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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA

CASE NO.: 2008-CA-006363

DEUTSCHE BANK, NATIONAL TRUST COMPANY  
AS TRUSTEE FOR INDYMAC INDX MORTGAGE LOAN  
TRUST 2005-AR2, MORTGAGE PASS-THROUGH  
CERTIFICATE SERIES 2005-AR1,

Plaintiff,

vs.

JAMES HEYWARD, et al,

Defendants.

\_\_\_\_\_ /

PROCEEDINGS HELD BEFORE  
THE HONORABLE GILBERT A. SMITH, JR.

Monday, August 15, 2016  
8:30 a.m. to 12:20 p.m.  
Manatee County Courthouse  
1051 Manatee Avenue West  
Bradenton, Florida 34205

Elizabeth Ashley Nole  
Court Reporter  
Notary Public, State of Florida at Large

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1  
2                   **APPEARANCES:**  
3  
4           **CHARISE MORGAN, ESQUIRE**  
5           Ward Damon Posner Pheterson & Bleau  
6           4420 Beacon Circle  
7           West Palm Beach, Florida 33407 Suite 100  
8           Boca Raton, Florida 33487  
9           Attorney for the Plaintiff  
10  
11           **MATTHEW D. WEIDNER, ESQUIRE**  
12           Matthew D. Weidner, P.A.  
13           250 Mirror Lake Drive North  
14           St. Petersburg, Florida 33701  
15           Attorney for the Defendant  
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3                   **EXHIBITS**  
4                   (Plaintiff's Exhibits)  
5   Exhibit Description                   Identified   Received  
6  
7   Exhibit No. 1 Note                   10       22  
8   Exhibit No. 2 Mortgage               27       27  
9   Exhibit No. 3 Pooling and             28       29  
10                   Servicing Agreement  
11   Exhibit No. 4 Document               39       41  
12   Exhibit No. 5 Limited Power of       51       54  
13                   Attorney  
14   Exhibit No. 6 Loan File Withdraw     54       58  
15   Exhibit No. 7 Original Assignment   58       59  
16                   of Mortgage  
17                   Corrective Assignment of Mortgage  
18   Exhibit No. 8 Comments Log           59       67  
19   Exhibit No. 9 Default Letter          67       72  
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1                   **PROCEEDINGS**  
2           **THE COURT:** All right. Good morning,  
3 everyone.  
4           **MS. MORGAN:** Good morning, Your Honor.  
5           **THE COURT:** All right. So let's start  
6 this way and let's have everybody note their  
7 notices of appearance.  
8           Who would like to start?  
9           **MS. MORGAN:** Your Honor, I will.  
10 Charise Morgan for the Plaintiff of Ward  
11 Damon.  
12           **THE COURT:** Okay. All right. Yes, sir.  
13           **MR. WEIDNER:** If it please the Court,  
14 Your Honor, I'm Matthew Weidner,  
15 W-E-I-D-N-E-R, for the Defendant James  
16 Heyward who is here sitting in the courtroom  
17 next to me.  
18           **THE COURT:** Okay. So are we ready to  
19 proceed?  
20           **MS. MORGAN:** Yes, Your Honor.  
21           **THE COURT:** Okay. All right. Okay.  
22 Do you want to give an opening first before  
23 we begin or do you --  
24           **MS. MORGAN:** Sure. Yes, Your Honor.  
25           **THE COURT:** Okay.

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1 MS. MORGAN: Your Honor, may it please  
 2 the Court, this is a residential mortgage  
 3 foreclosure case. It is eight years old.  
 4 We're asking the Court to look at the  
 5 documents presented by the Plaintiff today.  
 6 The issues of law to be raised are  
 7 standing, our compliance with the underlying  
 8 documents, the mortgage and the note. I  
 9 have a witness here from the current  
 10 servicer on the file, Ocwen Loan Servicing,  
 11 who will testify as to the recordkeeping and  
 12 business practices of the servicer.  
 13 The servicer is servicing the loan on  
 14 behalf of the Plaintiff's trust. And  
 15 Plaintiff is here today seeking final  
 16 judgment in this matter.  
 17 THE COURT: Yes, sir. Do you want to  
 18 give an opening?  
 19 MR. WEIDNER: If it please the Court,  
 20 Your Honor. We don't have an opening, but  
 21 as a procedural matter, we would just like  
 22 to assert for the record that we do not  
 23 consent to trying anything outside the four  
 24 corners of the Complaint.  
 25 THE COURT: Okay. All right. Are you

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1 ready to begin? Call your first witness.  
 2 MS. MORGAN: Yes, Your Honor.  
 3 Plaintiff calls its first witness Richard  
 4 Schwiner.  
 5 THE BAILIFF: This way, please. Stand  
 6 right here. Raise your right hand to be  
 7 sworn by the clerk.  
 8 THE CLERK: Do you solemnly swear or  
 9 affirm that the testimony you shall give  
 10 will be the truth, the whole truth and  
 11 nothing but the truth?  
 12 THE WITNESS: Yes.  
 13 MS. MORGAN: Your Honor, as a matter of  
 14 procedure, would you prefer that I stand at  
 15 this podium?  
 16 THE COURT: Podium.  
 17 MS. MORGAN: Okay.  
 18 DIRECT EXAMINATION  
 19 BY MS. MORGAN:  
 20 Q All right. Sir, can you please state your  
 21 name for the record?  
 22 A My name is Richard, last name Schwiner,  
 23 S-C-H-W-I-N-E-R.  
 24 Q By whom are you employed?  
 25 A I'm employed by Ocwen financial

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1 Corporation.  
 2 Q Who is Ocwen?  
 3 A Ocwen is the servicer on behalf of the  
 4 named Plaintiff in this particular case.  
 5 Q And what is your position there?  
 6 A I'm a senior loan analyst.  
 7 Q And what are some of the job  
 8 responsibilities of your position?  
 9 A Some of the job responsibilities of my  
 10 position include verifying and -- verifying and  
 11 analyzing business records, attending trials,  
 12 depositions and mediations.  
 13 Q Now, does Ocwen keep books and records  
 14 concerning a note and a mortgage?  
 15 A Yes.  
 16 Q Do they do that in all of their cases?  
 17 A Yes.  
 18 Q Did they do that in this particular case?  
 19 A Yes.  
 20 Q As a part of your job description or  
 21 duties, does that include researching the facts and  
 22 the circumstances of the note and the mortgage?  
 23 A Yes.  
 24 Q Did you do that for this particular note  
 25 and mortgage?

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1 A Yes.  
 2 Q Are you familiar with the subject loan for  
 3 Mr. James Heyward?  
 4 A Yes.  
 5 MS. MORGAN: All right. Your Honor,  
 6 we've requested that the original note and  
 7 mortgage be brought into the courtroom  
 8 today. Can I have those, please?  
 9 THE COURT: Okay. Let me take a look  
 10 before we --  
 11 MS. MORGAN: Sure.  
 12 THE COURT: Okay. And they are stapled  
 13 together. I don't know if you want to show  
 14 counsel. Mr. Weidner and you both can look  
 15 at them.  
 16 Now, those are stapled together for --  
 17 and that's just a matter of how they have  
 18 been with the Court. I am not -- I have no  
 19 objection to unstapling them and stapling  
 20 them separate if you want to deal with them  
 21 that way or you may deal with them as a  
 22 composite, however you want to deal with  
 23 them, okay?  
 24 MS. MORGAN: Yes, Your Honor.  
 25 THE COURT: All right.

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1 MS. MORGAN: I'm going to pull them  
 2 apart and request that they be entered as an  
 3 exhibit.  
 4 THE COURT: Okay. Do you want to -- do  
 5 you have a --  
 6 MS. MORGAN: Thank you.  
 7 BY MS. MORGAN:  
 8 Q Mr. Schwiner, I'm approaching you now and  
 9 I'm handing you a document.  
 10 Can you identify this for the Court,  
 11 please?  
 12 A This is the original note for the property  
 13 at 14146 Cattle Egret Place, Bradenton, Florida  
 14 34202.  
 15 Q Can you identify who was the original  
 16 lender on the note?  
 17 A The original lender on the note was IndyMac  
 18 Bank, F.S.B.  
 19 Q Do you recognize that to be the Plaintiff  
 20 in this action or the former Plaintiff in this  
 21 action?  
 22 A Well, yes, the former Plaintiff in this  
 23 action, yes.  
 24 Q All right. Who is the borrower? By whom,  
 25 if anyone, is the note signed?

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1 A There is a signature above the name of  
 2 James Heyward.  
 3 Q And do you recognize that to be the subject  
 4 borrower in this action?  
 5 A Yes.  
 6 Q Okay. What is the date on the note?  
 7 A The date on the note is December 1st, 2004.  
 8 Q And what is the amount?  
 9 A The amount is \$320,000 and zero cents.  
 10 Q And are there any endorsements on this  
 11 note?  
 12 A Yes.  
 13 Q Can you tell me what endorsement is on  
 14 there?  
 15 A There is one endorsement on this note.  
 16 It's from the lender IndyMac Bank, F.S.B., and it is  
 17 a blank endorsement.  
 18 MS. MORGAN: All right. No further  
 19 questions of this document, Your Honor.  
 20 Plaintiff moves this into the record as  
 21 Exhibit 1.  
 22 THE COURT: Okay. Mr. Weidner, any  
 23 objection to --  
 24 MR. WEIDNER: Yes, we're going to  
 25 object. I would like a brief voir dire.

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1 THE COURT: Okay. All right.  
 2 VOIR DIRE EXAMINATION  
 3 BY MR. WEIDNER:  
 4 Q Sir, the first time you saw the document is  
 5 this morning, isn't it?  
 6 A Yes.  
 7 Q Okay. And, in fact, you have no idea when  
 8 an endorsement might have been placed on there,  
 9 correct?  
 10 A I don't know when the endorsement was  
 11 placed on here, no.  
 12 MR. WEIDNER: Your Honor, at this point  
 13 in time I have several -- well, let me  
 14 continue with the voir dire.  
 15 BY MR. WEIDNER:  
 16 Q You never worked for IndyMac Bank, correct?  
 17 A Correct.  
 18 Q And you never worked for there successor  
 19 OneWest, correct?  
 20 A Correct.  
 21 Q Okay. And so your testimony here is  
 22 exclusively on behalf of Ocwen, the substituted  
 23 servicer many years removed, correct?  
 24 A I'm not sure I understand what you're  
 25 asking, but I can testify on behalf of the servicer

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1 in regards to the processes that are in place and  
 2 verify that the prior servicer's business records are  
 3 indeed the prior servicer's business records.  
 4 Q Okay. Thank you.  
 5 MR. WEIDNER: Judge, at this point in  
 6 time I want to object to the introduction of  
 7 that note. You will recall that when we  
 8 began, I asserted the objection as to the  
 9 four corners.  
 10 I would like to approach, if I may  
 11 Judge, or hand your deputy the relevant  
 12 Complaint that is at issue here. Judge,  
 13 that Complaint was filed on July 9th, 2008.  
 14 And by my calculation last night, there had  
 15 been 3,959 days since the Complaint was  
 16 filed -- I'm sorry, 2,959 days since that  
 17 Complaint was filed and since we're -- we  
 18 are here today.  
 19 You will note that Count II of that  
 20 Complaint is the allegation that they're  
 21 traveling under, and that is that they've  
 22 lost the note.  
 23 Now, several versions of a note were  
 24 filed. The objection is that the note that  
 25 appears to be present in the courtroom, it

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1 appears to be an original note, is not at  
2 all the theory that they traveled under when  
3 they filed this lawsuit 2,900 days ago.  
4 Paragraph four of that Complaint  
5 asserts that Plaintiff, at that point in  
6 time it was IndyMac, was the, quote, holder  
7 of the note.  
8 Well, Judge, that paragraph four is  
9 completely inconsistent with their Count II,  
10 which is that they have lost the note. And  
11 the reason why the Complaint is important is  
12 unlike some of the other times when they  
13 would have a lost note, they would have a  
14 schedule of what the terms were or whatever,  
15 they didn't even do that.  
16 So when they filed this Complaint, they  
17 said, IndyMac, we don't have the note, it's  
18 lost. We fast forward now a year or so  
19 after and two years after, they start filing  
20 different versions of the note. And in  
21 those different versions that they file --  
22 first of all, they don't incorporate into  
23 the Complaint critically. Number two, the  
24 versions that are filed are not endorsed.  
25 And here we are this many years later,

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1 and counsel is correct, it's been a long,  
2 long time, and they have never amended their  
3 Complaint to put anybody on notice that this  
4 was the Complaint that they were traveling  
5 under, this new theory, and that this note  
6 was what they were traveling under.  
7 I've got my whole stack of case law in  
8 here on this proposition that a case is  
9 tried by the four corners. And if they  
10 don't introduce an amended Complaint that  
11 changes the theory and makes it particular  
12 to the facts, then they're not entitled to  
13 pursue under this theory that now this  
14 substitute Plaintiff Deutsche Bank is the  
15 holder.  
16 I have my case, so I can do that in  
17 response to counsel if the Court wishes.  
18 THE COURT: Okay. All right. Yes,  
19 sir -- yes, ma'am.  
20 MS. MORGAN: Your Honor, we have the  
21 cases here. You recall the Second DCA case  
22 Hughes as well as the Fourth DCA case of  
23 Taperi which says the filing of the original  
24 note is the answer to curing the original  
25 note or a copy of the note not being

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1 attached to the Complaint. I have copies of  
2 those cases here.  
3 That is what occurred in this case. The  
4 Complaint was filed without a copy of the  
5 note attached obviously erroneously. A year  
6 later, on November 16th, 2009, that copy of  
7 the original note which I requested from the  
8 clerk this morning was filed.  
9 That copy of that original note that  
10 was filed is the only note that there is.  
11 It's the only version of the note that  
12 there's been. And it's been in the court  
13 file since 2009.  
14 And the case law that I have states  
15 that the filing of that original is  
16 sufficient to put opposing counsel and all  
17 parties on notice of the contract under  
18 which this case is being brought.  
19 THE COURT: Okay. So do you want to  
20 give me your cases now and we can take a  
21 real quick recess and I will come back and  
22 rule on this and then we can -- I'll -- I'll  
23 rule on it and then we will just see how we  
24 proceed?  
25 MS. MORGAN: Yes, Your Honor.

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1 THE COURT: Okay.  
2 MR. WEIDNER: Judge, I have a stack.  
3 Rather than reading them off, we will just  
4 present them and we can submit them later  
5 rather than reading them off or shall we  
6 read them off?  
7 THE COURT: Why don't you read them  
8 off, those one you are going to use.  
9 MR. WEIDNER: Yes.  
10 THE COURT: If you're going to rely on  
11 all of them, just read them all off --  
12 MR. WEIDNER: Yes, sir.  
13 THE COURT: -- because I just want you  
14 to have that opportunity on the record, and  
15 then we'll ask Ms. Morgan to do the same.  
16 MS. MORGAN: Yes.  
17 THE COURT REPORTER: And if could read  
18 the cites also, I would appreciate it.  
19 MR. WEIDNER: Yes, ma'am. Rule 1.140  
20 will be the defenses we're making for a  
21 Motion to Dismiss. The case is Schopler,  
22 S-C-H-O-P-L-E-R, v. Smilovits,  
23 S-M-I-L-O-V-I-T-S, 689 So.2d 1189; Cortina,  
24 C-O-R-T-I-N-A, versus Cortina, 98 So.2d 334;  
25 Arky, Freed, A-R-K-Y, F-R-E-E-D, versus

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1 Bowmar, B-O-W-M-A-R, 537 So.2d 561; Johnson  
2 versus Johnson, 546 So.2d 97. Feltus is  
3 F-E-L-T-U-S versus U.S. Bank, 80 So.3d 375;  
4 Safeco versus Ware, 401 So.2d 1129; Diaz  
5 versus Bell, 43 So.3d 138; GGB  
6 Profit-Sharing versus Goldberg, 166 So.3d  
7 847; Buday versus Ayer, 754 So.2d 771.  
8 THE COURT: Okay. And, Ms. Morgan, do  
9 you want to do the same thing?  
10 MS. MORGAN: Yes. We just have two  
11 case, Your Honor.  
12 THE COURT: All right.  
13 MS. MORGAN: The case is Hughes versus  
14 Home Savings of America, 675 So.2d 649 and  
15 Deutsche Bank National Trust versus Taperi,  
16 T-A-P-E-R-I, 89 So.3d 996.  
17 THE COURT: Okay. All right, sir. You  
18 can step down for right now. We'll take a  
19 recess and I'll be back --  
20 MS. MORGAN: Thank you, Your Honor.  
21 THE COURT: -- to give you my ruling.  
22 (A recess was taken.)  
23 THE COURT: All right. Let's go back  
24 on the record. And just so I can review  
25 before I rule on this, counsel, what was

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1 your objection?  
2 MR. WEIDNER: So, Judge, if you were to  
3 allow this original note in, that would  
4 significantly change the pleadings that are  
5 framed before the Court.  
6 Count II that they have presented in  
7 their Complaint filed in 2008 says we lost  
8 the note. That's what I'm here prepared to  
9 try.  
10 This morning for the first time, they  
11 tried to introduce an original note, and  
12 they have never amended their Complaint to  
13 assert that we're traveling under now the  
14 original note.  
15 It's important, Judge, because if you  
16 allow this in under the amendment, then I  
17 won't make two other arguments regarding  
18 amending to conform to the pleadings,  
19 because it's not just that they filed an  
20 original note -- and she might have had an  
21 argument if the Complaint they plead  
22 contemplated original note.  
23 And the two cases that she cited,  
24 summary judgment on both of those, and I  
25 think they don't -- I know they don't really

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1 say what counsel wants them to say, but  
2 there is a critical point of distinction,  
3 and that is: If the Complaint that they  
4 have filed says we have the note and we're  
5 the holder, perhaps just drop in an original  
6 note makes sense later, the critical point  
7 of distinction is that their Complaint says  
8 we lost the note and that IndyMac's the  
9 holder. That's the second argument that I'm  
10 going to be making if you grant them their  
11 relief.  
12 But the critical issue is, Judge, their  
13 Complaint, four corners, frames the issues,  
14 and they never chose to amend in the five  
15 years since they filed the note.  
16 And one final point, Judge. There has  
17 been multiple copies of the notes filed, and  
18 that's part of the problem, is we don't just  
19 have one note that's endorsed in blank that  
20 was filed. Within days of filing what they  
21 say was the original note in the docket in  
22 2009, you will note that what they call the  
23 original likewise doesn't have the  
24 endorsement on there.  
25 So it's the obligation of the Plaintiff

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1 to frame up the Complaint. It's the  
2 obligation of the Plaintiff to amend their  
3 Complaint if, in fact, the allegations  
4 change and the evidence changes. They have  
5 not done so, and, therefore, Judge, we're  
6 asking that you exclude the note based on  
7 their failure to state a cause of action in  
8 the pleadings.  
9 THE COURT: Okay. Ms. Morgan, anything  
10 else?  
11 MS. MORGAN: Yes, Your Honor. Your  
12 Honor, I don't have to tell you, I'm sure  
13 you just read it there in the Hughes case.  
14 There is no requirement for Plaintiff to  
15 amend its Complaint. There is not even a  
16 requirement really for it to drop the lost  
17 note count.  
18 It's stated very clearly in Hughes what  
19 Plaintiff wants it to state that the filing  
20 of the original note served as a correction  
21 of the deficiency in failing to attach the  
22 instrument sued upon. It's very simple,  
23 it's very plain. And, Your Honor, it's a  
24 second DCA case.  
25 It states very clearly that the filing

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1 of the original note, it does provide the  
 2 notice to opposing counsel. Opposing  
 3 doesn't -- he isn't blindsided by coming in  
 4 here today and seeing the original note for  
 5 the first time because it's been filed in  
 6 the court file since 2009. It's been there  
 7 for anyone to see. And, more importantly,  
 8 it's categorized. It states: The filing of  
 9 the original note. And, more importantly,  
 10 it contains that blank endorsement that's  
 11 still on there.  
 12 THE COURT: Okay. So was your  
 13 objection to what, the admission of it?  
 14 MR. WEIDNER: Yes, sir, that you need  
 15 to --  
 16 THE COURT: Well, I don't need to hear  
 17 anymore. I understand. I was just  
 18 clarifying for the record. So I'm going to  
 19 overrule your objection. And the case is  
 20 Guerrero versus Chase Home Finance. That is  
 21 at 83 So.3d 970, and that's a March 21st,  
 22 2012, case, okay?  
 23 MR. WEIDNER: Judge, I have another  
 24 couple of objections that I can maybe make.  
 25 THE COURT: All right.

