

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR OKALOOSA COUNTY, FLORIDA

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

CASE NO. 2008-CA-005617

COSTEL G. SERBAN, et al.,  
Defendants.

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KEITH BRACE

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DATE: OCTOBER 10, 2013  
TIME: 1:30 P.M. TO 2:37 P.M.  
LOCATION: OKALOOSA COUNTY COURTHOUSE  
CRESTVIEW, FLORIDA

AS REPORTED BY:

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PROCEEDINGS

THE COURT: All right. Let the record show that before the Court for consideration this afternoon on a nonjury trial is 08-CA-5617, Countrywide vs. Costel Serban.

Who is appearing on behalf of the plaintiff?

MR. BARROWS: Josh Barrows with Quintairos, Prieto, Wood & Boyer.

THE COURT: Josh Barrows?

MR. BARROWS: Barrows, B-A-R-R-O-W-S.

THE COURT: And who is appearing on behalf of the defendant, Costel Serban?

MR. GINGO: George Gingo, G-I-N-G-O. Also, Mr. Copus is with me.

THE COURT: Does counsel for the plaintiff or counsel for the defense, either, have any issues to consider before we commence?

MR. GINGO: Not for the defense.

MR. BARROWS: Judge, just one from the plaintiff's standpoint. I believe there was an affidavit that you filed for an expert, and we would just object to the introduction of expert testimony on this case.

I don't know if it's made it into the court file yet, but we did withdraw -- I believe

1           yesterday or the day before we filed a notice of  
2           withdrawing the assignments, any that have been  
3           recorded. We're proceeding solely on the note.

4           And I believe, number one, that was the  
5           issue -- the assignments was the issue that he was  
6           going to testify about. And even if the  
7           assignments were at issue, I don't believe he  
8           contains any specialized testimony or any special  
9           facts that the Court doesn't have.

10          THE COURT: I don't have any filings by the  
11          plaintiff withdrawing anything at this point in  
12          time. The last posting on my line by the clerk is  
13          October 8th.

14          Mr. Gingo, do you wish to respond?

15          MR. GINGO: Your Honor, Mr. Houk hasn't  
16          testified. His affidavit is not evidence. It  
17          shouldn't be viewed as evidence at this time. If  
18          he takes the stand, then what he says will be the  
19          evidence. The affidavit is certainly not evidence.

20          THE COURT: Okay. All right. Does either  
21          counsel desire to make a brief opening statement?

22          MR. BARROWS: No, Judge.

23          THE COURT: Are you ready to proceed, then?

24          MR. GINGO: Your Honor, I would, if I may. If  
25          I could stand up.

1           Your Honor, the plaintiff pled that the note  
2           was payable to MERS. It's clearly not. I'm not  
3           going to make an issue of that. I'm going to pass  
4           through that. I'm sure the note is the original  
5           note. I'll take a look at it. If it looks like it  
6           has a blue signature or whatever, it's going to be  
7           the original. We'll admit to authentication of  
8           that. Same thing with the mortgage.

9           That leaves us with the real issues of the  
10          case, which are the business records. In  
11          particular, the main business record that is going  
12          to be the issue is the breach letter. Paragraph 15  
13          of the mortgage provides that notice is written  
14          information sent from either party to the other  
15          party.

16          The written notice of the breach letter,  
17          plaintiff will obviously attempt to introduce it,  
18          will be there. It's going to have an address on  
19          it. There will be no evidence from the plaintiff's  
20          side that that letter actually was mailed to my  
21          client.

22          The plaintiff will allege, well, that  
23          address -- the address that the Court is going to  
24          see on there is going to be a different address, I  
25          believe, than what's required in the mortgage. The

1 best evidence -- if the plaintiff attempts to  
2 demonstrate that my client changed his designation  
3 address, the best evidence would be a written  
4 notice from my client back to the plaintiff.  
5 Plaintiff will not have any evidence demonstrating  
6 that my client changed his designated address or  
7 that this document was mailed out. I believe  
8 that's where the main issues are going to focus.

9 THE COURT: Okay. That's paragraph 15 of the  
10 mortgage?

11 MR. GINGO: Yes.

12 THE COURT: All right. Is this your witness?  
13 Are you ready to proceed?

14 MR. BARROWS: Yes, Judge.

15 THE COURT: All right. Do you want to respond  
16 to the argument of counsel or just move on with the  
17 case?

18 MR. BARROWS: Judge, I would just move on with  
19 the case and address that during the testimony.

20 THE COURT: All right. Sir, would you please  
21 raise your right hand.

22 (BENJAMIN VERDOOREN duly sworn by the Court.)

23 THE COURT: Thank you.

24 DIRECT EXAMINATION

25 BY MR. BARROWS:

1 Q Can you please state your full name for the  
2 record.

3 A Benjamin Verdooren, V-E-R-D-O-O-R-E-N.

4 Q And who is your employer?

5 A Ocwen Loan Servicing.

6 Q And what is the nature of your employer's  
7 business?

8 A We're a mortgage servicing company.

9 Q And what is your position with Ocwen?

10 A I'm a senior litigation analyst.

11 Q And, in particular, what are your duties in  
12 that role?

13 A I attend foreclosure trials, depositions,  
14 mediations, review business records for those particular  
15 trials and depositions.

16 Q And what is Ocwen's relationship to the  
17 plaintiff in this case?

18 A We're the servicer.

19 Q Okay. And are you the servicer for the  
20 plaintiff, or who are you the servicer for?

21 A We're the servicer for -- sorry. Repeat that  
22 question again.

23 Q Who are you the servicer for?

24 A We're the servicer for the owner of the note,  
25 which is Bank of America.

1 Q Okay. And how did Bank of America -- what's  
2 -- let me rephrase that. How did -- what was the  
3 plaintiff's prior role in this case?

4 A Countrywide was the originator and the first  
5 servicer of this particular loan, which was later on  
6 sold to Bank of America, who became the owner of the  
7 note, which then now this loan is being sub-serviced by  
8 Ocwen Loan Servicing.

9 Q Okay. And do you have -- did Ocwen Loan  
10 Servicing have authority to prosecute this case on  
11 behalf of the plaintiff?

12 A Yes.

13 MR. GINGO: Object, Your Honor. Hearsay.  
14 Lack of foundation. The best evidence would be the  
15 document.

16 THE COURT: By virtue of what -- go ahead.

17 MR. BARROWS: Judge, I have a document that I  
18 could label for identification as Exhibit 1.

19 THE COURT: Certainly. Exhibit 1 for the  
20 plaintiff for identification purposes only.

21 MR. BARROWS: Do you want me to pre-mark this,  
22 Judge?

23 THE COURT: The case manager will. Please  
24 identify it for my benefit. What's the style?

25 MR. BARROWS: It's the limited power of



1 attorney from Bank of America to Ocwen Servicing.  
2 (Plaintiff's Exhibit 1 marked for identification.)

