments.

11          A     \$300 in assessments with a 50-dollar late fee.

12          Q     As of 2011?

13          A     As of 2011.

14          Q     And you're trying to collect this 2011 debt in  
15     2015?

16          A     Correct.

17          Q     Do you know of any statute that authorizes or  
18     law that authorizes you to collect debt more than three  
19     years old?

20          A     I don't know.

21          Q     Okay. Now, walk me through how you get --  
22     that's \$300 as of 2011. How do you now get to 900,  
23     please?

24          A     That's \$300 in assessments with \$50 in late  
25     fees. We have the breakdown from these two statements

1 for the 350 -- or from this statement for the \$350. We  
2 then --

3 Q Show me where that is, please.

4 A (Witness indicating.)

5 Q That's at the top on page --

6 A There's \$150 for the annual dues and \$50 for  
7 the late fee, 2010. And then a 2011 letter from the  
8 association, listing the 2010 charges. And then we  
9 have 2011 charges.

10 Q Okay.

11 A That's the \$350.

12 Q All right. And there's -- on Exhibit No. 11,  
13 there's a line drawn underneath that \$350; right?

14 A Correct.

15 Q What does that mean?

16 A It means that we are starting below that line.  
17 We have the breakdown of the 350, so we're picking up  
18 at the statement below that.

19 Q Okay. So now, you see where there's an annual  
20 due of -- dues of \$150 on January 6th, 2012?

21 A Correct.

22 Q Did you know the dues were not due until  
23 February 1st?

24 A No. I go based off the statement, where it  
25 said 1/6/2012.

1 Q All right. So there's no investigation to  
2 determine whether or not the amount being charged as of  
3 January 6th was proper to charge the homeowner; right?

4 A No.

5 Q Is that correct?

6 A Not on my part.

7 Q Okay. All right. So now walk me through.  
8 You said you've got \$150 in assessments for 2010 and  
9 2011?

10 A That's 400 -- in 2012, that's 450.

11 Q Okay.

12 A And then 2013 was another 150.

13 Q Okay.

14 A 2014 was another 150.

15 Q Okay. These being charged -- let's look at  
16 the one for 2012. That's being charged in December of  
17 2012; right? According to the statement?

18 A December 3rd, 2012.

19 Q Does that make any sense, when previously they  
20 were being charged in January?

21 A Yes. They are -- I interpret that to be their  
22 incurred as of 12/3/2012.

23 Q If in fact they were incurred in February,  
24 that would be wrong; right?

25 A If they're due in February, yes.



1 Q Okay. Well, this statement in and of itself  
2 has inconsistent due dates of December and January;  
3 right? There's an invoice that shows --

4 A It lists an invoice for an annual assessment  
5 for different years.

6 Q So the document you're reviewing, or you think  
7 you may have reviewed, shows two different assessments  
8 for homeowner dues, one in 2012, one in 2000 -- or  
9 actually, two for 2012 for a total of \$300; right?

10 A No. 1/6/2012, it says 2002 -- 2012 HOA dues  
11 are 150.

12 Q Okay.

13 A That's in the description or under the  
14 transaction. And then on 12/3/2012, it says "2013 HOA  
15 dues, 150."

16 Q So within 11 months, they're charging another  
17 set of homeowner dues that are usually charged  
18 annually; right?

19 A It's an annual assessment, yes.

20 Q So would that raise a red flag that maybe that  
21 wasn't properly listed because it's being charged  
22 within 12 months of the other one?

23 A No.

24 Q Okay. And that's without you checking any of  
25 the covenants to see when they're actually due?

1 A Correct.

2 Q All right. Now, where do you -- that's

3 2000 -- where do you go for the next one?

4 A Next wage, on 12/11/2013, the 2014 annual dues  
5 are \$150.

6 Q Okay. So add up -- so 2010, '11, '12, '13 and  
7 '14 is how much in assessments?

8 A '10, '11, '12, '13 --

9 MR. COUNTRYMAN: 750.

10 A (Continuing) I'm sorry. And then for 2015, on  
11 this assessment.

12 Q Oh.

13 A This assessment for this statement, on  
14 2/21/15, it's 150.

15 Q So what you did was, you took pieces and parts  
16 from different documents to come up with the number;  
17 right?

18 A Yes. I used the breakdown from the  
19 association.

20 Q Well, how do you know that the association  
21 statement of account of 2/24/2015 hadn't properly  
22 charged 800 instead of the other one?

23 A Because I asked for a breakdown. This is what  
24 they provided to us.

25 Q Why wouldn't you believe that the 2/24/2015

1 statement is the most current and accurate statement?

2 A Because it states that the assessment of \$800  
3 was charged on 9/23/14, with several other charges  
4 listed on 9/23/14.

5 Q It says balance forward, zero dollars as of  
6 9/22/14; right?

7 A Yes, that's what it says.

8 Q Do the assessments prior to September 23rd,  
9 2014, equal \$800 on any documents you have from the  
10 association?

11 A It would equal \$750.

12 Q So that 800-dollar assessment number that you  
13 were given is not correct?

14 A Correct.

15 Q And so why did you disregard that? Did you  
16 call up and get clarification about that?

17 A We emailed and got clarification.

18 Q Show me that email.

19 A Sheri Self emailed Sage on Friday, September  
20 26th, 2014, and asked for a breakdown beginning balance  
21 of \$350.

22 Q On what date?

23 A Friday, September 26th, 2014, is what it looks  
24 like.

25 Q Well, Mr. Countryman handed you a document,

1 No. 11, that has a stamp of September 25th, 2014.

2 That's the day before. Right, that's No. 11, that he's  
3 been telling you that's part of the file that we  
4 haven't seen?

5 A She was asking for a breakdown of the \$350.

6 Q Okay. And where is the document that explains  
7 that?

8 A Right here, Exhibit 12.

9 Q Okay. And Exhibit 12 doesn't show  
10 assessments, does it? It shows a late fee and two sets  
11 of assessments?

12 A It shows \$150 in annual dues with a 50-dollar  
13 late fee, for a total of \$200 as of May 18th, 2010.

14 Q Okay.

15 A And then the second letter shows on June 15th,  
16 2011, it shows the charges from 2010, the 150-dollar  
17 annual fee, and the 50-dollar late fee, and \$150 for  
18 the annual dues for 2011.

19 Q Is there a reason why you all wouldn't simply  
20 rely on this current statement, the one that the  
21 homeowner would have access to, and go with those  
22 numbers as opposed to adding up this hodgepodge of  
23 other documents?

24 MR. COUNTRYMAN: Object to the form.

25 A (Continuing) A lot of -- sometimes if the

1 management company changes software or the management  
2 company changes, or if the HOA goes from being  
3 self-managed to using a management company, you have to  
4 put together the different statements.

5 Q Well, the homeowner was receiving different  
6 information than the law firm was providing; right?

7 A I don't know what the homeowner was receiving.

8 Q Well, doesn't it say statement of account, it  
9 has the homeowner name right here on Plaintiff's  
10 Exhibit 3, which says -- which you say was part of the  
11 materials you all got?

12 A I don't know that the homeowner received this.

13 Q Mr. Countryman was asking about Plaintiff's  
14 Exhibit No. 2 -- or, I'm sorry, about whether or not  
15 the lawyer has the opportunity or space to sign. If  
16 you'll look at Plaintiff's Exhibit No. 2, please. If  
17 you go to the second page, do you see all that blank  
18 space beneath Stephanie C. Trotter's name?

19 A Yes.

20 Q Did she have an opportunity to sign that?

21 A I don't know.

22 Q You don't know if she could fit her name or  
23 signature anywhere on that half-page blank space?

24 A I'm sorry, I didn't think that was a question.  
25 You asked if she had an opportunity to sign. This

1 isn't a letter that she signs.

2 Q Ah. So regardless of the amount of space  
3 available, she never signs these letters?

4 A I don't know that's what the basis of it is.  
5 She doesn't sign the demand letter. She signs the  
6 notice of lien.

7 Q Okay. So she never signs these notice of  
8 right to cure letters?

9 A I don't know of any situation where she signed  
10 the demand letter.

11 Q So it's not a question of space. It's just  
12 she chooses not to sign them?

13 A I don't know that that's the policy, or the  
14 choice.

15 MR. KAHN: That's all I've got.

16 MR. COUNTRYMAN: I don't have anything else.  
17 I wasn't trying to show that there wasn't enough space  
18 for her to sign her name.

19 MR. KAHN: Well, that's what you said.

20 MR. COUNTRYMAN: No, it wasn't what I said. I  
21 said there wasn't a space there. But, whatever.

22 VIDEOGRAPHER: This concludes the video  
23 deposition of Haylen Gatling. The time is  
24 approximately 6:25 p.m. We are now off the record.

25 (Deposition concluded at 6:25 p.m.)

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

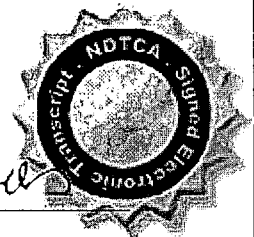
I, TERI L. SAMPSON, Registered Professional  
Reporter, Notary Public and Certified Live Note  
Reporter, State of South Carolina at Large, certify  
that I was authorized to and did stenographically  
report the foregoing deposition; and that the  
transcript is a true record of the testimony given by  
the witness.

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.

WITNESS MY HAND AND OFFICIAL SEAL this 17th day of  
January, 2019, in the City of Charleston, County of  
Charleston, State of South Carolina.

*Teri L. Sampson*

Teri L. Sampson, RPR,  
Notary Public and Certified  
Live Note Reporter  
My commission expires:



1 ERRATA SHEET

2 I have read the transcript of my deposition  
3 and find that no changes are necessary.

4 \_\_\_\_\_  
Haylen Gatling

5 Having read the transcript of my deposition, I  
6 wish to make the following corrections (Please state  
reason):

7 Page \_\_\_\_\_ Line \_\_\_\_\_ : \_\_\_\_\_  
8 Page \_\_\_\_\_ Line \_\_\_\_\_ : \_\_\_\_\_  
9 Page \_\_\_\_\_ Line \_\_\_\_\_ : \_\_\_\_\_  
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20 Page \_\_\_\_\_ Line \_\_\_\_\_ : \_\_\_\_\_

21 \_\_\_\_\_  
Haylen Gatling

22 Sworn to and subscribed before me this \_\_\_\_\_ day of  
23 \_\_\_\_\_, 2019, \_\_\_\_\_ County, South  
24 Carolina.