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1 MR. WEIDNER: May I approach?  
 2 THE COURT: Okay.  
 3 MR. WEIDNER: The case I'm presenting  
 4 now, and I will make sure counsel has a copy  
 5 of it, is Freshwater versus Vetter, that's  
 6 51 So.2d 1114, and Simon versus Cuartas,  
 7 that's 834 So.2d 870.  
 8 That's for the Judge and counsel if you  
 9 need it.  
 10 And having overruled the objection,  
 11 Judge --  
 12 THE COURT: So what are -- what are --  
 13 what are you arguing now?  
 14 MR. WEIDNER: So, Judge, I'm pointing  
 15 to --  
 16 THE COURT: No, I'm asking you what  
 17 you're -- when you say you're pointing to,  
 18 tell me what your objection is.  
 19 MR. WEIDNER: Now I'm making a Motion  
 20 to Dismiss because the case that they have  
 21 now asked the Court to try is different than  
 22 what they filed.  
 23 THE COURT: Okay. Go ahead. Go ahead  
 24 with your argument.  
 25 MR. WEIDNER: The admission of the note

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1 and allowing them to file that, and, again,  
 2 the critical distinction here is that their  
 3 Complaint claims that IndyMac was the,  
 4 quote -- that's paragraph four -- holder of  
 5 the note, and paragraph -- or Count II, that  
 6 the note had been lost.  
 7 Different than those cases that she  
 8 cited, now we're trying a completely  
 9 different case, because now we're trying a  
 10 case with an improperly substituted  
 11 Plaintiff and an improperly endorsed note.  
 12 So I wanted to make that objection and --  
 13 and -- and a Motion to Dismiss based on  
 14 that.  
 15 THE COURT: Okay. Yes, ma'am.  
 16 MS. MORGAN: Your Honor, we have not  
 17 even admitted the first exhibit. Plaintiff  
 18 intends to show that the proper Plaintiff is  
 19 currently in place in this action.  
 20 I would like us to move on to the rest  
 21 of the exhibits that we have, and Plaintiff  
 22 will show then that the proper Plaintiff is  
 23 in place.  
 24 THE COURT: Okay. Your motion is  
 25 denied.

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1 MR. WEIDNER: Thank you, Your Honor.  
 2 THE COURT: All right, Ms. Morgan.  
 3 Sir, you can come back up to the witness  
 4 stand. Oh, let's -- come on up, sir. You  
 5 can come on up. You're still under oath.  
 6 So let me talk to counsel for a minute.  
 7 We have all day. And if we need all day, we  
 8 have all day. And if we need more time,  
 9 well, I'll find time for you, okay?  
 10 MR. WEIDNER: Thank you.  
 11 THE COURT: I just want to tell you  
 12 we're going to take -- since I did have a  
 13 recess, I'll just use my discretion on  
 14 whether or not we need another recess before  
 15 lunch.  
 16 If we're not finished by lunch, then  
 17 we'll take a lunch from 12:00 to 1:30,  
 18 unless one of has some concerns or  
 19 something, a scheduling issue, and then  
 20 we'll come back at 1:30 and we'll be here  
 21 until 5:00 to finish up. And then if we  
 22 don't finish, we'll come back, okay?  
 23 MS. MORGAN: Okay.  
 24 THE COURT: All right. Go ahead.  
 25 MS. MORGAN: Thank you, Your Honor.

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1 For clarification for the record, Your  
 2 Honor, was the note admitted as Exhibit 1?  
 3 THE COURT: Yes, it was -- it was  
 4 admitted as Exhibit 1 over the objection of  
 5 the Defense.  
 6 MS. MORGAN: Thank you, Your Honor.  
 7 THE COURT: And it will be admitted and  
 8 received, okay, the note.  
 9 MS. MORGAN: Deputy, may I have back  
 10 the mortgage, please.  
 11 THE BAILIFF: Let her mark it first.  
 12 THE CLERK: Just the note or the  
 13 mortgage?  
 14 THE COURT: The note, just the note.  
 15 That should -- that should be the only thing  
 16 that's marked as an exhibit. Is it 1 or A?  
 17 THE CLERK: I wrote 1.  
 18 THE COURT: Okay.  
 19 All right, Ms. Morgan.  
 20 THE BAILIFF: Just the note.  
 21 MS. MORGAN: Thank you.  
 22 BY MS. MORGAN:  
 23 Q I'm approaching now with a document.  
 24 MR. WEIDNER: That was the note. I  
 25 need the mortgage, please.

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1 THE BAILIFF: This hadn't been marked  
 2 yet. Do you need this?  
 3 MS. MORGAN: Yes.  
 4 MR. WEIDNER: Judge, in the interest of  
 5 time, I'm not going to object to the note  
 6 and its admissibility. I will object later  
 7 on other grounds.  
 8 MS. MORGAN: The mortgage?  
 9 MR. WEIDNER: I'm sorry, the mortgage.  
 10 MS. MORGAN: Your Honor, Plaintiff  
 11 moves to admit the -- have the witness  
 12 identify it and then we'll request that it  
 13 be admitted.  
 14 BY MS. MORGAN:  
 15 Q Can you identify this document, please,  
 16 Mr. Schwiner?  
 17 MR. WEIDNER: Judge, I don't have any  
 18 dispute that that's the mortgage and it can  
 19 be admitted.  
 20 THE COURT: Okay. All right. Then it  
 21 will be admitted and received.  
 22 MS. MORGAN: Thank you. As Exhibit 2,  
 23 Your Honor.  
 24 THE COURT: (No verbal response.)  
 25 MS. MORGAN: The next document, Your

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1 Honor.  
 2 BY MS. MORGAN:  
 3 Q Mr. Schwiner, can you identify this  
 4 document for the record, please?  
 5 A This is a copy of the -- a pooling and  
 6 servicing agreement.  
 7 Q I'm going to ask you some general questions  
 8 about the pooling and servicing agreement.  
 9 What does it do?  
 10 A Generally speaking, a pooling and servicing  
 11 agreement is a document that is used when a mortgage  
 12 is placed into a trust, and it's part of the process  
 13 of securitization.  
 14 So, for example, in this particular case,  
 15 this is the pooling and servicing agreement which  
 16 references the loans that are included in the IndyMac  
 17 INDX mortgage loan trust, and one of those loans  
 18 would be the mortgage in question.  
 19 MR. WEIDNER: Judge, I do want to  
 20 object. And I just need to see the  
 21 document. May I, Judge?  
 22 THE COURT: Sure.  
 23 MR. WEIDNER: And may I approach?  
 24 THE COURT: Yes.  
 25 MR. WEIDNER: Thank you, Judge. And,

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1 Judge, the objection, I guess, or the point  
 2 of clarification I would like to make is  
 3 that what the witness is holding is, I  
 4 believe, a copy of something. And if we're  
 5 going to talk about it, because I'm going to  
 6 be making objections to admissibility and  
 7 questions on voir dire later, I want to make  
 8 sure that we're clear that he is holding on  
 9 to what appears to be a photocopy of  
 10 something printed off the Internet that's  
 11 unexecuted.  
 12 THE COURT: Okay. Well, let's do this  
 13 first. Has that been marked?  
 14 MS. MORGAN: No, Your Honor.  
 15 THE COURT: Let's mark it first --  
 16 MS. MORGAN: Okay.  
 17 THE COURT: -- okay, so the objection  
 18 that counsel just made reflects what he's --  
 19 the document he's referred to in the record  
 20 is going to be, I believe, Exhibit --  
 21 THE CLERK: -- 3.  
 22 THE COURT: -- 3. So it's now been  
 23 marked as Exhibit 3. Okay.  
 24 BY MS. MORGAN:  
 25 Q Mr. Schwiner, based on your experience in



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1 the mortgage loan servicing industry, who creates  
 2 this document, the pooling and servicing agreement?  
 3 A The pooling and servicing agreement is  
 4 created by the holder of the -- well, in this  
 5 particular case, this pooling and servicing agreement  
 6 was created by the trustee who holds the loans in  
 7 this securitized trust.  
 8 Q Now the physical document that is in your  
 9 hand, where does this come from?  
 10 A The physical document that is in my hand is  
 11 part of the business records that Ocwen holds and  
 12 maintains on behalf of the Plaintiff in this  
 13 particular case. So this comes from our own internal  
 14 records. It's also available to the public.  
 15 Q So this document, this pooling and  
 16 servicing agreement, it is both available publicly  
 17 and it is in Ocwen's servicing records?  
 18 A Yes.  
 19 Q So when you log in to your access to Ocwen,  
 20 you can see this document in your system?  
 21 A That is correct.  
 22 Q Can you modify it?  
 23 A No, I can't modify it.  
 24 Q Can you print it out?  
 25 A Yes.

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1 Q So you print out and generate a copy?  
 2 A Yes.  
 3 Q Do you know if that's what was done for  
 4 this trial here today?  
 5 A This copy was provided by Ocwen to counsel  
 6 in this particular case, so, yes.  
 7 Q Thank you.  
 8 I'm going to ask you about just two pages  
 9 that are in there, the first being page 11 I believe  
 10 it is. If it's not, I will come look over your  
 11 shoulder.  
 12 A Okay.  
 13 Q Are you on page 11?  
 14 A Yes. No, I'm not actually. It's -- okay.  
 15 I'm on page 11.  
 16 Q Does page 11 state the closing date of this  
 17 loan?  
 18 A No.  
 19 Q Which page is it, please?  
 20 A 16.  
 21 Q Page 16. I apologize. What is the closing  
 22 date for the pooling and servicing agreement?  
 23 A January 27th, 2005.  
 24 Q Now, just based on your experience, based  
 25 on your understanding of how pooling and servicing

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1 agreements work, what is the closing date? What does  
 2 that do?  
 3 A Well, based on my experience, the closing  
 4 date is basically the day in which this agreement is  
 5 effective. The loans that are included and attached  
 6 in this pooling and servicing agreement are  
 7 basically -- this agreement goes into effect, and  
 8 whatever loans are included in that attached mortgage  
 9 loan schedule would be -- would be then a part of  
 10 this agreement.  
 11 Q And that was January 27th of 2005?  
 12 A Yes.  
 13 Q So by January 2000 -- January 27, 2005, the  
 14 loans, if they are going to be put into this trust,  
 15 according to this agreement, they have to be in by  
 16 that date; is that correct?  
 17 A Yes.  
 18 Q Okay. The second page that I would like  
 19 you to look at there, I have it indicated with a  
 20 sticker. I believe it's page 111.  
 21 Does it have a number on the page there?  
 22 A I don't see a number on the page, but I  
 23 do -- oh, well it's written on here page 112, but I  
 24 don't --  
 25 Q 112. Thank you.

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1 Just briefly, do you recognize this as  
 2 being the execution page of the pooling and servicing  
 3 agreement?  
 4 A Yes.  
 5 Q Are there signatures or indication of  
 6 signatures on this document?  
 7 A They're indications of electronic  
 8 signatures on this document.  
 9 Q Thank you.  
 10 MR. WEIDNER: I'm going to object as  
 11 to --  
 12 THE COURT: What's your objection?  
 13 MR. WEIDNER: Unclear.  
 14 THE COURT: You're objecting to the  
 15 question or the answer?  
 16 MR. WEIDNER: The question. I don't  
 17 know what that means.  
 18 THE COURT: Okay. Well, why don't you  
 19 reask the question.  
 20 MS. MORGAN: Sure.  
 21 BY MS. MORGAN:  
 22 Q Are there electronic signatures on that  
 23 page?  
 24 A Yes.  
 25 Q I'm most concerned about who specifically

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1 the people are and the entities.  
2 What entitled are signatories on this page?  
3 A IndyMac MBS, Inc., Deutsche Bank National  
4 Trust Company and IndyMac Bank F.S.B.  
5 Q I'm going to ask you about something from  
6 your own knowledge. The first party that you read  
7 there was IndyMac Bank. Do you recognize that party  
8 as being the former Plaintiff in this action?  
9 A Yes.  
10 Q The second party that you read as a party  
11 to the pooling and servicing agreement was Deutsche  
12 Bank. And do you recognize them as being the current  
13 Plaintiff in this action?  
14 A Yes.  
15 Q And stop me if I'm wrong and correct me if  
16 I'm wrong, but doesn't -- has it been your  
17 understanding that these two parties, IndyMac Bank  
18 and Deutsche Bank, are the signatories or the parties  
19 to this agreement, this pooling and servicing  
20 agreement?  
21 MR. WEIDNER: I --  
22 THE COURT: You're objecting to the  
23 question or the answer or what?  
24 MR. WEIDNER: The question. The  
25 document speaks for itself, so the objection

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1 would be, you know, outside the scope of  
2 personal knowledge. And then relevance  
3 isn't exactly the correct objection to  
4 hearsay.  
5 THE COURT: Okay.  
6 MS. MORGAN: Your Honor, I'm asking for  
7 the witness's testimony or his understanding  
8 of the document.  
9 THE COURT: Okay. I'll overrule the  
10 objection on that. You can answer that on  
11 your understanding.  
12 THE WITNESS: Can you repeat the  
13 question?  
14 BY MS. MORGAN:  
15 Q Yes, sir. Is it your understanding that  
16 those are the two parties to this pooling and  
17 servicing agreement, IndyMac and Deutsche Bank?  
18 A Yes.  
19 Q Okay. And this agreement, again, for  
20 clarification for the record was entered into on  
21 January 27th, 2005?  
22 A Yes.  
23 Q Do you know whether or not this particular  
24 note is included in that pooling and servicing  
25 agreement?

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1 A Yes, I do know that this note is  
2 included in this particular pooling and servicing  
3 agreement.  
4 Q How do you know?  
5 A There's an attached mortgage loan schedule  
6 and it will verify that the loan is included in that  
7 mortgage loan schedule.  
8 Q We'll get to that in a second. But based  
9 on this document, this document states that those two  
10 parties entered into this agreement in 2005; is that  
11 correct?  
12 A Yes.  
13 MS. MORGAN: Your Honor, no further  
14 questions of this document at this time.  
15 THE COURT: Okay.  
16 MR. WEIDNER: Brief voir dire, Your  
17 Honor?  
18 THE COURT: Yes, sir.  
19 MR. WEIDNER: Okay.  
20 THE COURT: Well, let me ask you a  
21 question. Are you through -- oh, you're not  
22 through with your questioning, just on that  
23 document?  
24 MS. MORGAN: Yes, Your Honor.  
25 THE COURT: All right. Yes, sir, go

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1 ahead.  
2 VOIR DIRE EXAMINATION  
3 BY MR. WEIDNER:  
4 Q Sir, you weren't there when that document  
5 was executed, if it was executed, were you?  
6 A No.  
7 Q And you don't know whether any of these  
8 alleged signatories to that actually did sign it, do  
9 you?  
10 A I'm sorry.  
11 Q Could you bring me to the signature page,  
12 please. So there's no signatures that appear on  
13 there. And did you do anything to verify whether, in  
14 fact, those parties actually signed either  
15 electronically or actually?  
16 A Other than review of the document and based  
17 on my knowledge of, you know, how these documents  
18 work, no. As I stated previously, these appear to be  
19 electronic signatures.  
20 Q Okay. And we agree that that's just a copy  
21 correct?  
22 A This is a copy, yes.  
23 Q And where did you -- you saw that copy for  
24 the first time here today, correct?  
25 A Incorrect.

