In re: Amendments to the Florida Rules of Civil Procedure

No. SC 13-2384

COMMENTS OF NYE LAVALLE

2/3/2015

Table of Contents

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Table of Authorities

Cases

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Statutes

Other Authorities

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IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE.	))))))))	No. SC13-2384 COMMENTS OF NYE LAVALLE

I, Nye Lavalle, hereby provide this Honorable Court with my comments in the above-referenced matter as follows:

SUMMARY OF COMMENTS

1. As shown herein, I am a fraudulent foreclosure and predatory servicing and securitization expert who was the first person in the 90s to research, identify, and report on fraudulent foreclosure practices such as robo-signing and fraudulent and false pleadings, MERS as note owners, lost note counts, false affidavits in support of summary judgment, and assignments of mortgages amongst many other predatory servicing practices.

2. I have attempted to summarize my comments in this section, but the overwhelming weight of evidence mandates that I provide this Honorable Court and committee with extensive detail, research and information for its review. I make myself, my research, my expertise and the untold plethora of documents and evidence I have gathered over two decades available to the committee and this Honorable Court.

3. I have spent over 40,000 hours researching, investigating, and analyzing the default servicing, servicing, and foreclosure practices of the mortgage industry and it was my reports, work product, and research that ultimately led to the criminal referrals and multi-billion dollar settlements with over a dozen major banks and servicers as well as MERS and LPS. Few, if any Americans have as much experience and time researching these matters.

4. The default servicing and mortgage industry has for over three decades prosecuted fraudulent and unlawful foreclosure actions in the state of Florida using fraudulent, false, fabricated and frivolous pleadings and evidence as well as perjurious testimony and affidavits.

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5. The default servicing and mortgage industry has for over three decades engaged in a wide coordinated effort of evidence spoliation, fabrication, fraud, and perjury to conceal known document and title deficiencies and defects in order to enforce defective and/or unenforceable notes, mortgages and debt obligations.

6. The "automated" servicing systems and processes used by the default servicing and mortgage industry are fatally flawed, unreliable and untrustworthy and are known to the entire mortgage, servicing and default servicing industries as such.

7. Modern day mortgage transactions and foreclosures are highly complicated and require extensive electronic discovery to substantiate or disprove foreclosing Plaintiff's averments and allegations that have been historically false.

8. The mere word on paper or even testimony by a servicing witness must be carefully validated and verified for its truthfulness, veracity, and accuracy against known existing data, files, and records from several sources, systems, and entities.

9. Due to a three decade pattern of fraud and deceit, nothing a servicer or foreclosing Plaintiff in Florida places in a pleading, motion, affidavit, assignment of mortgage, allonge, endorsement, servicing history or other evidence can be accepted as authentic, true, correct, reliable, and/or trustworthy without the production of extensive electronic discovery and the testing, auditing, analysis, verification, and validation of all evidence presented for its authenticity, reliability and trustworthiness.

10. Due to a three decade pattern of fraud and deceit, nothing a servicer or foreclosing Plaintiff's witness testifies to can be accepted as true, competent, and reliable without the production of extensive electronic discovery and the testing, auditing, analysis, verification, and validation of all evidence presented by the witness for its authenticity, reliability and trustworthiness as well as the witness' competency.

11. As shown herein, the default servicing and mortgage industry will "fit" their fabricated evidence and facts in a new process to any template pleading forms issued by this Honorable Court.

12. The processes and systems used by the default servicing and mortgage industry must be retooled and reengineered to conform to the unique complex set of facts, evidence,

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issues, defects and even problems each individual mortgage, note, collateral file and loan possesses.

13. The testimony and evidence used by the default servicing and mortgage industry for over three decades is based upon hearsay upon hearsay upon hearsay in a Matryoshka Doll (i.e. nesting Russian Dolls) fashion.[1]

14. Servicers conceal the identities of the real parties to a loan transaction that can settle, arbitrate, and mediate the claims of borrowers as well as to who any holder in due course may be.

15. Often the real parties making the decisions on foreclosures, settlements, mediations, short sales, deeds in lieu and modifications are parties such as sureties, insurers and guarantors who have insured from 30% to over 40% of the loss due to the "default" of the borrower and are who in the first loss position on the loan.

16. These bulk insurance policies combined with other insurance and guaranty policies have often paid the true lender a substantial portion and sometimes the entirety of the actual "debt obligation" owed by the borrower and such payments or payoffs are not even recorded or referenced in specially created "servicing histories" that are only reflective of borrower payments, not the payment of co-obligors, sureties, insurers, endorsers, prior note owners and guarantors under paragraph 8/9 of the uniform promissory note.

17. Assignments of Mortgage ("AOM") are created to create an alleged "chain of servicers," not a chain of title and the beneficial ownership interests in the borrower's promissory note are not actually transferred to the alleged Assignor, but stay on the financial and accounting books of their alleged owners.

18. Virtually all sales of notes and promissory notes in the GSE and securitization models as well as their servicing rights and document custodial responsibilities are accomplished via extensive contracts and agreements, not assignments.

19. This Court and many other Florida Appeals Courts have ruled that despite assignments or other evidence to the contrary, the sale of a promissory note via contract takes with it the attendant mortgage.

20. There are two remedies a foreclosing Plaintiff may pursue that include 1) an action to enforce and collect upon the note; and 2) an in rem action to foreclose upon the mortgage.

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21. Foreclosing servicers and their foreclosure counsel are often only suing in an in rem foreclosure action upon the mortgage that is only a lien against the borrower's property. Thus, the foreclosing Plaintiff on a mortgage must be the current mortgagee that can only be the owner of the borrower's promissory note or a party specifically authorized by the owner of the note.

22. A Person Entitled to Enforce ("P.E.T.E.") a promissory note can be a holder, a non-holder in possession or have the rights of a holder to enforce a promissory note and sue to collect and obtain a judgment on the note itself, but unless they also own the mortgage or are specifically authorized by the owner of the note, they cannot foreclose upon the mortgage.

23. The *Anderson v. Burson*, 35 A.3d 452 (Md. 2011) in cited recently by the 4th DCA in *Murray v. HSBC Bank USA*, No. 4D13-4316 is most instructive in many Florida cases.

BACKGROUND

24. I am a resident of the state of Florida and a United States citizen.

25. As further shown herein, I am a foreclosure fraud and predatory servicing expert who is credited with being the first individual to research, identify, and report on Florida and national foreclosure and servicing abuses, including the infamous "robo-signing" practice beginning in the early 90s.

26. I have over 40,000 hours of experience investigating, researching, analyzing, and reporting on predatory servicing practices, a term I originally coined in the 90s and is widely accepted by federal banking regulators and banks today as a systemic risk issue.