3 MR. GINGO: May we review that before --

4 THE COURT: You can review it before I admit  
5 it into evidence, certainly.

6 BY MR. BARROWS:

7 Q Let me show you what's been pre-marked as  
8 Exhibit 1. And please tell the Court what that document  
9 is.

10 A It's a limited power of attorney that --

11 MR. BARROWS: Objection, Your Honor. He's  
12 testifying to the content of the document.

13 THE COURT: The document will speak for  
14 itself. But for the benefit of the Court, tell me,  
15 what is it you're trying to establish through this  
16 witness?

17 MR. BARROWS: That Ocwen Loan Servicing has  
18 the authority to testify on behalf of this matter  
19 and to service this particular loan.

20 THE COURT: Okay. Well, ask that question and  
21 see if he can indicate whether or not he is of the  
22 opinion that that document gives him the authority.

23 BY MR. BARROWS:

24 Q Mr. Vandoorden -- or Verdooren.

25 A Close enough.

1 Q I apologize. Based on that document, what is  
2 your understanding of the rights that it provides your  
3 company?

4 A It provides the rights that we service the  
5 loan, we collect payment, and we also take any legal  
6 action against the borrower of the loan.

7 Q Now, is that document prepared in the  
8 ordinary --

9 MR. GINGO: Your Honor, for the record, I just  
10 have a continuing objection. The document speaks  
11 for itself as to that answer.

12 THE COURT: Yes, sir. I understand.

13 BY MR. BARROWS:

14 Q Now, is that document prepared and maintained  
15 in the ordinary course and scope of the business of  
16 Ocwen Servicing?

17 A Yes.

18 Q And was that document prepared by someone who  
19 had knowledge of the information contained in there?

20 A Yes.

21 Q And are those types of records -- is that type  
22 of document something that would be kept under your  
23 custody and control of Ocwen Servicing?

24 A Yes.

25 Q And is it a regular part of your company's

1 business to keep and maintain records of this type?

2 A Yes.

3 Q And was it -- was the information contained  
4 therein transmitted by a person that had knowledge of  
5 the circumstances of that?

6 A Yes.

7 MR. BARROWS: Judge, we would go ahead and ask  
8 to admit this as Plaintiff's Exhibit 1.

9 MR. GINGO: May I voir dire, Your Honor?

10 THE COURT: Yes, you may, Mr. Gingo.

11 MR. GINGO: And I'd like to take a moment to  
12 look at it with co-counsel.

13 May I approach the witness, Your Honor?

14 THE COURT: Sure.

15 VOIR DIRE EXAMINATION

16 BY MR. GINGO:

17 Q I'm handing you what's been marked Plaintiff's  
18 Exhibit 1 for identification. How many pages do you  
19 count there?

20 A Four pages.

21 Q The first page is entitled Limited Power of  
22 Attorney. The fourth page is entitled Limited Power of  
23 Attorney. Are there more pages that are supposed to go  
24 to this document than what we have in your hands?

25 A No.

1 Q Why is this fourth page on here?

2 A That was a mistake when printing. When we  
3 printed it out, we printed out the first page again by  
4 accident.

5 MR. GINGO: Just for clarification, would  
6 counsel want to redact the last page? Because it's  
7 throwing me off.

8 MR. BARROWS: Yes. I apologize. We'll just  
9 submit the three pages.

10 BY MR. GINGO:

11 Q Where did this document come from today?

12 A Where did it come from today?

13 Q Yes.

14 A From our imaging system.

15 Q I'm sorry. Say that again.

16 A The system we use to hold all our documents,  
17 what we call our CIS imaging system.

18 Q Okay. So this came from Ocwen today?

19 A Yes.

20 Q All right. Did you cause this document to be  
21 generated?

22 A Did I personally cause this document to be  
23 generated?

24 Q Yes.

25 A No, I did not cause this personally.

1 Q When was this document generated?

2 A I need to look at it again, the exact date.  
3 2012, July 26.

4 Q How did you get this document today?

5 A I requested it, and it was printed out for me.

6 Q Who did you request it from?

7 A Someone within our department, legal  
8 department.

9 Q Did your attorney give you this today?

10 A No.

11 Q Do you know, did you ever -- excuse me. Is  
12 there an original of this document somewhere on file  
13 with Ocwen?

14 A Probably.

15 Q Why didn't you bring the original today?

16 A Because in my experience I've never known an  
17 original needed to be required.

18 Q So, is there an original document like this in  
19 Ocwen's files somewhere?

20 A I believe so.

21 Q So then are you saying that that original was  
22 somehow scanned into a computer?

23 A Uh-huh.

24 Q And then a printout was made later on?

25 A This printout, yeah.

1           Q     So this is a second-level duplication of the  
2 original?

3           A     I guess you could say that.

4           MR. GINGO:   Your Honor, I would object.  This  
5 is multi levels of hearsay.  The best evidence  
6 would require the original.

7           THE COURT:  Objection duly noted.  The  
8 document -- if that's your only objection, the  
9 document will be received in evidence.

10          MR. GINGO:  It's also hearsay.

11          THE COURT:  Well, any written document is,  
12 generally speaking, hearsay, sir.  I will agree  
13 with the fact it's hearsay, but the exception is  
14 it's a business record.

15          MR. GINGO:  Right.  And the custodian didn't  
16 certify that.  The custodian from Bank of America  
17 could have put a stamp on that to certify the  
18 document according to the business records  
19 exception.  That was not done.  So we have multiple  
20 levels of hearsay, there's no authentication of  
21 this document, and it's inherently untrustworthy.

22          THE COURT:  Do you care to comment on the  
23 record?

24          MR. BARROWS:  Judge, other than the fact that  
25 it is a business record, he's testified about the

1 fact this is maintained in the course and scope of  
2 their business. And, you know, as counsel said,  
3 opposing counsel said earlier, the document speaks  
4 for itself, in addition to the witness's testimony  
5 that they do have authority from the owner of the  
6 note and the mortgage to proceed on this action.

7 MR. GINGO: Your Honor, certainly if the  
8 document is admitted, it speaks for itself. The  
9 testimony that the witness relayed as to what he  
10 believed that document does is not admissible.

11 The Court had -- in a prior case today, we  
12 talked about several cases of Mr. Ehrhardt's book  
13 which relate to the oral testimony of a witness  
14 being inadmissible until the document is admitted.  
15 I would like to present these to the Court, if I  
16 may.

17 THE COURT: All right. You may.

18 MR. GINGO: I gave these also to counsel. And  
19 there are three cases.

20 MR. BARROWS: Are these --

21 MR. GINGO: Yes, they were on your desk there.

22 The first one, I believe, that's before the  
23 Court is the Cullimore case, which came out of the  
24 1st District. I took the liberty of highlighting  
25 for both counsel and the Court the actual sections

1 that cited the rule. And so that would be on the  
2 second page of that particular case, which states,  
3 "The business record exception is likewise  
4 inapplicable because there were no records or  
5 reports offered into evidence. There was only  
6 testimony concerning communications made between  
7 the dispatcher and the deputy. Accordingly, we  
8 conclude that the hearsay testimony should have  
9 been excluded." In that particular case, there was  
10 a dispatcher's report that was attempted to be  
11 offered into evidence.