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1 Q Okay. When you came in here, you did not  
 2 have that document with you, did you?  
 3 A Correct.  
 4 Q Okay. So that document that you are  
 5 holding in your hand, you just saw that today,  
 6 correct?  
 7 A This document was provided to -- by Ocwen  
 8 to our counsel. I reviewed the document prior to  
 9 coming into court today with counsel and came to the  
 10 conclusion that it was the document that we provided  
 11 to counsel, which was part of our business records.  
 12 Q Okay. You've never seen an original  
 13 executed copy of that document, have you?  
 14 A No.  
 15 Q The only copy of the document that you've  
 16 seen, if at all, has been online, correct?  
 17 A The document that I've seen is the document  
 18 that was included in our business records, so I don't  
 19 know if by "online" you mean in the public realm or  
 20 in the --  
 21 Q Yes.  
 22 A -- realm, but the copy that I viewed was  
 23 the copy that was part of our business record.  
 24 Q Okay. So how did that get uploaded into  
 25 your business record? Was it taken down off of the

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1 FCC website?  
 2 A When Ocwen acquires business records from a  
 3 prior servicer, Ocwen collects all the documentation  
 4 through a pretty extensive boarding process. This is  
 5 one of the documents that's verified and reviewed  
 6 during that process.  
 7 MR. WEIDNER: Okay. Judge, my  
 8 objection is hearsay and authenticity.  
 9 THE COURT: So are -- so what are you  
 10 objecting to?  
 11 MR. WEIDNER: The admission of the  
 12 document.  
 13 THE COURT: Well, it hasn't been  
 14 offered for admission yet, I don't believe,  
 15 but you are making your --  
 16 MR. WEIDNER: Proffer now.  
 17 MS. MORGAN: Yeah. I'll move it in,  
 18 Your Honor, for clarification, yes. Your  
 19 Honor, Plaintiff moves in the business  
 20 record as Exhibit 3.  
 21 THE COURT: Okay. So your objection is  
 22 to hearsay.  
 23 MR. WEIDNER: Hearsay and authenticity.  
 24 THE COURT: Okay.  
 25 MS. MORGAN: And, Your Honor, I can

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1 respond if you would like.  
 2 THE COURT: Okay. Go ahead.  
 3 MS. MORGAN: Your Honor, my witness has  
 4 testified that this is a document that is in  
 5 the actual servicing records of Ocwen Loan  
 6 Servicing.  
 7 He said that he can look this document  
 8 up himself. It's in their servicing  
 9 records. It's a part of their inventory.  
 10 He cannot modify it, he cannot change it,  
 11 and he's testified that it is connected to  
 12 the subject loan in this matter.  
 13 MR. WEIDNER: Brief response, Your  
 14 Honor?  
 15 THE COURT: Sure.  
 16 MR. WEIDNER: Judge, if we were in an  
 17 estate case or trying a trust agreement or  
 18 will or power of attorney and I make a  
 19 hearsay objection, of course the Court would  
 20 require an original. We don't have that.  
 21 What we have here is a document that is  
 22 a photocopy, it is not signed, and so it has  
 23 none of the indicia of authenticity that  
 24 admissibility would require. Furthermore,  
 25 it's a hearsay document.

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1 The mere fact that some other party  
 2 takes in another business record, a document  
 3 that they're not a party to at all, does not  
 4 make it their business record.  
 5 If we were here on a PI case -- the  
 6 mere fact that maybe the Sheriff's Office  
 7 reports are scanned into a carrier's records  
 8 does not make it their business records.  
 9 Likewise, going back to that trust  
 10 situation. You know, if I scan a will into  
 11 my office or my client scans a will or a  
 12 trust into their office, that doesn't make  
 13 it a business record. That's what we have  
 14 here.  
 15 THE COURT: Anything else, Ms. Morgan?  
 16 MS. MORGAN: Yes, Your Honor. My  
 17 witness has testified that this document is  
 18 used as the basis for their reliability in  
 19 order for them to insert themselves in this  
 20 particular case. Ocwen services the loan  
 21 based on this agreement.  
 22 THE COURT: Okay. I'm going to  
 23 overrule your objection and admit this into  
 24 evidence. What has it been marked as?  
 25 THE CLERK: 3.

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1 THE COURT: 3. And the authority I'm  
2 going to give you is Sas, S-A-S, versus  
3 Federal National Mortgage Association, 165  
4 So.3d 849. That's a Second DCA case in  
5 2015, and Bank of New York versus Halloway,  
6 157 So.3d 1064, Fourth DCA 2015.  
7 All right. Go ahead, Ms. Morgan.  
8 MS. MORGAN: Thank you, Your Honor.  
9 Next document.  
10 MR. WEIDNER: No objection to that,  
11 Your Honor.  
12 THE COURT: What is it?  
13 MS. MORGAN: It's the mortgage loan  
14 schedule, the MLS.  
15 THE COURT: Why don't we have it  
16 marked.  
17 MS. MORGAN: Yes, sir.  
18 THE COURT: Let's mark it first. I'm  
19 just doing that procedure --  
20 MS. MORGAN: Yes, sir.  
21 THE COURT: -- for the record for both  
22 of you --  
23 MR. WEIDNER: Thanks, Judge.  
24 THE COURT: -- okay?  
25 MR. WEIDNER: And, counsel, the

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1 testimony is that document shows that this  
2 loan is that --  
3 MS. MORGAN: Exactly.  
4 MR. WEIDNER: Then I have no objection.  
5 MS. MORGAN: Thank you.  
6 THE BAILIFF: For the witness?  
7 MS. MORGAN: Yes. And let me just  
8 get -- I just want to get on the record what  
9 Mr. Weidner and I just stated and agreed to.  
10 It will be brief.  
11 BY MS. MORGAN:  
12 Q Mr. Schwiner, what is this document, for  
13 the record?  
14 A This document is a portion of the mortgage  
15 loan schedule which includes the loans attached to  
16 the previously-entered pooling and servicing  
17 agreement.  
18 Q And this document states that this  
19 particular note and mortgage was submitted into that  
20 trust?  
21 A Yes. This includes the mortgages that are  
22 part of that trust and it includes the subject  
23 mortgage.  
24 Q Thank you.  
25 THE COURT: Okay. And that was to be

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1 admitted? No objection?  
2 MR. WEIDNER: Correct, Your Honor.  
3 THE COURT: Okay. That will be  
4 admitted. That's what, 4?  
5 THE CLERK: Yes.  
6 THE COURT: Okay.  
7 MS. MORGAN: Your Honor, next document,  
8 please.  
9 BY MS. MORGAN:  
10 Q Mr. Schwiner, can you identify this  
11 document for the record?  
12 A This is the limited power of attorney  
13 between Plaintiff, Deutsche Bank National Trust  
14 Company, and the servicer, who I'm employed with,  
15 Ocwen Financial Corporation.  
16 Q Just generally speaking, what does the  
17 power of attorney do?  
18 A Just generally speaking, what the power of  
19 attorney does is it gives Ocwen the authority to  
20 service the -- service the attached loan trusts that  
21 are indicated. And in doing that, it allows Ocwen to  
22 service the note, collect payments, provide lost  
23 mitigation, represent them in court, things of that  
24 nature.  
25 Q The way I understand it, Ocwen is a

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1 servicer for a lot of loans.  
2 Are there power of attorneys on all of  
3 Ocwen's loans?  
4 MR. WEIDNER: Objection, relevance.  
5 THE COURT: Wait just a minute. Wait  
6 just a minute.  
7 MS. MORGAN: Sure.  
8 MR. WEIDNER: Relevance.  
9 THE COURT: Okay. I'm going to sustain  
10 that.  
11 MS. MORGAN: Yes, Your Honor.  
12 THE COURT: Just go ahead.  
13 BY MS. MORGAN:  
14 Q Are you familiar with power of attorneys in  
15 other Ocwen cases?  
16 A Yes.  
17 Q All right. Is this the same type of power  
18 of attorney that you have seen in other Ocwen cases?  
19 MR. WEIDNER: Same objection,  
20 relevance.  
21 THE COURT: Okay. That's sustained.  
22 BY MS. MORGAN:  
23 Q All right. Who are the parties to this  
24 power of attorney?  
25 MR. WEIDNER: And I'm going to object,

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1 Judge, to the extent that it's a copy. I  
 2 want to make the record clear on that.  
 3 THE COURT: Okay. All right.  
 4 MS. MORGAN: Respond to the objection,  
 5 Your Honor. This is a copy as well, but  
 6 this is a document on which our witness of  
 7 Ocwen Loan relies as their authorization to  
 8 service.  
 9 THE COURT: Okay. So your objection is  
 10 to admissibility?  
 11 MR. WEIDNER: Yes, Your Honor.  
 12 THE COURT: So have you asked it to be  
 13 admitted?  
 14 MS. MORGAN: Yes. Your Honor,  
 15 Plaintiff would move this into the record as  
 16 Exhibit 5.  
 17 THE COURT: All right. So you're  
 18 objecting as to admissibility?  
 19 MR. WEIDNER: Yes, Your Honor, I can  
 20 voir dire but --  
 21 THE COURT: All right. Go ahead.  
 22 VOIR DIRE EXAMINATION  
 23 BY MR. WEIDNER:  
 24 Q You weren't there, if at all, when this  
 25 document was executed, were you?

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1 A No.  
 2 Q And you don't know whether on that  
 3 signature page any of those people actually signed  
 4 this document, do you?  
 5 A I don't know which page you're referring  
 6 to.  
 7 Q I'm referring to page four. You don't know  
 8 Jennifer Vandine (phonetic)? You don't know whether  
 9 that's her signature, do you?  
 10 A I don't know Jennifer Vandine.  
 11 Q You don't know whether it was notarized  
 12 correctly, and you don't know whether on page five  
 13 any of those witness signatures are correct or if  
 14 they are their signatures, do you?  
 15 A I don't know those people personally.  
 16 There's no reason for me to believe that anything was  
 17 done incorrectly. The notarization and the  
 18 signatures seem to be -- there would be nothing for  
 19 me to believe that there's anything wrong with that.  
 20 Q You have never seen the original document,  
 21 if, in fact, an original document exists, have you?  
 22 A I have not seen the original document, no.  
 23 MR. WEIDNER: Okay. Judge, I would  
 24 object, hearsay authenticity.  
 25 THE COURT: Okay.

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1 MS. MORGAN: Your Honor, I present to  
 2 the Court the case of Bennett versus  
 3 Deutsche Bank National Trust. It simply  
 4 stands for the provision that the bank can  
 5 rely on the statutory presumption of the  
 6 validity of signatures.  
 7 In that specific case, it was two  
 8 allonges and the promissory note, but it  
 9 goes to the same cause.  
 10 The witness doesn't have to personally  
 11 be there. He doesn't have to know the  
 12 people who signed. There is a Notary  
 13 signature. It states that it was signed.  
 14 It's a document on which Ocwen relies to  
 15 service its loans. It is specifically  
 16 provided in this specific case. It's not a  
 17 general power of attorney, it's a very  
 18 specific --  
 19 THE COURT: Do you have the case for  
 20 me?  
 21 MS. MORGAN: Yes, Your Honor, I have a  
 22 copy here for you.  
 23 THE COURT: Okay. So I have an  
 24 objection as to it being hearsay, so it's  
 25 clearly hearsay, so what exception are

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1 you -- are you admitting it under?  
 2 MS. MORGAN: Your Honor, I would like  
 3 it admitted under the business records  
 4 exception, but as to hearsay specifically,  
 5 the reliance of Ocwen on this document to  
 6 service is most significant.  
 7 THE COURT: Okay. Counsel, anything  
 8 else?  
 9 MR. WEIDNER: Judge, powers of  
 10 attorneys are specifically covered by  
 11 Florida Statute 92.08. And that reads it  
 12 may be admissible if it's been recorded for  
 13 20 years. This isn't recorded. And we get  
 14 10-day notice that they're relying on this  
 15 recorded notice. We have none of that here,  
 16 Judge.  
 17 And the witness has testified he's not  
 18 party to these signatures and, therefore,  
 19 there's no admissibility.  
 20 MS. MORGAN: With all due respect, Your  
 21 Honor, we filed in this case a notice of  
 22 providing our trial exhibits. If nothing  
 23 else, opposing counsel has had notice since  
 24 April that we intended to rely on this  
 25 document.

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1 THE COURT: Well, on this specific  
 2 document, I haven't heard, and I don't know  
 3 whether counsel is going to agree, but if  
 4 you want to establish as a business record  
 5 specifically as to this document --  
 6 MS. MORGAN: Yes, sir.  
 7 THE COURT: -- go ahead with your  
 8 questions.  
 9 MS. MORGAN: Yes, Your Honor.  
 10 BY MS. MORGAN:  
 11 Q Mr. Schwiner, is this document kept in  
 12 Ocwen Servicing Loans -- its records?  
 13 A Yes.  
 14 Q So I'm going to ask you the same question I  
 15 asked you earlier. Can you log into your Ocwen  
 16 access and can you see this document in there?  
 17 A Yes.  
 18 Q And, again, can you modify this document?  
 19 A I cannot modify this document.  
 20 Q Now, is this record kept in the ordinary  
 21 course of business for Ocwen?  
 22 A Yes.  
 23 Q And does Ocwen have procedures and  
 24 practices in place to ensure that this record is  
 25 maintained true and accurately?

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1 A Yes.  
 2 Q Did you review this document in preparation  
 3 for your testimony today?  
 4 A Yes, I did.  
 5 Q And to the best of your knowledge, were the  
 6 parties when they entered this document, when they  
 7 entered or created this power of agreement, did they  
 8 do so contemporaneously with it being agreed to?  
 9 A Yes.  
 10 MS. MORGAN: Okay. Your Honor,  
 11 Plaintiff moves this in as Exhibit 5.  
 12 THE COURT: Anything else, counsel?  
 13 MR. WEIDNER: Brief.  
 14 THE COURT: Yes, sir.  
 15 VOIR DIRE EXAMINATION  
 16 BY MR. WEIDNER:  
 17 Q What's the event that that document  
 18 records?  
 19 A The event?  
 20 Q Yes.  
 21 A I'm not sure if I understand what you are  
 22 asking.  
 23 Q So you testified that that record was made  
 24 at or near the event?  
 25 What was the event that was -- that that

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1 document is made close to?  
 2 A Well, this -- and first of all, I'm not  
 3 sure that I'm understanding the question. I don't  
 4 know if you want to give me something more specific  
 5 to refer to, but, as you know, the document does  
 6 speak for itself and as you also know that I'm not an  
 7 attorney.  
 8 Now, what I can tell you is that this  
 9 specifically states that the power of attorney gives  
 10 Ocwen the ability to represent the Plaintiff,  
 11 Deutsche Bank National Trust, for various different  
 12 items, such as loan modifications --  
 13 Q And we agree the document speaks for  
 14 itself.  
 15 A Right.  
 16 Q But you don't know personally when that  
 17 document was recorded. You can read the date off  
 18 there, but you don't know -- and I said "recorded."  
 19 You don't know whether that document was executed at  
 20 or about the time it was signed, do you?  
 21 A Well, it does contain a notarization, and  
 22 when you notarize something, that is a verification  
 23 that it was done at, my understanding, that  
 24 particular date and time.  
 25 Q Agreed. But you know nothing about that

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1 document, correct?  
 2 A I--  
 3 Q Number two, you don't know any -- whether  
 4 or not the parties there had knowledge of that event,  
 5 do you? You just had that document there? You  
 6 didn't talk to the parties? You weren't there when  
 7 it was allegedly executed, correct?  
 8 A I can't speak for the parties. I can speak  
 9 for the documentation, documents being part of our  
 10 business records.  
 11 Q And, in fact, because you have no  
 12 connection with Deutsche Bank, you don't know whether  
 13 Deutsche Bank kept that in the ordinary course of  
 14 their business or business activities, do you?  
 15 A I'm not really sure what you're asking, but  
 16 Ocwen does have a connection with Deutsche Bank.  
 17 Ocwen services loans on behalf of Deutsche Bank.  
 18 Q Agreed. Let me just -- but this is  
 19 executed allegedly by Deutsche Bank. You're not here  
 20 today to represent Deutsche Bank and know nothing  
 21 about Deutsche Bank, correct?  
 22 A Ocwen is the servicer on behalf of Deutsche  
 23 Bank, so we have a pooling and servicing agreement  
 24 which gives Ocwen the ability to represent them in  
 25 court based on this agreement and the fact that we

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1 serviced this -- this loan.  
 2 MR. WEIDNER: Same objection, Your  
 3 Honor.  
 4 THE COURT: Okay. Objection overruled.  
 5 It will be admitted as a business record.  
 6 Go ahead, Ms. Morgan.  
 7 MS. MORGAN: That's the POA as Exhibit  
 8 5. Thank you, Your Honor.  
 9 BY MS. MORGAN:  
 10 Q Mr. Schwiner, let me ask you about this  
 11 document, please.  
 12 Can you identify this document for the  
 13 record?  
 14 A This document is a loan file withdrawal  
 15 information document.  
 16 Q Again, just based on your own experience,  
 17 your own history and your own expertise, what is this  
 18 document and what does it do?  
 19 A Based on my -- my experience and my  
 20 expertise, this is a document that was part of our  
 21 business records and the research that I did for this  
 22 particular case.  
 23 And just based on my analysis of this  
 24 document, it appears to be a document from Deutsche  
 25 Bank indicating loan file withdrawal information that

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1 was sent to IndyMac Bank on 7-2-2008. So it was in  
 2 reference to the loan file in this case based on my  
 3 review.  
 4 Q You said it's in reference to the loan  
 5 file. If you know, do you know what documents  
 6 specifically?  
 7 A Well, I can't say specifically in this  
 8 particular case, but I can say generally in the  
 9 banking industry when you refer to a loan file in  
 10 this sort of case, you're talking about the contents  
 11 of the mortgage, the note, payment history, anything  
 12 else that might be needed in reference to obtaining  
 13 the loan documentation in regards to needing to  
 14 review it for a trial, something of that matter.  
 15 Q Based on your expertise, what does this  
 16 document state occurred?  
 17 A I'm sorry.  
 18 Q What happened?  
 19 A Well, I mean, based on the review of the  
 20 actual document, it's -- it's showing the loan -- it  
 21 says, Loan file withdrawal information for borrower  
 22 James Heyward for the address 14146 Cattle Egret  
 23 Place, Bradenton, Florida 34202.  
 24 It's showing the withdrawal information for  
 25 the loan file regarding a foreclosure to be withdrawn

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1 on 7-2-2008, and it's showing what appears to be some  
 2 sort of a tracking number and transmittal  
 3 information, and it's showing that it was to be sent  
 4 to IndyMac Bank F.S.B. at 155 North Lake Avenue,  
 5 Pasadena, California 91101.  
 6 Q For clarification for the record then, is  
 7 it your testimony that on July 2nd of 2008, Deutsche  
 8 Bank withdrew or took out of its own inventory the  
 9 original loan file in this case and sent it to  
 10 IndyMac Bank?  
 11 A That is my analysis. I wasn't there for  
 12 that event, I'm just basing that on this being part  
 13 of the business record that we acquired through the  
 14 boarding and the setup of this loan. So, yes, that  
 15 would be my, presumption.  
 16 Q Thank you.  
 17 MS. MORGAN: Your Honor, Plaintiff  
 18 moves this into the record as Exhibit 6.  
 19 MR. WEIDNER: Brief voir dire?  
 20 THE COURT: Yes, sir.  
 21 VOIR DIRE EXAMINATION  
 22 BY MR. WEIDNER:  
 23 Q Does that record there indicate that  
 24 Deutsche Bank owned and held this note at the time  
 25 that record was created?