25 \_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_



From: David Nelson DNelson@chrkglaw.com  
Subject: RE: McCabe Trotter & Beverly, PC - Sheri Self Deposition



Date: July 18, 2018 at 12:14 PM

To: Justin Kahn js Kahn@kahnlawfirm.com

Cc: Andrew Wesley Countryman awc@countrymanlawfirm.com, sgc sgc@countrymanlawfirm.com, Robert P. Wood Robert.Wood@rtt-law.com, Mary L. Arnold sammie@maryarnoldlaw.com, Pattie H Michel pmichel@kahnlawfirm.com

Justin,

Thanks for the email. I appreciated the email and in light of your representation that she has no personal exposure she will not require a subpoena and will appear voluntarily for a deposition at our office. Please kindly advise me of the date and number of people who will be attending so that we can reserve a conference room with sufficient space. Also, it would be our preference if the deposition could be conducted during office hours and not go past 5:30 as that is when our receptionist leaves. Having said that, if that presents a problem we will certainly make accommodations and do not wish imply that we (or Mrs. Self) would seek to limit the length of any deposition.

Please also advise if you are going to have any AV requirements as some of our conference rooms do have screens if there is a need to call up exhibits.

Thanking you in advance and I appreciate you keeping me advised.

Thanks,

Dave

David N. Nelson

Chambless, Higdon, Richardson, Katz & Griggs, LLP

Reply to Macon Office:

Highridge Centre  
3920 Arkwright Rd., Ste 405  
P.O. Box 18086  
Macon, GA 31209-8086  
478-745-1181 (phone) | 478-746-9479 (fax)  
Please visit us at [www.chrkglaw.com](http://www.chrkglaw.com)

Atlanta Office:

Midtown Promenade II  
1230 Peachtree St., Suite 1900  
Atlanta, GA 30309  
(404) 942-2311 (phone)

**CHAMBLESS HIGDON RICHARDSON KATZ GRIGGS LLP**  
ATTORNEYS AT LAW

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R\_779

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**From:** Justin Kahn <jskahn@kahnlawfirm.com>

**Sent:** Wednesday, July 18, 2018 11:31 AM

**To:** David Nelson <DNelson@chrkglaw.com>

**Cc:** Andrew Wesley Countryman <awc@countrymanlawfirm.com>; sgc  
<sgc@countrymanlawfirm.com>; Robert P. Wood <Robert.Wood@rtt-law.com>; Mary L. Arnold  
<sammie@maryarnoldlaw.com>; Pattie H Michel <pmichel@kahnlawfirm.com>

**Subject:** McCabe Trotter & Beverly, PC - Sheri Self Deposition

Dear David

Thanks so much for speaking with me. As was discussed, we wish to depose Sheri Self, a former employee of McCabe Trotter and Beverly PC related to litigation currently pending in South Carolina. She is a witness, not a party and has no personal exposure.

Her name appears in various documents and her name has come up in depositions.

You have kindly offered to allow us to use your law office to take her deposition and waive the various technical requirements for issuing an out of state subpoena. We are glad to pay a witness fee for her time.

We understand that she is generally available during business hours over the next few weeks.

You wanted me to let you know who opposing counsel was. Andy Countryman and Bob Woods are counsel for McCabe Trotter. Their phone numbers are as follows: Andy (843) 253-4477. Bob Wood (803) 744-1275.

They are copied on this email.

By this email, I am requesting they provide us with dates that work for them for her deposition so we can coordinate it.

The deposition location will be 3920 Arkwright Road, Suite 405 Macon, GA 31210 at Chambless Higdon Richardson Katz & Griggs, LLP. You have kindly offered a conference room at your office.

Please let me know if you have any other questions.

Thank you.

Justin S. Kahn  
Kahn Law Firm, LLP  
PO Box 31397  
Charleston, SC 29417

p. 843.577.2128  
web kahnlawfirm.com

R\_780

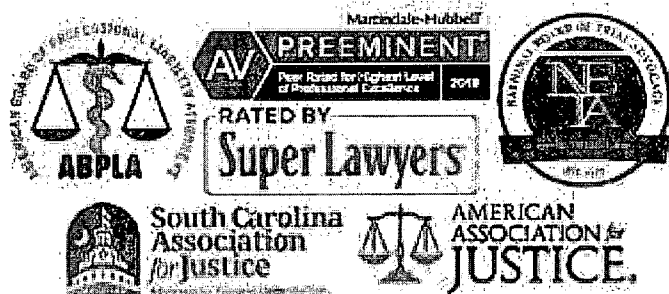
Adjunct Professor Charleston School of Law

Board Certified

- American Board of Professional Liability Attorneys (Medical)
- National Board of Trial Advocacy (Civil Trial, Practice)

NCA and AAJ Diplomate

SC Supreme Court Certified Mediator



**KAHN LAW FIRM, LLP**

562 SAVANNAH HIGHWAY  
 CHARLESTON, SC 29407  
 PHONE 843.577.2128  
 FAX 843.577.3538  
 WWW.KAHNLAWFIRM.COM

ELLIS I. KAHN\*<sup>A</sup>  
 JUSTIN S. KAHN\*<sup>A</sup>  
 WES B. ALLISON

MAILING ADDRESS  
 PO Box 31397  
 CHARLESTON, SC 29417-1397  
 E-MAIL JSKAHN@KAHNLAWFIRM.COM

April 2, 2019

Honorable Maite Murphy  
 P.O. Box 802  
 5200 E. Jim Bilton Blvd.  
 St. George, SC 29477

Re: Richardson v. McCabe, Trotter & Beverly, P.C., et al.  
 Civ. A. No.: 2016-CP-18-1001

Dear Judge Murphy:

Mr. Countryman filed and emailed a letter dated April 1, 2019 to you. He claims he can find no South Carolina case law on the issue of whether in the middle of a deposition, a defending attorney can stop and discuss with a witness a previously produced or identified document when there is no intention to meet to discuss whether to assert a privilege. As has been argued, *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 552 S.E.2d 10, (2001) which cites Rule 30(j)(8) prohibits defending counsel from interrupting a deposition to discuss with a witness a previously produced or identified document when such discussion is not to decide whether to assert a privilege.

Now, after the briefs, argument and the Court's decision as stated in the email of March 28, 2019, counsel provides orders from United States District Judge Joseph Anderson, Jr. Those orders rely on a different Federal Rule concerning deposition conduct and resulted from a motion filed *prior* to a deposition to prevent opposing counsel from conferring with the witness *at all* during the deposition. The Court merely held that it would not prevent an attorney defending the witness from meeting to discuss *whether to assert a privilege*. The Court held "it is reasonable for [deponent] and her counsel to be afforded a reasonable amount of time to review any document as necessary to *determine whether the document or whether King's answers to questions on the document would be protected by a privilege.*" (emphasis added).

The Court did not hold that the identification of documents by counsel was improper, violated the applicable federal rule or authorized the defense attorney to have discussions with the witness other than to determine whether to assert a privilege.

\* SOUTH CAROLINA AND DISTRICT OF COLUMBIA  
<sup>A</sup> BOARD CERTIFIED BY THE NATIONAL BOARD OF TRIAL ADVOCACY IN CIVIL TRIAL ADVOCACY AND  
 THE AMERICAN BOARD OF PROFESSIONAL LIABILITY ATTORNEYS IN MEDICAL MALPRACTICE

In short, the orders Mr. Countryman cites only authorize an attorney to confer with a witness during a deposition to discuss a previously produced or identified document to determine whether to assert a privilege.

There are many problems with the conduct that occurred. However, the issue about stopping a deposition to discuss a previously produced or identified document with a witness when it is not to assert a privilege is raised again. *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 190-91, 552 S.E.2d 10, 16-17 (2001) prohibits this:

Rule 30(j), SCRCP, makes clear that a deposition's beginning signals the end of a witness's preparation. Once a deposition begins, an attorney and a client may have an off-the-record conference *only when deciding whether to assert a privilege or to discuss a previously undisclosed document*. See Rule 30(j)(5), SCRCP; Rule 30(j)(8), SCRCP. Before beginning such a conference, the deponent's attorney should note for the record that a break is needed to discuss the possible assertion of a privilege or a newly produced document. After any such conference, the conferencing attorney should state on the record why the conference occurred and the decision reached. If the party decides to assert a privilege, the basis for the privilege should be clearly stated. Whether or not a privilege is asserted, deposing counsel may inquire on the record into the subject of the conference to determine if there has been any witness coaching. See Rule 30(j)(6), SCRCP. Conferences called to assist a client in framing an answer, to calm down a nervous client, or to interrupt the flow of a deposition are improper and warrant sanctions.

Off-the-record conferences not specifically permitted by the rule are not allowed whether they are called by the deponent's attorney or the deponent. "There is simply no qualitative distinction between private conferences initiated by a lawyer and those initiated by a witness. Neither should occur." *Hall*, 150 F.R.D. at 528. According to our rule, even during breaks in the deposition such as a lunch or overnight break, witnesses and their counsel cannot talk substantively about prior or future testimony in the deposition. See Rule 30(j)(5), SCRCP.

The proposed order addresses the 30(j)(8) issue. Discussions with a witness about a previously produced or identified document when not to assert a privilege are prohibited. Thus, there is no need to modify the proposed order.

Respectfully,



Justin S. Kahn

cc: Andrew W. Countryman, Esq.  
Robert R. Wood, Esq.

|                                   |   |                                         |
|-----------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS            |
|                                   | ) | THE FIRST JUDICIAL CIRCUIT              |
| COUNTY OF DORCHESTER              | ) | CASE NO.: 2016-CP-18-1001               |
|                                   | ) |                                         |
| TAMMY C. RICHARDSON,              | ) |                                         |
|                                   | ) |                                         |
| Plaintiff,                        | ) | <b>MTB'S BRIEF IN OPPOSITION TO</b>     |
|                                   | ) | <b>PLAINTIFF'S MOTION FOR SANCTIONS</b> |
| vs.                               | ) |                                         |
|                                   | ) |                                         |
| HALCYON REAL ESTATE SERVICES, LLC | ) |                                         |
| and MCCABE, TROTTER & BEVERLY,    | ) |                                         |
| P.C.,                             | ) |                                         |
|                                   | ) |                                         |
| Defendants.                       | ) |                                         |
| _____                             | ) |                                         |

Defendant McCabe, Trotter & Beverly, P.C. ("MTB") submits this brief in opposition to Plaintiff's Motion for Sanctions of February 7, 2019.

**Bottom Line**

It is not my practice to write briefs in the first person. However, given the outlandish personal nature of accusations of improper conduct (when nothing could be further from the truth), it is warranted here. This issue is before the Court because of Plaintiff's counsel's refusal to abide by the discovery rules in attempts to avoid disclosing deposition material so he could surprise witnesses and get answers that help his case.

