

1 the records, how would your company be  
2 harmed in that scenario?  
3 MR. BROCHIN: Object to the form.  
4 A. Well, the intent of the parties, including  
5 the borrower, is that MERS can foreclose.  
6 Q. Well, have you ever interviewed a borrower  
7 to ask them even if they knew who MERS was?  
8 A. It's in the first paragraph of the security  
9 instrument.  
10 Q. Sure. And like we talked about, MERS is  
11 the mortgagee. I mean --  
12 A. Yes.  
13 Q. So we're talking about from that  
14 perspective again. MERS is never going to  
15 suffer a default no matter what a client  
16 does; right?  
17 MR. BROCHIN: Object to the form  
18 of the question to the extent  
19 there is a legal question  
20 there. That's my objection.  
21 A. Well, the security instrument makes MERS  
22 the mortgagee, and that's executed by the  
23 borrower. And the security instrument

1 specifically says in another paragraph that  
 2 MERS has the right to foreclose. And those  
 3 documents under federal law are provided to  
 4 the borrower well before closing.  
 5 Q. And if the borrower is dealing with a  
 6 lender who uses the MERS as mortgagee form  
 7 and that's the only form they use, then  
 8 that borrower has no choice as to whose  
 9 name is mortgagee of record in the records,  
 10 does it?  
 11 KR. BROCHIN: Objection. Asked  
 12 and answered. I thought we  
 13 covered that this morning.  
 14 But you can answer it.  
 15 A. Well, they have a choice as to which lender  
 16 they use.  
 17 Q. And exactly how deep do they have to go in  
 18 the process to find out that that lender  
 19 only uses the MERS as mortgagee form?  
 20 A. Maybe walk across the street. I don't  
 21 know.  
 22 Q. Is it disclosed in a good-faith estimate or  
 23 any warnings prior to closing if that's the

1 case?

2 MR. BROCHIN: Objection.

3 Compound. Asked and answered

4 this morning.

5 A. It's in the first paragraph of the security

6 instrument and federal law requires that

7 they be given a copy of those documents

8 well before closing.

9 Q. I just want to make sure I understand. You

10 are perfectly willing to allow any

11 beneficial owner of any mortgage note

12 registered on your system to transfer that

13 lien out of your name and conduct

14 foreclosure on their own?

15 MR. BROCHIN: Object to the form.

16 A. Yes.

17 Q. But you somehow claim to be harmed if a

18 court were to say that you had no

19 enforceable interest in the foreclosure

20 proceeding?

21 MR. BROCHIN: Objection to the

22 form. You're

23 mischaracterizing his

1 testimony. And I also object  
2 for the previous reasons I  
3 objected when you asked it  
4 last time.

5 A. Yeah. I had trouble following that because  
6 the security instrument signed by the  
7 borrower gives us the right to foreclose.  
8 And if we hold the note like our rules  
9 require, it's hard to envision that we  
10 can't foreclose.

11 Q. The right to foreclose is defined by state  
12 law; right?

13 A. Always subject to state law.

14 Q. And your MERS as mortgagee form is merely  
15 an extension of your agreement with your  
16 members; right?

17 MR. BROCHIN: Object to the form.  
18 A. Well, that's the uniform document that's  
19 used by anyone that is going to register  
20 the loan on the MERS system.

21 Q. Absolutely. But that form is a form that  
22 you require of the members to use who are  
23 going to register the loan; right?

1 A. Actually it would be required by the investor.

2 Q. Did you take any part in answering the interrogatories that were filed in this case?

3 A. In the Henderson case?

4 Q. (Nods head.)

5 A. No.

6 Q. Okay. Have you reviewed them?

7 A. No.

8 Q. I show you a document I've marked as Plaintiff's Exhibit 8. Are you able to identify that document?

9 A. It's one of the -- one of the documents generated out of the KERS system.

10 Q. And what level of access would you have to have to receive that document?

11 A. This would be top-level access.

12 Q. So that would be somebody way up the food chain?

13 MR. BROCHIN: Object to the form

1 of the question.

2 A. It would be somebody that is already in

3 this file.

4 Q. Okay. So is that file frozen from access

5 to people who are not already involved in

6 it or something?

7 A. Yes.

8 Q. And is that because of this lawsuit?

9 MR. BROCHIN: Object to the form.

10 A. No. It's because of the access level.

11 Q. Okay. And what could a person reviewing

12 that document -- what could they learn from

13 the contents of that document? What does

14 that document tell us?

15 A. It's got all kinds of information on it,

16 but it's very basic.

17 Q. And what exactly is there?

18 A. You mean every single piece of information

19 on it?

20 Q. Well, you can summarize it. What's on that

21 document just by reading it? What am I

22 supposed to be able to determine by that?

23 A. Well, you determine who the parties to the

1 loan are.

2 Q. Okay.

3 A. The only thing it establishes is that this

4 is a MOM.

5 Q. Okay. Anything else?

6 A. It says it's in foreclosure.

7 Q. Is that part of a standard form of course

8 that can be generated or is generated

9 routinely through your company?

10 A. If you have the authority.

11 Q. Is that authority available to GMAC?

12 A. Yes.

13 Q. Is it available to anyone else?

14 A. By this document?

15 Q. (Nods head.)

16 A. No.

17 Q. And when was that document effective?

18 KR. BROCHIN: Object to the form

19 of the question.

20 Q. Is there any way to tell when that

21 situation came to be where only GMAC was

22 aligned with that particular loan?

23 A. Whenever -- whenever the registration was

1 and then transfers, since then.