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1 A It indicates Deutsche Bank in the subject  
 2 line. I don't know if it indicates what you're  
 3 asking me, but it does have Deutsche Bank at the top  
 4 in bold with the address.  
 5 Q You're relying upon that record, correct?  
 6 A Yes.  
 7 Q And what's the event that that record  
 8 describes?  
 9 A Well, as I just explained, and I can  
 10 happily explain again, based on my analysis of our  
 11 business records and based on this document being  
 12 included in those business records, my analysis is  
 13 that this was an indication that Deutsche Bank was  
 14 sending the loan file information to IndyMac Bank.  
 15 MR. WEIDNER: Okay. No objection to  
 16 admissibility, Your Honor.  
 17 THE COURT: Okay. Can I see the  
 18 document, Number 5?  
 19 MS. MORGAN: Yes, sir.  
 20 THE COURT: Okay. It will be admitted  
 21 and received. What's this, 5?  
 22 THE CLERK: That is going to be 6.  
 23 THE COURT: 6. That's going to be 6.  
 24 MS. MORGAN: Okay. Your Honor, I am  
 25 submitting now what opposing counsel and I

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1 agreed could be admitted as a composite  
 2 exhibit. It is the recorded assignment of  
 3 mortgage and the corrective assignment of  
 4 mortgage for this loan. I'll briefly have  
 5 the witness --  
 6 THE COURT: Okay. So that will be 7.  
 7 MS. MORGAN: Yes, Your Honor. -- just  
 8 identify the parties and dates, if Your  
 9 Honor would like.  
 10 THE COURT: No, you proceed --  
 11 MS. MORGAN: Yes, Your Honor.  
 12 THE COURT: -- for the record.  
 13 MS. MORGAN: Yes, Your Honor.  
 14 BY MS. MORGAN:  
 15 Q Beginning with the original assignment of  
 16 mortgage, Mr. Schwiner, can you please identify the  
 17 parties assignee and assignor and the date?  
 18 A The assignee on the first assignment of  
 19 mortgage which is dated July 27, 2010, and it's also  
 20 showing to being recorded in Manatee County,  
 21 assignment Deutsche Bank National Trust Company as  
 22 trustee of the IndyMac Mortgage Loan Trust 2005-AR2,  
 23 Mortgage Pass-Through Certificates Series 2005-AR1  
 24 under the pooling and servicing agreement dated  
 25 January 1st, 2005, assignor IndyMac Bank F.S.B.

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1 Q And the -- I apologize. Did you state the  
 2 date on that one as well?  
 3 A The date? Yes, July 27, 2010.  
 4 Q And then the corrected assignment of  
 5 mortgage, which is the second document I gave you  
 6 there?  
 7 A The corrective assignment of mortgage,  
 8 which is also recorded in Manatee County, Florida,  
 9 which is dated September 11, 2014, showing that the  
 10 assignment of mortgage is from Federal Deposit  
 11 Insurance Corporation as receiver for IndyMac Bank  
 12 F.S.B. assigned to Deutsche Bank National Trust  
 13 Company as trustee for IndyMac INDX Mortgage Loan  
 14 Trust 2005-AR2, Mortgage Pass-Through Certificates  
 15 Series 2005-AR2.  
 16 Q Thank you.  
 17 MS. MORGAN: Your Honor, Plaintiff  
 18 requests that these be admitted into the  
 19 record as Exhibit 7 as a composite exhibit.  
 20 THE COURT: It's going to be Composite  
 21 Exhibit 7.  
 22 BY MS. MORGAN:  
 23 Q Mr. Schwiner, can you identify this  
 24 document, please?  
 25 A This document is a comments log that was

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1 part of the prior servicer's business records, which  
 2 is now part of Ocwen's business records.  
 3 Q Based on your experience, how is a comment  
 4 log created?  
 5 A Well, based on my experience, a comment log  
 6 gets created as events occur. If there's a payment  
 7 made or if there's a customer call or if there is a  
 8 letter that is sent, those actions and/or comments  
 9 are recorded at the time in which they take place.  
 10 Q Now, when did Ocwen begin servicing this  
 11 loan?  
 12 A Ocwen began servicing this loan  
 13 approximately -- I believe it was October of 2013.  
 14 I'm going by memory right now, but around that time  
 15 is when we acquired servicing from IndyMac in this  
 16 particular case.  
 17 Q Now, just by looking at the dates on this  
 18 comments log, there are dates that are prior to  
 19 October of 2013; is that correct?  
 20 A Yes, that is correct.  
 21 Q So that there was input, there were  
 22 comments made on this loan prior to Ocwen Servicing;  
 23 is that correct?  
 24 A Yes, because as I stated, this was the  
 25 comments log from the prior servicer. So we acquired

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1 this and reviewed this as part of our boarding  
 2 process in taking over servicing from IndyMac.  
 3 Q Tell me more about the boarding process  
 4 then.  
 5 How does this document get from prior  
 6 servicer IndyMac to current servicer Ocwen Loan  
 7 Servicing?  
 8 A Whenever Ocwen acquires a loan to service  
 9 from a prior servicer, we go through basically an  
 10 industry standard three-step boarding setup process.  
 11 MR. WEIDNER: Judge, I'm going to be  
 12 respectful of the time. I've heard the  
 13 magic words for boarding unless the Court  
 14 wants to hear. I don't want to waste the  
 15 Court's time.  
 16 MS. MORGAN: Totally at the discretion  
 17 of the Court.  
 18 THE COURT: No, go ahead.  
 19 BY MS. MORGAN:  
 20 Q All right. So --  
 21 A Continue?  
 22 Q Yes.  
 23 A Oh. So the way the boarding process works  
 24 is when Ocwen acquires the business records and the  
 25 servicing rights from a prior servicer, we go through



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1 a three-step process.  
2 Step one is loan boarding or shell boarding  
3 where the prior servicer records, both originals and  
4 copies, things such as payment histories, notes,  
5 mortgages, anything -- assignments of mortgages,  
6 those document are reviewed and analyzed and they  
7 are -- we have a transaction coordinator who reviews  
8 that information. It's also reviewed by management.  
9 Once all of that information is reviewed  
10 and that data is inputted into our system, we go to  
11 step two, which is verification. That's when the --  
12 the actual physical records are cross-referenced  
13 against the data that's been previously input in step  
14 one.  
15 And then the final step of that is  
16 attribution. The records, both hard copies and the  
17 electronic copies and the data, is all reconciled.  
18 If anything does not look correct, it will be sent  
19 back to the prior steps until it's all verified as  
20 being true and accurate.  
21 Once everything is finalized, the loan  
22 servicing is activated. And because of that process,  
23 because of that industry standard process of loan  
24 boarding that we go through, we then are basically  
25 confident that the prior servicer business records

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1 are, in essence, our own company's business records  
2 so that we can rely on them for the accuracy and the  
3 information in which they contain and proceed with  
4 servicing the loan.  
5 Q So the comments log, it tells you, as you  
6 stated, if a payment is made. Does it tell you if  
7 correspondence is received from the borrower?  
8 A Yes, it does.  
9 Q Would it tell you correspondence was sent  
10 to the borrower?  
11 A Yes, it would.  
12 Q I'm going to ask you about that now. Does  
13 it state in the comments log that --  
14 MR. WEIDNER: Counsel, we're not going  
15 to object to the letter.  
16 MS. MORGAN: Sure. Absolutely.  
17 BY MS. MORGAN:  
18 Q Just then for clarification for the record,  
19 can you state -- does it state that the default  
20 letter was sent to the borrower in this case?  
21 A Yes. There are comments in the comments  
22 log in April of 2008 showing that the letter was  
23 sent.  
24 MS. MORGAN: Thank you.  
25 MR. WEIDNER: Just a brief voir dire?

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1 MS. MORGAN: Yeah, sure.  
2 VOIR DIRE EXAMINATION  
3 BY MR. WEIDNER:  
4 Q Sir, could you turn to the section  
5 2-8-2008? You testified about the process that you  
6 go through to confirm the accuracy of documents and  
7 this record here, and I want to know how in this  
8 verification of this boarding process you would  
9 confirm any of the facts on here, but rather than go  
10 line by line, specific to the alleged default in  
11 2008 -- this looks like it's formatted differently  
12 than what I saw.  
13 How would you confirm the events that are  
14 described here?  
15 MR. WEIDNER: And what I'm pointing to,  
16 counsel, is page 26300.  
17 BY MR. WEIDNER:  
18 Q And how would -- first of all, what  
19 happened on 1-22-2008? How does your boarding  
20 process allow you to verify what happened there?  
21 A Well, if you're asking me to specifically  
22 verify how the boarding process took place on this  
23 particular loan, I can't do that. I wasn't the  
24 person that boarded this loan.  
25 This loan was boarded by Ocwen employees

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1 based on, as I previously explained, an industry  
2 standard boarding process.  
3 So when that process took place, this was  
4 part of the record that was reviewed. I'm not  
5 exactly sure what you're asking me, but I can tell  
6 you that if there were any errors that were  
7 indicated, we wouldn't have completed the boarding  
8 process and began servicing.  
9 Q But, again, you don't know anything about  
10 this particular record?  
11 A I'm not sure what it is that you're  
12 actually asking me. I see dates and I see something  
13 that says MDX disconnected. That may be in reference  
14 to a phone call that was made.  
15 I can only -- you know, I don't want to say  
16 guess, but I can tell you that this is part of the  
17 record. These records were verified to be true and  
18 accurate and then we were servicing based on this.  
19 If there is something in particular that you want me  
20 to answer --  
21 Q Well, I'm --  
22 A -- please point to it.  
23 Q -- focusing specifically on the alleged  
24 events of default, 1-22-2008. You don't even know  
25 what those entries mean there, do you?

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1 A Well, I can -- like I said, I mean, it says  
2 on -- are you talking about the 1-22-08?  
3 Q Correct.  
4 A Well, it says 1-22-08, negative  
5 amortization balance cap, so I'm going to make a  
6 guess. This loan has a negative amortization. When  
7 payments are not made, it actually does a reverse  
8 amortization.  
9 So the principal balance that is owed  
10 increases. Now, I don't know if that's what this is  
11 in regards to, but it may have something to do with  
12 that.  
13 MR. WEIDNER: Okay. Your Honor,  
14 hearsay. But I wanted to make that point  
15 about that particular business record.  
16 THE COURT: So you are objecting to the  
17 entire document as hearsay?  
18 MR. WEIDNER: Yes, Your Honor.  
19 MS. MORGAN: Your Honor, response. The  
20 Sas case referenced by Your Honor previously  
21 as regarding prior servicer business records  
22 being able to come in as long as the current  
23 servicer testifies to the accuracy and the  
24 verification of their boarding process and  
25 confirming those documents.

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1 THE COURT: Okay. Anything else,  
2 counsel?  
3 MR. WEIDNER: No, Your Honor.  
4 THE COURT: All right. Well, I'm going  
5 to overrule it as to the hearsay on business  
6 records. That doesn't mean that I'm not  
7 going to prohibit you from questioning the  
8 accuracy of those records at a later time,  
9 okay?  
10 MR. WEIDNER: Thank you, Your Honor.  
11 MS. MORGAN: Yes, Your Honor.  
12 BY MS. MORGAN:  
13 Q The next document, Mr. Schwiner.  
14 Mr. Schwiner, in review --  
15 MR. WEIDNER: We don't dispute that it  
16 was sent or received, I will just question  
17 the numbers briefly.  
18 THE COURT: Okay. So are we on another  
19 document?  
20 MS. MORGAN: Yes, Your Honor.  
21 BY MS. MORGAN:  
22 Q Mr. Schwiner, can you identify this  
23 document for the record, please?  
24 A Yes. This is a copy of the default letter  
25 that was sent in reference to the loan that we've

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1 been discussing dating April 7, 2008.  
2 Q And to whom was it sent?  
3 A It was sent to James Heyward.  
4 Q And do you recognize that as being the  
5 borrower for this action?  
6 A Yes.  
7 Q Now, it says that -- let me make sure we  
8 have the same copy as well. It states that it was  
9 sent to a P.O. box; is that correct?  
10 A Yes.  
11 Q Do you know why it would be sent to a P.O.  
12 box?  
13 A Well, the way that it -- generally, the way  
14 that it works is if there is a change of address or  
15 if the borrower provides a change of address to us,  
16 then we're going to -- then the servicer at that time  
17 was going to send it to the address on file.  
18 MR. WEIDNER: And, counsel, we don't  
19 dispute -- I know you're probably going to  
20 handle that mortgage application, so we're  
21 not going to dispute the address.  
22 MS. MORGAN: I so appreciate it. Thank  
23 you. Thank you.  
24 BY MS. MORGAN:  
25 Q Just briefly, does it give the borrower the

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1 opportunity to cure the alleged default?  
2 A Yes.  
3 Q Does it advise of what may occur if the  
4 default is not cured?  
5 A Yes.  
6 Q Now, is this document kept in Ocwen's  
7 servicing records?  
8 A Yes.  
9 Q Is it kept in the ordinary course of their  
10 servicing records?  
11 A Yes.  
12 Q Now, this document, again, as we can see,  
13 it's created by the prior servicer IndyMac Bank. And  
14 you gave extensive testimony previously regarding the  
15 servicing records of Ocwen and how the prior  
16 servicer's business records become a part of Ocwen;  
17 is that correct?  
18 A Yes.  
19 Q Is it also true for the default letter?  
20 A Yes.  
21 Q So does that default letter go through that  
22 three-point process in which you have testified to?  
23 A Yes.  
24 Q And does Ocwen have the same procedures and  
25 practices in place to ensure the records are

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1 maintained as true and accurate?  
 2 A Yes.  
 3 Q And based on your experience with default  
 4 letters, are they created at or near the time of the  
 5 alleged default?  
 6 A Yes.  
 7 Q And does this comport with the prior  
 8 exhibit which we talked about, the comments log, does  
 9 this comport with that same entry that there was a  
 10 default letter sent?  
 11 A Yes.  
 12 Q Thank you.  
 13 MS. MORGAN: Your Honor, Plaintiff  
 14 moves this into the record as Exhibit 9.  
 15 MR. WEIDNER: Brief voir dire, Your  
 16 Honor?  
 17 THE COURT: Yes, sir.  
 18 VOIR DIRE EXAMINATION  
 19 BY MR. WEIDNER:  
 20 Q The number there, the alleged payment due,  
 21 you have no way of looking at the letter and knowing  
 22 that's correct, do you?  
 23 A Just by looking at the letter, no. I mean,  
 24 would have to cross-reference.  
 25 Q And the next amount there, \$8,504.69, you

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1 have no idea whether that number is correct, do you?  
 2 A Which number? Can you please --  
 3 Q I'm sorry. 8,504.68.  
 4 A I have no reason to believe that it's  
 5 incorrect based on the boarding process that we went  
 6 through and the verification of the business records.  
 7 Q Reviewing that letter prior to your  
 8 testimony, were you able to verify whether those  
 9 amounts in there were correct and accurate?  
 10 A I did not -- I don't recall if I verified  
 11 that or not.  
 12 MR. WEIDNER: Judge, the objection is  
 13 hearsay.  
 14 THE COURT: Okay.  
 15 MS. MORGAN: Your Honor, Plaintiff's  
 16 counsel is incredibly grateful for the  
 17 wealth of case law that has come out of the  
 18 Second DCA stating that the prior purpose of  
 19 the breach letter is to provide notice of  
 20 the default.  
 21 There has been prior cases in which the  
 22 numbers were actually incorrect in which  
 23 they stated the date was incorrect, and the  
 24 court has upheld the default letter as being  
 25 sufficient as the sole primary purpose of

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1 the letter being notice to advise the  
 2 borrower and to provide that opportunity to  
 3 cure and to provide the opportunity to  
 4 advise them of what will occur if the  
 5 default isn't cured.  
 6 THE COURT: Okay. Your objection is  
 7 going to be overruled as to the business  
 8 records exception.  
 9 Again, I'm not going to prohibit you  
 10 from questioning the contents of the letters  
 11 at a later time, okay? So that will be  
 12 Number 9.  
 13 MS. MORGAN: Yes, Your Honor.  
 14 THE COURT: 9 will be received.  
 15 BY MS. MORGAN:  
 16 Q All right. Mr. Schwiner, can you identify  
 17 this entire document here?  
 18 A This entire document is the current and  
 19 prior servicer payment history for this particular  
 20 loan.  
 21 Q Again, general knowledge, what is the  
 22 payment history?  
 23 A Payment history is a record of payments  
 24 made on behalf of the account. I mean, it would  
 25 include mortgage and interest payments, it would