27. I warned of the impending financial and foreclosure crisis our state and nation have gone through as early as 1996.

28. In 2010, I provided then Ohio Secretary of State (Current Ohio Appeals Court Judge) Jennifer Brunner with a transcript[2] of a deposition of a JPMorgan Chase employee taken in a Florida foreclosure matter.

29. As further shown herein I, along with a close friend and colleague, worked with then Ohio Secretary of State (Current Ohio Appeals Court Judge Jennifer Brunner) providing evidence of notary fraud (part of robo-signing scandal) in which she made criminal referrals to the U.S. Attorney's office on August 11, 2010.[3]

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30. Soon after these referrals, major U.S. banks/servicers, including JPMorgan Chase and Bank of America[4] stopped their foreclosures nationally and the U.S. Attorney General and 50 state attorneys general began investigations into the predatory foreclosure practices of American banks and servicers that led to massive reform and a set of new industry "best practices" supervised by the Consumer Finance Protection Bureau ("CFPB").

31. Many of these best practices, including those relating to foreclosure filings and documents supporting foreclosure were first developed by myself and other colleagues over a decade ago.

32. In fact, in my 2004 report[5] I sought the creation of a National Compliance Center to oversee mortgage servicing regulation and compliance of new laws and best practices.

33. For over two decades, I have personally warned the CEOs and Board of Directors of major servicers foreclosing on Florida borrowers of false, frivolous, and fraudulent default servicing, mortgage servicing, and foreclosure practices and their outdated models and processes.

34. In some respects, after education of lawyers and judges, some of my proposals, especially to Fannie Mae, were adopted and made industry wide standards.

35. One such proposal I first made at the turn of the new millennium, directly related to the state of Florida, was to stop the industry's use of Mortgage Electronic Registration Systems, Inc. ("MERS") from fraudulently filing foreclosure suits in the state of Florida falsely alleging that MERS was the owner and holder of a borrower's promissory note.

36. Another proposal, directly related to the state of Florida, was stopping the widespread, rote and fraudulent representation in Florida foreclosure actions that original wet-ink promissory notes were lost, stolen, and/or destroyed when in fact that was an extremely rare occurrence.

37. I had then and I have now, a vested interest in seeing that justice is meted out in a fair, impartial, and justifiable manner since I am a trustee of and beneficiary of Pew family trusts that have over time, invested significantly in funds and direct investments in the debt and shares of Fannie Mae and Freddie Mac as well as various banks, lending institutions, and mortgage-backed securities and various funds that held such securities.

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38. The one simple formula that I follow is that Mortgage/Foreclosure/Borrower-Fraud = Investor/Shareholder-Fraud meaning that if any money, property, or assets are being collected unlawfully, then the banks are overstating their income, revenue, and profits and underreporting their liabilities and risks.

39. As illustration, to date, the six largest U.S. bank-holding companies have paid about $128 billion in settlements, fines and other costs related to mortgages and the financial crisis.[6]

40. The attached Fannie Mae Independent Counsel Report that bears my name (Exhibit A) was prepared by the Washington D.C. office of Baker Hostetler. It was commissioned by Fannie Mae's board of directors and CEO. The report, downloadable at http://www.nytimes.com/interactive/2012/02/05/business/05fannie-doc.html?ref=business clearly shows that Florida foreclosure filings and allegations historically were completely and knowingly false and unlawful.

41. The report was publicly released as part of an journalistic investigation by Pulitzer winning journalist, Gretchen Morgenson of the New York Times who authored the front page business section story located at http://www.nytimes.com/2012/02/05/business/mortgage-tornado-warning-unheeded.html?pagewanted=all and attached as Exhibit B.

42. Yet, for decades, these widespread industry wide frauds continued and unfortunately, continue to this day[7] through the use of antiquated and outdated Model-T like factory assembly-line legal processes that took the former template forms this court promulgated and supported those forms with false and fraudulent averments, facts and evidence.

43. Thus, legislation was enacted by the Florida legislature to guide the courts and to reduce the heavy burden placed upon this state's judiciary from the recent foreclosure crisis.

44. As this Honorable Court has emphasized in it's the order I am commenting on, the purpose of the legislation was to "*expedite the foreclosure process by ensuring initial disclosure of a plaintiff's status and the facts supporting that status, thereby ensuring the availability of documents necessary to the prosecution of the case*." (emphasis added)

45. Thus, for the reasons stated herein, I am uniquely qualified to comment on and make recommendations to the committee and this Court on what steps, processes, and changes

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to the current system can and should be made that would a) expedite the foreclosure process for borrowers, lenders, and the courts; b) ensure proper initial disclosures are made; c) ensure that the pleading state true facts, not false averments to support foreclosing plaintiff's claims; and d) ensure the availability of documents (and data as well) to prosecute foreclosure actions in the state of Florida.

46. To that end, I have been asked by various foreclosure defense counsel in the state of Florida, that based on my expertise and experience with these kinds of matters, if I had any opinions, comments, and recommendations on:

A. How Florida courts can expedite the foreclosure process for borrowers, lenders, and the courts while adhering to measures of fairness and due process?

B. How Florida courts can ensure proper initial disclosures in foreclosure filings are made while adhering to measures of fairness and due process?

C. How Florida courts can ensure that foreclosure pleadings state true and real facts, not false averments to support foreclosing plaintiff's claims?

D. How Florida courts can ensure the availability of documents (and data as well) to prosecute foreclosure actions in the state of Florida while adhering to measures of fairness and due process?

47. As will be shown herein, I believe that I have valuable comments, opinions, and recommendations on how to expedite the foreclosure process in a consistent and fair manner that protects the due process rights of all litigants and the integrity of the Florida courts.

48. In order for the committee and this Honorable Court to understand how we reached this point, I believe that some facts and history of the process and how we got here is necessitated. I still see many lawyers, law firms, and even judges make comments to the effect that these are mere "simple foreclosures."

49. I understand that my comments are lengthy and exhibits and references extensive, but I would beg anyone considering changes to foreclosure rules and laws to read my comments in their entirety and ask me for any additional support, facts, opinions, observations, recommendations or whatever evidence this Honorable Court or its committee necessitates.

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50. It was I who in the 90s created the legal strategy commonly known as "produce the note" when my family attempted to payoff a $100,000 mortgage loan IN CASH and the payoff figure was over $18,000.00 off on a loan they had for a few years. My family had money and access to Pew family trusts to payoff such a loan.

51. This was done after we wanted to get away from a bad loan servicer who had placed not one, but three forced-places hazard insurance policies on my family's property when we had insurance on the property. Two of these policies were placed on top of their own existing policies. My discoveries then are relevant today.