12 The next indication is the Bolen case. And  
13 this was a case that -- a murder case that came out  
14 of the Supreme Court of Florida. And there's  
15 substantial dicta, I believe it's on the last page,  
16 where the Court expressed that Section 90.803(6) of  
17 Florida Statutes, "Fails as a basis for admission  
18 because no actual records were offered or admitted.  
19 Oral testimony concerning business records is not  
20 admissible under this exception. 90.803(6) Florida  
21 Statute."

22 The third case is the Richardson case. And I  
23 believe that the highlighted material is on page  
24 676, in the right-hand column, where the Court  
25 says, "Noting that the business records exception



1 to the hearsay rule permits the admission of,  
2 quote, a memorandum, report, record, or data  
3 compilation, end quote, the District Court further  
4 noted that Section 90.803(6) does not authorize  
5 hearsay testimony concerning the contents of  
6 business records which have not been admitted into  
7 evidence."

8 So the statements that the witness makes about  
9 the document prior to it being admitted to evidence  
10 are not admissible.

11 THE COURT: All right. Mr. Barrows.

12 MR. BARROWS: Judge, I believe -- well, first  
13 of all, number one, we are introducing this  
14 document into evidence. We're introducing the  
15 limited power of attorney. The witness has  
16 testified on the predicate of the business records  
17 exception for that document, and it's admissible  
18 evidence.

19 You know, I haven't had an opportunity to  
20 review these cases from -- that counsel submitted,  
21 you know, so I haven't -- you know, I don't know  
22 what the circumstances of those particular cases  
23 are, other than glancing through just that first  
24 case from -- you know, which is noted from 1980,  
25 which mainly spoke to the -- to some statements

1           that two employees had made to each other and that  
2           that wasn't a sufficient business record. It  
3           doesn't appear that they had tried to introduce the  
4           report. Which the evidence that we're admitting in  
5           this case is a limited power of attorney, in  
6           addition to the witness's testimony that he's  
7           reviewed all these business records.

8           THE COURT: The Court will admit the document  
9           into evidence, and the case manager will indicate  
10          so on the document itself.

11          MR. BARROWS: Judge, should I go ahead and  
12          give this to the case manager?

13          THE COURT: If you're through with your  
14          inquiry on that exhibit, you may.

15          MR. BARROWS: I am, Judge, with this exhibit.

16          (Plaintiff's Exhibit 1 admitted in evidence.)

17          THE COURT: The Court's ruling is somewhat  
18          predicated on the fact that the witness is not  
19          testifying as to the contents but merely to the  
20          fact it is a business record. And it's a business  
21          record and therefore an exception to the hearsay  
22          rule.

23          And the document itself will speak for itself.  
24          The Court will not -- you know, will make a  
25          determination as to what it says on its own as

1           opposed to eliciting from the witness what it says.

2           Proceed, Mr. Barrows.

3 BY MR. BARROWS:

4           Q     Now, are you familiar with your employer's  
5 business practices, the processes and the procedures as  
6 they pertain to the origination and servicing of  
7 mortgages?

8           A     Yes.

9           Q     Now, are you familiar with your employer's  
10 business practices, processes, and procedures as they  
11 pertain to the creation, maintenance, and storage of  
12 documents relating to the origination and servicing of  
13 mortgages?

14          A     Yes.

15          Q     Now, are the records and entries made into  
16 that system made at or near the time of the transaction  
17 or the event they reflect?

18          A     Yes.

19          Q     And are the entries made by a person with  
20 knowledge of the transaction or the event?

21          A     Yes.

22          Q     And do they -- do you utilize these systems as  
23 part of your regular job duties?

24          A     I do.

25          Q     Are you familiar with the business records of

1 your employer for the loan related to this foreclosure  
2 proceeding that we have?

3 A Yes.

4 Q And did you have an opportunity to review the  
5 business records related to the defendant's loan prior  
6 to coming to trial today?

7 A I did.

8 Q And is the testimony you're about to give your  
9 own personal knowledge of your review of those business  
10 records?

11 A It is.

12 Q And what is the name of the mortgage service  
13 platform used to service this defendant's loan?

14 A Real Servicing.

15 Q What type of information does this mortgage  
16 servicing platform contain?

17 A Loan origination information, you know, the  
18 date that it started, the payment history, notes on the  
19 account, the original loan amount, tax information,  
20 escrow information.

21 Q Okay.

22 MR. GINGO: Objection, Your Honor. That's the  
23 type of information that the three cases describe  
24 is prohibited at this point in the trial. He's  
25 testifying as to what the contents are of the

1 document.

2 THE COURT: Generically, but not specifically.  
3 I'm not going to let him testify from memory what  
4 any amounts are without having the payment history  
5 in hand or anything of that nature.

6 So you may proceed.

7 BY MR. BARROWS:

8 Q And how is this information inputted into your  
9 mortgage servicing platform?

10 A By people with knowledge in the particular  
11 departments.

12 MR. GINGO: Objection, Your Honor. That's  
13 nonresponsive.

14 MR. BARROWS: Judge, I believe he answered the  
15 question. The question was, how the information is  
16 inputted in the system.

17 THE COURT: If you're satisfied with the  
18 answer, then it is responsive to your question. If  
19 you're not satisfied with it, then it is not  
20 responsive.

21 Proceed.

22 MR. BARROWS: Thank you.

23 BY MR. BARROWS:

24 Q And what is the business practice regarding  
25 inputting this information?

1           A     The time it happens, on or about the time it  
2 happens, the person -- whatever the transaction might  
3 be, the person that is in that department puts in that  
4 information.

5           Q     Okay. And what is the name of your  
6 scanned-imaging document system?

7           A     It's called CIS.

8           Q     And what types of scanned documents are kept  
9 in this system?

10          A     The origination documents, the original note  
11 or a copy of -- the original note and original mortgage  
12 are scanned into there; correspondence letters sent out;  
13 the breach letter that's sent out to the borrower.

14          Q     Okay. What department scans these documents  
15 into this document system?

16          A     Our loan integration department.

17          Q     And you said Ocwen -- I believe you testified  
18 earlier that Ocwen is a subsequent servicer on this  
19 loan?

20          A     Yes.

21          Q     When did they first become the servicer?

22          A     It was October 2012.

23          Q     Okay. And were there any prior servicers on  
24 this loan?

25          A     There was. The prior servicer before us was

1 Bank of America, and before that was Countrywide.

2 Q Okay. And did Ocwen -- when Ocwen became the  
3 servicer of this loan, did Ocwen receive the prior  
4 servicer's business records?

5 A They did.

6 MR. GINGO: Objection. Hearsay. Lack of  
7 foundation.

8 THE COURT: Overruled.

9 BY MR. BARROWS:

10 Q And how did Ocwen obtain the prior servicer's  
11 records?

12 A They received it from -- the prior servicer  
13 takes the information -- let me back up here. They get  
14 the information from the prior servicer.