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1 include any escrow payments for things such as hazard  
 2 insurance or taxes made in the normal and ordinary  
 3 course of business.  
 4 Q Does this payment history, the current  
 5 servicer or prior, current servicer Ocwen, prior  
 6 servicer IndyMac, does it include the entire life of  
 7 the loan?  
 8 A Yes, it does.  
 9 Q How do you know that?  
 10 A Well, just by verifying the dates from the  
 11 beginning of the loan to current. It includes  
 12 everything.  
 13 Q Okay. So is it your testimony that this is  
 14 a complete payment history for this loan?  
 15 A Yes.  
 16 Q And does it show that there was a default  
 17 in this loan?  
 18 A Yes.  
 19 Q Does it show that the default was cured?  
 20 A It shows that the default was not cured.  
 21 Q All right. And, again, is this document  
 22 maintained in the ordinary course of business for  
 23 Ocwen Loan Servicing?  
 24 A Yes.  
 25 Q Now, tell me about how the entries are put

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1 in there? Are they input manually or automatically?  
2 How is the payment history sort of created?  
3 A The payment history is going to be created  
4 basically, I mean, both. You can -- when -- when  
5 entries are made into the payment history, they are  
6 time stamped, date, times, down to the second, it's  
7 all in here. And, you know, depending on what's  
8 happening, if we're talking about a cashiering or  
9 collection of payment, that may be done  
10 automatically, although there are other items which  
11 may be done manually by somebody who works for Ocwen  
12 and has access to the system.  
13 Q Now, in this event that that must occur,  
14 that someone must manually input the records, do you  
15 know whether or not the persons are charged with the  
16 responsibility? Are they required to input the data  
17 accurately and contemporaneously with when the event  
18 occurs?  
19 A Yes.  
20 Q That's required under what? Is that  
21 training? How are they required?  
22 A Well, I mean, anyone that's -- if somebody  
23 is working for Ocwen in the area of cashiering or  
24 lost mitigation or something like that, they're  
25 obviously going to have training in their job

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1 function.  
2 MR. WEIDNER: I will stipulate that  
3 Ocwen -- accept the procedures of their  
4 records --  
5 THE COURT: Okay.  
6 MR. WEIDNER: -- but not as to the  
7 prior servicer.  
8 THE COURT: All right. Thank you.  
9 BY MS. MORGAN:  
10 Q All right. And just for clarification and  
11 for the record, do these prior servicer's records of  
12 IndyMac, do they also come in to Ocwen under the  
13 boarding process?  
14 A Yes.  
15 Q Does Ocwen treat them like their own?  
16 A Yes.  
17 MS. MORGAN: All right. Your Honor, no  
18 further questions on this document.  
19 Plaintiff moves this into the record as  
20 Exhibit 10.  
21 THE COURT: Mr. Weidner?  
22 MR. WEIDNER: Brief voir dire.  
23 VOIR DIRE EXAMINATION  
24 BY MR. WEIDNER:  
25 Q The same question before about the default

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1 letter. You have no way of knowing whether the  
2 inputs of any prior servicer around the alleged date  
3 of default, and that would be January, February of  
4 2008, are accurate, you're just reading the record,  
5 correct?  
6 A Well, I'm not sure if I understand what  
7 you're asking me, but I have no reason to believe  
8 that they are not accurate based on the boarding  
9 process and the industry standards.  
10 Q But you have no way of verifying this  
11 particular record for that particular --  
12 A As I stated previously, I did not  
13 personally conduct the boarding process. Somebody  
14 who works for Ocwen did. We have a system in place,  
15 the verification.  
16 If there were any errors that were  
17 indicated or if there was something we were uncertain  
18 of, we would have not completed the boarding process.  
19 MR. WEIDNER: Object as to hearsay,  
20 Your Honor.  
21 THE COURT: Okay. Overruled as to the  
22 business records, but I'm not going to  
23 prohibit counsel from inquiring later on.  
24 MS. MORGAN: Yes, Your Honor.  
25 THE COURT: Okay. Go ahead.

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1 MS. MORGAN: Brief second, Your Honor.  
2 I believe that is all the documents that I  
3 have for this witness.  
4 THE COURT: Okay. All right.  
5 MS. MORGAN: At this time Plaintiff  
6 rests, Your Honor, and requests final  
7 judgment entered in the amount -- well, for  
8 clarification, Your Honor.  
9 THE COURT: Well, let's do this, let's  
10 do this, let's give Mr. Weidner an  
11 opportunity to cross-exam.  
12 MS. MORGAN: Should I take testimony as  
13 to the final judgment now or would you  
14 prefer that at the end? I know the  
15 second --  
16 THE COURT: Well, it's up to you. It's  
17 up to you. If you are through with your  
18 questions right now, I want to hear  
19 Mr. Weidner -- I mean, it's up to you  
20 whether you want to ask questions of this  
21 witness in full.  
22 MS. MORGAN: I will do it now.  
23 THE COURT: Okay. All right.  
24 MR. WEIDNER: And, Judge, if she's just  
25 reading the final judgment that they want

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1 you to sign, I'm not sure what the point is.  
 2 I know it's sort of a wish list of what  
 3 they want. We're going to dispute  
 4 everything on there, so that document is  
 5 what it is.  
 6 MS. MORGAN: Your Honor, there is a  
 7 recent Second DCA case that came out about  
 8 the judgment figures and specific. And the  
 9 items that are in there, I want to make sure  
 10 that there is testimony taken as to each --  
 11 THE COURT: All right.  
 12 MS. MORGAN: -- individual item.  
 13 THE COURT: I'll let you do that. Go  
 14 ahead.  
 15 MS. MORGAN: I don't mean to bore the  
 16 Court with a line item, but it is as  
 17 Mr. Weidner said what it is that we're  
 18 requesting.  
 19 THE COURT: Let's put it on the record  
 20 then.  
 21 BY MS. MORGAN:  
 22 Q Have you seen this document before today,  
 23 Mr. Schwiner?  
 24 A Yes.  
 25 Q Can you identify this document for the

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1 record?  
 2 A This is a copy of the proposed final  
 3 judgment of foreclosure in reference to the case.  
 4 Q All right. And that is for the subject  
 5 matter of Deutsche Bank versus James Heyward; is that  
 6 correct?  
 7 A Yes.  
 8 Q As it's stated on there -- first, let me  
 9 move this into the record before I ask you to testify  
 10 about it.  
 11 MS. MORGAN: Your Honor, Plaintiff  
 12 moves to have it at least marked as Exhibit  
 13 10 for reference for the record.  
 14 MR. WEIDNER: No objection.  
 15 THE COURT: Okay. Let's mark it as  
 16 Exhibit 10. Actually --  
 17 THE CLERK: We already have 10.  
 18 THE COURT: -- actually 11.  
 19 THE CLERK: 11.  
 20 THE COURT: This is 11.  
 21 MS. MORGAN: What did I miss?  
 22 THE COURT: All right. Do you want to  
 23 go over with the clerk what exhibits are?  
 24 MS. MORGAN: Please.  
 25 THE COURT: All right.

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1 MS. MORGAN: Comments log --  
 2 THE COURT: What was 10?  
 3 THE CLERK: 10 was the payment history.  
 4 MS. MORGAN: That's what I forgot. I  
 5 got it. Thank you.  
 6 THE COURT: Okay.  
 7 MS. MORGAN: Thank you.  
 8 THE COURT: Okay. So we've just marked  
 9 the proposed judgment as Exhibit 11, okay?  
 10 MS. MORGAN: Yes, Your Honor.  
 11 THE COURT: All right. Yes, ma'am.  
 12 BY MS. MORGAN:  
 13 Q I'm going to ask you about the items on the  
 14 proposed final judgment, Mr. Schwiner.  
 15 It states that there is a principal amount  
 16 of 350,462 --  
 17 THE COURT: Counsel, do you have a copy  
 18 I can look at while we are going through  
 19 this --  
 20 MS. MORGAN: Absolutely. Yes, Your  
 21 Honor.  
 22 THE COURT: -- so that I can follow?  
 23 MS. MORGAN: Yes, sir.  
 24 THE COURT: Thank you.  
 25 BY MS. MORGAN:

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1 Q Where is this principal number from,  
 2 Mr. Schwiner?  
 3 A This is taken from our business records  
 4 accounting system. It's the total of the principal  
 5 that is due at that point. So it's taken from our  
 6 servicing records.  
 7 Q Was that the principal amount that was  
 8 loaned on the note?  
 9 A No.  
 10 Q Okay. So how is this number created, the  
 11 principal?  
 12 A Well, it's based on the -- this is a  
 13 reversed amortization note, so when payments were not  
 14 made, principal actually was added on to the note, so  
 15 the amount of principal has increased.  
 16 Q Okay. Second item on there is the interest  
 17 to this date of judgment.  
 18 How is the interest compounded?  
 19 A It's amortized based on the amount due and  
 20 the interest rate which was 7 point something. I  
 21 don't remember exactly. I don't have it in front of  
 22 me.  
 23 Q There's a title search expense. How is  
 24 that incurred?  
 25 A That's incurred based on title search

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1 expenses of \$300.  
2 Q What is a title search?  
3 A Well, we -- Ocwen will go and verify if  
4 there are any title issues on the property.  
5 Q No taxes.  
6 There's an attorneys's fee total of \$8400?  
7 How is that amassed?  
8 A It's based on 27 hours at \$200 an hour and  
9 a \$3,000 flat fee.  
10 Q And that's the attorney's fees for  
11 Plaintiff's counsels at Ward Damon?  
12 A Yes.  
13 Q Okay. The next one, there is a court cost  
14 of \$355. Do you know how that's created or where  
15 that comes from?  
16 A Well, that's a court cost. I don't know.  
17 Q Let me ask you in general. This document,  
18 the final judgment of mortgage foreclosure, where do  
19 the numbers come from to input this document?  
20 A The numbers come from our system. You  
21 know, as the payment history accumulates over time,  
22 we can run a report. We take that report and take  
23 the line items of that report and create the judgment  
24 based on what those fees are.  
25 Q So we spoke about the previous -- the

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1 payment history in the previous exhibit, Exhibit 10.  
2 So if we went line by line in that payment history,  
3 we would be able to add it up and get these same  
4 numbers that are on the final judgment?  
5 A Yes.  
6 Q Okay. There's an escrow amount of  
7 \$84,635.66. How is that amassed?  
8 A Well, this loan is due for I think 2008, so  
9 there has been quite a bit of taxes and insurance.  
10 MR. WEIDNER: I'm going to object as to  
11 hearsay.  
12 THE COURT: Sustained. Go ahead.  
13 MS. MORGAN: Yes, Your Honor.  
14 BY MS. MORGAN:  
15 Q All right. There's additional fees on  
16 there, property evaluation fee, property inspection  
17 fee.  
18 Again, the same question. Are these all  
19 listed in the payment history?  
20 A Yes.  
21 Q If we went through the payment history,  
22 would we see --  
23 MR. WEIDNER: Objection, hearsay as to  
24 the amounts.  
25 THE COURT: Okay. Well, okay,

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1 overruled as to what the witness testified  
2 to that is reflected on another document  
3 that was admitted, but I will let you on  
4 cross --  
5 MR. WEIDNER: Yes, sir.  
6 THE COURT: -- deal with that.  
7 MS. MORGAN: Thank you, Your Honor.  
8 BY MS. MORGAN:  
9 Q Ask what is the total amount that Plaintiff  
10 is seeking here today?  
11 A Total amount that Plaintiff is seeking in  
12 this matter today, \$573,535.34.  
13 Q Now, in your review of your business  
14 records, is that number correct? Does it comport  
15 with your business records?  
16 A Yes.  
17 Q All right. And did you look that over and  
18 confirm that is correct before coming into court  
19 today?  
20 A Yes.  
21 Q Thank you.  
22 MS. MORGAN: Your Honor, Plaintiff has  
23 no further questions of this witness. We  
24 will reserve for rebuttal.  
25 THE COURT: Okay.

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1 MR. WEIDNER: Briefly, Your Honor.  
2 THE COURT: Take all the time you want.  
3 MR. WEIDNER: Thank you.  
4 CROSS-EXAMINATION  
5 BY MR. WEIDNER:  
6 Q I want to remind you of your testimony  
7 regarding Exhibits Number 3 and 4, the pooling and  
8 servicing agreement and the loan schedule that was  
9 attached there.  
10 Do those document confirm in your mind and  
11 in your testimony that the loan that is at issue here  
12 was owned by Deutsche Bank at the time that that loan  
13 closed?  
14 A Yes.  
15 MR. WEIDNER: Okay. May I see -- let's  
16 get 3, 4, 5 and 6. Thank you so much.  
17 THE CLERK: Uh-huh.  
18 BY MR. WEIDNER:  
19 Q So you've answered yes, and let's just be  
20 clear about that.  
21 You testified that this loan was owned by  
22 the Deutsche Bank trust effective the closing date of  
23 the trust, and you provided testimony about what the  
24 closing date meant, correct?  
25 A Yes. Well, I'm not sure that I'm

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1 understanding the question, so I just want to  
2 clarify.  
3 The pooling and servicing agreement is  
4 attached to the loan -- the mortgage loan schedule.  
5 I testified or I believe that I testified that this  
6 was included in the loans that were part of this on  
7 the date that it closed.  
8 Q And that mortgage --  
9 A If that is what you are asking me, that's  
10 what the answer is.  
11 Q Thank you.  
12 And that mortgage loan schedule indicates  
13 that this loan was, in fact, owned by that trust as  
14 of the date of this pooling and servicing agreement,  
15 correct?  
16 A I'm sorry, could you repeat that, please?  
17 Q The --  
18 A What is it that you are asking?  
19 Q Thank you.  
20 The mortgage loan schedule, which is  
21 Plaintiff's Exhibit 4, what does that document tell  
22 you?  
23 A This mortgage loan schedule includes the  
24 loan numbers, the servicer loan numbers, and the  
25 loans that are included as part of this particular

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1 pooling and servicing agreement.  
2 Q And this was entered into evidence to prove  
3 to the judge that Deutsche Bank, in fact, owned this  
4 note and loan, correct?  
5 A Well, I don't know why it was entered into  
6 evidence or what it was supposed to prove, I'm just  
7 testifying as to what it is as part of our business  
8 records.  
9 Q And what is it? Tell me what that schedule  
10 proves.  
11 A Sir, as I previously --  
12 THE COURT: What exhibit, Mr. Weidner?  
13 MR. WEIDNER: I'm sorry, Judge.  
14 Exhibit 4, the loan schedule.  
15 THE COURT: Okay.  
16 BY MR. WEIDNER:  
17 Q That loan schedule lists this particular  
18 loan number in it, correct?  
19 A Yes, it does.  
20 Q And --  
21 A The loan number that is -- that is  
22 indicated on the mortgage loan schedule references  
23 the same number that is included on the actual  
24 mortgage itself.  
25 Q Got it. The BIN number.

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1 A I believe that's what it is. I'm not sure.  
2 I would have to take another look at what that number  
3 was. But the number matches and it's included in the  
4 loans that are included in this particular pooling  
5 and servicing agreement which is in the -- showing  
6 that Deutsche Bank National Trust Company is the  
7 trustee of.  
8 Q Got it.  
9 And that loan schedule is incorporated and  
10 directly related to Plaintiff's Exhibit 3, correct?  
11 A Yes.  
12 Q Okay. And Plaintiff's Exhibit 6 is  
13 likewise another document which supports the  
14 proposition that this note and loan were owned by  
15 this IndyMac -- or, I'm sorry, by Deutsche Bank as of  
16 the date of that loan, correct?  
17 A I'm not sure if that is what it indicates  
18 or proves. I just indicated in my testimony that  
19 this particular business record is showing that there  
20 was a loan file withdrawal information request that  
21 was made which appears to be made -- Deutsche Bank  
22 was sending -- my analysis of this is that Deutsche  
23 Bank was providing the loan file information to  
24 IndyMac Bank just stating that was part of the  
25 records and that's what it appeared to be to me.

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1 Q Okay. Thank you.  
2 MR. WEIDNER: All right. So I'm  
3 handing back to the clerk 4, 5 and 6.  
4 BY MR. WEIDNER:  
5 Q The payment history that we talked about  
6 which alleges amounts due and owing, you weren't able  
7 to talk to anybody from IndyMac and determine whether  
8 those numbers were correct, were you?  
9 A No.  
10 MR. WEIDNER: Okay. Judge, may I have  
11 the --  
12 THE COURT: Which one do you want?  
13 MR. WEIDNER: Let's do I think 8.  
14 THE BAILIFF: And did you hand back 3?  
15 MR. WEIDNER: I did. Exhibit 1 and  
16 then 4, 5 and 6.  
17 THE COURT: I have 3, 4, 5 and 6.  
18 MR. WEIDNER: Thank you, Judge.  
19 BY MR. WEIDNER:  
20 Q So focusing on the alleged dates of  
21 default -- and I have the comments log that's  
22 Plaintiff's Exhibit 8 in my hand, and I want to focus  
23 your attention on -- the record will reflect that the  
24 Complaint lists a date of default February 2008.  
25 That number that's there on this comments

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1 log in here about the negative amortization, you have  
 2 no independent knowledge of how that number was  
 3 created, do you?  
 4 A I'm sorry, what are you asking?  
 5 Q The line item there that indicates this arm  
 6 adjustment, you have no way of knowing how that  
 7 comment came to appear on that document, do you? You  
 8 have no idea what it refers to?  
 9 A No. As I -- I made an estimated assumption  
 10 to what it was based on what you previously asked me  
 11 about it. I can't really speak beyond much more than  
 12 what it says.  
 13 It says, Negative amortization balance cap.  
 14 As I stated previously, I didn't work for -- for  
 15 IndyMac.  
 16 Q Got it.  
 17 A We reviewed -- Ocwen reviewed IndyMac's  
 18 records as part of their boarding process and came to  
 19 the conclusion that they were accurate. We didn't  
 20 send them back. We began the boarding process.  
 21 I can't -- I'm not going to try to make a  
 22 factual statement about a -- about a log that I  
 23 wasn't part of creating, but I can speak to the fact  
 24 that Ocwen has procedures in place to verify that  
 25 information when we began servicing.