52. The banks and servicers' servicing systems and processes were and still are fatally flawed, unreliable and untrustworthy. Several financial engineering schemes and scams have been programed into the systems to generate additional revenue, cash flow, income, and profits.

53. All my family wanted was to a) determine the owner of the note who we could pay off; b) obtain the original note back stamped "cancelled and paid in full;" c) obtain original servicing histories that were not whited out and typed over with an IBM Selectric typewriter to determine the proper payoff; and d) get a satisfaction of deed from the owner or its authorized agent of the deed of trust.

54. Instead, EMC Mortgage, Bear Stearns and Washington Mutual spent over $2 million in legal fees fighting us for over 8-years on a mere $100,000 mortgage loan we were ready, willing, and able to pay off.

55. Each payoff would add hundreds of thousands of dollars (over $800,000) to our mortgage demanding that we pay their attorney fees off for discovering their fraud!

56. Thus, few persons in this state, let alone America, have a three-decade history and successful record of researching, investigating, analyzing, and reporting on predatory servicing, securitization and foreclosure fraud.

57. For the reasons stated herein, there is nothing simple about a modern-day mortgage transaction or foreclosure. Both are extremely complicated matters.

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SUMMARY OF CRITICAL FACTS

58. The default servicing and mortgage servicing foreclosure practices, processes, and procedures of the last 30-years are fatally flawed, defective, unreliable, untrustworthy, and cannot be trusted without careful forensic examination of all digital data, images, records and paper files.

59. Much of the records, papers and evidence relied upon in Florida foreclosure cases is known to the industry to be flawed, defective, unreliable and untrustworthy.

60. The third-party system of record, MSP, used to service more than 50% of residential mortgages in America is historically unreliable and untrustworthy.

61. The robo-signing scandal of rote and even fraudulent execution and notarization of assignments of mortgage and affidavits along with the templated fraudulent and frivolous foreclosure pleadings of the last three decades were created as part of an industry process to conceal known document deficiencies, defects, and flaws with the records, data, and collateral of each alleged lender and servicer.

62. For over three decades, servicers and foreclosure counsel in Florida have:

- Filed false, frivolous, and fraudulent foreclosure complaints, pleadings, affidavits, and evidence in Florida courts.

- Concealed real parties in interest with ultimate settlement authority such as mortgage insurers, private investors, and Government Sponsored Enterprises ("GSEs") such as Fannie Mae, Freddie Mac and Federal Home Loan Banks.

- Claimed that original wet-ink promissory notes were lost, stolen, and/or destroyed when in fact they were in the hands of document custodians and other parties who had taken such collateral as pledges against other financings and borrowings from the lenders and servicers.

- Claimed to be a holder and have possession of original wet-ink promissory notes when in fact all they merely possessed was an imaged copy of a prior an unknown generation and undated "copy" of note and not the original note itself nor a first generation, dated, and authenticated copy of the original note.

- Engaged in the spoliation of evidence of borrower's "collateral files" via "file scrubbing," "document remediation," and "title curative" (e.g. actual names of practices in the industry) measures wherein lawyers and vendors, after notices of default were sent out, engaged in:

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- Removing, destroying, and or concealing assignments in blank, blanket assignments, unattached allonges, and other documents that were contained in a collateral file that would not support their foreclosure allegations;

- Fabricating, forging, and altering assignments of mortgage, note endorsements and allonges to falsely create a chain with "new evidence" that would support their allegations in foreclosure complaints;

- Creating new allonges and endorsements to fix document deficiencies and defects known to make notes unenforceable;

- Concealing and destroying original promissory notes, some marked cancelled or that had endorsements contrary to the alleged facts pled;

- Attempting to alter and fabricate notes and other evidence to fix known defects that make an unenforceable note enforceable;

- Creating four-color laser copies notes and other evidence to conceal the original was pledged and sold to another party.

➢ Concealed demands, claims, the payoff or significant payments of the borrower's "debt obligation" to the "debt owner" according to co-obligation provisions of the uniform promissory note (i.e. ¶ 8/9).

➢ Concealed a plethora of electronic data file related to each mortgage loan.

➢ Concealed contracts, agreements and their exhibits, schedules, attachments, and amendments related to each mortgage loan.

➢ Concealed payoffs, payments, and other contributions from third parties and co-obligors as well as repurchase demands, substitutions, claims, and lawsuit settlements affecting borrower's loans.

➢ Failed to transfer physical possession of original wet-ink promissory notes to their intended document custodians and trustees for securitized trusts.

➢ Concealed fraudulent appraisals and underwriting exceptions on borrower's properties and loans.

➢ Concealed the involvement of mortgage insurers, in the first loss position, who provided undisclosed lender placed mortgage and pool insurance policies.

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- Concealed document defects and deficiencies with the collateral file.

FACTUAL HISTORY FOR THE COURT & COMMITTEE TO CONSIDER

FROM TRADITIONAL SIMPLE MORTGAGE TRANSACTION MODEL TO COMPLEX MODERN MORTGAGE TRANSACTION MODEL

63. When once, traditional lenders held the loans they originated in their local vaults and on their balance sheets ("originate-to-hold model or "traditional model"), a new and modern method of structured financing created an "originate-to-distribute" loan model over the last two decades. Yesterday's mortgage in an originate-to-hold model was relatively simple. The old and traditional housing finance system was straightforward. Local banks and savings and loan associations made mortgage loans to local households and held those loans in their vaults and loan portfolios until they were eventually repaid.

64. In the old days, the bank's depositors provided the primary source of funding for lenders by making deposits into various checking and savings accounts, certificate of deposits, and other financial accounts. The process of making a loan was called originating a loan.

65. In the traditional model, the lender made the loan, recorded the mortgage, and held onto the note. If the borrower defaulted, the lender would seek to enforce the note and mortgage. However, this model is widely a relic of the past. Today, lending is typically followed by a series of transfers of the lender's interest.

66. Once the lender's rights have repeatedly been transferred, determining rights related to the lender's claim is complex. Thus, commercial law, not real property law provides us many of the answers necessary to determine complex legal issues to Florida foreclosures.