2 Q. Would that be a MIN transfer audit?

3 A. A MIN transfer?

4 Q. A MIN transfer audit. Would that give you  
5 that same information?

6 A. Oh, you mean a report like that?

7 Q. (Nods head.)

8 A. I don't know.

9 Q. Have you reviewed the MIN transfer audit  
10 for this particular loan?

11 A. I don't recall.

12 (Plaintiff's Exhibit 9 was marked  
13 for identification.)

14 Q. Let me show you a document I've marked as  
15 Plaintiff's Exhibit 9. Have you reviewed  
16 those documents as part of your employment  
17 in the past?

18 A. Not really.

19 Q. Are you familiar with the contents of those  
20 documents?

21 A. Generally.

22 Q. Are you able to testify as to what that  
23 document represents?

1 A. Not really.

2 Q. What can you ascertain from looking at that

3 document -- what information can you glean

4 from that document?

5 A. I'd have to have one of my -- my team help

6 me with that.

7 Q. Who would be the person that could

8 interpret that document for you?

9 A. Somebody on my team.

10 Q. Got any idea who that would be?

11 A. Well, it's very -- it's very basic. So it

12 would just need to be somebody that knows

13 how to read it.

14 Q. Can I have that document for a moment,

15 please, sir?

16 In looking at this document, reading

17 from right to left, it says that

18 December 20th, 2004, there was a batch

19 uploaded by an organization that was ID'd

20 as 1000249. And the next entry says that

21 the transfer status says pending and then

22 complete. Would that represent a handshake

23 that we talked about earlier?

1 A. That sounds like it.

2 MR. BROCHIN: Object to the form.

3 I think the witness said he's

4 not in a position to offer

5 that testimony for this

6 document.

7 MR. WOOLEN: All right. Well,

8 we're -- I'm going to examine

9 him on what he can tell from

10 it based on what I can tell

11 from it.

12 Q. And it indicates that all three of those

13 transactions indicated a transfer status

14 and a transfer success indicator occurred

15 on 12-20 of 2004 and that the transfer

16 success indicator was yes. Does that mean

17 that the handshake was complete?

18 A. I don't know.

19 Q. All right. The column on the farthestmost

20 right-hand side has a series of

21 organizational ID numbers. Do you have a

22 database which would provide you the

23 identity of each of the entities by that

1 organization ID number?

2 A. Yes.

3 Q. And you can actually look up those entities

4 on your Website by that ID number, can't

5 you?

6 A. Do those numbers have seven digits?

7 Q. Yes, they do.

8 A. Yes.

9 Q. Okay. And in examining those documents on

10 your Website, I represent to you -- and be

11 glad to take a moment to look it up and

12 show it to you if you'd like -- but that

13 1,249 -- or 1000249 was a number for GMAC.

14 Have you reviewed those numbers and are

15 familiar with them?

16 A. I know they have seven digits and they keep

17 track of our members.

18 Q. Okay. So if it indicated that on

19 12-20-2004 GMAC transferred the note and

20 there was a handshake for it, you would

21 have no reason to doubt that that's at

22 least allegedly what transpired, right?

23 A. I don't know whether it had to do with the

1 note or not.

2 Q. Okay. With respect to that particular

3 document, there is a date entered of

4 September 18th, 2009. And it says that the

5 MIN transfer confirmation from the current

6 investor and that it was confirmed. The

7 current investor, according to the earlier

8 transaction ...

9 The number for the current investor was

10 1000375. And when I looked that number up,

11 it came back to Ginnie Mae. Would you have

12 any reason to doubt that that was who was

13 the current investor at the time that the

14 transfer took place --

15 MR. BROCHIN: Object to the form

16 of the question.

17 Q. -- based on your records?

18 MR. BROCHIN: Object to the form

19 of the question.

20 A. Well, Ginnie Mae is a little different than

21 any other investor.

22 Q. In what respect?

23 A. They're actually a guarantor. It's the

1 united States Government.

2 Q. Okay, And how are they different from the

3 other investors?

4 A. They probably never actually have the note.

5 Q. But you don't know that?

6 A. I don't know that.

7 Q. And, again, you would defer to what the

8 actual documents say; right?

9 A. Well, if those are documents out of the

10 KERS system, I would certainly go by them.

11 I just -- I don't read those in the normal

12 course of my work.

13 Q. Well, you understand I've never seen them

14 before either?

15 A. Yeah. And they're not -- not that

16 difficult to read. I just would be

17 guessing.

18 Q. Put that with the other ones.

19 This is a two-page --

20 (Brief interruption.)

21 (Plaintiff's Exhibit 10 was marked

22 for identification.)

23 Q. I'm going to clip these separately. We'll

1 mark these as Plaintiff's Exhibit 10.

2 Do you know what a MIN audit is?

3 A. As opposed to a MIN transfer audit?

4 Q. Right.

5 A. I might if I look at it.

6 Q. All right. Let me let you take a look at

7 that. And, again, I don't mean to throw

8 that at you. I'm sorry. I'm just trying

9 to make sure you can get your hands on it.

10 A. Uh-huh (positive response).

11 Yeah. These are documents that an

12 expert could read. Straightforward, but

13 you would have to have experience to be

14 able to read them.

15 Q. Okay. Would you be able to take your

16 procedures manual and those documents and

17 pretty much be able to tell what was meant

18 by most of those entries?

19 A. My team could.

20 Q. Sure. Let me take a look at that

21 document.