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1 Q Thank you.  
 2 MR. WEIDNER: Okay. The payment  
 3 history. Thanks so much.  
 4 BY MR. WEIDNER:  
 5 Q Now I'm going to show you Plaintiff's  
 6 Exhibit 10. This is the payment history. We've  
 7 agreed this is IndyMac.  
 8 Turning to the alleged date of default --  
 9 you may be able to find it more quickly than I, but  
 10 would you please turn to 1-2008 to 2-2008 entry on  
 11 the payment loan?  
 12 A Okay. Why don't you show me what it is  
 13 that you want me to testify about because I don't  
 14 want to guess to what your question is.  
 15 Q I want you to find in the payment log of  
 16 the prior servicer the period that reflects the  
 17 alleged date of default, and that's January of 2008  
 18 to February of 2008.  
 19 A Okay. So it looks like it might be  
 20 somewhere in this section right here. Is there  
 21 something you want me to address?  
 22 Q Just the numbers in there, we agree that  
 23 you have no way of verifying the accuracy of those  
 24 numbers around the date of default, correct?  
 25 A Well, I guess I can just repeat my previous

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1 answer. I was not the person that verified these  
 2 records when we boarded them into Ocwen's process.  
 3 My role is that I am able to authenticate  
 4 and verify business records. I can also tell you  
 5 that Ocwen went through a very specific boarding  
 6 process, and when this was verified by Ocwen, these  
 7 records were -- were indicated to be true and  
 8 correct.  
 9 I'm not going to come in here and try to  
 10 explain to you what happened with IndyMac's payment  
 11 history when I can tell you that Ocwen already went  
 12 through a boarding process which verified that.  
 13 Q Please just focus on that period of the  
 14 date of default.  
 15 Can you point to me where in that payment  
 16 history it shows the amount that was in default in  
 17 January of 2008?  
 18 A Well, it shows right here. In February of  
 19 2008, it's showing a principal balance of  
 20 \$350,462.92. I believe that same amount -- I'm  
 21 guessing, I don't want to assume, but I'm guessing  
 22 that is the same amount that was indicated in the  
 23 Complaint. So it is right here clear as day in the  
 24 IndyMac payment history.  
 25 Q I see that there and that's the principal

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1 amount.  
 2 Can you point to me the amount that is the  
 3 alleged event of default? How much did this  
 4 Defendant have to pay to IndyMac in order to cure the  
 5 alleged default?  
 6 A Are you referring to the \$8000 and some  
 7 change that was in the letter? I don't know which  
 8 amount -- what amount are you wanting me to -- please  
 9 tell me the amount that you want me to indicate --  
 10 Q I want you --  
 11 A -- because I don't know what you're asking.  
 12 Q I want you to point to your evidence -- and  
 13 we're looking at Plaintiff's Exhibit 10. I want you  
 14 to point to the line item in there that specifies the  
 15 amount of the alleged default.  
 16 A Well, I can see that there are negative  
 17 balances listed in here. I don't see the specific  
 18 amount that's listed on the letter, but I can tell  
 19 you that if I had, you know, more time to go through  
 20 this line by line, I might be able to figure that  
 21 out.  
 22 But, again, I'm not an expert of IndyMac's  
 23 business records. I can only tell you that these  
 24 were verified by Ocwen's boarding process when we  
 25 acquired the servicing on this loan.



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1 And I can see right here that it's showing  
 2 the loan to be in default and it's showing the past  
 3 due amount.  
 4 Q Got it.  
 5 MR. WEIDNER: No further questions as  
 6 to 10 and no further questions of this  
 7 witness, Your Honor.  
 8 THE COURT: Okay. Do you have any  
 9 other questions?  
 10 MS. MORGAN: No, Your Honor, nothing  
 11 further.  
 12 THE COURT: Okay. I have some  
 13 questions.  
 14 MS. MORGAN: Yes, Your Honor.  
 15 THE COURT: Okay. Sir, let me ask you  
 16 some questions that you may have answered  
 17 through this process, but tell me how long  
 18 is -- well, who do you work for? You work  
 19 for Ocwen?  
 20 THE WITNESS: Yes, Your Honor.  
 21 THE COURT: Okay. And how long have  
 22 you worked for Ocwen?  
 23 THE WITNESS: I've worked for Ocwen  
 24 since approximately May of -- March of 2013.  
 25 Ocwen has acquired my prior employer which

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1 was GMAC Residential Capital, so I worked  
 2 for GMAC also in servicing from 2010. In  
 3 2013, we were acquired by Ocwen.  
 4 THE COURT: Okay. And so this is --  
 5 I'm curious about this.  
 6 So you have reviewed all the business  
 7 records on this loan?  
 8 THE WITNESS: Well, all that I -- that  
 9 I thought to review. There may be others  
 10 that I didn't take a look at.  
 11 THE COURT: Okay. So in doing so, did  
 12 you also -- did you also review and  
 13 understand the transactions that occurred  
 14 where this loan had been transferred?  
 15 THE WITNESS: Yes.  
 16 THE COURT: Okay. And so on September  
 17 11, 2014, the amended assignment of mortgage  
 18 refers to FDIC as receiver for IndyMac Bank.  
 19 THE WITNESS: Yes.  
 20 THE COURT: Okay. So tell me about  
 21 that.  
 22 THE WITNESS: Well --  
 23 THE COURT: Did IndyMac Bank fail?  
 24 THE WITNESS: Your Honor, to my -- to  
 25 the best of my knowledge, IndyMac Bank is no

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1 longer around. Ocwen did acquire servicing  
 2 of many of IndyMac's loans, and I know that  
 3 there was some other agreement between Ocwen  
 4 and IndyMac. I don't have the details of  
 5 that. I don't have the knowledge with me or  
 6 available. But to the best of my knowledge,  
 7 IndyMac is no longer around.  
 8 There were many loans that were  
 9 acquired -- that were IndyMac loans that  
 10 were acquired by Ocwen that they took over  
 11 servicing on those. But that was -- that  
 12 would have been after this time that we  
 13 actually took over servicing.  
 14 We began servicing on this loan on, I  
 15 believe, October of 2013, and I did verify  
 16 that there was a loan -- I did verify the  
 17 loan shell boarding and the verification on  
 18 the loan setup in our system and it was  
 19 around that date.  
 20 THE COURT: Okay. All right. Any  
 21 questions based on my question?  
 22 MR. WEIDNER: I'm going to make a  
 23 Motion For Involuntarily Dismissal but --  
 24 THE COURT: Well, I mean, do you have  
 25 any other questions for the witness?

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1 MR. WEIDNER: No, sir.  
 2 MS. MORGAN: No, Your Honor.  
 3 THE COURT: Okay. Sir, you can step  
 4 down.  
 5 MR. WEIDNER: And just so we're clear,  
 6 Plaintiff has rested?  
 7 MS. MORGAN: Yes.  
 8 THE COURT: Yes, sir. Go ahead.  
 9 MR. WEIDNER: Judge, I want to pick up  
 10 immediately where you left off right there  
 11 because that's frankly what looms rather  
 12 largely over this case.  
 13 You now have the evidence, the eleven  
 14 exhibits that are in, most of those over  
 15 objection. And we have before you what we  
 16 will call now Gewe case. That's G-E-W-E.  
 17 Counsel, I will make sure you have a copy if  
 18 you haven't seen it. And, Judge, I want to  
 19 make sure you have a copy as well.  
 20 I was hoping that you wouldn't lead him  
 21 into answering the questions and providing  
 22 the evidence that I know he did not on his  
 23 direct, and that's precisely what I was  
 24 looking for.  
 25 This is a very unusual case in 2016 in

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1 that the failures of the Plaintiff's law  
 2 firm that filed that, we don't see many of  
 3 these failures that still exist in 2016.  
 4 But what happened was, this case was filed  
 5 by IndyMac. And I handed you the Complaint  
 6 when we first started here, and one of the  
 7 critical points to focus on is paragraph  
 8 four of that Complaint.  
 9 THE COURT: Okay. Let me get that.  
 10 Okay.  
 11 MR. WEIDNER: So paragraph four of that  
 12 Complaint asserts that IndyMac, quote, owns  
 13 and holds the note in question.  
 14 MS. MORGAN: Objection, Your Honor,  
 15 that's not what it states.  
 16 MR. WEIDNER: It's not an exact quote.  
 17 Perhaps I should read the Complaint exactly.  
 18 MS. MORGAN: I just want it clear for  
 19 the record. Paragraph four states:  
 20 Plaintiff is now the holder of the mortgage  
 21 note and mortgage. There is no allegation  
 22 of ownership, Your Honor.  
 23 THE COURT: Okay. All right. So go  
 24 ahead.  
 25 MR. WEIDNER: Thank you for that.

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1 So as to paragraph four, that's what it  
 2 says, they're the holder, but that testimony  
 3 or that allegation is in direct conflict  
 4 with what the evidence here in the courtroom  
 5 established.  
 6 You recall the witness talked over and  
 7 over again about how it was Deutsche Bank  
 8 from the beginning. And the reason why I  
 9 stipulated to those documents coming in,  
 10 Judge, is because those document prove the  
 11 fatal error in the case in that they, the  
 12 Plaintiff, has not proven that IndyMac had  
 13 standing at the time they filed the lawsuit.  
 14 The two other cases that I want to make  
 15 sure the Court has, Cretin and Corrigan  
 16 (phonetic). Counsel, I'll make sure you get  
 17 copies of those as well.  
 18 MS. MORGAN: I have Corrigan.  
 19 MR. WEIDNER: Thank you. I will make  
 20 sure you have Cretin.  
 21 MS. MORGAN: Thank you.  
 22 MR. WEIDNER: At the closing of  
 23 Plaintiff's evidence, Judge, that's what  
 24 we've got. We've got this standing problem.  
 25 It's sort of the last frontier in

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1 foreclosure defense, but his testimony  
 2 didn't do anything to establish the  
 3 essential elements. So that's the first big  
 4 bullet point I want the Court to focus on in  
 5 our Motion for Involuntary Dismissal.  
 6 The second point that I want to focus  
 7 again on is, you remember I gave you the  
 8 Freshwater and Vetter case. And this was  
 9 the amendment to conform to the pleadings,  
 10 and they're proceeding under a completely  
 11 different fact pattern than what they  
 12 alleged in their Complaint.  
 13 The fact that the evidence comes in,  
 14 there was nothing to contradict what -- what  
 15 they alleged in their Complaint. In fact,  
 16 it supported the conflict. There is another  
 17 big bullet point. And so that second bullet  
 18 point would be sort of a procedural point,  
 19 Your Honor, in that the pleadings are not  
 20 framed properly in the fact that the  
 21 document was admitted. They never put a  
 22 count in there to change the theory and the  
 23 fact pattern under which they are  
 24 proceeding, and they didn't amend.  
 25 Another one, and this will be the first

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1 time you'll have heard it because it's not  
 2 raised in a pleading. This requires us to  
 3 look at the note that is at issue and the  
 4 principal amount that they claim. If you  
 5 recall one of the last things -- I apologize  
 6 for pointing -- that the witness talked  
 7 about was how the principal amount changed.  
 8 That was critical testimony.  
 9 What I'm handing to you, Judge, is  
 10 Somma versus Metra Electronics.  
 11 THE COURT: You already did or you are  
 12 going to?  
 13 MR. WEIDNER: I'm going to hand that to  
 14 your right now.  
 15 THE COURT: Okay.  
 16 MR. WEIDNER: And Cone versus West  
 17 Virginia Pulp and Paper, and State of  
 18 Florida versus McCoy. And I will give the  
 19 court reporters copies of those so I don't  
 20 have to rattle those off, but, Judge, the  
 21 third big issue that we're going to be  
 22 proceeding under -- one more, Kotzen versus  
 23 Levine.  
 24 Judge, these cases are dealing with a  
 25 very important issue to the State of Florida

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1 and to this court, and that is the failure  
 2 of the Plaintiff to pay the appropriate  
 3 amount of documentary stamp and intangible  
 4 taxes that are due to enforce a document.  
 5 The first to learn about it is the  
 6 credit card cases, and it was brought to me  
 7 as a defensive matter just as opposing  
 8 counsel standing in her position.  
 9 The case law is clear when it  
 10 interprets Florida Statute 20108, and that  
 11 is if you don't pay the appropriate amount  
 12 of documentary stamp and intangible taxes on  
 13 the document you seek to foreclose and  
 14 enforce, it's not enforceable.  
 15 And that's what we have here. We have  
 16 a principal amount and a note that changes,  
 17 and then the allegation in the Complaint is  
 18 that the amount that they are seeking is  
 19 higher. They have not paid the documentary  
 20 stamp and intangible taxes that are due on  
 21 that, and for that reason the note is  
 22 unenforceable and they failed to state a  
 23 cause of action based on that.  
 24 THE COURT: So let me ask you a  
 25 question, Mr. Weidner. One of these cases

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1 that you have, does it deal with that  
 2 argument?  
 3 MR. WEIDNER: Absolutely, directly on  
 4 point.  
 5 THE COURT: Which one is that?  
 6 MR. WEIDNER: Somma and then 179 --  
 7 THE COURT: Somma?  
 8 MR. WEIDNER: Yes, S-O-M-M-A.  
 9 THE COURT: All right. I have it.  
 10 MR. WEIDNER: And then 179th Street  
 11 Estates and Kotzen versus Levine.  
 12 THE COURT: Okay. So Kotman  
 13 (phonetic) --  
 14 MR. WEIDNER: Kotzen, K-O-T-Z-E-N.  
 15 I've handed that to you.  
 16 THE COURT: How about McCoy?  
 17 MR. WEIDNER: Yes, sir, same thing.  
 18 THE COURT: So the authorities that you  
 19 handed me deal with the doc stamps?  
 20 MR. WEIDNER: Yes, sir.  
 21 THE COURT: Okay. Very good. Thank  
 22 you.  
 23 MR. WEIDNER: There is a recent case  
 24 directly --  
 25 THE COURT: And also this one 179th

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1 Street Estates?  
 2 MR. WEIDNER: Yes, sir.  
 3 THE COURT: Another one?  
 4 MR. WEIDNER: Yes, sir. The recent  
 5 case, Nikoee, N-I-K-O-E-E, it's a Fourth DCA  
 6 case.  
 7 THE COURT: What is it?  
 8 MR. WEIDNER: Nikoee, N-I-K-O-E-E.  
 9 Again, it deals explicitly with this issue  
 10 of the failure to pay the appropriate amount  
 11 of documentary stamp and intangible taxes.  
 12 I will make sure I give you a copy of that  
 13 as well, but that would be the third point.  
 14 Judge, that's my written or that's my  
 15 oral motion for involuntary dismissal. I  
 16 don't know whether the Court likes to  
 17 receive written. I'm happy to supplement  
 18 and do a written if you don't want to rule  
 19 today. I certainly understand that.  
 20 Because, to be fair, there have been a  
 21 number of new cases coming out. I think we  
 22 both cited appropriate cases, but there are  
 23 new cases coming out even recently.  
 24 But for those reasons, we would  
 25 respectfully move for an involuntary

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1 dismissal, them having failed to prove up  
 2 the essential elements of their case.  
 3 THE COURT: Okay. So, let's see --  
 4 well, let me ask Mr. Weidner.  
 5 Ms. Morgan, before you stand up, let me  
 6 ask Mr. Weidner a couple of questions.  
 7 MS. MORGAN: Sure.  
 8 THE COURT: So, sir, you handed me the  
 9 case of Carolyn -- is it pronounced Gewe.  
 10 MR. WEIDNER: Potato, potato. We'll  
 11 call it Gewe, G-E-W-E.  
 12 THE COURT: And then I have Cretin and  
 13 Corrigan.  
 14 MR. WEIDNER: Yes.  
 15 THE COURT: So this was your argument  
 16 on the standing?  
 17 MR. WEIDNER: Yes, sir.  
 18 THE COURT: Okay. All right. So those  
 19 three go together for the standing argument?  
 20 MR. WEIDNER: Yes, sir. I previously  
 21 handed you Feltus, which is a standing case  
 22 as well. I will make sure you have a copy  
 23 of that to keep in your files.  
 24 THE COURT: Okay. All right. Okay.  
 25 Ms. Morgan.