67. Figure 1 below, illustrates the traditional "originate-to-hold" mortgage model that, along with the fragmented nature of the banking sector, resulted in a highly localized mortgage market with regional variation in the availability of residential mortgage credit.[8]

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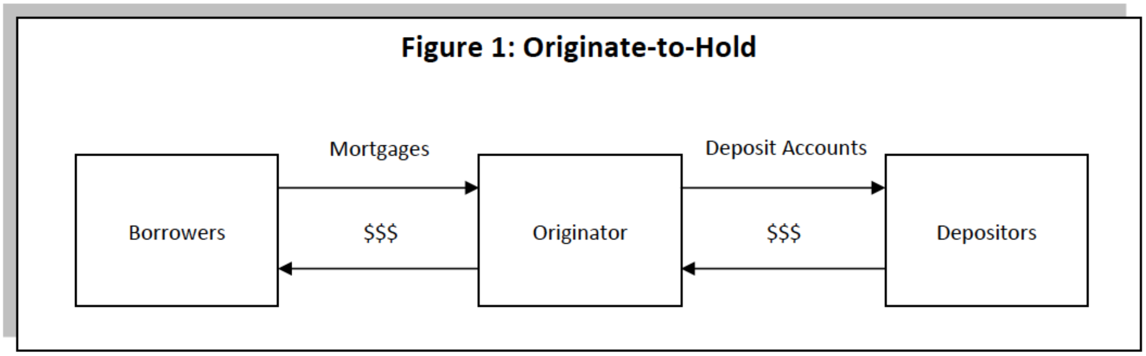
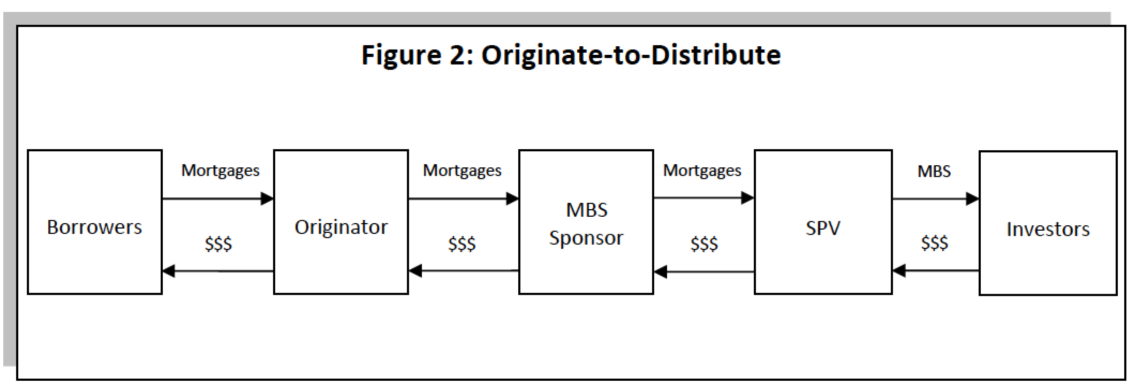


68. Today's modern mortgage transaction process is highly complex wherein a series of digital financial transactions travel at the speed of light with their electrical impulses flashing around the world.

69. These modern mortgage transactions are accomplished by the execution of a series of voluminous and complicated agreements and contracts that transfer various rights to the original note and mortgage.

70. Thus, when analyzing ownership of a mortgage and/or promissory note as well as the amount of the actual debt obligation, the loan's paper, legal, financial, accounting, and money trail must be identified or reconstructed from the extensive digital data, image, and paper trails.

71. Figure 2 below, "simplifies" the illustration of the "originate-to-distribute" mortgage model that also is referred to as "originate-to-sell."



72. The "originate-to-distribute" model claimed to have advantages over the old "originate-to-hold" model, where a bank originated a loan to the borrower/homeowner and retained the credit (default) risk. Now, securitization allowed the removal of loans from a

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bank's books, enabling the bank to remain in compliance with capital requirement laws. This allowed more loans could be made with proceeds of the MBS sale.[9]

73. As such, over the last two decades the servicers and lenders in the mortgage banking marketplace, have established a set of highly defined and programmed loan origination, underwriting, sales, securitization, servicing, document custody, collections, default servicing, foreclosure, loss mitigation, bankruptcy, and REO steps, policies, protocols, and practices, that use highly automated processes executed by a series of electronic and computer systems and programs in order to streamline and standardize processes, reduce costs, increase profits, and increase market share.

74. However, this rush to modernization came with high risks, that the industry ignored and turned a willful blind eye to, based on their cost/benefits analyses.

75. As exhibited in the recent robo-signing scandal and the ultimate regulatory investigations and tens of billions of dollars in settlements, the industry's foreclosure processes, protocols, and systems are untrustworthy and unreliable.

76. As described in two decades of reports and papers attached as a linked listing of reports in Exhibit C, elsewhere herein and in the attached exhibits, I initially warned of these risks over two-decades ago, while servicers in Florida and their foreclosure counsel ignored centuries-old property laws, the due process rights of property owners, and the risks to our state and nation's communities, pension funds, trust funds, shareholders, and investors.

77. The legal and foreclosure processes and practices created, ignored ethical boundaries, state property and consumer laws, commercial law, due process rights, and bordered on criminality, as fraud for profit became the norm for servicers and foreclosure "mill" law firms alike.

78. Standardized, one-size-fits-all, foreclosure steps, processes, protocols, procedures, and practices were executed using both written and electronic policy and procedure manuals that were not only designed to speed up the process, but reduce costs and human interaction.

79. It didn't matter if the loan was for $25,000 or for $6 million, the same flawed factory like automated steps and procedures were utilized and carried out without proper due diligence, review, and care.

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80. These legal foreclosure and property "processes," included the creation and implementation of the Mortgage Electronic Registration Systems and use of other industry specific servicing platforms and processes such as robo-signing.

81. However, many of these legal and foreclosure processes were never sufficiently tested or vetted for their legal conformity and real tests of the risk and legal consequences did not occur until the avalanche of foreclosures that began in 2007 and continue onward today.

82. No baseline was adequately determined for an acceptable reliability or error rate and the procedures, practices, and systems used created unnecessary and additional opaque layers of obfuscation designed to conceal the true nature of the modern mortgage transaction and the multitude of parties that were and still are participants in the process, especially the ownership and holder status of a borrower's original wet-ink promissory note.

83. This process led to less transparency. What once was an easy process to determine who your lender was has become a "virtual" impossibility. This change was significant for anyone who attempted to get accurate answers about their mortgage; had questions about a transaction for a $100,000.00 loan to over a $6 million loan; or had questions regarding the hundreds of pages they blindly executed with the answer to their pertinent and relevant questions often coming from a vendor sitting in a call center in front of a computer screen in New Delhi, Montevideo or another locale, thousands of miles away

84. This lack of transparency was specially designed by members of the "Shadow Banking System"[10] to create a process known as "Global Financial Intermediation"[11] that turned our traditional mortgage banking and lending system as illustrated by Figure 3 below to a series of complex intermediation transactions as illustrated in Figures 4 and 5.