Unfortunately, I have come to expect these sorts of tactics from him through defending at four lawsuits he has brought against MTB on the same theory as this the one in this case (since 2015). In all of those cases, I have invoked SCRPC 30(j)(8), which provides that if a lawyer deposing a witness fails to provide or identify material he plans to use in the deposition two days ahead of time, the witness' lawyer may privately discuss the document with the witness before she

answers questions about it. In my over thirteen years of practice, I have never had another lawyer challenge the Rule 30(j)(8) issue. Everyone understands the witness is entitled to review deposition exhibits (with their lawyer) before the deposition, or during it if the deposing lawyer has not produced the material ahead of time.

The objective of discovery (and in fact, litigation) is to get to the truth. Lawyers are supposed to be zealous advocates for their clients but must do so within the framework of the Rules of Civil Procedure and Rules of Professional Conduct. Justin Kahn disregards these tenants in favor of trying to win. He does this by refusing to disclose what material he will use with witnesses in depositions, then trying to get soundbite answers to questions about material with which the witnesses are unfamiliar.

Mr. Kahn continually refused to provide any indication of what material he actually planned to use with the witnesses prior to the depositions even after multiple letters, warnings and discussions about the issue. I appropriately invoked Rule 30(j)(8) during the depositions and briefly discussed the material with the witnesses before they answered questions about them. To have Mr. Kahn turn around and seek sanctions against me in this manner is outrageous and offensive.

### **Background**

MTB is a law firm that represents various HOAs in South Carolina. Part of the firm's work includes pursuing claims against homeowners who owe money to their HOAs (MTB's clients). Plaintiff Tammy Richardson lives in the Southern Magnolia neighborhood in Summerville. Her property is subject to governing documents that form an HOA, provide for payment of annual assessments and include restrictions on what owners may do with their property. MTB represented her HOA, which asked the firm to pursue collections against her in 2015 after Ms. Richardson had



failed to pay her HOA assessments for years and incurred a significant balance in fines for use restriction violates she ignored for years.

Instead of paying what she owed (she had zero excuse for failing to pay other than she just did not feel like it), Mrs. Richardson hired counsel who filed this action on the theory that MTB misrepresented the amount she owed to the HOA in violation of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 ("FDCPA") by including certain attorney's fees in the balance. MTB has a fee agreement with the HOA providing for a flat fee structure for HOA lien claims.

The fee agreement provides that MTB handles actions to pursue unpaid assessments on a flat fee basis. Upon beginning an action to recover delinquent amounts, the fee agreement identifies two sets of fees. MTB initially charges the HOA a small upfront retainer. The agreement identifies specific amounts for each step in the collections process. The total for taking a lien claim from beginning through a foreclosure hearing is around \$2,000.

Under the agreement, the attorney's fees accrue when the firm performs the work. However, the firm does not require payment from the HOA until the firm recovers from the owner: "the fees will not be invoiced until collected from the owner." Therefore, the HOA never owes MTB more than the upfront retainer out of pocket, and all of the HOA's costs are reimbursed upon collection from the owner defendant. This allows the HOA to function without having to pay a law firm hourly to pursue claims against delinquent owners.

Mr. Kahn filed this action (and three others) against MTB alleging violation of the FDCPA based on MTB's inclusion of attorney's fees earned under this fee arrangement. Those cases are: (1) Allison v. MTB, 2:17-cv-01727-RMG; (2) Aubrey v. MTB, 2:17-cv-00656-RMG and (3) Park v. MTB, 2:17-cv-01727. Judge Gergel granted MTB's Motion for Summary Judgment in Allison on

August 11, 2018. *See* Order granting SJ, Ex. 1. In a nutshell, he held that whether MTB can properly include attorney's fees in an owner's balance in a situation like this depends on whether the governing documents for the owner's neighborhood provide that the delinquent owner is responsible for the attorney's fees the HOA incurs in the process of pursuing a claim against the owner. The Plaintiffs in Allison lived in Charleston National, and its governing documents contained that sort of language.

Judge Gergel granted summary judgment in favor of the Plaintiffs in Aubrey and Park because he found the governing documents for their neighborhood (Crowfield) did not make the delinquent owner responsible for the HOA's attorney's fees unless and until the HOA prevailed on its lien claim. The Southern Magnolia governing documents contain language similar to those for Charleston National as it relates to the owner's responsibility for the HOA's attorney's fees incurred. In short, the delinquent owner is responsible for the reasonable attorney's fees the HOA incurs in the course of pursuing payment from the owner. This is an excerpt of the Southern Magnolia restrictive covenants:

**SECTION FOURTEEN. Effect of Nonpayment of Assessments/Dues, Covenant Violations and/or Failure to Follow Bylaws: Remedies of the Association.**

- (c) Whether the Association is enforcing these covenants, the Bylaws and/or the rules/regulations of the Association, in any, by virtue of a violation of these documents and/or by virtue of actions taken to enforce the obligations of the Owner, the Association may protect their rights by taking any type of legal action for any type of relief allowed by law, including, but not limited to, an action at (for damages and other relief), and action in equity (for injunctive relief or otherwise), filing a notice of lien, filing a lis pendens, suing for specific performance, foreclosing the lien and/or making a claim for

**(and suing necessary) those reasonable attorney's fees/ costs/ expenses incurred in handling/ enforcing the above—referenced documents in subsection. The Association's decision to use one or more of these remedies shall not prejudice their right to use one or more of the other remedies stated in this herein. Also, no Owner may waive or otherwise escape liability for the assessments/ charges/ dues/ fines/ sanctions provided herein by non-use of the Common Area or abandonment of their property.**

If one applies Judge Gergel's analysis in Allison, Aubrey and Park to this case, Plaintiff's claim that MTB misrepresents the amount owed by including attorney's fees in the owner's balance fails.

Since Judge Gergel dismissed Allison, Mr. Kahn has focused on showing other alleged problems with MTB's collections process (than the attorney's fee issue). To do this, he has recently deposed various witnesses, including former MTB employee Sheri self and current MTB employees Theron Coetzee and Haylen Gatling. Mr. Kahn went through me to schedule the depositions of Ms. Gatling and Ms. Coetzee.

Unbeknownst to me, Mr. Kahn contacted Ms. Self, who is now a legal assistant at a law firm in Macon, Georgia, directly to discuss the case and her deposition. He did not ask if I represented Ms. Self or involve me in the discussions with her until after her boss agreed that she would give a deposition.

[remainder of page intentionally blank]

From: Justin Kahn <[jskahn@kahnlawfirm.com](mailto:jskahn@kahnlawfirm.com)>  
 Sent: Wednesday, July 18, 2018 11:31 AM  
 To: David Nelson <[DNelson@chrkglaw.com](mailto:DNelson@chrkglaw.com)>  
 Cc: Andrew Wesley Countryman <[awc@countrymanlawfirm.com](mailto:awc@countrymanlawfirm.com)>; sgc <[sgc@countrymanlawfirm.com](mailto:sgc@countrymanlawfirm.com)>; Robert P. Wood <[Robert.Wood@rtt-law.com](mailto:Robert.Wood@rtt-law.com)>; Mary L. Arnold <[sammie@maryarnoldlaw.com](mailto:sammie@maryarnoldlaw.com)>;  
 Pattie H Michel <[pmichel@kahnlawfirm.com](mailto:pmichel@kahnlawfirm.com)>  
 Subject: McCabe Trotter & Beverly, PC - Sheri Self Deposition

Dear David

Thanks so much for speaking with me. As was discussed, we wish to depose Sheri Self, a former employee of McCabe Trotter and Beverly PC related to litigation currently pending in South Carolina. She is a witness, not a party and has no personal exposure.

Her name appears in various documents and her name has come up in depositions.

You have kindly offered to allow us to use your law office to take her deposition and waive the various technical requirements for issuing an out of state subpoena. We are glad to pay a witness fee for her time.

We understand that she is generally available during business hours over the next few weeks.

You wanted me to let you know who opposing counsel was. Andy Countryman and Bob Woods are counsel for McCabe Trotter. Their phone numbers are as follows: Andy (843) 253-4477. Bob Wood (803) 744-1275.

They are copied on this email.

By this email, I am requesting they provide us with dates that work for them for her deposition so we can coordinate it.

The deposition location will be 3920 Arkwright Road, Suite 405 Macon, GA 31210 at Chambliss Higdon Richardson Katz & Griggs, LLP. You have kindly offered a conference room at your office.

Please let me know if you have any other questions.

Thank you.

Justin S. Kahn  
 Kahn Law Firm, LLP  
 PO Box 31397  
 Charleston, SC 29417

Did this *ex parte* contact violate Rule of Professional Conduct 4.2, which precludes a lawyer from talking with a represented party or someone who the lawyer knows to be represented? See Rule 4.3 and comments, including [8]:

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(h). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

I had a talk with Mr. Kahn on July 19, 2018, to discuss some of these issues. During that conversation, I indicated I would be representing Ms. Self for her deposition since she was a former MTB employee. From there, Mr. Kahn worked with me to nail down a date.

Justin Kahn @  
 Richardson v. MTB  
 To: Andrew Countryman, Cc: Bob Wood, Pattie H Michel, Mary L. Arnold, sgc

August 27, 2018 at 4:17 PM  
 Details

Andy and Bob

Please provide dates for the 30(b)(6), Sheri Self, and Ms. Coetzee's depositions so we can get those going. Also, we will be deposing CPA so, please provide dates for him too.  
 Thanks.

Justin S. Kahn  
 Kahn Law Firm, LLP  
 PO Box 31397  
 Charleston, SC 29417

I agreed to present Ms. Self voluntarily without a subpoena and set her deposition for on January 24, 2019. Mr. Kahn sent a deposition Notice on November 13, 2018, to that effect. Ex. 2. The Notice identified *all documents produced or made available in discovery by any party* as documents Mr. Kahn might use in the deposition under Rule 30(j)(8). The parties have exchanged thousands of documents in this case, which the court has certified as a class action. This material includes every document MTB sent class members who were defendants in HOA lien collections matters for a period of over a year.

We also scheduled, by agreement, the deposition of MTB employee Haylen Gatling to take place on January 15, 2019. Mr. Kahn issued a deposition Notice to that effect on November 9, 2018. Ex. 3. Like the Notice for Ms. Self's deposition, Mr. Kahn identified *all documents produced by any party in discovery* as material he might use in the deposition under Rule 30(j)(8).

On November 14, 2018, I sent a letter to Mr. Kahn indicating this blanket identification of all material exchanged in discovery as material to use in the depositions of Ms. Gatling and Ms. Self under Rule 30(j)(8) was insufficient because it provided no real indication of which of the thousands of documents produced in discovery he actually planned to use with the witnesses. Ex. 4. I also indicated that if he did not provide a genuine identification of the material he planned to use with the witnesses, I planned to discuss the material with the witnesses in the depositions. Id. Here is the body of that letter:

Dear Justin:

The Notices for the depositions you recently set all refer to any documents produced and made available in discovery as documents you might use in the depositions under SCRCp 30(j)(8). This Rule states that if deposing counsel provides or otherwise identifies the documents to be used during the deposition at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If deposing counsel does not provide or identify the documents ahead of time, then counsel and the witness may have a reasonable amount of time to discuss the document before the witness answers questions concerning it.