15 Q And who was the immediate prior servicer on  
16 this loan?

17 A Bank of America.

18 Q And what is the procedure for the servicing  
19 transfer?

20 A What takes place is Bank of America -- we'll  
21 say the prior servicer. The prior servicer will take  
22 all the information related to every loan that they  
23 have, send it over to the new servicer, which is Ocwen,  
24 and to our loan integration department. They handle all  
25 service transfers or transfer of loan servicing.

1           From there, we look at the original information  
2 sent from the prior servicer. You know, we look at when  
3 a loan is originated, when they're due for, what's the  
4 current unpaid balance.

5           MR. GINGO: Objection. Relevance. We're  
6 talking about a particular loan. I believe the  
7 witness should be asked questions about this loan,  
8 what happened on this loan.

9           MR. BARROWS: Judge, I believe he's -- I'm  
10 establishing his foundation for --

11          THE COURT: I think that's what you're doing,  
12 and I agree. Overruled.

13          Proceed.

14          A     Which then, as I was saying we --

15          THE COURT: If you wish to stipulate to the  
16 fact that their procedure is acceptable, then we'll  
17 move right into -- I assume you don't.

18          MR. GINGO: No, sir.

19          THE COURT: Thank you.

20          A     Like I said, we get the information from the  
21 prior servicer that shows the loan information, which  
22 then we map it out to what our system -- where that  
23 information should go in our system. So we line up the  
24 loan origination date to where it would be in our  
25 system. We line up the unpaid balance from where it



1 looks in their system to where it's in our system. And  
2 we run an example, pretty much, we run a trial run,  
3 pretty much, of we're moving information from the prior  
4 servicer, Bank of America, to us, Ocwen. And that's  
5 where we audit that to make sure all the information was  
6 transferred properly. Once that's done, we transfer all  
7 the loan information.

8 We transferred this particular loan's information  
9 from Bank of America to our system, which not just the  
10 numbers are transferred, but also all the documents  
11 associated with this loan, which would be the original  
12 note, original mortgage, payment history, any letters,  
13 correspondence sent out from the prior servicer are  
14 scanned into our CIS imaging system. And so we have all  
15 the documents, as well as all the loan information, all  
16 the past history.

17 BY MR. BARROWS:

18 Q Okay. And based on your review of this  
19 particular loan, was what you just expressed on the  
20 procedure for the servicing transfer, was that done in  
21 this case?

22 A Yes, it was.

23 MR. GINGO: Objection. Hearsay. Lack of  
24 foundation. Speculation. Trying to bootstrap all  
25 that entire prior process to this one case without

1 offering any testimony.

2 MR. BARROWS: Judge, I established his  
3 foundation that he's familiar with the way that his  
4 company transfers the servicing records from the  
5 prior company.

6 THE COURT: As to the form of the question,  
7 the objection is overruled.

8 You may proceed.

9 BY MR. BARROWS:

10 Q How is the -- how is the borrower notified of  
11 the servicing transfer?

12 A The prior servicer, which would be Bank of  
13 America, mails out a hello-goodbye letter, which states  
14 that they are no longer the servicer and states the name  
15 of the new servicer, which is Ocwen, and all their  
16 information, phone number, where to mail in payments or  
17 any other correspondence address.

18 Q And as part of the prior servicer's records,  
19 Bank of America's records that they provide to Ocwen,  
20 would a copy of that letter be included as part of the  
21 servicing records?

22 A Yes.

23 MR. GINGO: Objection, Your Honor. Without  
24 the document itself, I believe it's hearsay.  
25 There's lack of foundation. There's no

1 authentication. This document doesn't exist. And  
2 he's testifying now to the contents of documents  
3 before the documents have even been admitted into  
4 evidence.

5 THE COURT: I assume that's what he's fishing  
6 around for right now.

7 MR. BARROWS: Yes, Judge. He spoke too soon  
8 on that. I was just about to have this pre-marked  
9 as an exhibit.

10 THE COURT: I had the advantage of seeing you,  
11 and he did not. So that's fine.

12 MR. BARROWS: And, Judge, if I can approach  
13 the case manager to have it pre-marked.

14 THE COURT: You may approach the case manager  
15 and have this exhibit marked as Plaintiff's No. 2  
16 for identification at this point in time.

17 (Plaintiff's Exhibit 2 marked for identification.)

18 THE COURT: Please show the document to  
19 opposing counsel.

20 BY MR. BARROWS:

21 Q All right. Let me hand you what's been  
22 pre-marked as Exhibit 2. Please tell the Court what  
23 that is.

24 A It is what we call the hello-goodbye letter  
25 sent from Bank of America to the borrower, Costel

1 Serban.

2 Q All right. And are you familiar with that  
3 document?

4 A I am.

5 Q And was that document prepared or maintained  
6 in the ordinary course and scope of Bank of America's  
7 business?

8 A Yes.

9 Q And is it a regular part of your -- a regular  
10 part of your company's business to keep and maintain  
11 records of this type?

12 A Yes.

13 Q And is this the type of document that would be  
14 kept under your custody and control?

15 A Yes.

16 Q And are these records made at or near the time  
17 of the event or the date of the letter?

18 A Yes.

19 Q Are these records made -- or is that document  
20 made by or from information transmitted by a person with  
21 knowledge?

22 A Yes.

23 Q And what does that document reflect?

24 MR. GINGO: Objection. The document speaks  
25 for itself.

1 THE COURT: Agreed.

2 MR. BARROWS: At this time we would move this  
3 into evidence as Plaintiff's Exhibit 2.

4 MR. GINGO: May I voir dire?

5 THE COURT: You may.

6 VOIR DIRE EXAMINATION

7 BY MR. GINGO:

8 Q Sir, you indicated you currently work for  
9 Ocwen; is that correct?

10 A That's correct.

11 Q Have you ever worked for Bank of America?

12 A I have not.

13 Q This document that you're testifying to, it  
14 indicates it came from Bank of America; is that correct?

15 A That's correct.

16 Q What is the full name of the Bank of America  
17 entity this came from?

18 A Bank of America NA.

19 Q All right. And isn't it true that you have no  
20 personal knowledge that Bank of America NA actually  
21 mailed out this letter?

22 A The knowledge I have is based on what came  
23 from -- when we boarded this loan, when we transferred  
24 the servicing to us, it was notified that they were sent  
25 that letter.

1 Q Your records. Your Ocwen records is what your  
2 information is based on; correct?

3 A Which came from Bank of America.

4 Q Well, you have no personal knowledge that Bank  
5 of America actually sent this out; isn't that correct?

6 MR. BARROWS: Judge, asked and answered.

7 THE COURT: Well, I don't know that he did  
8 answer. If he's looking for a yes-or-no answer, I  
9 didn't hear either of those.