FIGURE 3[12]

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FIGURE 4[13]

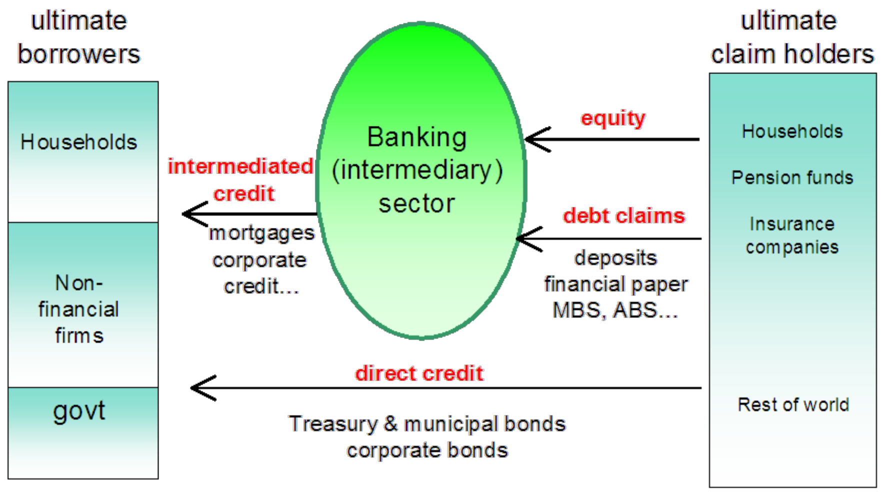
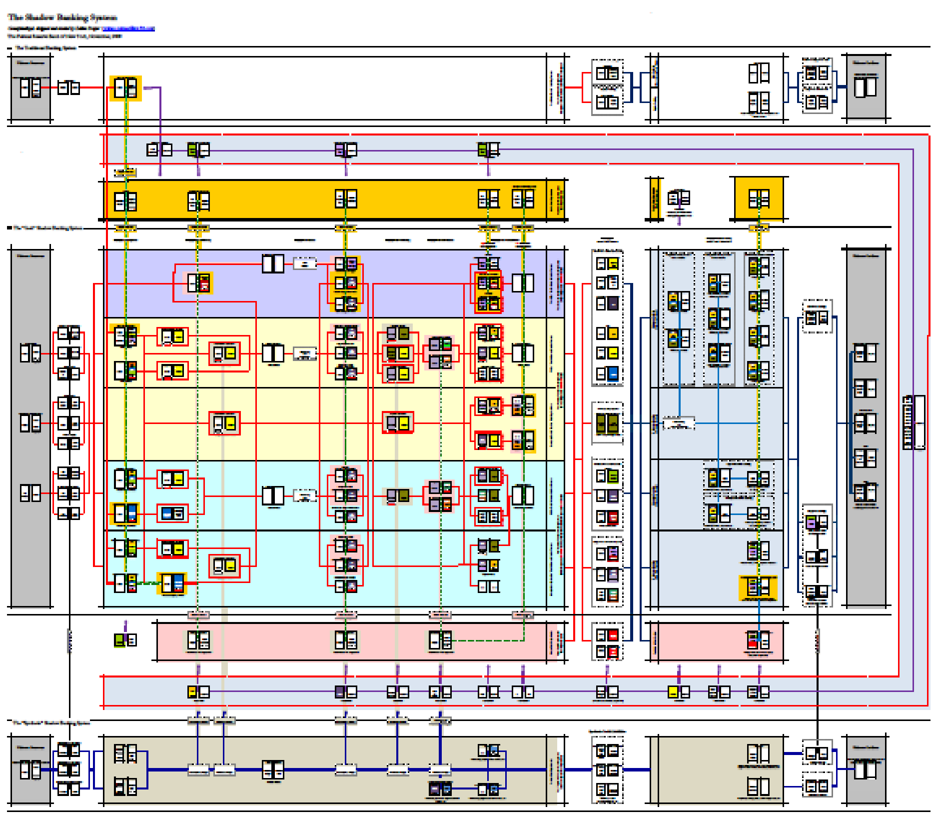


FIGURE 5[14]



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85. I would direct this Honorable Court and the committee to New York Federal Reserve Staff Report No. 458 from the New York Federal Reserve Website address at http://www.newyorkfed.org/research/staff_reports/sr458.pdf.

86. While the report is illuminating for a number of factors, the real essence of the report comes in the forms of the charts and illustrations contained in Appendixes 1 to 8 contained on pages 32 to 38 of which Figure 5 is only a reduced snippet.

87. These charts, when compared to the charts and diagrams contained in this filing illustrate not only the complexity of any modern mortgage transaction, but the sheer size of the process. Thus, the complexity of the modern mortgage transaction was concealed from the borrower at closing and is still concealed from the courts of Florida and defendants in Florida foreclosure filings.

88. The liquidity of the national and even international mortgage market allowed capital to flow quickly where mortgages were in demand and funding short. However, securitization created substantial moral hazard for the market. Third-party originators ("TPOs"), banks, and institutions making mortgage loans did not worry if the mortgages got repaid. The lack of skin-in-the game provided incentive to process more mortgage transactions, but ignore their credit quality.[15]

89. For awhile, Fannie Mae and Freddie Mac, Government Sponsored Enterprises ("GSEs") maintained their more conservative and conventional approach to the secondary market by purchasing loans with higher down payments and credit scores and mortgage loans within smaller conforming limits. However, the Wall Street firms, as residential and commercial property prices ramped up their production and manufacture of exotic mortgage products for market to a wider audience. They did so by developing mortgage-backed securities in the riskier non-conforming subprime and Alt-A markets[16] that they marketed to anyone who could breath, including illegal immigrants.[17]

90. What these "private label" or "non-agency" originators did was to use "structured finance" to create new forms of mortgage-backed securities.[18] Structuring involved "slicing and dicing" the pooled mortgages into "tranches," each having a different priority in the stream of monthly or quarterly principal and interest payment streams. Tranches were compared to "buckets" catching a "waterfall" of principle and interest payments with the most