The purpose of the Rule is to avoid surprise and wasting time during a deposition. Thousands and thousands of documents have been produced in discovery in this case. Blanketly referring to all of them does not comport with the letter or spirit of the Rule. Unless you identify or produce specific material you actually plan to use in the depositions two days beforehand, I reserve the right to discuss material presented to the witnesses privately during the deposition(s).

Mr. Kahn did not respond.

At 6:31 p.m. on Friday, January 11, 2019, Mr. Kahn sent an email including a 68-page spreadsheet listing more material he may use in Ms. Gatling's deposition under Rule 30(j)(8). The email is below, and the spreadsheet is Ex. 5 to this brief. The spreadsheet listed over 2,500 more documents as potential deposition fodder.

Justin Kahn @  
Richardson v. MTB  
To: Andrew Countryman, Cc: Mary L. Arnold, sgc, Bob Wood

January 11, 2019 at 6:31 PM  
Details

Andy and Bob

These are some of the documents we may use in addition to those previously identified for the depositions next week. Thanks.

Justin S. Kahn  
Kahn Law Firm, LLP  
PO Box 31397  
Charleston, SC 29417

I spoke with Mr. Kahn about these issues the morning of Ms. Gatling's deposition and said his identification of thousands of pages of material was insufficient to give me any idea as to what he actually planned to use with the witness. I also said I would be happy to review the actual exhibits with her shortly before the deposition started to avoid interrupting the deposition to review the

documents with her. Mr. Kahn refused to provide documents, provide an explanation or discuss the issue further.

Ms. Gatling's deposition broke for lunch before Mr. Kahn introduced any substantive exhibits. The excerpt below shows the parties took an hour lunch break and is taken from Ex. 3 to the Motion for Sanctions.

17                   VIDEOGRAPHER: We are now back on the record.  
18   The time is approximately 12:08 p.m. This concludes  
19   Video No. 1 in the video deposition of Haylen Gatling.  
20   The time is approximately 12:08 p.m. We are now off  
21   the record.  
22                   (The deposition recessed for a lunch break.)  
23                   VIDEOGRAPHER: We are now back on the record.  
24   Today's date is January 15th, 2019. The time is  
25   approximately 1:07 p.m. This is Video No. 2 in the

Before leaving for lunch, I raised the exhibit issue with Mr. Kahn again. I indicated I would be happy to review exhibits with the witness during the lunch break. Otherwise, I reserved the right to review the material with her during the deposition. I also presented Mr. Kahn with another letter regarding the issue. The letter specifically said the identification of documents by producing a 68-page spreadsheet the Friday evening before the Tuesday deposition did not sufficiently identify material under Rule 30(j)(8). Mr. Kahn refused to provide material or discuss the issue further. A copy of the letter is Ex. 6 to this brief.

Among other things, it said that Mr. Kahn's refusal to provide or identify the actual material he planned to use in the deposition was an attempt to trick the witness with documents with which she was unfamiliar into giving soundbite answers:

It would be objectively impossible for anyone to use that many documents in either of or both of these deposition. I still have no idea what material you truly plan to use in the depositions. This appears to be a sad attempt to obtain soundbites from unsophisticated (non-lawyer) using documents with which they are unfamiliar. It is certainly not a good faith effort to identify documents under the Rule.

Upon commencing the deposition after lunch, Mr. Kahn showed the witness the Notice of Right to Cure letter for Ms. Richardson's case. I did not object since the witness was familiar with it. See pages 170 – 181 of transcr. of Ms. Gatling's deposition, Ex. 3 to the Motion for Sanctions. Mr. Kahn then showed the witness a document with which she was not familiar. I objected and indicated my intent to discuss it with her under Rule 30(j)(8).

At this point, Mr. Kahn provided me with the majority of material he planned to use with the witness. The deposition broke briefly during which time I reviewed the proposed exhibits with the witness. Stephanie Trotter, a principal of MTB who attended the deposition on behalf of MTB, attended the meeting too. Mr. Kahn then asked Ms. Gatling what we discussed in the private meeting. I objected on grounds of attorney-client privilege and instructed her not to answer. Below are excerpts from the condensed version of the transcript showing this exchange, the full version of which is Ex. 3 to the Motion for Sanctions.

[remainder of page intentionally blank]



## Haylen Gatling - 1/15/2019

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1 Q Okay. But that was after you all already had  
2 the box, and Stephanie would be in her office doing  
3 whatever, and you all were somewhere else; right?

4 A Yes.

5 Q Okay. And the -- in terms of an account  
6 statement, this is a -- we've had multiple copies of  
7 this, but --

8 MR. COUNTRYMAN: I'm going to have to talk to  
9 her about that.

10 MR. KAHN: I haven't even shown her what it  
11 is, yet, so hold on. Let me figure out what it is.

12 BY MR. KAHN:

13 Q There's one that's been marked as Stephanie  
14 Trotter No. 22. Let me double-check something. Right.  
15 So this is a document from Stephanie Trotter's  
16 deposition that's been Bates -- I'm sorry, that's been  
17 marked as Exhibit No. -- I'm sorry, did I read the  
18 number right? Yeah, 22. Do you see where it says  
19 Trotter 22?

20 A Yes.

21 MR. COUNTRYMAN: I want to talk to her about  
22 this under 30(j)(8).

23 MR. KAHN: I haven't finished my question, and  
24 let me at least finish my question.

25 MR. COUNTRYMAN: I'm going to talk to her

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1 about it under 30(j)(8). You're giving it to her, and  
2 I told you --

3 MR. KAHN: I have previously identified this  
4 document in an email. I specifically stated the  
5 document --

6 MR. COUNTRYMAN: Justin, you --

7 MR. KAHN: Andy, let me just put on the  
8 record -- let me just put it on the record.

9 MR. COUNTRYMAN: Just give me the chance to do  
10 the same. All right? That's all --

11 MR. KAHN: I got no problem with that. I  
12 specifically stated to you last Friday, and before as  
13 part of the notice, that we may review with the witness  
14 documents previously produced in this case. On Friday,  
15 I specifically stated that we may review documents with  
16 this witness that were exhibits to Stephanie Trotter's  
17 deposition, along with other people's deposition.

18 I have handed her one of those documents from  
19 her deposition, and I don't even believe I finished  
20 asking her a question, and you have -- somehow now  
21 taking the position that you're allowed to speak with  
22 the witness about it. I think that violates the rules.  
23 You have a different position. We can let a judge take  
24 it up. And if you want to say anything about that,  
25 that's fine, but that's my position. I don't think you

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1 should be allowed to talk with her, but you do what you  
2 want.

3 MR. COUNTRYMAN: May I?

4 MR. KAHN: And we'll let the judge deal with  
5 it.

6 MR. COUNTRYMAN: All right. You noticed this  
7 deposition I think in the first week of November of  
8 2018. The week after that, I sent you a letter  
9 indicating that the notice was insufficient to identify  
10 documents under 30(j)(8) as the rule is intended to  
11 identify documents that you'll use in a deposition so  
12 that a witness won't be surprised. Instead, your  
13 notice identified basically everything that had been  
14 exchanged in discovery. I didn't get any response to  
15 that letter.

16 I then received an email Friday at 6:30, again  
17 referencing every document in discovery, and including  
18 a 68-page spreadsheet of different -- a list of  
19 different documents. I don't think that's sufficient  
20 under the rule. I talked to you about that this  
21 morning before the deposition and invited you to  
22 provide me with documents so I could go over them with  
23 her. You didn't.

24 You did that again before lunch, and I gave  
25 you a letter at lunch. We had about an hour lunch, and

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1 I gave you that same opportunity, which you declined.  
2 So I'm going to talk to the witness about this within a  
3 reasonable period of time as the rule provides. And  
4 if --

5 MR. KAHN: I think that absolutely violates  
6 the rule. We'll let the judge deal with it.

7 MR. COUNTRYMAN: And I don't really care what  
8 you think.

9 MR. KAHN: I understand. That's why we have  
10 judges.

11 VIDEOGRAPHER: This concludes Video No. 2 in  
12 the video deposition of Haylen Gatling. The time is  
13 approximately 2:52 p.m. We are now off the record.  
14 (The deposition recessed briefly.)

15 MR. KAHN: Mr. Countryman and the witness have  
16 come back into the room. Although we have different  
17 positions on what the rule, whether or not there's been  
18 compliance with the rule, I'm now going to hand Mr.  
19 Countryman and the witness a document entitled "History  
20 Report," which has been Bates stamped marked as  
21 MTB000220, which I believe is also an exhibit to Miss  
22 Trotter's and the other depositions.

23 Although I believe I should be allowed to ask  
24 the witness questions immediately about this document,  
25 Mr. Countryman has a different position, and we can

| Page 186                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 187                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 take that up with the judge.</p> <p>2 MR. COUNTRYMAN: We will. And just for the</p> <p>3 record, this case involves tens of thousands, if not</p> <p>4 hundreds of thousands, of documents. I had no idea</p> <p>5 what documents would be used in this deposition.</p> <p>6 Identification beforehand didn't give me that idea.</p> <p>7 That's all I've been asking for. I'm not trying to be</p> <p>8 unreasonable. I'm not trying to be obtuse, or delay</p> <p>9 things. Take a reasonable amount of time and look at</p> <p>10 this with her and we'll...</p> <p>11 (STATEMENT OF ACCOUNT MARKED AS PLAINTIFF'S</p> <p>12 EXHIBIT NO. 3 FOR I.D.)</p> <p>13 (HISTORY REPORT MARKED AS PLAINTIFF'S EXHIBIT</p> <p>14 NO. 4 FOR I.D.)</p> <p>15 (INVOICE MARKED AS PLAINTIFF'S EXHIBIT NO. 5</p> <p>16 FOR I.D.)</p> <p>17 VIDEOGRAPHER: We are now back on the record.</p> <p>18 Today's date is January 15th, 2019. The time is</p> <p>19 approximately 3:37 p.m. This is Video No. 3 in the</p> <p>20 video deposition of Haylen Gatling.</p> <p>21 BY MR. KAHN:</p> <p>22 Q What did you all talk about?</p> <p>23 MR. COUNTRYMAN: Don't answer that.</p> <p>24 MR. KAHN: Okay. We'll let the judge take it</p> <p>25 up.</p> | <p>1 BY MR. KAHN:</p> <p>2 Q I want to hand you what I've marked as</p> <p>3 Plaintiff's Exhibit No. 3, which is a document at the</p> <p>4 top that says "Statement of Account as of 2/24/15, a</p> <p>5 document, Plaintiff's Exhibit No. 4, which is something</p> <p>6 called "History Report," and Plaintiff's Exhibit No. 5,</p> <p>7 which is a 65-dollar invoice.</p> <p>8 MR. COUNTRYMAN: Can I make a quick statement</p> <p>9 for the record before you ask your question? He asked</p> <p>10 what you talked about. I directed you not to answer on</p> <p>11 the grounds of attorney-client privilege. We discussed</p> <p>12 the documents that you were given just a few minutes</p> <p>13 ago. Those are the ones that were not, in my view,</p> <p>14 previously properly identified under Rule 30(j)(8).</p> <p>15 That's something that he and I can discuss at another</p> <p>16 time. But I'm directing you not to answer that</p> <p>17 question under attorney-client privilege grounds.</p> <p>18 MR. KAHN: I have a different perspective;</p> <p>19 but, again, we'll go --</p> <p>20 MR. COUNTRYMAN: I just wanted it to be --</p> <p>21 MR. KAHN: I understand. We'll go forward.</p> <p>22 BY MR. KAHN:</p> <p>23 Q The -- have you seen these documents before?</p> <p>24 A Yes.</p> <p>25 Q And in terms of going back to talk about the</p> |