22 At the bottom of this page there's an

23 entry for 12-20-2004, and it gives an

1 agency number and says it's a part of a  
2 batch file. And then on 8-18-2007, as part  
3 of a batch file, it indicates that it's in  
4 foreclosure status pending under option two  
5 and says, comma, retained on MERS. So that  
6 would indicate to you that foreclosure was  
7 instituted in the name of MERS; right?  
8 A. Yes.  
9 Q. And the organization ID at that point in  
10 time says 1000375, which earlier I said  
11 when I looked it up was GMAC.  
12 A. It was GMAC?  
13 Q. GMAC -- GMAC Mortgage, LLC.  
14 MR. BROCHIN: I thought you said  
15 Ginnie Mae.  
16 MR. RAMEY: Yeah. You said 375  
17 said Ginnie Mae.  
18 MR. WOOLEN: 100249 is Ginnie Mae.  
19 MR. RAMEY: Oh, okay. You said it  
20 backwards earlier.  
21 THE WITNESS: Yeah.  
22 MR. RAMEY: Because I did write it  
23 down whenever it came out the

1 first time. So that may  
 2 change how the testimony  
 3 was --  
 4 MR. WOOLFEN: I apologize if that  
 5 was the case.  
 6 Q. But this follows a -- there's an entry of  
 7 August 18th, 2007, indicating foreclosure  
 8 status, September -- or October 23rd, 2007,  
 9 indicating foreclosure status, and  
 10 June 14th, 2008, indicating foreclosure  
 11 status. But then there's an entry on  
 12 September 18th, 2009, indicating an  
 13 investor pool number, and it has a code or  
 14 a value that says 634653XAF. Somewhere  
 15 that value is defined in your system, isn't  
 16 it?  
 17 A. I'm sure it is.  
 18 Q. And that was intended to identify an  
 19 investor pool, right?  
 20 A. Whatever that value is shown in the system.  
 21 Q. Okay. And your policies and procedures  
 22 manual requires servicers and investors to  
 23 indicate the pool or the trust where the

1 asset -- the note is for the beneficial  
2 interest; right?

3 A. I wouldn't say requires. In all of these  
4 entries you're talking about, like you said  
5 earlier, there's corollary documents.  
6 Q. Right. There are underlying documents.  
7 We're talking about for the purposes of  
8 your system. Everything that's on this  
9 report as of this day, this information  
10 should have been available to GMAC and  
11 Ginnie Mae whenever they looked at this MIN  
12 number; right?

13 A. Yes.

14 Q. And right above that entry that indicates  
15 the investor pool number, there is an  
16 investor Org ID, which I read to be the  
17 investor organization ID; is that correct?

18 A. Sounds like it.

19 Q. Okay. And it indicates 1000249 is the  
20 before value, which is the value for Ginnie  
21 Mae. And then the after value is 1000375,  
22 which is the value for GMAC Mortgage, LLC.  
23 Is that also another handshake evidencing a

1 change in the interest of this loan?

2 A. It's an update.

3 (Plaintiff's Exhibit 11 was marked

4 for identification.)

5 Q. I'm going to hand you another page I've

6 marked as 11. It is also dated

7 December 20th, 2004. It indicates that the

8 investor organization ID is 1000375, which

9 is GMAC, and the after value is 1000249,

10 which is Ginnie Mae. And it also indicates

11 the investor pool number which matches the

12 investor pool number shown on

13 September 18th, 2009; correct?

14 I mean, I'll show it to you. But you

15 can take a look at that and you can compare

16 it.

17 Okay. Compare it to the numbers on

18 that document.

19 In reviewing those documents, that

20 would indicate to you, would it not, that

21 the interest in that note changed hands

22 first from GMAC to Ginnie Mae on December

23 the 20th of 2004 and went to a specific

1 pool and then it came back from that pool

2 and Ginnie Mae to GMAC in September of

3 2009. Would you agree with that based on

4 those two documents?

5 A. I would say that the documents show what

6 they show.

7 Q. Is that what those documents would indicate

8 to you by those entries?

9 A. I -- I don't have experience in reading the

10 MIN audit reports.

11 Q. Have you ever read a milestone?

12 A. A milestone?

13 Q. Uh-huh (positive response).

14 A. I know what -- I know what that is.

15 Q. Have you read any before?

16 A. I've seen milestones.

17 Q. Do you know what a milestone report is

18 supposed to do or supposed to tell you?

19 A. I don't know that I could answer that.

20 Q. Well, maybe I can fill in the gaps for you

21 a little bit.

22 {Plaintiff's Exhibit 12 was marked

23 for identification.}

1 Q. I show you this document. It's Plaintiff's Exhibit 12.

2

3 MR. BROCHIN: Just so the record

4 will reflect it, that the

5 document has highlighted

6 markings in it, multicolors.

7 MR. WOOLEN: Sure. That's what

8 you do when you hadn't slept

9 all night and you're trying to

10 stay awake. You mark it in

11 funny colors.

12 Q. The milestone report, take a minute and

13 read it over.

14 Does it indicate that that loan

15 transferred from GMAC to Ginnie Mae in

16 December of 2004?

17 It would be on your left -- or your

18 right-hand column down at the bottom of the

19 page.

20 A. In pink?

21 Q. There will be a number of colors, but it's

22 the lower entries.

23 A. Well, this report is different in the sense

1 that it does use the term Government  
2 National Mortgage Association, which is  
3 Ginnie.  
4 Q. Right.  
5 A. So this report's a little more intuitive.  
6 Q. Right. It gives you the information I gave  
7 you earlier with respect to the  
8 organizations' ID number and their name;  
9 right?  
10 A. It's got names.  
11 Q. It's also got their ID number, doesn't it?  
12 A. Yes.  
13 Q. And do those numbers and names match what I  
14 told you about the earlier exhibits?  
15 A. The second time around.  
16 MR. BROCHIN: Object to the form.  
17 Q. So in reviewing that document, does it  
18 indicate that Ginnie Mae became an investor  
19 on that loan in December of 2004?  
20 A. Well, it's referred to as new investor.  
21 Q. Okay.  
22 A. And that is December 2004.  
23 Q. And that was done under a process that your

1 company calls option one for the

2 registration of that loan on the system;

3 correct?