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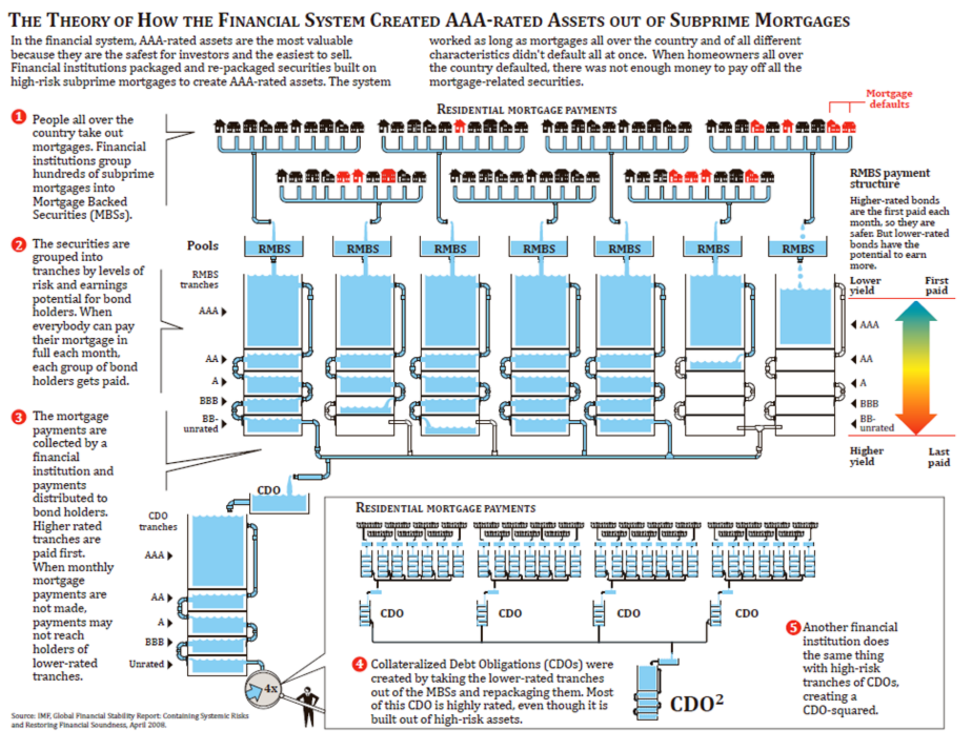
senior buckets not sharing water with those below until they were filled up to the brim and overflowing.[19]

91. This gave the top buckets/tranches considerable creditworthiness that earned them the highest "Triple A" credit ratings. AAA ratings allowed what would otherwise be junk bonds, to be marketable to conservative institutional investors such as money market and pension funds that would not otherwise invest in subprime mortgage securities.[20]

92. Wall Street investment banks developed another security known as a collateralized debt obligation ("CDO") to complicate matters further. The diagram and chart below, from the International Monetary Fund, provides a graphic description of this complicated process.



SOURCE: IMF, Global Financial Stability Report, Containing Systemic Risks and Restoring Financial Soundness, April 2008

93. As shown above and herein, widely known to the industry was the widespread abuses and frauds undertaken by TPOs, brokers, and others in the origination, underwriting and appraisal process prior to loan closing. Many loans originated from 2000 to 2007 contained predatory terms and were fraudulently induced via false promises and procured by fraudulent appraisals, loan documentation, and the alternation of mortgage loan applications

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and forms. Employees of TPOs and brokers received high commissions and yield spread premiums that motivated them to commit such frauds and abuses.

94. During the Mortgage Process, and even after the sale of a mortgage loan to a secondary mortgage market investor, the loan and its documentation goes through various stages of Due Diligence, Quality Control, and Quality Assurance processes. These processes analyze known risks and the purchaser's tolerance for such risks. Thus, any "red flags" for fraud, misrepresentation, and abuse was discovered and known at the early stages of the Mortgage Process.

95. However, some purchasers were more accepting of higher risks and uncovered red flags for origination or appraisal fraud since they were only worried about increasing pipeline production and booking quick profits on their books. Others mitigated the known risks by insuring against the risks or addressing the issues in the reps and warranties provisions in their "Mortgage Loan Purchase Agreements" ("MLPA").

96. Thus, lenders and purchasers along the way and the defined note holder in paragraph one of uniform promissory notes knowingly modeled and undertook the risks of default and even insured against such risks with private mortgage insurers and others. As part of this risk, increased points, costs, and higher interest rates were passed on to borrowers to cover the additional insurance, expenses and risks taken, even before the loan was closed.

97. After all, it was not their money that was being lent, but the money of the real lender. The wholesale lenders and conduits advanced the funds to the TPO, broker, or other named lender on the promissory note.

98. In reality, most TPOs were not banks or lending institutions, but highly leveraged and financed mortgage sales organizations. They were created solely to add an additional layer of protection against liability for the known fraudulent mortgage origination and predatory loan practices promulgated throughout the industry.

99. Participants (e.g., investors) in the secondary mortgage market established the underwriting guidelines for the purchase or guarantee of a mortgage loan. The underwriting guidelines allowed the secondary mortgage market participant to assess and manage the risk of loss from the borrower's default. In fact, defaults are factored into the risk models used to "manufacture a mortgage loan."

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100. Yet, exceptions to these guidelines were commonplace in order to push mortgage loans through the pipeline while Wall Street brokerage house, eager for more product to sell, flooded the market with easy money.

101. This transfer of risk, as applied to the securitization of various financial assets (mortgages, credit card receivables, auto loans, etc.), once provided increased liquidity or funding sources to real estate markets by transferring risk to buyers of structured products. It also permitted financial institutions to remove certain assets from their balance sheets as well as provided a means for investors to gain access to diversified asset classes.

102. However, it greatly contributed to the degradation in underwriting standards for financial assets such as mortgages, which helped give rise to both the inflationary credit bubble of the mid-2000s and the credit crash and financial crisis of 2007 that turned to the Great Recession. Common examples of instruments created through securitization include collateralized debt obligations (CDOs) and mortgage-backed securities (MBS).

103. However, admittedly lost in the era or modern mortgage transactions in the structured financing world is with whom is a borrower contracting with and who can the borrower turn to for help or even to payoff his debt obligation with no risks to the borrower? The Promissory Note specifies that the borrower must repay the "Note Holder," which may and often is different from the original lender if the loan is sold. The Mortgage acts as a separate "security instrument" and it is a separate legal document or agreement that pledges the property/house as collateral for repayment of the debt obligation.

104. In Florida, the mortgage, not the promissory note, is typically recorded in the county recorder of deeds office in order to establish the mortgagee's interest in the property as a matter of public record. This is important because it establishes the mortgagee's rights in the property relative to other parties, including other mortgagees. Since 2000, the majority of mortgages are recorded using a private recordation company known as the Mortgage Electronic Registration System (MERS). When MERS is used, it is listed in county property records as the mortgagee, while the real mortgagee is tracked in MERS' private registry.