10 A Since I did not work for Bank of America, I  
11 don't know whether they actually sent that out.

12 BY MR. GINGO:

13 Q And you have no record that would demonstrate  
14 that this letter was mailed out; isn't that true?

15 A Only based on what Bank of America told us.

16 Q When was this document generated?

17 A I'd have to look at that.

18 Q Yes.

19 A Thank you. September 12, 2012.

20 Q Did you cause this document to be generated?

21 A No, I did not.

22 Q Do you know if that document was generated by  
23 Bank of America?

24 A It was generated by Bank of America.

25 Q This document was literally printed, this

1 physical document in my hand was printed by Bank of  
2 America?

3 A No, no, no. It was printed within Ocwen.

4 Q Okay. So Ocwen printed this document in my  
5 hand?

6 A Correct.

7 Q Did you bring any other business record today  
8 that would demonstrate that this letter was mailed out  
9 to Mr. Serban?

10 A The only proof to know that, he knew that  
11 we're servicing the loan.

12 Q Did you bring any other document, though, that  
13 would demonstrate that this letter was mailed out to  
14 Mr. Serban?

15 A No, I do not have that.

16 Q Do you know anything about Bank of  
17 America's -- the reliability of their computer system,  
18 when it's checked for reliability, how frequently it's  
19 checked for reliability, what those checks might consist  
20 of?

21 A Just their system alone, I'm not -- anything  
22 that was transferred to us on this loan, that's how we  
23 know it was checked.

24 Q Have you ever gone to Bank of America and  
25 worked on their computer system to play with these

1 documents?

2 A I have not done that.

3 Q Have you talked to any Bank of America  
4 employees about their computer system and how they  
5 record data, process data?

6 A No, I have not.

7 MR. GINGO: I have nothing further on that.

8 MR. BARROWS: Judge, if I could redirect just  
9 briefly.

10 THE COURT: Sure.

11 DIRECT EXAMINATION (CONTINUED)

12 BY MR. BARROWS:

13 Q You testified earlier that this document was  
14 contained in the servicing records that your company  
15 obtained from Bank of America; is that correct?

16 A That's correct.

17 Q And what is the -- what is the standard  
18 practice for servicing companies sending out these  
19 letters?

20 A For correspondence of this nature --

21 MR. GINGO: Objection. That's an overbroad  
22 question. It's speculation. The question seeks  
23 information about what the standard is really for  
24 Bank of America. When he's asking what the  
25 standard of the industry is in that regard, that's



1           what he's really going to. It's too broad. The  
2           question should be narrowed down. I think it needs  
3           to be focused.

4           THE COURT: Well, regardless, the Court is  
5           going to admit the exhibit into evidence as a  
6           business record exception based on the testimony of  
7           this witness. So you don't need to voir dire  
8           anymore.

9           Just submit the exhibit to the case manager,  
10          and it will be marked as being in evidence over  
11          objection of counsel for the defendant.

12          The Court is of the opinion that sufficient  
13          predicate has been laid to establish this is a  
14          business record, that the defendant has not put  
15          into issue the manner in which the predecessors,  
16          Bank of America and I think Countrywide -- there's  
17          nothing to suggest that their business records are  
18          inadequate or fallible in anyway.

19          So, therefore, under my understanding of the  
20          law of business record, it is admitted and it's,  
21          therefore, in evidence.

22          Proceed, Mr. Barrow.

23          (Plaintiff's Exhibit 2 admitted in evidence.)

24          MR. BARROWS: Thank you, Judge.

25          Judge, at this time the plaintiff would ask

1 the Court to take judicial notice of the original  
2 note that's been filed previously filed with the  
3 Court.

4 MR. GINGO: Your Honor, if I could just look  
5 at that real quickly.

6 THE COURT: If you want to take a look at that  
7 exhibit. I'm looking here at the mortgage. Give  
8 me a paper clip. That's the mortgage. The note  
9 ought to be right in front of it. There you go.

10 MR. GINGO: Thank you. It looks like the  
11 original, both the note and mortgage.

12 THE COURT: The note and mortgage contained in  
13 the court file, which counsel for the defendant has  
14 acknowledged are the originals, are those being  
15 offered in evidence?

16 MR. BARROWS: They would if the --

17 MR. GINGO: No objection.

18 THE COURT: No objection. Okay. The note  
19 will be noted as Exhibit 3 in evidence for the  
20 plaintiff. And the mortgage will be noted as  
21 Exhibit No. 4 in evidence for the plaintiff. The  
22 documents will remain in the court file in their  
23 present posture at the present time.

24 Go ahead, Mr. Barrows.

25 (Plaintiff's Exhibits 3 & 4 marked and admitted.)

1 MR. BARROWS: Judge, I have two documents I  
2 would like pre-marked as exhibits.

3 THE COURT: Okay. Come on up.

4 MR. BARROWS: The first document is Bank of  
5 America payment history.

6 THE COURT: It will be marked No. 5 for  
7 identification, the payment history.

8 (Plaintiff's Exhibit 5 marked for identification.)

9 MR. BARROWS: And the second document, Judge,  
10 is the payment history from Ocwen Servicing.

11 THE COURT: All right. No. 5 is the payment  
12 history from whom, then?

13 MR. BARROWS: Bank of America, the prior  
14 servicers.

15 THE COURT: Okay. And No. 6 is the payment  
16 history from Ocwen Loan.

17 MR. BARROWS: Yes, Judge.

18 (Plaintiff's Exhibit 6 marked for identification.)

19 BY MR. BARROWS:

20 Q Okay. Let me show you what's been pre-marked  
21 as Plaintiff's Exhibit 5 for identification. Can you  
22 please tell the Court what that is?

23 A This is a payment history from Bank of  
24 America, starting in November of 2006 and ending in  
25 December of 2011.

1 Q Okay. And are you familiar with that  
2 document?

3 A I am.

4 Q And was that -- was that document prepared or  
5 maintained in the ordinary course and scope of the  
6 records?

7 A Yes.

8 MR. GINGO: Objection, Your Honor. Hearsay.  
9 Lack of foundation. Lack of predicate. This  
10 witness hasn't testified as to how he would know  
11 what the prior servicer's record maintenance is.

12 MR. BARROWS: Judge, I haven't yet sought to  
13 admit this document into evidence. I haven't  
14 finished my questions on this document. But this  
15 document -- but I am going to establish that this  
16 document was part of the prior servicer's records.

17 THE COURT: Okay. Proceed.

18 BY MR. BARROWS:

19 Q Was that document prepared or maintained in  
20 the ordinary course and scope of Bank of America's or  
21 the prior servicer's --

22 MR. GINGO: Your Honor, may I have a  
23 continuing objection?

24 THE COURT: You may. Of course, the exhibit  
25 hasn't been offered for introduction as yet. It's

1           only for identification. You may voir dire and  
2           then make any objection on the record before the  
3           exhibit is received by me in evidence, if it's  
4           going to be received. And I understand that even  
5           though I keep knocking you down, you've got to keep  
6           stating the same thing or else somebody up the line  
7           will say, well, he abandoned his position.