Later in the deposition, Mr. Kahn presented the witness with another document that he had not provided earlier. I did not object or discuss the document with the witness. *See* p. 231 of Ms. Gatling's transcr., Ex. 3 to the Motion for Sanctions. Also, as a professional courtesy, I did not object to Sammie Arnold (also counsel for the Plaintiff) to question the witness. *See* pp. 236, *et seq.* of the transcript of Ms. Gatling's deposition, Ex. 3 to the Motion for Sanctions). The deposition concluded at 6:25 p.m. *See* p. 293 of the transcript to Ms. Gatling's deposition, Ex. 3 to the Motion for Sanctions. On January 21, 2019, I filed a Motion for a Protective Order under Rule 30(j)(3), which I incorporate by reference here.

On January 21, 2019, Mr. Kahn sent an email with a 67-page spreadsheet identifying material he may use in Sheri Self's upcoming deposition. The email is below, and the spreadsheet is Ex. 7 to this brief.

Justin Kahn

January 21, 2019 at 4:59 PM



Richardson v. MTB Self Depo Documents

Details

To: Andrew Countryman, Cc: Bob Wood, Mary L. Arnold, Pattie H Michel

Andy

This is a further list of documents I may use in the deposition of Sheri Self. Although I do not believe such a further list is required, you seem to think it is.

The bates numbers listed are the beginning numbers of the PDF Files you named or assigned to the PDF documents produced. The deposition exhibits to the prior depositions should be self explanatory.

I look forward to seeing you Thursday.

Justin S. Kahn

Kahn Law Firm, LLP

PO Box 31397

Charleston, SC 29417

This identification of thousands of pages of material gave no indication of what Mr. Kahn actually planned to show the witness.

Ms. Self's deposition took place in Macon, Georgia on January 24, 2019. Again, I produced her as a courtesy without a subpoena and after Mr. Kahn got her boss to agree to the deposition before talking to me. The deposition started late because Mr. Kahn brought a court reporter who was not a Georgia notary public. SCRCP 30(f)(1) provides that the court reporter is the one to swear the witness and create the transcript, which the court reporter ("officer transcribing the deposition") must certify is an accurate record of the testimony:

**(f) Certification and Delivery by Officer; Exhibits; Copies; Notice of Filing.**

(1) The officer transcribing a deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (herein insert name of witness)" and shall promptly deliver it or send it by registered or certified mail to the party taking the deposition who shall retain the original and become the custodian. The custodian shall promptly file the original deposition with the clerk of court when the same is to be used at a hearing or at trial.

After it was clear no Georgia court reporter could get to the deposition location in a reasonable amount of time to allow it to proceed that day, I agreed (to the extent that is possible) to waive objections under Rule 30(f)(1) and allow a Georgia notary in the office to swear in the witness and the South Carolina court reporter to transcribe the deposition. The excerpt below is a

condensed version of the subject pages from the transcript of Ms. Self's deposition (the full version of which is Ex. 2 to the Motion for Sanctions).

Sheri Self - 1/24/2019

| Page 6   |                                                            | Page 7   |                                                            |
|----------|------------------------------------------------------------|----------|------------------------------------------------------------|
| 10:45:17 | 1. MACON, GEORGIA, THURSDAY, JANUARY 24, 2019              | 10:46:20 | 1 VIDEOGRAPHER: In accordance with Rule                    |
| 10:45:17 | 2 10:46 A.M.                                               | 10:46:25 | 2 30(h)(3), the witness has the right to be shown the      |
| 10:45:17 | 3 PROCEEDINGS                                              | 10:46:25 | 3 videotaped deposition unless waived by the witness and   |
| 10:45:17 | 4 -----                                                    | 10:46:27 | 4 the parties.                                             |
| 10:45:20 | 5 VIDEOGRAPHER: Good morning. We are now on                | 10:46:28 | 5 The court reporter today is Teri Sampson of              |
| 10:45:21 | 6 the record. Today's date is January 24th, 2019. The      | 10:46:31 | 6 Magnolia Reporting.                                      |
| 10:45:26 | 7 time is approximately 10:46 a.m.                         | 10:46:33 | 7 Would the notary public present in the room              |
| 10:45:29 | 8 This is the video deposition of                          | 10:46:34 | 8 please swear in the witness, and we may begin.           |
| 10:45:31 | 9 Sheri L. Self, taken by counsel for the plaintiff. The   | 10:46:37 | 9 WHEREUPON.                                               |
| 10:45:34 | 10 location today is 3920 Arkwright Road in Macon.         | 10:46:37 | 10 SHERI SELF,                                             |
| 10:45:40 | 11 Georgia.                                                | 10:46:37 | 11 being first duly sworn by Wanda Watford, a Jones        |
| 10:45:41 | 12 My name is Douglas Browne, legal videographer           | 10:46:37 | 12 County, Georgia, notary, testified as follows:          |
| 10:45:43 | 13 representing VidSouth Production. I am familiar with    | 10:46:51 | 13 MR. KAHN: An issue was -- or a question was             |
| 10:45:46 | 14 the provisions of Rule 30(h) pertaining to videotaped   | 10:46:52 | 14 raised by defense counsel, prior to the deposition      |
| 10:45:49 | 15 depositions.                                            | 10:46:53 | 15 starting, about the fact that the court reporter, who's |
| 10:45:49 | 16 This deposition is taken in the matter of               | 10:46:55 | 16 been involved with many of the depositions in this      |
| 10:45:52 | 17 Taunmy C. Richardson versus McCabe, Trotter & Beverly,  | 10:46:57 | 17 case, is not a notary in the state of Georgia.          |
| 10:45:56 | 18 P.C., Case No. 16-CP-18-1001.                           | 10:47:03 | 18 We have -- he has kindly agreed to allow us             |
| 10:46:03 | 19 Counsel present and remotely, please                    | 10:47:05 | 19 to have a Georgia notary swear the witness in, which    |
| 10:46:05 | 20 introduce yourselves for the record.                    | 10:47:06 | 20 has just taken place, and Teri will transcribe and      |
| 10:46:07 | 21 MR. KAHN: My name is Justin Kahn. Myself                | 10:47:12 | 21 prepare the deposition. So any issue about that is not  |
| 10:46:09 | 22 and Mary Leigh Arnold, who's on phone, are representing | 10:47:16 | 22 an issue or has been waived.                            |
| 10:46:14 | 23 the plaintiffs -- the plaintiff in this matter.         | 10:47:21 | 23 EXAMINATION                                             |
| 10:46:17 | 24 MR. COUNTRYMAN: I'm Andy Countryman. I                  | 10:47:21 | 24 BY MR. KAHN:                                            |
| 10:46:19 | 25 represent McCabe, Trotter & Beverly.                    | 10:47:21 | 25 Q Can you tell us, please, your full name.              |

Mr. Kahn then began using documents with the witness. When he showed her the first one, I privately discussed the document with the witness for three minutes under Rule 30(j)(8). Mr. Kahn then asked the witness what we discussed, and I instructed her not to answer on the basis of attorney-client privilege. Here is that exchange:

[remainder of page intentionally blank]

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10:57:00 1 the homeowner association was told that should the law  
10:57:03 2 firm not collect money from the homeowner, then the  
10:57:06 3 homeowner association would not owe any attorney's  
10:57:10 4 fees?  
10:57:12 5 A I don't recall.  
10:57:13 6 Q Okay. I'll give you an example of a fee  
10:57:18 7 proposal. All right. Well, I'll -- if you don't  
10:57:20 8 recall, you don't recall.  
10:57:21 9 Do you remember when you came -- when you  
10:57:23 10 started working at McCabe Trotter, whether or not you  
10:57:27 11 had seen any HOA fee proposals?  
10:57:28 12 And I'll show you --  
10:57:32 13 A No. I --  
10:57:32 14 Q Let me just -- well, you say you don't -- let  
10:57:34 15 me just show you one before I mark it.  
10:57:36 16 This is -- previously been marked as an  
10:57:38 17 exhibit to Stephanie Trotter's deposition -- No. 7.  
10:57:41 18 This is an example of a fee proposal.  
10:57:44 19 A I had no part of this.  
10:57:46 20 Q All right. Having no part of this is  
10:57:47 21 slightly different.  
10:57:49 22 What I'm asking you is you see the second  
10:57:50 23 paragraph, where it says -- the last sentence: "No fee  
10:57:55 24 will be charged to the HOA" -- being homeowner  
10:58:00 25 association -- "if McCabe, Trotter & Beverly, P.C., is

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10:58:03 1 unsuccessful in collecting?"  
10:58:04 2 Do you see that?  
10:58:05 3 A "No fee will be charged" --  
10:58:05 4 MR. COUNTRYMAN: I'm going to have to talk  
10:58:06 5 to her about this. I don't think this was properly  
10:58:08 6 identified under 30(j)(8).  
10:58:10 7 MR. KAHN: I'm just asking if --  
10:58:11 8 BY MR. KAHN:  
10:58:11 9 Q Did you see that sentence?  
10:58:12 10 MR. COUNTRYMAN: And I'm going to tell her  
10:58:13 11 not to answer that before we discuss it.  
10:58:15 12 BY MR. KAHN:  
10:58:15 13 Q Do you see that sentence?  
10:58:17 14 MR. COUNTRYMAN: So don't answer that.  
10:58:18 15 MR. KAHN: All right. I --  
10:58:18 16 MR. COUNTRYMAN: Come with me. We're going  
10:58:19 17 to chat about it.  
10:58:21 18 MR. KAHN: I don't understand the basis of  
10:58:21 19 your objection. These -- this document has been  
10:58:22 20 previously produced; right?  
10:58:24 21 MR. COUNTRYMAN: Yup.  
10:58:25 22 MR. KAHN: All right. And you think the  
10:58:25 23 rules allow you to talk with a witness about a document  
10:58:29 24 that has been previously produced or identified?  
10:58:31 25 MR. COUNTRYMAN: Yes.