4 A. It says option one.

5 Q. Do you know what option one means?

6 A. In this context?

7 Q. Uh-huh (positive response).

8 A. Transfer beneficial rights, option one.

9 Q. Do you know what option one is with respect

10 to the transfer of beneficial rights?

11 A. No.

12 Q. Do you know how many options there are for

13 transfer of beneficial rights?

14 A. No. I think it's got to do with Glinnie's

15 special status. I don't know.

16 (Plaintiff's Exhibit 13 was marked

17 for identification.)

18 Q. I show you this document I've marked as

19 Plaintiff's Exhibit 13. It's -- a portion

20 of it I've highlighted. Does it explain

21 what option one is?

22 A. It's their special status.

23 Q. Right. And what does that section say

1 option one is?

2 A. Option one requires no confirmation and

3 they can remove any interim funder or

4 warehouse/gestation lender interests from

5 the loan.

6 Q. And by reading option one and looking at

7 that milestone report, does it appear, at

8 least as it was represented on your system,

9 that Ginnie Mae became the investor on that

10 loan in December of 2004?

11 A. Under option one.

12 Q. Okay. Going back to the previous

13 exhibit -- I guess it was Number 12, the

14 milestone report -- it indicates, going up

15 the right-hand column, the transfers that

16 took place on your system registration; is

17 that correct?

18 A. It was registered on November 20th, 2004.

19 Q. November or December?

20 A. The registration?

21 November.

22 Q. Would that be the preregistration with an

23 anticipated closing date?

1 A. That's possible.

2 Q. Right. If there was a commitment to lend

3 and they knew they were going to use the

4 MCM form, wouldn't they go ahead and

5 preregister to get the MIN?

6 A. They can.

7 Q. Right. And that's so they can put the MIN

8 on the documents; right?

9 A. Could be.

10 Q. Sure. Now, I know you started in November,

11 but going forward in time from November of

12 2004, is the next entry the December entry

13 where Ginnie Mae was indicated to be the

14 investor?

15 A. Yes.

16 Q. And that indicates they took from GMAC;

17 right?

18 A. GMAC Mortgage is listed as the old

19 investor.

20 Q. Okay. And the next transfer occurred,

21 according to the milestone report, when?

22 A. October 2006.

23 Q. Okay. And is that the update regarding

1 foreclosure status?

2 A. It looks like a seasoned servicing

3 transfer.

4 Q. Okay. That would have been something we

5 discussed earlier today where there was a

6 fee paid for a servicing change that

7 occurred on a loan that was more than 270

8 days old; is that right?

9 A. I believe so.

10 Q. And does that indicate who the new servicer

11 would have been?

12 A. The old and the new are the same.

13 Q. So it's Homecomings taking from

14 Homecomings?

15 A. It's GMAC.

16 Q. Or GMAC. I'm sorry. You're right.

17 What is the next status change

18 indicated by date chronologically on that

19 form?

20 A. Foreclosure status.

21 Q. And what date is that?

22 A. August 2007.

23 Q. What is the next date entry that indicates

1 a change in the investor on that report?

2 A. Looks like September 2009.

3 Q. September 2009. And does that at that

4 point change from Ginnie Mae to GMAC

5 Mortgage, LLC?

6 A. Old investor to new investor, Ginnie to

7 GMAC.

8 Q. And, again, you can take the pool number

9 that is included on those exhibits and

10 someone at MERS can tell us whatever

11 information is in the system which

12 identifies what that pool is supposed to

13 be, right?

14 A. What do you mean by pool?

15 Q. There is -- if you'll let me see that

16 milestone report, I'll point it out for

17 you.

18 Thank you.

19 Well, actually, you know what. I guess

20 you need to go back to Number 11. Because

21 the -- Exhibit 11 would show you -- and

22 there -- is it a series number that

23 indicates on that in the upper transaction

1 or a pool number?

2 A. Investor pool number is what it says.

3 Q. Right. And is there a specific portion of

4 your procedures manual that requires that

5 that be indicated?

6 A. I don't know.

7 Q. You don't know.

8 (Plaintiff's Exhibit 14 was marked

9 for identification.)

10 Q. Let me show you what I've marked as

11 Exhibit 14. I represent to you that that

12 came from your procedures manual. And does

13 that procedures manual require that you

14 identify the pool number or the investor

15 with a Ginnie Mae loan?

16 A. If required by the investor.

17 MR. BROCHIN: Object to the form.

18 The document speaks for

19 itself.

20 A. If the investor requires it, it's required.

21 Q. Right.

22 MR. WOOLEN: I need to take a

23 short break and look at a

1 couple of things. Let's take  
2 about ten minutes. I might be  
3 able to cut off.  
4 THE VIDEOGRAPHER: We are going  
5 off the record at this time.  
6 It is now 4:31 p.m.  
7 (A brief recess was taken.)  
8 THE VIDEOGRAPHER: We are back on  
9 the record, and the time is  
10 now 4:43 p.m.  
11 Q. (Mr. Wooten continuing:) Mr. Arnold, we  
12 looked at several reports generated as part  
13 of this discovery. And specifically to  
14 those issues, is there any method that  
15 you're aware of whereby a user of the MERS  
16 system could go back and alter any of those  
17 transactions that have been entered or  
18 registered on the system, change any of the  
19 terms or the timing or anything like that?  
20 A. No.  
21 Q. Is that a -- is there some sort of audit of  
22 the technology to assure that that can't  
23 take place or some sort of firewall? How

1 does that occur? Do you know?