8           MR. GINGO: I appreciate that.

9           THE COURT: Okay.

10          MR. GINGO: Thank you, Judge.

11 BY MR. BARROWS:

12          Q       And is it a regular part of the company's  
13          business to keep and maintain records of this type?

14          A       Yes.

15          Q       And is this the type of document that would be  
16          kept under your custody and control?

17          A       Yes.

18          Q       And are these records made at or near -- the  
19          events in the payment transactions and the events listed  
20          on that payment history, were they made at or near the  
21          time of the transaction or event?

22          A       They were.

23          Q       And are these documents made by -- or are  
24          those entries made by or from information transmitted by  
25          a person with knowledge?

1           A     Yes.

2           Q     And what does this particular document  
3 reflect?

4           A     It is the -- it's payments received from the  
5 borrower, as well as insurance and tax disbursements  
6 made on behalf of the -- or by Bank of America.

7           Q     And did you review this document and compare  
8 it with the other business records that -- let me strike  
9 that and rephrase.

10           Was this particular document part of the prior  
11 servicer's records that you obtained?

12           A     Yes.

13           Q     Okay. And based on your review of this  
14 document and what you testified earlier with regard to  
15 the boarding process for when you received these prior  
16 servicer's records, did you receive this -- did you  
17 review this document to ensure that the information  
18 listed there was accurate?

19           A     Yes.

20           Q     And based on your review of this document, the  
21 payment history, is this loan in default?

22           A     Yes, it is.

23           MR. GINGO: Objection. Hearsay. Conclusion  
24 of law at this point. Lack of foundation.  
25 Speculation. And there's been no business record

1 introduced to demonstrate default. If the document  
2 is admitted into evidence, the document would speak  
3 for itself, perhaps as in default, perhaps as not.  
4 He's again testifying prior to the admission of the  
5 document into evidence as to what it contains.

6 THE COURT: That's true. That's what he's  
7 doing. And the Court, the reason I'm here is even  
8 if he says it's evidence of the default and I find  
9 later that it's not, then I'm going to go with my  
10 ruling, not his.

11 So your objections are duly noted. And the  
12 witness can continue to testify to what, at this  
13 point in time, appear to be proper business records  
14 as received from the Bank of America.

15 BY MR. BARROWS:

16 Q And what is the date of the last payment  
17 reflected on this document, on this payment history?

18 A Last payment received was on January 15, 2008.

19 Q And what was the amount of the last payment?

20 A \$1,025.42.

21 MR. BARROWS: And, Judge, at this time  
22 plaintiff would move to -- would move into evidence  
23 the Bank of America payment history as Exhibit 5.

24 MR. GINGO: May I voir dire?

25 THE COURT: Yes, sir, you may.

## 1 VOIR DIRE EXAMINATION

2 BY MR. GINGO:

3 Q Sir, this Exhibit 5 for identification, Bank  
4 of America payment history, again, you never worked for  
5 Bank of America; is that correct?

6 A That is correct.

7 Q So you have no personal knowledge -- isn't it  
8 true you have no personal knowledge that this was made  
9 at or near the time by or from information transmitted  
10 by a person with knowledge?

11 A I know that it was -- I know that the payments  
12 were made because when we transferred everything over to  
13 our system, the last payment received to Bank of America  
14 was January 15, 2008.

15 Q So your information, to answer my question,  
16 comes from Ocwen; correct?

17 A Which Ocwen received from Bank of America.

18 Q So isn't it true, though, you have no personal  
19 knowledge that the information in this document was made  
20 at or near the time by or from information transmitted  
21 by a person with knowledge at Bank of America?

22 A At Bank of America, correct, I don't know.

23 Q And isn't it true that you have no personal  
24 knowledge that this document was kept in the course of  
25 regularly conducted business activity at Bank of



1 America?

2 A When it was at Bank of America, I do not know.

3 Q Okay. And isn't it true that you have no  
4 personal knowledge that it was a regular practice of  
5 Bank of America to make this document?

6 A Like I said, I wasn't there. But based on  
7 what they told us, it was done properly.

8 Q Was Bank of America the first loan servicer in  
9 this case?

10 A No. Countrywide was.

11 Q Isn't it true that this document that you're  
12 testifying to now contains information that you're  
13 trying to establish came also from Countrywide?

14 A That's correct.

15 Q Did you ever work for Countrywide?

16 A I did not.

17 Q Isn't it true that you have no personal  
18 knowledge that the information that came from  
19 Countrywide that's in this document was made at or near  
20 the time by or from information transmitted by a person  
21 with knowledge?

22 A Only from what Bank of America told us. But  
23 since I never worked there, I don't know.

24 Q Isn't it true that the information from  
25 Countrywide that's in this document from Bank of America

1 you have no personal knowledge as to whether or not it  
2 was kept in the course of regularly conducted business  
3 activity at Countrywide?

4 A Correct.

5 Q And isn't it true that that information from  
6 Countrywide that's in this document from Bank of  
7 America, that you have no personal knowledge that it was  
8 a regular practice of Countrywide to keep that  
9 information?

10 A Correct.

11 MR. GINGO: I renew my objection, Your Honor.  
12 Lack of foundation. Lack of authentication.  
13 Hearsay. And at this point, it's also speculation.  
14 That document is not a proper business record. So  
15 I would ask that it not be admitted into evidence.

16 THE COURT: Well, again, I'll tell you what my  
17 understanding of the law is, that you have -- let  
18 the record show that in this Court's opinion the  
19 defense has not put into evidence anything to  
20 question the business record processes or  
21 procedures of Nationwide, Countrywide, Bank of  
22 America, or Ocwen, and that, therefore, it is a  
23 business record and it is admissible as an  
24 exception to the hearsay rule, and Exhibit 5 will  
25 be in evidence.

1 (Plaintiff's Exhibit 5 admitted in evidence.)

2 MR. BARROWS: And, Judge, do you want me to  
3 approach the case manager now and --

4 THE COURT: You can just go ahead with Exhibit  
5 6. And then when you get through with that one,  
6 we'll see what happens. And then you can file  
7 them. In any event, the case manager is going to  
8 take care of them, whether they're in evidence or  
9 just for identification only.

10 DIRECT EXAMINATION (CONTINUED)

11 BY MR. BARROWS:

12 Q Let me show you what's been pre-marked for  
13 identification as Plaintiff's Exhibit 6. And are you  
14 familiar with this document?

15 A I am.

16 Q And please identify this document to the  
17 Court.

18 A This was Ocwen's loan servicing payment  
19 history on the loan in question.

20 Q All right. And was that document prepared or  
21 maintained in the ordinary course and scope of your  
22 employer's business?

23 A Yes.

24 Q And is it a regular part of your company's  
25 business to keep and maintain records of this type?

1           A     Yes.

2           Q     And is this the type of document that would be  
3 kept under your custody and control?

4           A     Yes.

5           Q     And are these records made at -- I'm sorry --  
6 the entries on that document, were they made at or near  
7 the time of the transaction?