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11:00:22 1 MR. KAHN: All right. I disagree, and I  
11:00:22 2 think you're not allowed to talk with her, but --  
11:00:23 3 MR. COUNTRYMAN: Okay. Fair enough.  
11:00:26 4 Come with me.  
11:00:27 5 VIDEOGRAPHER: We will now go off the record.  
11:00:27 6 The time is approximately 10:59 a.m.  
11:00:40 7 (The deposition recessed briefly.)  
11:01:29 8 VIDEOGRAPHER: We are now back on the record.  
11:01:40 9 The time is approximately 11:02 a.m.  
11:01:42 10 BY MR. KAHN:  
11:01:42 11 Q All right. I want to -- the document that  
11:01:45 12 you walked out of the -- you walked out of the room  
11:01:46 13 with that document; right?  
11:01:48 14 A Right.  
11:01:48 15 Q And had a discussion with Mr. Countryman?  
11:01:52 16 A Yup.  
11:01:57 17 MR. KAHN: I just -- I want to mark it as  
11:01:58 18 Plaintiff's Exhibit No. 1. Let me just --  
11:01:58 19 (HOA FEE PROPOSAL MARKED PLAINTIFF'S EXHIBIT  
11:01:58 20 NO. 1 FOR I.D.)  
11:01:58 21 BY MR. KAHN:  
11:01:58 22 Q And what -- what did you all talk about?  
11:01:58 23 MR. COUNTRYMAN: Don't answer that question.  
11:01:59 24 That's --  
11:01:59 25 A (Continuing) It's client privileged.

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11:02:01 1 MR. COUNTRYMAN: -- privileged.  
11:02:01 2 THE WITNESS: Right?  
11:02:01 3 MR. COUNTRYMAN: I'm telling you not to  
11:02:02 4 answer it because it's attorney-client privileged.  
11:02:03 5 THE WITNESS: Right.  
11:02:03 6 MR. COUNTRYMAN: The document was not  
11:02:04 7 properly identified under Rule 30(j)(8), two days or  
11:02:08 8 more ahead of the deposition.  
11:02:10 9 And, Justin, we've talked about this issue at  
11:02:12 10 length. I sent you multiple letters on the issue.  
11:02:15 11 Providing a 67-page spreadsheet identifying probably a  
11:02:18 12 100,000 documents, in my view, does not sufficiently  
11:02:22 13 identify this document under 30(j)(8).  
11:02:24 14 MR. KAHN: I understand that we disagree  
11:02:26 15 about that. I -- this document was produced and  
11:02:26 16 identified way before two days ago. And under the  
11:02:32 17 rules, you're not allowed to talk with the  
11:02:34 18 witness is --  
11:02:35 19 MR. COUNTRYMAN: When was it identified more  
11:02:36 20 than two days ago?  
11:02:37 21 MR. KAHN: -- is my position. And I  
11:02:38 22 understand you disagree, and we're just going to move  
11:02:39 23 forward and let a judge deal with your conduct.  
11:02:42 24 BY MR. KAHN:  
11:02:42 25 Q When did -- what kind of retainer did you

The deposition broke for lunch at 11:59 a.m. and reconvened at 12:22 p.m. I discussed the need to complete the deposition by 3:00 p.m. if possible and asked Mr. Kahn how long he

expected to be. The witness had work she needed to complete that afternoon, and I was needed at home to help with my newborn child (two months old at the time). Mr. Kahn refused to give any indication of how much time he might need to finish his questions. I told him I would need to end the deposition at 3:00 p.m. to make the 5-hour trek home from Macon and allow the witness time to complete her tasks. Mr. Kahn refused to respond or discuss the issue. I then made a statement on the record regarding the deposition needing to be over by 3:00 p.m.

|          |    |                                                       |
|----------|----|-------------------------------------------------------|
| 11:59:44 | 8  | VIDEOGRAPHER: We will now -- we will now go           |
| 11:59:44 | 9  | off the record. The time is approximately 11:59 a.m.  |
| 11:59:47 | 10 | (The deposition recessed briefly.)                    |
| 12:22:11 | 11 | VIDEOGRAPHER: We are now back on the record.          |
| 12:22:12 | 12 | The time is approximately 12:22 p.m.                  |
| 12:22:15 | 13 | MR. COUNTRYMAN: Real quick, I just want to            |
| 12:22:16 | 14 | make a quick statement for the record. I've talked to |
| 12:22:18 | 15 | plaintiff's counsel and the deposition is going to be |
| 12:22:21 | 16 | ended at 3:00. The witness has things she needs to do |
| 12:22:23 | 17 | at work, and I need to get home.                      |
| 12:22:25 | 18 | We're here by agreement, and we've agreed to          |
| 12:22:26 | 19 | be here without a subpoena, and that's what's         |
| 12:22:29 | 20 | happening.                                            |
| 12:22:32 | 21 | MR. KAHN: I don't agree with that, and you            |
| 12:22:33 | 22 | didn't inform me to the -- of the fact that you said  |
| 12:22:35 | 23 | you needed to leave at 3:00 until just a few moments  |
| 12:22:38 | 24 | ago during the break.                                 |
| 12:22:39 | 25 | We'll go forward, and the judge can deal with         |

After the short lunch break, Mr. Kahn showed the witness another document. I took from 12:25 p.m. to 12:27 p.m. to review the document with the witness under Rule 30(j)(8). I then directed the witness not to answer the question on grounds of attorney-client privilege. Here is the exchange (condensed version of pp. 93 -- 95 of S. Self transcript, Ex. 2 to Motion for Sanctions)

|          |    |                                                    |
|----------|----|----------------------------------------------------|
| 12:23:19 | 18 | I'll give you -- I'm going to show you a           |
| 12:23:20 | 19 | document I'm marking as Plaintiff's Exhibit No. 2, |
| 12:23:22 | 20 | which is a two-page document.                      |
| 12:23:26 | 21 | (NOTICE OF CONSUMER'S RIGHT TO CURE LETTER         |
| 12:23:26 | 22 | MARKED PLAINTIFF'S EXHIBIT NO. 2 FOR I.D.)         |
| 12:23:26 | 23 | MR. KAHN: It's MTB Supplemental -- here you        |
| 12:23:32 | 24 | go, sir.                                           |
| 12:23:32 | 25 | BY MR. KAHN:                                       |

| Page 94  |                                                           | Page 95  |                                                    |
|----------|-----------------------------------------------------------|----------|----------------------------------------------------|
| 12:23:32 | 1 Q It's 012455. And if you'd look on the second          | 12:24:06 | 1 MR. KAHN: I think that violates the rule.        |
| 12:23:36 | 2 page, you see where -- do you see where it says         | 12:24:10 | 2 MR. COUNTRYMAN: C'mon, Sheri.                    |
| 12:23:39 | 3 "SCT/SLS"?                                              | 12:24:10 | 3 MR. KAHN: I would ask you not to violate the     |
| 12:23:41 | 4 MR. COUNTRYMAN: All right. Hold on one                  | 12:24:12 | 4 rule.                                            |
| 12:23:42 | 5 second. You can come talk to me about this.             | 12:24:13 | 5 MR. COUNTRYMAN: Okay.                            |
| 12:23:43 | 6 MR. KAHN: Hold on.                                      | 12:24:13 | 6 MR. KAHN: All right.                             |
| 12:23:43 | 7 BY MR. KAHN:                                            | 12:24:13 | 7 VIDEOGRAPHER: We will now go off the record.     |
| 12:23:43 | 8 Q Do you see that document?                             | 12:24:13 | 8 The time is approximately 12:25 p.m.             |
| 12:23:44 | 9 MR. COUNTRYMAN: No. Don't answer that                   | 12:26:56 | 9 (The deposition recessed briefly.)               |
| 12:23:44 | 10 question right now. I'm going to talk to you about     | 12:26:56 | 10 VIDEOGRAPHER: We are now back on the record.    |
| 12:23:46 | 11 this document.                                         | 12:26:57 | 11 The time is approximately 12:27 p.m.            |
| 12:23:48 | 12 MR. KAHN: Andy, this document was produced.            | 12:27:00 | 12 BY MR. KAHN:                                    |
| 12:23:48 | 13 You agree it was produced in discovery; right? You all | 12:27:00 | 13 Q What did you all talk about?                  |
| 12:23:51 | 14 produced it to us.                                     | 12:27:02 | 14 MR. COUNTRYMAN: Don't answer that. It's         |
| 12:23:51 | 15 MR. COUNTRYMAN: Yeah, it was produced in               | 12:27:03 | 15 attorney-client privileged.                     |
| 12:23:53 | 16 discovery. It wasn't identified under the rules. I     | 12:27:06 | 16 BY MR. KAHN:                                    |
| 12:23:54 | 17 had no idea this was one of the hundreds of thousands  | 12:27:06 | 17 Q On the second page of page -- of Exhibit      |
| 12:23:57 | 18 of documents produced in discovery that you would be   | 12:27:09 | 18 No. 2, you see where it says "SCT/SLS"?         |
| 12:23:58 | 19 using in this deposition.                              | 12:27:13 | 19 A Yes.                                          |
| 12:23:59 | 20 MR. KAHN: That would be a false statement.             | 12:27:13 | 20 Q Do you recognize this -- those initials "SLS" |
| 12:24:00 | 21 This document was produced --                          | 12:27:16 | 21 as being your initials?                         |
| 12:24:01 | 22 MR. COUNTRYMAN: Yeah, it was produced.                 | 12:27:17 | 22 A Yeah.                                         |
| 12:24:03 | 23 MR. KAHN: -- and it was identified and --              | 12:27:18 | 23 Q And therefore this is a document that you     |
| 12:24:04 | 24 MR. COUNTRYMAN: You can make your argument.            | 12:27:20 | 24 would have prepared or printed?                 |
| 12:24:06 | 25 I'm talking with her about it.                         | 12:27:22 | 25 A I printed it, yep. I didn't -- yeah. I        |

This happened over and over again for thirteen exhibits. Mr. Kahn would show the witness a document. I would take 2-4 minutes to review it with her privately under Rule 30(j)(8), after which he would ask her what we discussed. I would direct her not to answer on grounds of attorney-client privilege.