2 A. You just wouldn't be able to go in and

3 change anything that had been done. You'd

4 have to update it.

5 Q. So if -- is there a way to make an entry

6 which would allege that the prior entry was

7 an error and it be replaced on your system?

8 A. You could correct a prior entry with a new

9 entry.

10 Q. Would the old entry be deleted if you

11 correct it?

12 A. No.

13 Q. So even if, say, somebody decided that they

14 didn't like the timing of some of these

15 transfers in one of these reports, even if

16 they tried to go back and change the dates

17 with a correction, it would still show the

18 previous entries?

19 A. Yes.

20 Q. Your technology provider, where are they

21 located?

22 A. EDS?

23 They're a worldwide company.

1 Q. Do they have a location that is dedicated  
2 towards your technology systems?  
3 A. Well, there's -- I think of it as being the  
4 Plano headquarters.  
5 Q. Plano?  
6 A. Plano, Texas.  
7 Q. That's what I was getting at. Is that  
8 the -- is that your national data center?  
9 A. That's their national data center. But I  
10 know that there's work done in other  
11 places.  
12 Q. Is there a physical location where your  
13 electronic data is centrally deposited?  
14 A. Yes.  
15 Q. Is that Plano?  
16 A. I don't think so, but that's -- that's a  
17 guess.  
18 Q. Has EDS created data integrity audits which  
19 will verify the reliability of the data  
20 entered in your system?  
21 A. I don't know.  
22 Q. With respect to the various certifications  
23 that your certifying officers make in your

1 name, the data that they are certifying as  
 2 correct in your name is not MERS data, is  
 3 it?  
 4 A. Well, they have either personal or  
 5 institutional knowledge with regard to the  
 6 loan itself.  
 7 Q. Sure.  
 8 A. And the member.  
 9 Q. Right. But they are certifying in the name  
 10 of MERS data that actually belongs to the  
 11 member; correct?  
 12 A. In some cases.  
 13 Q. Right. Because other than with respect to  
 14 the entries like we've talked about in your  
 15 system, the registrations, and the fact  
 16 that the loan names your company as  
 17 mortgagee of record, data with respect to  
 18 the account, the documents that created the  
 19 mortgage loan, the custodial files -- all  
 20 that information would be in the possession  
 21 of some other entity, most likely that  
 22 member making that certification?  
 23 A. Yes.

1 MR. BROCHIN: Object to the form  
2 of the question.  
3 MR. WOOLEN: Do I need to re-ask  
4 the question and make sure we  
5 don't have an objection about  
6 that?  
7 MR. BROCHIN: I do object to the  
8 form of that question.  
9 Q. When a MERS certifying officer makes a  
10 certification in MERS' name, based upon the  
11 mortgage account, the mortgage documents,  
12 the custodial documents, the mortgage file,  
13 those documents are not MERS documents;  
14 correct?  
15 A. We have certain documents, but none of them  
16 are mortgage documents.  
17 Q. So any document related to the servicing of  
18 a mortgage loan other than the MERS as  
19 mortgagee document, the lien that is being  
20 certified in MERS' name, is a certification  
21 of documents that belong to another entity?  
22 A. When you say any, that seems a little  
23 categorical to me.

1 Q. Okay, let me ask it this way: With

2 respect to the mortgage servicing

3 function --

4 Okay?

5 -- that is conducted by a mortgage

6 servicer; correct?

7 A. Yes.

8 Q. And that servicer is most likely a member

9 of MERS; correct?

10 A. Yes.

11 Q. The persons that you have designated as

12 certifying officers of MERS who are

13 employees of that mortgage servicer --

14 those persons, when they certify on behalf

15 of MERS the servicing activities of the

16 servicer, they are certifying not MERS data

17 and documents, but the servicer's data and

18 documents?

19 MR. BROCHIN: Object to the form

20 of the question.

21 A. Generally those servicing documents are

22 from the member.

23 Q. Is the milestone report that we were

1 referring to earlier here, Number 12 -- is

2 that a document or a report that is

3 produced by MERS?

4 A. Yes. It's generated from the MERS system.

5 Q. Is MERS able to go onto the MERS system and

6 request a milestone report for any MIN?

7 A. Yes.

8 Q. And a servicer may also do so?

9 A. Yes.

10 MR. RAMSEY: Just to clarify, is

11 that certify -- a servicer can

12 go in on any loan that it can

13 input -- can it put in the

14 milestone report for any loan

15 that it has an interest in?

16 A. I should clarify that. It's -- when you

17 say member, it should be the member.

18 Q. Okay. So if a MIN is identified to a

19 servicer or a beneficial owner --

20 A. Yes. And I misspoke. It's -- any servicer

21 cannot get a milestone report on any loan.

22 Q. And I think you and I were talking about

23 the same thing but maybe weren't clear.

1 What I was speaking about is, in this particular case MERS has the right to get a milestone report and GMAC?

2

3 A. Yes.

4 Q. And whoever the investor on the note is or was, right?

5

6 A. Yes.

7 Q. If MERS presents a note which it has obtained possession of that is endorsed in blank and a payment is made to satisfy that note as a result of MERS' presentation, may MERS simply take that money and do with it what it wishes?