8           A     Yes.

9           Q     And were they made by or from information  
10 transmitted by a person with knowledge?

11          A     Yes.

12          Q     And based on your review, does that document  
13 show any -- let me strike that and rephrase.

14                What does this document reflect?

15          A     It is the payment history from when we began  
16 servicing the loan in 2012 till today.

17          Q     Okay. And what types of entries are  
18 maintained on that document?

19          A     Fees that are assessed, which would be  
20 property inspection fees, attorney's fees, escrow  
21 disbursement, insurance, and tax payments made by Ocwen.

22          Q     And any payments, any payments made by the  
23 borrower, would they be reflected on that document?

24          A     They would.

25          Q     Does that -- are there -- based on your review

1 of that document and your review of the business records  
2 at Ocwen, has the defendant made any payments to Ocwen  
3 for this loan?

4 A He has not.

5 MR. BARROWS: Judge, at this time I would ask  
6 to move Exhibit 6, previously marked for  
7 identification as an exhibit.

8 MR. GINGO: May I voir dire?

9 THE COURT: You may, sir.

10 VOIR DIRE EXAMINATION

11 BY MR. GINGO:

12 Q Sir, when did Ocwen take over?

13 A October 2012.

14 Q All right. And does this document contain  
15 information from prior loan servicers?

16 A Just the previous loan balance that was  
17 transferred in and I believe any previous fees that were  
18 assessed, anything that was paid out.

19 Q So the two prior loan servicers are  
20 Countrywide and Bank of America; correct?

21 A Correct.

22 Q And you never worked for Countrywide.

23 A Correct.

24 Q And you never worked for Bank of America.

25 A Correct.

1           Q     And you have no personal knowledge of the  
2 process for Countrywide inputting data into their  
3 system; is that true?

4           A     That is true.

5           Q     You have no personal knowledge of the process  
6 by which Countrywide verifies the information in their  
7 system; is that true?

8           A     True.

9           Q     You have no personal knowledge as to how  
10 Countrywide's computer system is monitored for valid  
11 operating?

12          A     Correct.

13          Q     All right. And the same with Bank of America.  
14 You have no personal knowledge as to their computer  
15 system, how it operates and how its reliability is  
16 challenged?

17          A     Correct.

18          Q     And, also, you have no personal knowledge as  
19 to how the information is processed by Bank of America;  
20 is that correct?

21          A     Correct.

22                MR. GINGO: Other than my previous objections,  
23 Your Honor, lack of foundation, lack of hearsay,  
24 lack of authentication, this is a business record  
25 from prior loan servicers, and he's not laid the

1 foundation for it, I would submit.

2 THE COURT: Same ruling as to Exhibit 5.  
3 Exhibit 6 will be received into evidence and  
4 submitted to the case manager, please.

5 MR. GINGO: Was that Exhibit 6 just now?

6 THE COURT: Yes.

7 (Plaintiff's Exhibit 6 admitted in evidence.)

8 MR. BARROWS: All right. Judge, I have  
9 another exhibit I would like pre-marked for  
10 identification.

11 THE COURT: Sure. Bring all your exhibits up  
12 here and have them pre-marked if you would like.

13 MR. BARROWS: Okay. Great. Actually -- well,  
14 I've got the final judgment with the numbers, but  
15 this is the final exhibit, then.

16 THE COURT: Okay. That will be No. 7 for  
17 identification.

18 MR. BARROWS: And, Judge, this is the breach  
19 letter.

20 (Plaintiff's Exhibit 7 marked for identification.)

21 DIRECT EXAMINATION (CONTINUED)

22 BY MR. BARROWS:

23 Q Let me show you what's been pre-marked for  
24 identification as Plaintiff's Exhibit 7. Are you  
25 familiar with that document?

1           A     Yes.

2           Q     And can you please identify to the Court what  
3 that document is.

4           A     Breach letter sent to the borrower, Costel  
5 Serban.

6                   MR. GINGO:  Objection, Your Honor.  The  
7 witness testified that the letter was sent.  That's  
8 hearsay.  The document would speak for itself if  
9 it's admitted in evidence.

10                   THE COURT:  Understand.  Business records,  
11 however, can support the fact that it was sent.  
12 Otherwise, the exhibit will, in fact, speak for  
13 itself, not need to be interpreted by the witness.

14 BY MR. BARROWS:

15           Q     What entity sent out that document?

16           A     Countrywide Home Loans.

17                   MR. GINGO:  Objection.  Hearsay.

18                   MR. BARROWS:  Judge, he hadn't even finished  
19 answering the question before the objection was  
20 called.

21                   THE COURT:  All right.  Understand that.  He  
22 has kind of a standing objection.  But he needs to  
23 renew it from time to time.  But go ahead.

24 BY MR. BARROWS:

25           Q     Okay.  What entity sent out that document?



1           A     Countrywide Home Loans.

2           Q     And you previously testified that's one of the  
3 prior servicers for this loan?

4           A     Correct.

5           Q     And was this document prepared or maintained  
6 in the ordinary course and scope of Countrywide's  
7 business?

8           A     Yes.

9           Q     And it's a regular part of your company's  
10 business to keep and maintain records of this type?

11          A     Yes.

12          Q     And was this document made at or near the date  
13 listed on the record?

14          A     Yes.

15          Q     And are these records made by or from  
16 information transmitted by a person with knowledge?

17          A     Yes.

18                THE COURT:  This exhibit was generated by  
19 Countrywide, subsequently sent to Bank of America,  
20 and then subsequently sent to Ocwen Loan Service.  
21 So the breach occurred at a point in time when  
22 Countrywide was actually actively servicing the  
23 loan?

24                THE WITNESS:  Yes.

25                THE COURT:  And the information that you're

1 relating at this time is based upon the transfer of  
2 business records from Countrywide to Bank of  
3 America and subsequently from Bank of America to  
4 Ocwen?

5 THE WITNESS: Yes.

6 THE COURT: And they're now -- Ocwen is now in  
7 possession of all of the documents associated with  
8 this loan activity?

9 THE WITNESS: Correct.

10 THE COURT: All right.

11 BY MR. BARROWS:

12 Q And to whom was this letter sent to?

13 A The borrower, Costel Serban.

14 Q And what is the address reflected on that?

15 A It was mailed to 2651 West Highway 98, Mary  
16 Esther, Florida, 32569.

17 Q And is that the property address, the property  
18 address secured by the mortgage?

19 A No, it is not.

20 Q Okay. And why was it sent to that address?

21 A Because that's where he requested us to send  
22 all correspondence to.

23 MR. GINGO: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MR. BARROWS:

1           Q     Is that the address that -- based on your  
2 review of the prior records from the prior servicers, is  
3 that the designated mailing address?

4           A     Yes.

5           MR. GINGO:  Objection.

6           THE COURT:  Sustained.

7           If you haven't figured it out yet, you're in  
8 trouble.  I'm going to require more than a third  
9 person's review of Countrywide's record to convince  
10 me that you had authorization to send this letter  
11 to any address other than that provided in the  
12 mortgage.  So if you don't have it, then you're  
13 out; this is over.