105. The validity of MERS' various processes has been the subject of significant and on-going legal controversy.

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106. As discussed herein, historically, over the last two decades, lenders sold over half of all mortgage loans they originated into the secondary mortgage market. By selling mortgage loans on the secondary mortgage market, lenders were able to free up capital and warehouse credit lines in order to have funds to meet additional consumer demand for other mortgages. A warehouse line of credit is a credit line used by mortgage bankers. It is a short-term revolving credit facility extended by a financial institution to a mortgage loan originator for the funding of mortgage loans.

107. The cycle started when a TPO or mortgage broker took a loan application from the property buyer and then secured an investor (often a large institutional bank) to whom the loan would be sold to, whether directly or through the securitization process. This decision was generally based on an institutional investor's published rates for various types of mortgage loans, while the selection of a warehouse lender for a particular loan may vary based on the types of loan products allowed by the warehouse provider or investors in the loan approved by the warehouse lender to be on the line of credit.

108. After an investor has been selected, the TPO or mortgage broker draws on the warehouse line of credit to fund a mortgage and sends the loan documentation (e.g. original promissory note and collateral file) to the warehouse lending credit-providing institution to act as a collateral for the line of credit extended to fund the borrower's mortgage loan.

109. The warehouse lender, at this stage, perfects a security interest in the mortgage note to serve as collateral. *When the loan is finally sold to a permanent investor, the line of credit is paid off by wired funds from this permanent investor to the warehouse facility* and the cycle starts all over again for the next loan.

110. Typical durations that loans are held on the warehouse line, called dwell time, range based on the speed at which investors review mortgage loans for purchase after their submission by mortgage banks. In practice, this length of time is generally between 10-30 days. Warehouse facilities typically limit the amount of dwell time a loan can be on the warehouse line. For loans going over dwell, ***mortgage bankers are often forced to buy these notes off the line with their own cash in anticipation of a potential problem with the note***.

111. Warehouse lines of credit play an important role in making mortgage loan market more accessible to property buyers since many TPO and mortgage brokers would not be able

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to attract sufficient amount of deposits that are necessary to fund mortgage loans by themselves. Therefore, warehouse funding allows the loan originators to provide mortgages at more competitive rates.

112. Unlike in other types of lending, loan originators earn more profit from origination fees rather than interest rate spread since the closed mortgage loan is sold quickly to an investor.

113. The warehouse funding providing institution accepts various types of mortgage collateral, including subprime and equity loans, residential or commercial, including specialty property types. It is the warehouse lender, who most often receives direct physical delivery and possession of a borrower's original wet-ink promissory note with either an endorsement in blank placed on the last or back page of the borrower's executed wet-ink original promissory note ("Original Note") or placed upon a separate piece of paper, not attached or affixed to the original note, that participants in the secondary mortgage market attempt to call an "allonge."

114. The warehouse lenders in most cases provide the loan for a period of fifteen to sixty days and warehouse lines of credit are usually priced off 1-month LIBOR plus a spread. Also warehouse lenders typically apply a 'haircut' to credit line advances meaning that only 98% - 99% of the face amount of loans are being funded by them; the originating lenders have to provide with the remainder from their own capital.

115. Yet, despite the widespread use of warehouse lenders in the mortgage and securitization process, it is rare, if ever, that one sees the identification of the warehouse lender, the real and true lender, in any legal disclosure and/or public or paper transfer, negotiation, assignment, sale, or possession chain of a borrower's original note.

116. One key system from the beginning of the loan that may shed light on the initial sale and/or securitization of a loan is the warehouse lender's transaction and tracking system.

117. The parties to a warehouse transaction are managed and controlled through a variety of system functions. The relationships themselves are established and approved or unapproved as necessary. The benchmark data (e.g., exposure and credit limits, insurance coverage, state licensing, etc.), document control (e.g., financials, agreements, expirations, etc.), and guidelines for management of these relationships are contained within the database.

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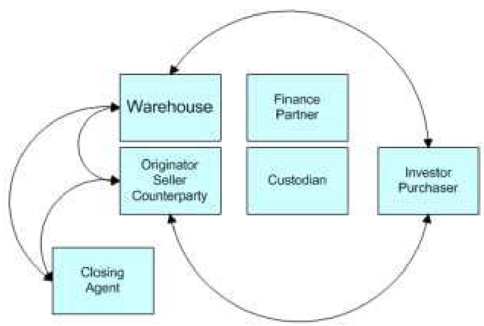
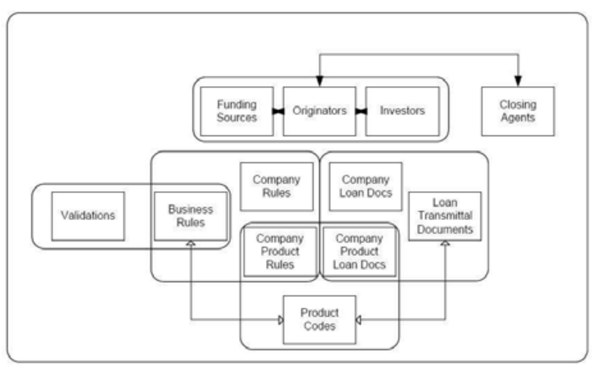
The movement of <u>collateral and funds between</u> the parties is <u>tracked and controlled</u>. (emphasis added)

118. A detailed loan record can be organized to provide a comprehensive set of information that *tracks <u>every step</u> of the warehouse lending process*. The accessibility of this data is controlled functionally (i.e., loan setup, underwriting, funding, shipping, payoff tasks, or management level). In addition to facilitating operational workflows, the extensive information provides the foundation for asset/liability management, collateral valuation, portfolio statistical analysis, and process review. These processes are exemplified by the following schematics and charts[21] as examples: As reflected, there are built-in tracking mechanisms in the system. However, for a variety of nefarious motives, the known data, records, and documents are intentionally concealed and even destroyed to prohibit their identification by the parties in each mortgage loan transaction.





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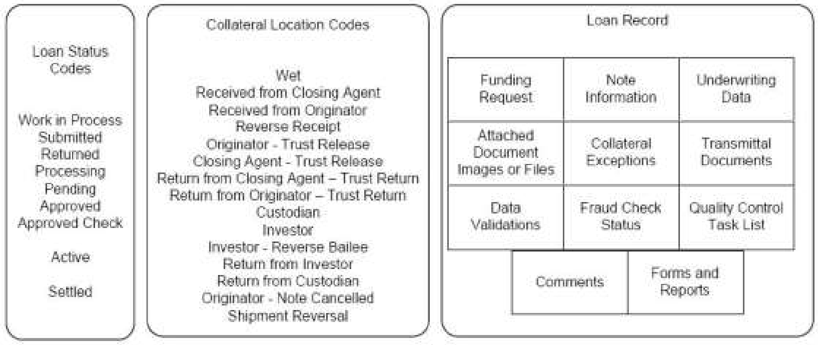

119. Yet, it's this secondary market and its lenders, not the originators and TPOs, that keep the supply of money for housing available to borrowers. Within the secondary mortgage market, lenders normally sell the mortgage loans to a secondary market conduit or wholesaler. Lenders may sell a single mortgage loan at a time or sell several mortgage loans at a time to a wholesaler. The wholesaler then packages the purchased mortgage loans into pools.