8

9 A. No.

10 Q. Is that because of the express terms of your agency with your members?

11

12 MR. BROCHIN: Object to the form.

13

14 A. It's one of the reasons.

15 Q. And it's also because you never have the right to any of the money under that note?

16

17 A. That's another reason.

18 Q. And you've testified previously that you would consider that almost to be a criminal

19

20

21

22

23

1 action; right?  
 2 A. No.  
 3 MR. BROCHIN: Object to the form  
 4 of the question.  
 5 A. No, I don't -- I don't think it would be a  
 6 criminal act, but it would -- it would be a  
 7 mistake that would need to be corrected.  
 8 Q. In every membership agreement with every  
 9 member you have that same agreement that  
 10 you will never claim to be entitled to any  
 11 of the money from any promissory note?  
 12 A. Yes.  
 13 (Plaintiff's exhibit 15 was marked  
 14 for identification.)  
 15 Q. I show you what I'll mark as Exhibit 15,  
 16 which are documents 61 and 62 by your  
 17 Bates-stamping. That's a copy of the note  
 18 in this case. Does that note appear to be  
 19 a copy of the note executed by Debra  
 20 Henderson?  
 21 MR. BROCHIN: Object to the form  
 22 of the question.  
 23 A. Appears to be.

1 Q. Does that note have a rider just above the  
2 signature line addressing the modification  
3 of the terms of that note due to the VA  
4 guarantee?

5 A. I don't understand the question.

6 Q. Is there a modification of the terms of the  
7 note with respect to a VA guarantee just  
8 above the signature page of that note?

9 MR. BROCHIN: Objection. The  
10 document speaks for itself.

11 A. I have not seen any reference to the VA.  
12 Q. If you will, if you'll hand that to me,  
13 I'll tell you --

14 A. It says it's insured under the United  
15 States Code.

16 Q. Right. And at the top of the note it  
17 says -- it has a VA number and says that  
18 it's not assumable without the approval of  
19 the Department of Veterans Affairs or its  
20 authorized agent; right?

21 MR. BROCHIN: You're asking him if  
22 that's what it says?

23 Q. That's what it says; right?

1 MR. BROCHIN: Object to the form  
2 of the --  
3 Q. And I'll show that back to you.  
4 MR. BROCHIN: Object to the form  
5 of the question.  
6 Q. The section under 11 says prepayment and  
7 acceleration. In your experience in your  
8 employment in the mortgage industry, are  
9 you familiar with that terminology?  
10 A. The two concepts.  
11 Q. Right. And does that paragraph address  
12 modifications to the terms of the mortgage  
13 based on the guarantee that's recited in  
14 that paragraph?  
15 MR. BROCHIN: Object to the  
16 extent the question calls for  
17 a legal conclusion and the  
18 document speaks for itself.  
19 A. Yeah. I don't see modification.  
20 Q. Read that paragraph into the record,  
21 please, sir.  
22 A. Prepayment and acceleration paragraph?  
23 If the indebtedness secured hereby is

1 guaranteed or insured under Title 38,  
2 United States Code, such title and  
3 regulations issued thereunder and in effect  
4 on the date hereof shall govern the rights,  
5 duties, and liabilities of borrower and  
6 lender. Any provisions of the security  
7 instrument or other instruments executed in  
8 connection with said indebtedness which are  
9 inconsistent with said title or  
10 regulations, including, but not limited to,  
11 the provision for payment of any sum in  
12 connection with prepayment of the secured  
13 indebtedness and the provision that the  
14 lender may accelerate payment of the  
15 secured indebtedness pursuant to Section 18  
16 of the security instrument, are hereby  
17 amended or negated to the extent necessary  
18 to confirm such instruments -- such  
19 instruments to said title or regulations.  
20 Q. Are you familiar with any special  
21 protections afforded by -- to Ms. Henderson  
22 by virtue of this loan being guaranteed by  
23 the VA?

1 A. Well, this paragraph seems to say there  
2 can't be a prepayment penalty and there are  
3 certain restrictions on acceleration.  
4 Q. Okay. Are you familiar with any of those  
5 changes because of the VA guarantee  
6 personally?  
7 A. What do you mean?  
8 Q. Do you know what the specific protections  
9 are which are afforded by that clause?  
10 A. Well, I know you can't have a prepayment  
11 penalty.  
12 (Plaintiff's Exhibit 16 was marked  
13 for identification.)  
14 Q. Exhibit 16 is the Henderson mortgage. That  
15 is the standard form language for all  
16 62 million MERS mortgages in existence; is  
17 that right?  
18 MR. BROCHIN: Object to the form  
19 of the question.  
20 A. It's an Alabama mortgage.  
21 Q. The clauses dealing with MERS and its  
22 rights --  
23 A. Yes.

1 Q. -- are they any different in any other  
2 state than the explanation provided in that  
3 document?  
4 A. Generally speaking, no.  
5 Q. Okay. If you will, let me take a look at  
6 that for just a second.  
7 I highlighted a portion of that  
8 document in pink, and that is the  
9 acknowledgment clause where the borrower  
10 acknowledges that MERS is the mortgagee of  
11 record on behalf of the lender; is that  
12 right?  
13 MR. BROCHIN: Object to the form.  
14 The document speaks for  
15 itself.  
16 Q. I mean, is that -- that is, in effect,  
17 Mr. Arnold, the magic language that is  
18 inserted in all these mortgages, isn't it?  
19 MR. BROCHIN: Object to the form  
20 of the question, the term  
21 magic language.  
22 A. This is the granting clause, the words of  
23 conveyance.