At any time before or during the deposition, Mr. Kahn could have provided the all the documents to review with the witness at once. He refused despite Rule 30(j)(8) and the expressed need to complete the deposition by 3:00 p.m. This led to the following brief additional breaks in the deposition for me to review the material with the witness:

(a) 12:35 -- 12:37 to review Ex. 3 (p. 105 of Self transcr.)<sup>1</sup>

(b) 12:45 -- 12:48 to review Ex. 4 (p. 113 of Self transcr.)

- (c) 12:52 – 12:54 to review Ex. 5 (p. 118 of Self transcr.)
- (d) 12:59 – 1:02 to review Ex. 6 (p. 123 of Self. transcr.)
- (e) 1:23 – 1:26 to review Ex. 8 (p. 148 of Self transcr.)
- (f) 1:28 – 1:30 to review Ex. 9 (p. 151 of Self transcr.)
- (g) 1:35 – 1:37 to review Ex. 10 (pp. 155 – 156 of Self transcr.)
- (h) 1:42 – 1:51 to review Ex. 11 (p. 161 of Self transcr.)
- (i) 2:01 – 2:04 to review Ex. 12 (p. 172 of Self transcr.)
- (j) 2:14 – 2:16 to review Ex. 13 (p. 183 of Self transcr.)
- (k) 2:18 – 2:10 to review Ex. 14 (pp. 185 – 186 of Self transcr.)
- (l) 2:29 – 2:32 to review Ex. 15 (p. 194 of Self transcr.)
- (m) 2:43 – 2:45 to review Ex. 16 (pp. 204 – 205 of Self transcr.)

After Mr. Kahn refused to give any indication of how long he planned to depose the witness or produce documents to review with her ahead of time (causing us to waste nearly an hour during the deposition), I ended the deposition at 3:00 p.m. I then filed a Motion for Protective Order regarding Ms. Self's deposition on January 31, 2019, under Rule 30(j)(3).

### Argument

"The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." In re Anonymous Member of the S.C. Bar, Opinion 25346 (Aug. 20, 2001) *citing* In re Alford Chevrolet-Geo, 997 S.W.2d 173, 180 (TX 1999). The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a

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<sup>1</sup>I did not direct the witness to refuse to answer the question "what did you talk about with respect to this document." Of course, the answer was "the document."



guessing game or one of surprise for either party. Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). In this respect, the discovery process is designed to “make a trial less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” In re Anonymous Member of the S.C. Bar, Opinion 25346 (Aug. 20, 2001) *see also* U.S. v. Procter & Gamble Co., 356 U.S. 677, 682, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958). Simply put, the core purpose of discovery is to obtain the *truth*. *See, e.g., Samples, supra*. The rights of discovery the Rules provide give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice is assumed. Downey v. Dixon, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987).

Rule 30 discusses the conduct of lawyers during depositions. Our Supreme Court provided some guidance on how Rule 30 applies. “A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” In re Anonymous *referring to* Rule 407, SCACR pmbl. In depositions, lawyers may face the greatest conflict between their obligations to the court and opposing counsel under Rule 3.4, and their obligations to their own client under Rule 1.3.

Because depositions usually occur without direct judicial supervision, lawyers must regulate themselves during this highly critical stage of litigation. The Supreme Court has sanctioned lawyers who have failed to properly conduct themselves during depositions. In re Anonymous *referencing* Matter of Golden, 329 S.C. 335, 496 S.E.2d 619 (1998). In addition to subjecting themselves to possible ethical sanctions, attorneys who engage in misconduct during depositions may find themselves sanctioned by the trial court as well. *See* Rule 37, SCRCPP.

SCRCP 30(j)(8) provides:

(8) Deposing counsel shall provide to opposing counsel a copy of all documents shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to privately discuss the documents before the witness answers questions concerning the document.

The plain and obvious intent of Rule 30(j)(8) is to allow witnesses to review material and be familiar with it prior to answering questions about it, i.e., avoid surprise. Whether a document was produced in discovery has nothing to do with whether a witness is familiar with the document. That is particularly true in a case like this where thousands of documents have been exchanged. The only possible explanation for Mr. Kahn's refusal to provide this material prior to the depositions (despite numerous requests that he do so) is that he wanted to surprise the witness and *not* give them a chance to review material before discussing it.

### *Haylen Gatling Deposition*

Mr. Kahn's identification of material to use in Ms. Gatling's deposition in the Notice referred to all of the thousands of pages of material exchanged in discovery did not provide any genuine indication of what material he actually planned to show the witness in her deposition. I told him as much in writing two months before the deposition. Mr. Kahn ignored two letters on the topic and instead sent a 68-page spreadsheet referencing thousands more pages of material as potential deposition exhibits.

This did nothing to clarify what material he actually planned to use with the witness either. To the contrary, Mr. Kahn was actually attempting to *preclude* me from knowing ahead of time what material he would use with the witness. This is directly contrary to the discovery rules, as well as the Rules of Professional Conduct (*see* i.e., SCRPC 3.3, Candor Towards the Tribunal).

This was insufficient to identify material he planned to use in the deposition under Rule 30(j)(8). Under the Rule, I had the right to discuss exhibits with the witness privately during the deposition.

I also had the right to discuss the material privately with Ms. Gatling during the deposition under Rule 30(j)(8) because Mr. Kahn's production of the 68-page spreadsheet was untimely. The Rule has a two-day time period for providing material. Under Rule 5(a), weekends do not count when computing time under the Rules. The deposition was at 10:00 a.m. on Tuesday, January 25<sup>th</sup>. Producing the 68-page spreadsheet at 6:31 p.m. the Friday before the Tuesday deposition was not two days before the deposition. I had the right under Rule 30(j)(8) to privately discuss the deposition exhibits with the witness during the deposition. Those conversations were privileged.

Upon the presentation of the second exhibit, I exercised that right. At that point, Mr. Kahn provided me with copies of the material he planned to use in the deposition moving forward. I appropriately took a reasonable amount of time to discuss the material with the witness privately. I then appropriately instructed the witness not to answer a question asking what we discussed based on attorney-client privilege. I then properly filed a Motion for Protective Order under Rule 30(j)(3).

Mr. Kahn had every opportunity to provide or identify the material he actually planned to use at any time prior to the deposition. He ignored *two* letters about the issue and refused to discuss it with me at the deposition. I even implored him to let me review the exhibits with the witness the morning of the deposition and during the lunch break (waiving the two-day requirement in Rule 30(j)(8)). He failed and refused to provide the material at any time before the deposition.

Mr. Kahn argues that Rule 30(j)(8) does not require identification or production of material if the material was previously produced in discovery. He would prefer to surprise non-lawyer witnesses with documents cherry-picked from thousands of pages of material they have not previously reviewed so he can get the answers he wants regardless of whether the answers are accurate or help find the truth in the case. Of course, the fact that something was previously produced in discovery, or even that the person being deposed created the document, is completely irrelevant. The Rule is intended to enable the witness to be familiar with the documents she is going to be questioned about during the deposition so she can accurately answer questions about them. Mr. Kahn's aimed to utilize the element of surprise with these lay witnesses and obtain answers that help his case by showing them isolated documents out of thousands produced in discovery with no opportunity to review the material beforehand. These are attempts to evade the very protections Rule 30(j)(8) imposes and the spirit and intent of the discovery rules in general.

Rule of Professional Conduct 3.4 also has bearing here. It discusses duties of lawyers to act in fairness to opposing parties and counsel. A lawyer may not unlawfully obstruct another party's access to evidence or conceal material. "Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery, and the like." Comment [1] to SCRPC 3.4. Refusing to produce or identify what a lawyer plans to use as deposition exhibits is an attempt to conceal and gain an unfair advantage through the element of surprise.

### ***Sheri Self Deposition***

I voluntarily produced Ms. Self, a Georgia witness, without a subpoena even after Mr. Kahn sneakily contacted her directly without going through me. I extended another professional courtesy

and allowed the deposition to proceed even though the court reporter Mr. Kahn hired was not a notary in Georgia. Mr. Kahn refused to produce or identify material before the deposition or at any time during it. He also refused to provide any indication of how long he expected the deposition to take despite being asked multiple times.

Mr. Kahn has sued MTB in four cases, including this one. He has deposed Stephanie Trotter four times and Ryan McCabe twice. He has now deposed two current MTB legal assistants and one former assistant as well. There is no dispute at all as to what MTB's process is. That has been established over and over again through the various witnesses. Mr. Kahn believes MTB's process is wrong, MTB disagrees. Obtaining more testimony about what the process is (the only possible explanation for wanting to depose MTB legal assistants) will do nothing to develop the claims or defenses in the case. In fact, I have even stipulated to many of these "facts" that Mr. Kahn thinks are bad.

Mr. Kahn still decided to spend much of Ms. Self's deposition attempting to reinforce already established facts in the case by asking the witness questions about old material with which she was unfamiliar. He also tried to get "gotcha" answers from her by misstating what she said and changing key words he hoped the unsophisticated witness would not detect.

The Rules prevent witness coaching during depositions, as well as lengthy speaking objections and brief suggestive interjections. In re Anonymous. Therefore, interjections during a deposition by the witness' lawyer such as "if you remember" and "don't speculate" are improper because they suggest to the witness how to answer the question. Id. A plain reading of the transcript shows I made no such suggestive statement or objection to influence the witness'

answers. I objected to the form of certain questions, and on select occasions, concisely stated the basis of the objection. Here is an example:

| Page 140 |                                                           | Page 141 |                                                            |
|----------|-----------------------------------------------------------|----------|------------------------------------------------------------|
| 13:15:55 | 1 A Yes.                                                  | 13:16:38 | 1 A I think. I don't remember.                             |
| 13:16:55 | 2 Q Do you understand, when you look at the               | 13:16:39 | 2 Q All right. Well, typically, when you got the           |
| 13:16:59 | 3 homeowner association statement account of the          | 13:16:42 | 3 email from the homeowner association --                  |
| 13:16:02 | 4 homeowner --                                            | 13:16:44 | 4 A Right.                                                 |
| 13:16:02 | 5 A Uh-huh.                                               | 13:16:45 | 5 Q -- it would not have on it an amount for --            |
| 13:16:03 | 6 Q -- that the \$250 in attorney's fees would not        | 13:16:47 | 6 A What we charge.                                        |
| 13:16:05 | 7 appear there?                                           | 13:16:48 | 7 Q -- an amount for attorney's fees; right?               |
| 13:16:06 | 8 A Right.                                                | 13:16:50 | 8 A Right. That's correct.                                 |
| 13:16:04 | 9 Q Okay. So the law firm is stating an amount            | 13:16:51 | 9 Q So when the law firm is sending out a letter           |
| 13:16:09 | 10 of attorney's fees as being owed. It does not appear   | 13:16:54 | 10 like this to the homeowner, you're telling the consumer |
| 13:16:13 | 11 on the homeowner association account statement.        | 13:16:55 | 11 that there are attorney's fees that appear on their     |
| 13:16:15 | 12 Is that right?                                         | 13:17:02 | 12 account. Right?                                         |
| 13:16:15 | 13 A No.                                                  | 13:17:03 | 13 MR. COUNTRYMAN: Object to the form.                     |
| 13:16:16 | 14 Q That's not right, or that is right?                  | 13:17:05 | 14 A (Continuing) There's attorney's fees, yep.            |
| 13:16:19 | 15 A That is right.                                       | 13:17:08 | 15 Q Okay. Even though those attorney's fees do            |
| 13:16:20 | 16 Q Okay.                                                | 13:17:10 | 16 not appear on the homeowner account; is that right?     |
| 13:16:20 | 17 A That it's not -- it doesn't appear on the            | 13:17:13 | 17 A On their statement, no.                               |
| 13:16:23 | 18 statement.                                             | 13:17:14 | 18 Q Is that -- am I right?                                |
| 13:16:22 | 19 Q Okay. So the law firm is telling the                 | 13:17:15 | 19 A Right.                                                |
| 13:16:24 | 20 homeowner they owe attorney's fees and amounts that do | 13:17:16 | 20 Q All right. So -- because there's been a               |
| 13:16:27 | 21 not appear on the homeowner account statement?         | 13:17:16 | 21 bunch of no's and yes's. Let's make sure we're on the   |
| 13:16:29 | 22 A Right. At that time.                                 | 13:17:19 | 22 same page.                                              |
| 13:16:34 | 23 Q Okay. You said "at that time"?                       | 13:17:18 | 23 A Okay.                                                 |
| 13:16:35 | 24 A I think so. I don't know.                            | 13:17:18 | 24 Q The law firm at the time it is sending a              |
| 13:16:36 | 25 Q Okay. Well, we'll get to some.                       | 13:17:22 | 25 letter to the consumer stating that there is \$250 owed |

| Page 142 |                                                            | Page 143 |                                                            |
|----------|------------------------------------------------------------|----------|------------------------------------------------------------|
| 13:17:27 | 1 because it's on the homeowner account, that amount does  | 13:17:55 | 1 MR. COUNTRYMAN: You can ask her a question               |
| 13:17:31 | 2 not appear on the homeowner account; is that right?      | 13:17:56 | 2 if you want to.                                          |
| 13:17:33 | 3 MR. COUNTRYMAN: Object to the form. That's               | 13:17:58 | 3 MR. KAHN: I've asked her a question, and you             |
| 13:17:34 | 4 not what she said.                                       | 13:17:59 | 4 are interrupting and stating things improperly, which    |
| 13:17:36 | 5 A (Continuing) It's -- right. It's not on the            | 13:18:03 | 5 are in clear violations of the rules.                    |
| 13:17:36 | 6 statement.                                               | 13:18:05 | 6 MR. COUNTRYMAN: Sounds good.                             |
| 13:17:37 | 7 MR. KAHN: Hold on. The rules are very                    | 13:18:06 | 7 MR. KAHN: If you have an objection, then                 |
| 13:17:38 | 8 clear. That's an instruction --                          | 13:18:07 | 8 state it, and I'll go from there.                        |
| 13:17:39 | 9 MR. COUNTRYMAN: Justus, we've already                    | 13:18:09 | 9 MR. COUNTRYMAN: I object to the question you             |
| 13:17:40 | 10 stipulated that the attorney --                         | 13:18:10 | 10 asked her because it mischaracterized what she said,    |
| 13:17:41 | 11 MR. KAHN: No, sir. Stop it.                             | 13:18:14 | 11 and you slid words in there that she didn't say. I      |
| 13:17:41 | 12 MR. COUNTRYMAN: -- I don't care what you                | 13:18:18 | 12 think that's misleading, unfair, and deceptive.         |
| 13:17:41 | 13 say, man.                                               | 13:18:24 | 13 MR. KAHN: Your extraneous comments are                  |
| 13:17:42 | 14 MR. KAHN: The rules do not allow you --                 | 13:18:26 | 14 specifically prohibited by the South Carolina Supreme   |
| 13:17:42 | 15 MR. COUNTRYMAN: You can talk over me all you            | 13:18:28 | 15 Court and under the rules.                              |
| 13:17:43 | 16 want. That's fine.                                      | 13:18:29 | 16 MR. COUNTRYMAN: Then call somebody. Take                |
| 13:17:44 | 17 MR. KAHN: It's not --                                   | 13:18:30 | 17 somebody up. That's fine.                               |
| 13:17:44 | 18 MR. COUNTRYMAN: You're mischaracterizing                | 13:18:32 | 18 MR. KAHN: I would ask you to refrain from               |
| 13:17:46 | 19 what she said and slipping words in there and making it | 13:18:33 | 19 engaging in that conduct. I'm just asking as nice as I  |
| 13:17:49 | 20 different than what she actually said.                  | 13:18:37 | 20 can be and as civil as I can.                           |
| 13:17:51 | 21 Just conduct a fair deposition.                         | 13:18:39 | 21 BY MR. KAHN:                                            |
| 13:17:53 | 22 MR. KAHN: The rule -- I asked you --                    | 13:18:39 | 22 Q In terms of Plaintiff's Exhibit No. 6, when           |
| 13:17:53 | 23 MR. COUNTRYMAN: I don't need you to tell me             | 13:18:42 | 23 you get in the homeowner account statement that is used |
| 13:17:55 | 24 what the rules say.                                     | 13:18:47 | 24 to generate these form letters, that statement would    |
| 13:17:55 | 25 MR. KAHN: -- to not violate --                          | 13:18:50 | 25 not contain an amount for attorney's fees; right?       |

The above exchange relates to Plaintiff's argument that MTB's inclusion of attorney's fees the HOA has not yet paid in the owner's balance is a misrepresentation of the amount the owner

owes. It is a well-established fact in this case that MTB typically receives a statement from the HOA of the amount the owner owes. MTB then begins a collections action and includes attorney's fees generated under its agreement with the HOA in the amount the owner owes. Those amounts do not appear on the HOA's account statement for the owner because the HOA has not yet paid it.

The witness plainly testified that the firm includes attorney's fees in the owner's balance, and those are fees that do not appear on the owner's account ledger with the HOA (because the HOA has not paid them yet). This is a well-established fact in the case. In rephrasing her testimony, Mr. Kahn tried to trick the witness into admitting the firm intends the owner to believe the attorney's fees appear on the owner's account with the HOA, which is not what she said. I objected to the form of the question and stated my basis for the objection ("that's not what she said."). Mr. Kahn asked me to state my objection further, so I did and asked him to conduct a fair deposition. This was all proper and appropriate.

Mr. Kahn also says that I did not represent Ms. Self, and thus no privilege attaches to conversations between us. This is also wrong. The provision of legal advice, consultation, explanations and recommendations on matters of law constitute the practice of law. State v. Robinson, 321 S.C. 286, 468 S.E.2d 290 (1996). Whether the lawyer receives payment is irrelevant to whether he/she is practicing or if an attorney-client relationship exists. State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). An attorney-client relationship does not depend on the existence of a formal agreement of payment of a legal fee. S.C. Bar Ethics Opinion # 91-03 citing N.C. State Bar v. Sheffield, 326 S.E.2d 320 (N.C. App. 1985). A client for purposes of applying the attorney-client privilege is a person who "seeks legal advice by communicating in confidence with an attorney for the purpose of obtaining such advice." Marshall

v. Marshall, 320 S.E. 2d 44 (S.C. Ct. App. 1984). “Whether an attorney-client relationship exists in a particular situation is a question of fact....” S.C. Bar Ethics Advisory Opinion #91-03 *citing Chavez v. State*, 604 P.2d 1341, 1346 (Wyo. 1980).

I represented Ms. Self at the deposition. I operated with this understanding throughout the deposition scheduling and preparation process. This included meeting with her before the deposition to prepare. I did not have a formal retainer agreement or require payment outside of what I am already being paid for my work as counsel for MTB in this case, but this has no bearing here. When asked directly if I was her lawyer, Ms. Self said “yes.” She also said that when we had pre-deposition discussions, it was with the understanding they were privileged and confidential. p. 223 transcr. Self depo., Ex. 2 to Motion for Sanctions). There is zero basis to the argument that I did not represent Ms. Self at her deposition.

My discussion of material with Ms. Self during the deposition was appropriate under Rule 30(j)(8) because the identification of all material exchanged in discovery and a 67-page spreadsheet of more material failed to provide any indication of what material Mr. Kahn planned to use in the deposition. Under the Rule, I took a very brief amount of time (around 3 minutes each) to review the exhibits with the witness. My instructions to the witness to not answer questions asking what we discussed in those brief private meetings to review the material were appropriate because the attorney-client privilege applies to those conversations.

I presented the witness to give the deposition without a subpoena and by agreement. I agreed to allow a non-Georgia court reporter to transcribe the witness’ testimony. Despite extending these courtesies, Plaintiff’s counsel refused to disclose material he planned to use with the witness with the full knowledge this would cause breaks and delays in the deposition. I took a



brief amount of time (around three minutes per document) to review the exhibits with the witness as they were presented to her. This time totaled almost an hour, which could have been spent questioning the witness had counsel provided the exhibits before the deposition. I expressed a need to have the deposition end at a certain time for multiple reasons related to me and the witness. Mr. Kahn refused to even provide any indication of how long he expected the deposition to take.

Under these circumstances, it was completely reasonable to end the deposition at 3:00 p.m. It certainly was not done in bad faith. This is not a basis for sanctions.

***Stephanie Trotter***

Plaintiff's motion seeks to depose Stephanie Trotter for what would be a fifth time because she was present for the brief meeting with Ms. Gatling to review Plaintiff's deposition exhibits that he refused to provide before the deposition. Ms. Trotter is a representative of MTB, the named Defendant in this case. She had the right to attend the meeting, which was clearly privileged. Again, the meeting would not have been necessary had Plaintiff's counsel followed the Rules and produced or identified the deposition exhibits beforehand.

**Conclusion**

Plaintiff's counsel's conduct shows a pattern of attempting to gain a tactical advantage by maintaining the element of surprise with respect to the use of deposition exhibits. This blatantly abusive of the discovery Rules. The Court should deny Plaintiff's Motion for Sanctions and award sanctions to MTB against Plaintiff and her counsel as requested in MTB's pending Motions for Protective Order(s), as well as attorney's fees and costs associated with preparing this brief and arguing the Motion.

[signature page to follow]

Respectfully submitted,

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