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1 MS. MORGAN: Thank you, Your Honor.  
 2 Your Honor, to the issue of standing, this  
 3 is relevant because, as previously stated,  
 4 the Complaint states in paragraph four that  
 5 IndyMac is the holder of the note. It does  
 6 not allege ownership. And Your Honor knows  
 7 in the OneWest versus Bauer case, that's a  
 8 Second DCA case, 159 So.3d 843. And that's  
 9 May 30th of 2014.  
 10 The court unequivocally stated in that  
 11 case the establishment of ownership is not  
 12 necessary to prove standing. All that is  
 13 necessary is that the allegation of holder  
 14 is true.  
 15 In this case, IndyMac, when if filed  
 16 it's Complaint on July 9th of 2008, alleged  
 17 to be the holder. Your Honor has in its  
 18 possession as was entered into the record as  
 19 Exhibit 6 the loan file withdrawal  
 20 information showing that seven days prior on  
 21 July 2nd of 2008, Deutsche Bank withdrew  
 22 from its inventory the original loan file  
 23 and sent it to IndyMac Bank.  
 24 At that time, as of July 2nd of 2008,  
 25 the owner of the trust, who is now the

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1 Plaintiff, sent to IndyMac, who was then the  
 2 Plaintiff, the original note document. So  
 3 when the Complaint was filed a week later on  
 4 July 9th, and IndyMac alleged to be the  
 5 holder of the note, it's clear based on the  
 6 testimony and evidence provided, IndyMac  
 7 did, in fact, have physical possession of  
 8 the note when the Complaint was filed. That  
 9 is just to the standing issue.  
 10 Your Honor, going back to the issue  
 11 with the note not being attached to the  
 12 Complaint and the need to conform the  
 13 pleadings to the evidence, it's not  
 14 required, Your Honor, it's simply --  
 15 opposing counsel is asking for a requirement  
 16 that is not in case law precedent.  
 17 Hughes and Taperi both state that an  
 18 amendment of the Complaint is not required  
 19 to correct the failure to attach the note.  
 20 What is required is what was done here, the  
 21 filing of the original note. That's been  
 22 done since 2009.  
 23 The Sas case as Your Honor stated, it  
 24 allows prior servicer business records to  
 25 come in where the witness has testified that

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1 the successor servicer, here Ocwen, has  
 2 independently verified the same. That's all  
 3 been done here.  
 4 This argument regarding the documentary  
 5 stamps, forgive me, Your Honor, this is the  
 6 first time I am hearing it and seeing case  
 7 law on that issue. But just from looking  
 8 over opposing counsel's case law, it doesn't  
 9 match the facts of this case.  
 10 On the final judgment, which we  
 11 presented to Your Honor, the number listed  
 12 next to the taxes is zero. It simply  
 13 doesn't -- it wouldn't resonate, Your Honor,  
 14 that that would be a reason for involuntary  
 15 dismissal in this case. Thank you.  
 16 THE COURT: Okay. So, Mr. Weidner, why  
 17 don't you address counsel's argument if you  
 18 want. And on the promissory note, I  
 19 understand the argument, but let's talk  
 20 about that a little bit if you would --  
 21 MR. WEIDNER: Thank you, Your Honor.  
 22 THE COURT: -- on the promissory note  
 23 issue. So there's no question that the  
 24 Plaintiff paid the documentary stamp taxes  
 25 on the note for the principal amount? No

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1 question about that, right?  
 2 MS. MORGAN: Correct, Your Honor.  
 3 MR. WEIDNER: On the face of the note,  
 4 that's correct.  
 5 THE COURT: On the face of the note,  
 6 there's no question about that. So your  
 7 argument has to do with the testimony I've  
 8 heard from the witness that the -- there  
 9 was -- because there hadn't been a payment  
 10 made on it, that there was, I don't know if  
 11 I'm using the right language, reversed  
 12 amortization. Is that it?  
 13 MR. WEIDNER: He said principal  
 14 increase, but, yes.  
 15 THE COURT: That's what I'm saying --  
 16 MR. WEIDNER: Yes.  
 17 THE COURT: -- reversed amortization,  
 18 but I think the testimony was that the  
 19 principal increased --  
 20 MR. WEIDNER: Correct.  
 21 THE COURT: -- basically because of  
 22 that?  
 23 So what your argument is, is the  
 24 difference between the face amount and  
 25 whatever the principal is now?

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1 MR. WEIDNER: That is correct, Your  
 2 Honor.  
 3 THE COURT: Okay.  
 4 MR. WEIDNER: And -- and the  
 5 critical --  
 6 THE COURT: Go ahead.  
 7 MR. WEIDNER: -- the critical point of  
 8 inquiry is to examine the note and the  
 9 principal amount claimed in the note, and  
 10 then compare that to the Complaint and the  
 11 principal amount that's included within that  
 12 Complaint, that increase and renders the  
 13 note unenforceable and that's what -- and I  
 14 apologize. I don't have Nikoee on me,  
 15 N-I-K-O-E-E. It's a Fourth DCA case.  
 16 THE COURT: All right. So what's that  
 17 case?  
 18 MR. WEIDNER: N-I-K-O-E-E. It's a  
 19 Fourth DCA case of 2013, I believe.  
 20 THE COURT: Okay.  
 21 MR. WEIDNER: I have a handful of cases  
 22 here. I usually bring that up at summary  
 23 judgment on precisely that issue, but these  
 24 are circuit court cases, so of course it's  
 25 not relevant, but I think the case law is

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1 clear and it speaks for itself.  
 2 MS. MORGAN: One quick response.  
 3 THE COURT: Okay. Anything else?  
 4 MS. MORGAN: Yes, Your Honor, just one  
 5 very quick response. Your Honor, looking  
 6 over the case law, there is simply an  
 7 element to these facts that are not present  
 8 in our case, and that is that there is both  
 9 a modification agreement in the 179th Street  
 10 Estates case as well as two substantial  
 11 payments that were made to attempt -- I'm  
 12 going to speculate, attempt to cure the  
 13 default.  
 14 And that is what apparently provoked  
 15 the court to state: Accepted a very  
 16 substantial pay down after an initial  
 17 payment default and acceleration and because  
 18 of the conflicting terms of documents  
 19 offering reinstatement of mortgage.  
 20 That is simply not the facts that we  
 21 have in this case. The testimony of the  
 22 witness was that there has been a default  
 23 that has yet to be cured. There has been no  
 24 testimony as to any type of substantial  
 25 payment. Thank you, Your Honor.

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1 THE COURT: Okay. So here is how we're  
 2 going to deal with that, with the arguments  
 3 made for the involuntary dismissal. You  
 4 both made good arguments, probably some of  
 5 the better arguments that I have heard in  
 6 foreclosure cases, on these issues.  
 7 On the issue of standing, as to the  
 8 arguments that were made, clearly the  
 9 Complaint says that the Plaintiff was the  
 10 holder. Ms. Morgan's argued that the  
 11 testimony has indicated that, in fact, it  
 12 was the holder, even though it might not  
 13 have been the owner at the time, it was the  
 14 holder.  
 15 I actually would like to sort of review  
 16 the testimony and what's happened before I  
 17 rule on that.  
 18 As to the other arguments that were  
 19 made, pretty interesting argument as to the  
 20 reverse amortization as to that.  
 21 So here's where -- here's where I'm at  
 22 on this. And I'll -- I'm going to give you  
 23 choices on how we're going to proceed here,  
 24 okay? Clearly we've heard from -- is it  
 25 Schwiner?

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1 MR. SCHWINER: Yes, Your Honor.  
 2 THE COURT: Okay. Mr. Schwiner. And  
 3 let me just ask a question as we discuss  
 4 this. Mr. Weidner, were you going to call  
 5 Mr. Schwiner in your case?  
 6 MR. WEIDNER: I would expect, Your  
 7 Honor, very brief testimony. I wouldn't  
 8 even ask him to move from his seat, but five  
 9 minutes or ten minutes at the most and five  
 10 minutes at the most of Mr. Heyward just to  
 11 flesh up another issue regarding default.  
 12 So it's very brief on my case in chief.  
 13 And if I read what I think the Court is  
 14 saying, if I just had a very brief case and  
 15 then just briefed the Court, that may -- and  
 16 some very brief closing argument, perhaps  
 17 that works?  
 18 THE COURT: I think you sort of  
 19 anticipated where I was going with this.  
 20 MS. MORGAN: I would agree with that,  
 21 Your Honor.  
 22 THE COURT: Okay. And the reason I was  
 23 saying that is what I was going to do, as I  
 24 do in a lot of trials, I reserve ruling on  
 25 the involuntarily dismissal until I have a

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1 chance to review that, but if you are  
 2 suggesting that if you are given the  
 3 opportunity to present your case, that we  
 4 might finish within the next 30 minutes or  
 5 more, or around that time, then you can  
 6 brief the issues and then you can just leave  
 7 it with me and I can decide and I can look  
 8 over everything.  
 9 MR. WEIDNER: Precisely.  
 10 THE COURT: Is that what you're saying?  
 11 MS. MORGAN: Yes. I agree with that.  
 12 THE COURT: Do you agree with that?  
 13 MS. MORGAN: Yes, Your Honor.  
 14 THE COURT: All right. Mr. Weidner,  
 15 then I will formally reserve ruling on your  
 16 motion, and so if you want to go ahead and  
 17 present your case, we'll move in that  
 18 manner, all right?  
 19 MR. WEIDNER: Thank you, Your Honor.  
 20 will call this witness and wherever the  
 21 witness wants to be or wherever the Judge  
 22 wants the witness.  
 23 THE COURT: Okay. Do you think you  
 24 have five minutes?  
 25 MR. WEIDNER: If that.

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1 THE COURT: All right. And so we'll  
 2 let Mr. Schwiner stay right there. Your are  
 3 still under oath, sir.  
 4 DIRECT EXAMINATION  
 5 BY MR. WEIDNER:  
 6 Q Mr. Schwiner, I will show you what I'm  
 7 showing you as Defense Exhibit 1. It's a Motion to  
 8 Substitute Party Plaintiff. It was filed by the  
 9 Plaintiffs in 2010. Would you review it?  
 10 A Okay.  
 11 Q Now, that pleading, that document says  
 12 that -- well, let's go ahead and read it. Paragraph  
 13 two asserts that subsequently the note and mortgage  
 14 were transferred to Deutsche Bank National Trust  
 15 Company as trustee of the loan trust, but, in fact,  
 16 that is not what happened here in this case.  
 17 The note and mortgage were always owned and  
 18 held by Deutsche Bank, correct?  
 19 A Yes, they were included in that pooling and  
 20 servicing agreement, that's correct.  
 21 MS. MORGAN: Your Honor, I would -- I  
 22 guess I will seek to admit it just for  
 23 record purposes as Defense 1. And this is  
 24 simply a motion filed on September 2nd,  
 25 2010.

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1 THE COURT: What is that?  
 2 MR. WEIDNER: It's a motion that was  
 3 filed -- it's part of the docket filed by  
 4 the Plaintiff on September 2nd, 2010.  
 5 THE COURT: Okay. And, Ms. Morgan, any  
 6 objection?  
 7 MS. MORGAN: No objection, Your Honor.  
 8 THE COURT: All right. It will be  
 9 admitted and received.  
 10 THE CLERK: Do you want 1 or A?  
 11 THE COURT: What would you like?  
 12 THE CLERK: A.  
 13 THE COURT: Let's do A. We're going to  
 14 do the alphabet for you.  
 15 MR. WEIDNER: Yes, Your Honor.  
 16 THE COURT: Okay.  
 17 BY MR. WEIDNER:  
 18 Q And just to remind you of your testimony on  
 19 my case in chief, you did not have the ability or did  
 20 not review the amounts alleged to be in default as  
 21 part of your preparation, correct?  
 22 A Are you talking about the amounts that was  
 23 on the default letter?  
 24 Q Correct.  
 25 A I believe that my testimony was that I

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1 can't recall if I did or not.  
 2 Q Got it.  
 3 And as to the amounts alleged to be in  
 4 default and the payment history, same testimony, you  
 5 didn't -- you weren't able to review them or did not  
 6 review them?  
 7 A I did review the -- I reviewed the payment  
 8 history.  
 9 Q But you are not able to determine whether  
 10 they are correct?  
 11 A Well, as I stated in my previous testimony,  
 12 we went through a boarding process of verification of  
 13 the business records, so I would have no reason to  
 14 believe that they were incorrect unless I came across  
 15 something in my review that stated that they were.  
 16 Q Got it.  
 17 A When I reviewed the business records, I  
 18 also confirmed that the boarding process had been  
 19 completed, so in review of that, it was my -- my  
 20 analysis that it was done correctly.  
 21 MR. WEIDNER: No further questions,  
 22 Your Honor.  
 23 MS. MORGAN: One quick question, Your  
 24 Honor. May I have the document, please,  
 25 Exhibit A for the defendant? Thank you,

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1 ma'am.

2 CROSS-EXAMINATION

3 BY MS. MORGAN:

4 Q Mr. Schwiner, you provided testimony

5 regarding the Motion to Substitute Party Plaintiff.

6 For the record, I will state attached to it is that

7 assignment of mortgage to which we had previously

8 introduced into the record during Plaintiff's

9 testimony as Exhibit 7.

10 Do you recognize that as well?

11 A Yes.

12 Q I have a very simple question for you.

13 Based on your experience in mortgage loan servicing,

14 if Deutsche Bank had already at some time been

15 involved with the subject note, be it the owner, be

16 it the holder, what is the purpose then of a 2010

17 assignment of mortgage to someone who is already

18 interested in the subject note?

19 A I mean, I have seen this in the past.

20 Often times, it's just to have the additional

21 information recorded. I mean, there -- it's not

22 uncommon for this to take place. And I have seen

23 this happen many times. This is just basically, I

24 guess, a confirmation of what's already been

25 established.

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1 Q Confirmation of what's already been

2 established; is that your testimony?

3 A Yes, yes. I mean, I don't know exactly why

4 this was done, but I can tell you that it's not --

5 it's not uncommon.

6 MS. MORGAN: Thank you. Nothing

7 further, Your Honor. Returning the exhibit.

8 Thank you.

9 THE COURT: Okay. Mr. Weidner?

10 MR. WEIDNER: No further questions,

11 Your Honor.

12 THE COURT: Sir, Exhibit Number 11,

13 which is the judgment, and the figures that

14 were in that judgment pertaining to the

15 loan, did those figures come from other

16 exhibits that had been admitted into

17 evidence?

18 THE WITNESS: Well, they would -- that

19 information should be available on the

20 payment history, but there is an affidavit

21 of debt, sort of like internal judgment

22 figures that we often use to compile that

23 information, and I don't believe that that

24 was included.

25 THE COURT: Okay. So the answer to

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1 that question was: Is it in the exhibits?

2 THE WITNESS: I don't -- I don't recall

3 seeing it. No, I don't believe so.

4 THE COURT: Okay. So let me get down

5 to specifics with you. There is a figure in

6 the judgment regarding escrow?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Do the exhibits that have

9 been admitted into evidence outline what

10 that figures is?

11 THE WITNESS: I believe the Ocwen

12 payment history should, but if I could just

13 take another quick look at it just to verify

14 that.

15 THE COURT: What exhibit is that?

16 MS. MORGAN: The payment history?

17 THE COURT: Is that 10?

18 MS. MORGAN: Yes, Your Honor.

19 MR. WEIDNER: And, Judge, you recall

20 that I objected as to hearsay as to those

21 amounts.

22 THE COURT: I do recall. I do. I do

23 recall that.

24 MR. WEIDNER: Thank you.

25 THE WITNESS: So the -- the first page

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1 of the Ocwen payment history does include an

2 escrow balance. The escrow balance that's

3 included in this particular page is not the

4 same amount that's included in the payment

5 history. I do recall reviewing these

6 internally, and I do know that I did verify

7 that \$120,000 was the amount of interest

8 that was due -- I'm sorry, that the -- I'm

9 sorry. My apologies. The escrow balance

10 does match up correctly as does the

11 interest --

12 MR. WEIDNER: I'm going to object to

13 hearsay.

14 THE COURT: Well, I'm just asking about

15 the escrow.

16 THE WITNESS: So the escrow is stated

17 on the -- the total escrow is stated on the

18 first page of the payment history. I just

19 wanted to verify that it was there.

20 MR. WEIDNER: And, Judge, for the

21 record, reading off of a payment history

22 that has a line item that doesn't have any

23 documents to support or evidence to support

24 that is my hearsay objection.

25 THE COURT: I understand.

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1 So, Ms. Morgan, you're standing. Did  
 2 you want to say something?  
 3 MS. MORGAN: No, Your Honor.  
 4 THE COURT: Okay. So my question  
 5 continues on that 84,635.66.  
 6 Do any of the exhibits explain what  
 7 that figure is?  
 8 THE WITNESS: Yes, Your Honor. The  
 9 escrow figures are broken down on the Ocwen  
 10 payment history. There's the escrow balance  
 11 adjustment which was carried over.  
 12 THE COURT: A what?  
 13 THE WITNESS: The escrow -- so on the  
 14 very top of the payment history, the Ocwen  
 15 payment history, which is the first page,  
 16 you can see how the escrow was applied in  
 17 the third to the last column.  
 18 So it breaks down that figure that's  
 19 listed at the top. It breaks down tax  
 20 escrows, insurance escrows. The specific  
 21 amounts are all listed and they should --  
 22 THE COURT: Are you saying the figures  
 23 that you are looking at --  
 24 THE WITNESS: Yes.  
 25 THE COURT: -- add up to 84,635.66?

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1 THE WITNESS: Well, it appears to be.  
 2 If I just eyeball the items that are listed  
 3 under the applied escrow, you've got 54,000,  
 4 4,600, 5,000, another 5,000, 5, 5 and 5, so  
 5 it looks like it would add up to the escrow  
 6 balance which is listed at the top which is  
 7 normally how it works.  
 8 MR. WEIDNER: And same objection.  
 9 THE COURT: And so Mr. Weidner's  
 10 question with respect to the records that  
 11 have been admitted into evidence, is there  
 12 documentation to support those escrow  
 13 amounts?  
 14 THE WITNESS: Yes.  
 15 THE COURT: There are?  
 16 THE WITNESS: Yes.  
 17 THE COURT: So for taxes, what is the  
 18 documentation?  
 19 THE WITNESS: The payment history  
 20 indicates the escrow amounts.  
 21 THE COURT: That's not what I'm talking  
 22 about.  
 23 THE WITNESS: Oh, I'm sorry.  
 24 MS. MORGAN: The taxes here.  
 25 THE WITNESS: Oh, the taxes are shown

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1 as zero on the --  
 2 THE COURT: Okay. So are you saying  
 3 that it's not part of the escrow?  
 4 THE WITNESS: Okay. I apologize. The  
 5 escrow is including -- the escrow amount,  
 6 yes. If I'm understanding your question,  
 7 and I apologize if I'm not, we have an  
 8 escrow amount of \$84,365.66 on the judgment.  
 9 The payment history shows how that  
 10 escrow is broken down between tax escrow  
 11 disbursements and insurance escrow  
 12 disbursements.  
 13 THE COURT: Okay.  
 14 THE WITNESS: They weren't itemized on  
 15 here, but they are totaled up. It's part of  
 16 what's been totaled up.  
 17 THE COURT: Okay. So Mr. Weidner asked  
 18 the question which I'm asking, and that is:  
 19 Is there documentation to support all of  
 20 those entries? Like is there a receipt from  
 21 the tax collector, is there a check, a  
 22 cancelled check, you know, that was paid to  
 23 the tax collector? Is there a receipt from  
 24 the insurance?  
 25 THE WITNESS: I don't have that

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1 information with me. I would be able to --  
 2 I --  
 3 THE COURT: You're saying that it  
 4 hasn't been admitted into evidence?  
 5 THE WITNESS: No.  
 6 THE COURT: Okay. That's fine. All  
 7 right. I don't have anything else.  
 8 Mr. Weidner, do you have anything?  
 9 Ms. Morgan, do you have anything?  
 10 MR. WEIDNER: I don't. I just have a  
 11 couple of cases that I want to sort of  
 12 bootstrap this latest discussion. That  
 13 would be Maslack versus Wells Fargo. That's  
 14 an April 6, 2016 case. And Holt versus  
 15 Calchas, C-A-L-C-H-A-S. It's 155 So.3d 499  
 16 for Holt and for Maslack it's -- I don't  
 17 have the cite number on there, but I will  
 18 just bring this to the Judge.  
 19 Judge, I have no further questions. I  
 20 just have a few brief questions of  
 21 Mr. Heyward.  
 22 THE COURT: Okay.  
 23 MS. MORGAN: Your Honor, before we get  
 24 to Mr. Heyward, can I just offer to the  
 25 Court, I do have the receipts for each



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1 individual items in the payment history. It  
 2 is extensive. I typically don't have to  
 3 admit it when I give testimony. The  
 4 testimony of the witness if these items come  
 5 in is sufficient.  
 6 If Your Honor would like  
 7 testimony as to the invoices and receipts  
 8 for each individual item, I do have that  
 9 here.  
 10 MR. WEIDNER: The case is  
 11 closed, Your Honor, and, furthermore, it's  
 12 not --  
 13 THE COURT: Yeah. I don't need it,  
 14 okay?  
 15 MS. MORGAN: Thank you.  
 16 THE COURT: All right. Mr. Weidner.  
 17 MR. WEIDNER: I call Mr. Heyward to the  
 18 stand.  
 19 THE BAILIFF: Raise your right hand to  
 20 be sworn by the clerk.  
 21 THE CLERK: Do you solemnly swear or  
 22 affirm that the testimony you shall give  
 23 shall be the truth, the whole truth, and  
 24 nothing but the truth?  
 25 MR. HEYWARD: Yes, I do.