14           In other words, the mortgage says it's to be  
15 sent to the address of record.  It was not.  Your  
16 witness has testified to that.

17           It also says that the bank shall establish a  
18 procedure and that they shall have in writing  
19 confirmation from the borrower that it's to be sent  
20 to a different address.  You don't have that.

21           And the best evidence would be a copy of that  
22 letter.  And you better let the word filter on down  
23 through the system that that's what I'm going to  
24 require.

25           MR. BARROWS:  Do you require a copy of the

1 direct letter from the borrower?

2 THE COURT: I require a copy of the indication  
3 from the borrower that he wants the notice sent to  
4 an address other than that noted in the mortgage.  
5 That's what the paragraph requires, from a rather  
6 simple reading of it.

7 There's no evidence, no good evidence, not  
8 even any bad evidence, that the notice of default  
9 was sent to Mr. Serban at an address that he  
10 requested.

11 BY MR. BARROWS:

12 Q Based on your review of the prior servicers'  
13 records, was -- based on your review of the prior  
14 servicers' records, how do you know that that has the  
15 borrower's designated --

16 MR. GINGO: Objection, Your Honor. Hearsay.  
17 He's beginning to testify again to information  
18 that's not been admitted into the record.

19 THE COURT: That is not an item that I am  
20 going to permit oral testimony to.

21 MR. BARROWS: Okay.

22 THE COURT: You need to make a note of it and  
23 you need to get the word out that you need to bring  
24 a copy of the communication from the borrower to  
25 the lender that I want it now sent to this address,

1           because I think that's what it requires.

2           For him to testify to something that happened  
3           when Countrywide had it, even if it was sent to  
4           him, I would not let him testify to that fact based  
5           upon oral testimony without a copy of the exhibit.

6           MR. BARROWS: Okay. Judge, if I could briefly  
7           respond to that.

8           THE COURT: Have at it.

9           MR. BARROWS: That paragraph in the mortgage,  
10          I believe it's paragraph 15 in the mortgage --

11          THE COURT: It is.

12          MR. BARROWS: -- it doesn't specifically  
13          require that the borrower designate his address, an  
14          address other than the property address, in  
15          writing. The borrower can call the servicer. The  
16          borrower can call the lender.

17          THE COURT: Based upon any policy established  
18          by the lender. That's what it says. I've read it  
19          three times. There's no evidence to that, either.  
20          "Shall be deemed to have been given to borrower  
21          when mailed by first-class mail or actually  
22          delivered. Notice to any one borrower will  
23          constitute notice to all. The notice address shall  
24          be the property address, unless borrower has  
25          designated a substitute notice address by notice to

1 lender. Borrower shall promptly notify lender of  
2 borrower's change of address. If lender specifies  
3 a procedure for reporting borrower's change of  
4 address, then borrower shall only report a change  
5 through that procedure."

6 There's been no evidence of what the procedure  
7 is. There's been no evidence, other than his oral  
8 testimony of a review of a record by a predecessor  
9 servicer, that the address was changed. I wouldn't  
10 permit him to testify to what that address was.

11 MR. BARROWS: Are you familiar -- Judge, if I  
12 could --

13 THE COURT: Sure. Go ahead and try to get air  
14 back in the tire. I don't care. That's how we  
15 play this game.

16 BY MR. BARROWS:

17 Q Are you familiar at all with the procedures  
18 established by the prior servicer, by Bank of America,  
19 with regard to change of address or designations of an  
20 address for notice purposes?

21 THE COURT: Well, this is Countrywide, anyway,  
22 not Bank of America.

23 BY MR. BARROWS:

24 Q Oh, I'm sorry. Yeah. By Countrywide or by  
25 any of the prior.

1           A     As to the procedure, I'm not familiar with  
2 what they did. Just based on when we transferred over  
3 that, that was designated as their mailing address where  
4 all correspondence needed to go.

5           MR. BARROWS: Okay. At this time we would  
6 withdraw the letter as an exhibit based on your --

7           THE COURT: Well, it's still going to be in  
8 evidence. It's not in evidence, but it's part of  
9 the record.

10           And then what are you next going to do?  
11 Voluntarily dismiss or what? Do you want to take a  
12 minute to think about it? Do you want to talk to  
13 opposing counsel and see if you can arm-wrestle a  
14 deal? I don't have a problem with that either.

15           This is a specific condition, and I'm of the  
16 opinion that it needs to be complied with. So,  
17 anyway, that's my ruling. You think about what you  
18 want to do.

19           MR. GINGO: I could use a quick restroom  
20 break.

21           THE COURT: Sure. Take a break.

22           MR. BARROWS: I apologize, sir.

23           THE COURT: You don't need to apologize.

24           (Recess taken from 2:29 p.m. to 2:34 p.m.)

25           THE COURT: Mr. Barrows, please proceed.

1           MR. BARROWS: Judge, let the record reflect  
2           I'm handing the witness a copy of the final  
3           judgment of foreclosure, the proposed final  
4           judgment.

5 BY MR. BARROWS:

6           Q     Have you had an opportunity to review this  
7           proposed judgment?

8           A     I have.

9           Q     And did you review the numbers listed in the  
10          final judgment against your business records for  
11          accuracy as far as the amounts that are due and owing?

12          A     Yes.

13          Q     And based on your review of the business  
14          records associated with the defendant's loan and the  
15          prior servicing records, are the amounts due and owing  
16          listed in the final judgment consistent with your  
17          business records for the defendant's loan?

18          A     They are.

19          Q     All right.

20          MR. BARROWS: Judge, at this time --

21          THE COURT: Would you indicate the total  
22          amount on the final judgment itself?

23          MR. BARROWS: Oh, I'm sorry.

24 BY MR. BARROWS:

25          Q     What is the total amount listed?



1           A     186,302.78.

2                   MR. BARROWS: Judge, at this time the  
3           plaintiff rests.

4                   THE COURT: All right. For the defendant.

5                   MR. GINGO: I have no evidence, Your Honor.

6                   THE COURT: All right. Basically, the Court  
7           is of the opinion that the plaintiff has failed to  
8           establish notice of default and that that is a  
9           critical phase of the case and that the plaintiff's  
10          case fails for that reason. So the judgment will  
11          be for the defendant.

12                   MR. GINGO: Thank you, Your Honor. I will get  
13          with counsel and get an order of judgment for the  
14          Court.

15                   (The proceedings concluded at 2:37 p.m.)

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## CERTIFICATE

STATE OF FLORIDA  
COUNTY OF OKALOOSA

I, Brenda Douglas, RPR, FPR, Court Reporter  
and Notary Public for the State of Florida at Large,  
certify that I was authorized to and did report  
stenographically the foregoing proceedings and that the  
transcript is a true and complete record of my  
stenographic notes.

DATED this 14TH DAY OF OCTOBER, 2013.

*Brenda Douglas*

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BRENDA DOUGLAS, RPR, FPR

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