1 Q. Right. That give you the right to sit as  
2 mortgagee of record; right?  
3 MR. BROCHIN: Object to the form.  
4 A. The borrower makes WERS the mortgagee of  
5 record.  
6 Q. Right. That's what I'm saying. That  
7 portion of that clause is the language that  
8 you rely on to make you the mortgagee of  
9 record for the land record; right?  
10 A. Yes.  
11 Q. Okay. Let me have that document for just a  
12 second.  
13 With respect to this clause, you've  
14 explained your concept of legal title as  
15 being the right to appear as mortgagee of  
16 record; right?  
17 A. It's the bare legal title. We're in the  
18 land records as mortgagee.  
19 Q. The name in the book; right?  
20 MR. BROCHIN: Object to the form.  
21 A. And the interest that goes with it.  
22 Q. And the clause says that the borrower  
23 understands and agrees that WERS holds only

1 legal title to the interest granted by the  
2 borrower in this security instrument, but,  
3 if necessary to comply with law or custom,  
4 MEMRS, as nominee for lender and lender's  
5 successors and assigns, has the right to  
6 exercise any or all of those interests,  
7 including, but not limited to, the right to  
8 foreclose and sell the property.  
9 Now, the clause says if necessary to  
10 comply with law or custom, right?  
11 MR. BROCHIN: You're asking him if  
12 that's what the document says?  
13 MR. WOOTEN: Right.  
14 MR. BROCHIN: Object to the form  
15 of the question. The document  
16 speaks for itself.  
17 Q. I mean, this was your language.  
18 A. Yes.  
19 MR. BROCHIN: Well, object to the  
20 form of the question in terms  
21 of what your language means.  
22 Q. If necessary --  
23 A. That's the language where the borrower

1 makes us the mortgagee.

2 Q. If necessary to comply with law or custom,

3 MERS has the right. So if it's necessary

4 to comply with law or custom, you have the

5 right?

6 MR. BROCHIN: Object to the form

7 of the question.

8 Q. Correct?

9 MR. BROCHIN: Do you understand

10 the question?

11 A. It's the granting clause that the borrower

12 conveys the interest.

13 Q. So if nothing in law or custom is necessary

14 and would require you to foreclose, you

15 don't have to, right?

16 MR. BROCHIN: He's -- are you

17 asking him based on this

18 document?

19 MR. WOCTEN: I'm asking him based

20 on his document, yes.

21 MR. BROCHIN: Object to the form

22 of the question.

23 A. It's the borrower's document.

1 Q. Who prepared it?

2 A. Whoever closed the loan.

3 Q. Okay. And this is a standard form

4 document, Fannie Mae, Freddie Mac, who are

5 shareholders of MERS, with the MERS

6 granting clause --

7 A. Yes.

8 Q. -- that you chose -- MERS chose; right?

9 MR. BROCHIN: Object to the form.

10 A. I wouldn't say that we chose it.

11 Q. Who came up with the granting clause, then?

12 A. Well, the member is the one that put it in

13 the document, and the borrower is the one

14 that executed it.

15 Q. The member is actually using a form

16 provided as a uniform instrument by Fannie

17 and Freddie; right?

18 A. Yes.

19 Q. So the actual granting language, the

20 verbiage, the terminology, that was MERS';

21 right?

22 A. I wouldn't say --

23 MR. BROCHIN: Object to the form.

1 A. -- that.

2 Q. If it were not MERS', who chose that

3 language?

4 MR. BROCHIN: Object to the form.

5 A. Fannie and Freddie and the lender.

6 Q. And Fannie and Freddie are Class A

7 shareholders of MERS?

8 A. Yes.

9 Q. And tell the ladies and gentlemen of the

10 jury what a Class A shareholder is versus

11 the rest of us.

12 A. A Class A shareholder is in a class all

13 their own.

14 Q. And they are afforded special treatment

15 within the classes of shareholders of MERS;

16 right?

17 A. Not special treatment. They have a few

18 additional rights.

19 Q. They form the management committee that has

20 the right to act as the board of directors

21 in certain circumstances; correct?

22 A. No.

23 Q. That's not in your bylaws?

1 A. They're on that committee.

2 Q. Right. That's made up of Class A

3 shareholders; right?

4 A. Well, half of -- half of that committee is

5 made up of Class A shareholders. The other

6 half are not Class A.

7 Q. Okay. So when you say that the consumer --

8 obviously a consumer signed this mortgage,

9 Ms. Henderson, but this mortgage was

10 presented to her in printed form. She did

11 not write the language that's contained in

12 this preprinted form; right?

13 A. True.

14 Q. And irrespective of your agency grant by

15 your member, you are not testifying that

16 any court should look past the actual

17 documents that underlay this transaction to

18 determine your rights, are you?

19 MR. BROCHIN: Object to the form

20 of the question. If you can

21 answer it.

22 A. What the court looks like is -- I am

23 comfortable saying that they would have to

1 look at the mortgage. What else they look  
2 at is up to the court.  
3 Q. You testified earlier that the ownership of  
4 the promissory note, the right to enforce  
5 it, all of that is determined by state law?  
6 A. Yes.  
7 Q. Not by your mortgage or your membership  
8 agreement?  
9 MR. BROCHIN: Object to the form  
10 of the question.  
11 A. Yeah. I -- you know, that's very  
12 theoretical, you know. The bottom line is  
13 you've got the note. You've got the  
14 mortgage. And under state law that's a  
15 secured transaction.  
16 Q. And that is assuming that you do not hold  
17 the note under a separate agreement that  
18 limits your rights to that note; correct?  
19 A. Well, if you hold the notes, you're holder  
20 of the note.  
21 Q. But you hold the note with specific  
22 restrictions by written agreement with your  
23 member?

1 A. Many holders do.

2 Q. Correct.

3 A. (Witness nods head.)

4 MR. WOOLEN: I think I'm done.

5 Thank you.

6 MR. BROCHIN: Just put back, you

7 know, on the record so we're

8 clear, we do not waive reading

9 of the deposition.