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1 DIRECT EXAMINATION  
 2 BY MR. WEIDNER:  
 3 Q Mr. Heyward, you heard several of my  
 4 questions about this default letter. I want to ask  
 5 you: Was there a monthly payment amount that you  
 6 were making that you remember and that you agreed  
 7 with?  
 8 A Yes.  
 9 Q And what was that?  
 10 A I'm pretty sure it was 1952.65.  
 11 Q And did the numbers change in and about the  
 12 time of the alleged default? So, for instance, were  
 13 you being asked to pay something different than what  
 14 you had previously been paying?  
 15 A Yes. The numbers went all over the place.  
 16 Q And --  
 17 THE COURT: I'm sorry, I didn't  
 18 understand. I'm the one that needs to hear,  
 19 so you are going to need to speak up.  
 20 THE WITNESS: Oh, I'm sorry. The  
 21 numbers changed in a way that I couldn't  
 22 understand them.  
 23 BY MR. WEIDNER:  
 24 Q And when the numbers started changing, what  
 25 did you do to try and clarify or understand what

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1 those numbers were?  
 2 A I called IndyMac.  
 3 Q I'm sorry?  
 4 A I called IndyMac.  
 5 Q And was anybody at IndyMac able to explain  
 6 to you what the numbers were?  
 7 A No.  
 8 Q And sometime shortly after they started  
 9 giving you different numbers, did you cease  
 10 communicating with IndyMac?  
 11 A Well, they went out of business.  
 12 Q Were you able to have any conversations  
 13 with IndyMac?  
 14 A No.  
 15 Q And the default letter includes an alleged  
 16 amount in default of 8504.69, is that number correct?  
 17 A Well, no, that can't be correct, because if  
 18 you look at the date of this letter, it's April the  
 19 7th, and they are saying that it wasn't paid from  
 20 January the 1st. Well, that's four months, and four  
 21 times 1952.65 isn't 8500, so, I mean, that's typical  
 22 of the things that I was questioning or trying to  
 23 question.  
 24 Q But no one was able to confirm what the  
 25 numbers were or explain to you what the numbers were,

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1 what you were in default to your satisfaction; is  
 2 that correct?  
 3 A That's correct.  
 4 MR. WEIDNER: No further questions,  
 5 Your Honor.  
 6 THE COURT: Ms. Morgan?  
 7 MS. MORGAN: Yes, Your Honor,  
 8 questions.  
 9 CROSS-EXAMINATION  
 10 BY MS. MORGAN:  
 11 Q Good afternoon, Mr. Heyward. I going to  
 12 ask you about two documents, please, sir.  
 13 A Uh-huh.  
 14 Q This first document that I'm handing you,  
 15 have you seen this document before?  
 16 A I do not recall it, no.  
 17 Q Do you recall if you received any letters  
 18 similar to this one?  
 19 A I don't quite understand the question.  
 20 Q Yes, sir. First let me identify it for the  
 21 record and I will state it briefly. It appears to be  
 22 a letter from IndyMac advising the borrower of a  
 23 change in the interest rate.  
 24 Do you recall ever receiving any letters  
 25 from IndyMac telling you that your interest rate

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1 would change?

2 A No.

3 Q What prompted you to call IndyMac? Did

4 there --

5 A Because the -- the figures that I was being

6 asked to pay didn't make any sense.

7 Q Yes, sir.

8 A And this is -- I mean, this is interesting

9 because this is IndyMac, dated November 16, 2012, and

10 IndyMac went out of business in 2008, so I'm not sure

11 about what this document is.

12 Q So you do not recall receiving a letter

13 like this advising a change in the interest rate?

14 A I do not.

15 Q Do you recall receiving this letter, sir?

16 A No, I don't recall that at all.

17 Q Well, just for clarification, this is the

18 transfer of servicing notice from Ocwen that advises

19 the borrower of the new servicer.

20 Did you know that Ocwen had began servicing

21 this loan?

22 A I knew when this case started, but I didn't

23 know back then. I mean, this letter is dated 2013.

24 Q Yes.

25 A Is that when Ocwen started to service? I

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1 don't know.

2 Q Yes, sir.

3 A I don't know. I see -- it doesn't ring a

4 bell with me.

5 Q Yes, sir. Did you ever attempt to contact

6 Ocwen or speak with Ocwen about this?

7 MR. WEIDNER: Objection, relevance,

8 outside the scope.

9 THE COURT: I'm going to overrule. You

10 can answer if you want, if you can.

11 THE WITNESS: I didn't.

12 MS. MORGAN: Yes, sir. Thank you.

13 No further questions, Your Honor.

14 THE COURT: Mr. Weidner, any questions?

15 MR. WEIDNER: No further questions,

16 Your Honor.

17 THE COURT: Sir, let me ask you a

18 question. When this loan was taken out,

19 what was the amount that you were paying?

20 Do you remember?

21 THE WITNESS: The first amount?

22 THE COURT: Yes, sir.

23 THE WITNESS: The first payment?

24 THE COURT: Yes, sir.

25 THE WITNESS: I don't remember.

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1 THE COURT: Okay. If I gave you a

2 document, would that help you.

3 THE WITNESS: Possibly.

4 THE COURT: Okay. Let me -- hand that

5 to me.

6 THE CLERK: Do you want all of it or

7 just --

8 THE COURT: Yeah, you can hand all of

9 it to me.

10 Mr. Weidner, if you would help me.

11 MR. WEIDNER: Yes, sir.

12 THE COURT: The note is what I'm

13 looking for.

14 THE WITNESS: It says here -- and this

15 looks like the adjustable rate note. And it

16 says the payment is \$1,029.25.

17 THE COURT: Okay. So my question is:

18 Does that refresh your memory as to what the

19 payment amount was after you got the loan?

20 THE WITNESS: Not really, to be honest.

21 THE COURT: It doesn't?

22 THE WITNESS: It was a long time ago.

23 THE COURT: Okay. So do you remember

24 when the monthly payment changed?

25 THE WITNESS: Not really, to be honest.

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1 It's a long time ago.

2 THE COURT: Okay. So do you remember

3 when the monthly payment changed?

4 THE WITNESS: I think it changed -- I

5 honestly don't remember when it changed.

6 THE COURT: You don't remember. Okay.

7 So let me hand you another document.

8 Spencer, if you can give this to

9 Mr. Weidner.

10 Take a look at that and see if that

11 refreshes your memory.

12 THE WITNESS: Yes. This is a letter

13 that prompted me to call IndyMac because it

14 didn't make -- it says the current monthly

15 payment is 1952.65, and this letter is dated

16 April the 7th.

17 THE COURT: What year?

18 THE WITNESS: Of 2008.

19 THE COURT: Okay.

20 THE WITNESS: So that's from --

21 THE COURT: Well, it doesn't refresh

22 your memory as to when the payment

23 increased?

24 THE WITNESS: It doesn't refresh my

25 memory.

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1 MR. WEIDNER: May I try?  
2 THE COURT: Yes.  
3 MR. WEIDNER: May I have the payment --  
4 the payment --  
5 THE COURT: Which one?  
6 MR. WEIDNER: The payment history or  
7 the payment log.  
8 THE COURT: Yes, sir. Go ahead.  
9 REDIRECT EXAMINATION  
10 BY MR. WEIDNER:  
11 Q Do you remember making a relatively stable  
12 amount of payments from the time you took out the  
13 loan in 2004 until there might have been some change?  
14 A I paid IndyMac over a long period regularly  
15 and I didn't default on anything.  
16 Q Do you have a remembrance of what that  
17 payment was before it changed in 2008?  
18 A I don't remember.  
19 MR. WEIDNER: I'm sorry, Judge.  
20 THE COURT: That's all right. Okay.  
21 MR. WEIDNER: For the record, the  
22 question that you are getting at is included  
23 within here. There, in fact, was a stable  
24 payment of \$1200 or so and then there was a  
25 change date.

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1 THE COURT: All right. So here is my  
2 last question. You testified that IndyMac  
3 went out of business.  
4 THE WITNESS: Yes.  
5 THE COURT: Okay. Tell me what you  
6 know about that. How did you know that?  
7 THE WITNESS: It was what I read in the  
8 news.  
9 THE COURT: In the news? What did you  
10 read?  
11 THE WITNESS: Oh, it was one of the  
12 biggest failures in American history, all  
13 kinds of things like that.  
14 THE COURT: Okay. And what do you  
15 recall about that? Do you recall any  
16 details about it?  
17 Well, let me just go ahead and get to  
18 what I was getting at. My question earlier  
19 to the witness was about the assignment that  
20 had FDIC as receiver.  
21 THE WITNESS: Uh-huh.  
22 THE COURT: Were you ever dealing with  
23 FDIC?  
24 THE WITNESS: No.  
25 THE COURT: Okay. I don't have any

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1 other questions.  
2 MR. WEIDNER: Just a brief follow-up  
3 there.  
4 THE COURT: Yes, sir.  
5 REDIRECT EXAMINATION  
6 BY MR. WEIDNER:  
7 Q I want you to go back in time to 2008, and  
8 I want you to think about what you personally did  
9 around that time. It's just after Christmas. It's  
10 just after the first of the year in 2008.  
11 You testified that you remember reading  
12 about IndyMac and failing, but as to your particular  
13 loan and the allegation that you were in default and  
14 you had to make a payment, were you able to get  
15 anybody on the phone from IndyMac, and were you able  
16 to get satisfactory answers about your particular  
17 loan with IndyMac -- from anybody at IndyMac or  
18 anywhere else?  
19 A No. As I said earlier, I tried to contact  
20 IndyMac and I got a voice mail and I got -- spoke to  
21 somebody that said they were going to get somebody to  
22 call me back, it wasn't their department or whatever,  
23 and nobody did. I got no satisfaction.  
24 THE COURT: Okay.  
25 BY MR. WEIDNER:

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1 Q And you dispute the amounts that they claim  
2 that you were in default?  
3 A That was the reason for the calls.  
4 Q Is that a yes?  
5 A Yes.  
6 Q Thank you.  
7 MR. WEIDNER: No further questions,  
8 Your Honor.  
9 MS. MORGAN: Your Honor, one single  
10 questions of Mr. Heyward.  
11 THE COURT: Yes, sir -- yes, ma'am, I  
12 mean. I'm sorry.  
13 RECROSS-EXAMINATION  
14 BY MS. MORGAN:  
15 Q Mr. Heyward, do you live in the property  
16 currently?  
17 A No, I do not.  
18 Q When did you cease living in the property?  
19 A Middle of 2008 I think it was.  
20 Q I want to ask you about a document here.  
21 This is the IndyMac occupancy agreement.  
22 A Uh-huh.  
23 Q First, do you recognize your signature on  
24 this document?  
25 A Well -- no, I don't. I -- no, I don't.

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1 This is a copy.  
 2 Q Yes, sir. Did you sign this document?  
 3 A No.  
 4 Q Are you alleging that the signature there  
 5 above your name is fraudulent?  
 6 A I'm not making -- you asked me if I signed  
 7 this document and I said I didn't.  
 8 Q You did not.  
 9 And do you see that someone signed this  
 10 document above where your name is, sir?  
 11 A I cannot see that.  
 12 MS. MORGAN: No further questions, Your  
 13 Honor.  
 14 THE COURT: Okay. Mr. Weidner, any  
 15 other questions?  
 16 MR. WEIDNER: No further questions,  
 17 Your Honor. At the close of our case, I  
 18 would make the argument of failure to prove  
 19 standing. This documentary stamp,  
 20 intangible tax, if it requires briefing, I'm  
 21 happy to do that.  
 22 But into our bullet points: Failure of  
 23 standing, again, confirmed with the  
 24 testimony in our case in chief.  
 25 And the second category would be the

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1 documentary stamp and intangible issue  
 2 regarding failure based on that.  
 3 The third issue would be the procedural  
 4 issues that loom largely in this case, the  
 5 improper substitution of party plaintiff,  
 6 the improper standing as to IndyMac versus  
 7 Deutsche Bank.  
 8 And now the fourth element that I would  
 9 introduce in, and I have provided you the  
 10 cases on testing the competency and the  
 11 reliability of witness for the bank's  
 12 testimony about default.  
 13 And now we've introduced in firsthand  
 14 direct testimony of the witness who  
 15 recognizes it as being incorrect and  
 16 improper amount. So that is what I would be  
 17 briefing up for you and asking for a  
 18 judgment figure on that.  
 19 THE COURT: Okay. Ms. Morgan, anything  
 20 else or I will just wait for --  
 21 MS. MORGAN: Yes, Your Honor, just very  
 22 briefly.  
 23 THE COURT: Okay.  
 24 MS. MORGAN: First, I want to make sure  
 25 that Your Honor has this case cite, the

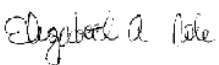
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1 OneWest Bank v. Bauer, and I apologize for  
 2 not having a copy, 159 Southern --  
 3 THE COURT: Wait just a minute.  
 4 MS. MORGAN: Yes, Your Honor.  
 5 THE COURT: What is it again?  
 6 MS. MORGAN: OneWest Bank versus Bauer,  
 7 B-A-U-E-R. The cite is 159 So.3d 843,  
 8 Second DCA, May 30th of 2014. And that's  
 9 the case stating that establishment of  
 10 ownership is not necessary to prove  
 11 standing.  
 12 Again, Your Honor, the previous  
 13 arguments made under the Sas case, the prior  
 14 servicer business records come in where the  
 15 witness testified to Ocwen's accuracy, he  
 16 did so.  
 17 With respect to the testimony given by  
 18 Mr. Heyward, Your Honor, it's the position  
 19 of Plaintiff that his failure to recollect  
 20 the amounts due do not amount to a valid  
 21 defense presented by the witness and the  
 22 evidence in Plaintiff's case in chief.  
 23 Again, regarding the note issue. As it  
 24 is, Your Honor, it's Plaintiff's argument  
 25 that the issue was cured with the filing of

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1 the original note under the Hughes and  
 2 Taperi case.  
 3 And, Your Honor, regarding the  
 4 documentary stamp taxes, the testimony and  
 5 the case law presented by opposing counsel  
 6 simply do not equate the facts that are  
 7 before you here today.  
 8 At this time, Plaintiff requests for  
 9 final judgment in its favor.  
 10 THE COURT: Okay. All right. And I'm  
 11 going to reserve on the issues, and I will  
 12 invite both counsel to submit memorandum to  
 13 the Court and then we'll be finished.  
 14 MS. MORGAN: Yes, sir.  
 15 THE COURT: And I thank both of you for  
 16 being here.  
 17 MS. MORGAN: Your Honor, just for  
 18 clarification for both parties, is there a  
 19 date by which you request submissions?  
 20 THE COURT: So how many days would both  
 21 of you like?  
 22 MR. WEIDNER: Fifteen days.  
 23 MS. MORGAN: He's way busier than me.  
 24 Fifteen days is fine.  
 25 MR. WEIDNER: Thank you.

1 THE COURT: Do you want fifteen? Do  
 2 you want twenty?  
 3 MS. MORGAN: Twenty is fine.  
 4 THE COURT: Let's do twenty.  
 5 MS. MORGAN: Yes, sir.  
 6 THE COURT: Okay. Thank you both.  
 7 MR. WEIDNER: Judge, thanks for your  
 8 time.  
 9 THE COURT: Good to see you.  
 10 MS. MORGAN: Thank you. Thank you.  
 11 (Whereupon the proceedings concluded  
 12 at 12:20 p.m.)  
 13  
 14  
 15  
 16  
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 24  
 25

1 COURT CERTIFICATE  
 2 STATE OF FLORIDA )  
 3 COUNTY OF MANATEE )  
 4  
 5 I, ELIZABETH A. NOLE, Registered Professional  
 6 Reporter, certify that I was authorized to and did  
 7 stenographically report the foregoing proceedings  
 8 and that the transcript is a true and complete record  
 9 of my stenographic notes.  
 10  
 11 DATED this 30th day of August, 2016.  
 12  
 13  
 14   
 15 \_\_\_\_\_  
 16 Elizabeth A. Nole, Court Reporter  
 17 Notary Public - State of Florida  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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