10 And just -- I don't know

11 if I put this on the record,

12 but this will be attached as

13 Exhibit Number 1 --

14 MR. WOOLEN: Sure.

15 MR. BROCHIN: -- which is a

16 discovery and confidentially

17 agreement which has been

18 signed -- it doesn't look by

19 all, but certainly I would --

20 MR. WOOLEN: It's going to be

21 countersigned by the other

22 co-counsel. They've made the

23 agreement. And as I've told

1 Shaun, we have no interest in

2 disseminating the video.

3 We're not going to do it.

4 MR. BROCHIN: Very good.

5 THE VIDEOGRAPHER: This concludes

6 today's deposition. The time

7 is now 5:19 p.m.

8 (Deposition concluded at

9 approximately 5:19 p.m.)

10 \* \* \* \* \*

11 FURTHER DEPOSITION SAITH NOT

12 \* \* \* \* \*

13 REPORTER'S CERTIFICATE

14 STATE OF ALABAMA:

15 MONTGOMERY COUNTY:

16 I, Tracey Sadler Blackwell, certified

17 Court Reporter and Commissioner for the State of

18 Alabama at large, do hereby certify that I reported

19 the deposition of:

20 R.K. ARNOLD

21 who was duly sworn by me to speak the truth, the

22 whole truth and nothing but the truth, in the

23 matter of:

1 DEBRA A. HENDERSON,

2 Plaintiff,

3 vs.

4 MERSCORP, INC., et al.,

5 Defendants.

6 IN THE CIRCUIT COURT FOR

7 MONTGOMERY COUNTY, ALABAMA

8 Case Number CV-08-900805.00

9 on September 25, 2009.

10 The foregoing 288 computer-printed pages

11 contain a true and correct transcript of the

12 examination of said witness by counsel for the

13 parties set out herein. The reading and signing of

14 same is hereby not waived.

15 I further certify that I am neither of

16 kin nor of counsel to the parties to said cause nor

17 in any manner interested in the results thereof.

18 This 6th day of October 2009.

19  
20 \_\_\_\_\_  
21 Tracey Sadler Blackwell

22 ACCR No. 294

23 Expiration date: 9-30-2010

24 Certified Court Reporter

25 and Commissioner for the State

26 of Alabama at Large

of Alabama at Large  
and Commissioner for the State  
Certified Court Reporter  
Expiration date: 9-30-2010  
ACCR No. 294  
Tracey Badler Blackwell

*Tracey Badler Blackwell*

This 6th day of October 2009,

in any manner interested in the results thereof,  
kin nor of counsel to the parties to said cause nor  
I further certify that I am neither of  
same is hereby not waived.

parties set out herein. The reading and signing of  
examination of said witness by counsel for the  
contain a true and correct transcript of the  
The foregoing 288 computer-printed pages

on September 25, 2009.

Case Number CV-08-900805.00

MONTGOMERY COUNTY, ALABAMA

IN THE CIRCUIT COURT FOR

Defendants,

MERSCORP, INC., et al.,

vs.

Plaintiff,

DEBRA A. HENDERSON,

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\*\*\*\*\*  
WITNESS SIGNATURE PAGE  
\*\*\*\*\*

IN RE: HENDERSON VS. MERSCORP, INC., et al.

I, R.K. ARNOLD, hereby certify that I have

read the foregoing transcript of my deposition

given on September 25, 2009, and it is a true and

correct transcript of the testimony given by me at

the time and place stated with the corrections, if

any, and the reasons therefor noted on a separate

sheet of paper and attached hereto.

R.K. ARNOLD

SWORN TO AND SUBSCRIBED before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2009.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

\_\_\_\_\_

1 October 6th, 2009

1

2 Mr. R.K. Arnold

3

4 c/o Mr. Shaun Ramey

4

5 SIROTE & PERMUTT

6 2311 Highland Avenue

7 Birmingham, Alabama 35205

8 IN RE: HENDERSON vs. MERSCORP, INC., et al.

6

9 Dear Mr. Arnold:

7

10 Enclosed is a copy of the transcript of your

8

11 deposition taken on September 25, 2009. Please read

9

12 the transcript and make any corrections on the

9

13 correction sheet provided specifying the page and

10

14 line number of each correction.

10

15 You will find the original signature page attached to

11

16 the front of the transcript. Even if there are no

12

17 corrections, please sign the original signature page

12

18 and have your signature notarized.

13

19 Please return the signature page, correction sheet

13

20 and transcript within thirty days. The list of

14

21 corrections will be attached to the original

14

22 deposition and all parties will be notified of any

15

23 changes.

16

24 Thank you for your prompt attention to this matter.

17

25 Sincerely,

18

26 Tracey Sadler Blackwell

19

27 Certified Court Reporter

20

28 cc: Mr. Nicholas H. Wooten

22

29 Mr. Shaun Ramey

23

1 October 6th, 2009

2 Mr. R.K. Arnold

3 c/o Mr. Shaun Ramey

4 SIROTE & PERMUTT

5 2311 Highland Avenue

6 Birmingham, Alabama 35205

7 IN RE: HENDERSON vs. MERSCORP, INC., et al.

8 Dear Mr. Arnold:

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10 deposition taken on September 25, 2009. Please read

11 the transcript and make any corrections on the

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13 line number of each correction.

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15 the front of the transcript. Even if there are no

16 corrections, please sign the original signature page

17 and have your signature notarized.

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19 and transcript within thirty days. The list of

20 corrections will be attached to the original

21 deposition and all parties will be notified of any

22 changes.

23 Thank you for your prompt attention to this matter.

Sincerely,

Tracey Sadler Blackwell

Certified Court Reporter

cc: Mr. Nicholas H. Wooten

Mr. Shaun Ramey