120. **A wholesaler typically enhances the mortgage loan pools by <u>*guaranteeing full payment*</u> of the mortgage loans and providing administrative services for the pool. The wholesaler then forms the enhanced mortgage loan pools into securities and sells them to investors. This process is known as securitization.**

121. Mortgage-backed securities ("MBS"), or MBS deals, are *debt obligations that <u>represent **claims to the cash flows**</u> from pools of mortgage loans*, most commonly on residential property. Mortgage loans are purchased from banks, wholesalers, mortgage companies, and other originators and then assembled into pools by governmental, quasi-governmental, or private entities.

122. The entity then issues *securities that represent <u>claims on the principal and interest payments</u> made by borrowers on the loans in the pool*, a process known as securitization.

123. Most MBS are issued by the Government National Mortgage Association (Ginnie Mae), a U.S. government agency, or the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), U.S. government-sponsored enterprises ("GSE" or Enterprises") who are now under the conservatorship of the Federal Housing Finance Administration ("FHFA").

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124. On September 6, 2008, FHFA used its authorities to place Fannie Mae and Freddie Mac into conservatorship. This was in response to a substantial deterioration in the housing markets that severely damaged Fannie Mae and Freddie Macs' financial condition and left them unable to fulfill their mission without government intervention.

125. Relevant research, information, and data contained in my comments has been gleaned from reports and papers issued by the FHFA and its Office of Inspector General ("OIG") who have been extremely diligent in getting to the surface of the coordinated fraudulent activities and practices of the servicers, their vendors, lawyers, trustees, and investors and who have recognized my efforts to steer the industry into lawful compliance of laws and rules of civil procedure.

126. Ginnie Mae, backed by the full faith and credit of the U.S. government, guarantees that investors receive timely payments. Fannie Mae and Freddie Mac also provide certain guarantees and, while not backed by the full faith and credit of the U.S. government, have special authority to borrow from the U.S. Treasury.

127. Private institutions, such as brokerage firms, banks, and homebuilders, also securitized mortgages that are known as "private-label" mortgage securities, or "non-agency" MBS. These securities, became a major component of the MBS market between 2004 and 2007, and were typically issued by homebuilders or financial institutions through subsidiaries that were backed by residential mortgage loans that did not conform to the agencies' underwriting standards.

128. Because private-label mortgage securities were not guaranteed by the government agencies, there was generally more risk associated with such mortgage securities. To account for this increase in risk, private-label MBS were rated by rating agencies and *often feature credit enhancements, such as subordination and over collateralization, that are designed to help protect investors from delinquencies*.

129. Mortgage-backed securities exhibit a variety of structures. The most basic types are pass-through participation certificates, which entitle the holder to a pro-rata share of all principal and interest payments made on the pool of loan assets. More complicated MBS, known as collateralized mortgage obligations or mortgage derivatives, may be designed to protect investors from or expose investors to various types of risk. An important risk with

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regard to residential mortgages involves prepayments, typically because homeowners refinance when interest rates

130. Loans and notes sold and transferred to securitized trusts ("Trusts") and GSEs are routinely accomplished by contracts and agreements, not by assignments of mortgages commonly known as Pooling and Servicing Agreements ("PSA") and Mortgage Loan Purchase Agreements ("MLPA") that contain a number of pertinent conditions, provisions, terms, and exhibits, schedules, and on-going amendments that are often concealed from Courts, borrowers, and their counsel.

131. Yet, it is an extreme rarity to see an "authenticated," let alone copy of these contracts with all of their amendments, attachments, exhibits and "live" schedules of loans sold produced or even identified in discovery, deposition, and/or trial.

132. Concealed from the pleadings, discovery, and courts are enumerations of complex agreements and contracts, some of which are in the flux of dispute and even lawsuits over transfers, pledges, debt obligation insurance, and even repurchase or substitution of the loan or it's promissory note.

133. This is why the industry standard is to have original wet-ink promissory notes endorsed in blank rather than to have them specifically endorsed to the note purchaser and sent to a document custodian with "trust powers" in order to effectuate:

- Concealment of various repurchases, repo agreements, pledges, hypothecation, and transfers of the collateral (i.e. note and attendant documents).
- Concealment that holder in due course status has been destroyed by actions of the parties.
- Avoidance of intangibles taxes, recording fees, and other costs associated with the multiple "electronic" transfers, sales, and /or repurchases of the original notes.
- Constructive transfer of possession via electronic means in the document custodian's system of record and tracking system.
- Electronic transfer of the beneficial interests in promissory notes.

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134. The industry standard is not to record an assignment of each transfer of a promissory note and only prepare an assignment of mortgage ("AOM") that reflects a "chain of servicers," not a change in the beneficial interest to the payment stream of the note to the note's owner upon foreclosure and/or change of servicer or "servicing rights.

135. The industry believes that the use of AOMs are merely to allow borrowers and the public to have notice that there is a lien on the property.

136. Fannie Mae and Freddie Mac, Government Sponsored Enterprises ("GSEs") under the conservatorship of the Federal Finance Housing Agency own loans in their portfolios, securitized loans in MBS trusts, and own certificates in other "private-label" MBS products.

137. While the GSEs and their securitized trusts own a majority of promissory notes and mortgage loans in Florida, it is an extremely rare occurrence to see Fannie Mae, Freddie Mac, or Ginnie Mae listed in the property records as the lien holder or owner of debt obligation and its related lien.

138. A promissory note, mortgage, and its related "debt obligation" represent two separate and distinct lines of business or sources of income with more than two separate and distinct systems of financial and accounting books and records.

139. The first and primary business line or source of income flows from the ownership of mortgage loans is the earning of interest and principal payments. This is known in the industry as the beneficial rights in the note. The original debt obligation (the money borrowed) is reflected in the note owner's financial and accounting records. If the debt obligation has been paid down or paid off by ANY party, such as a guarantor, surety, endorser or other third-party co-obligor under the terms of the uniform note (¶ 8/9), then the debt obligation and amount to pay off the loan is reduced or the debt has been paid in full, obligating the note owner to cancel the note, discharge, and satisfy the mortgage lien.

140. The second line of business in mortgage lending involves the servicing of the mortgage loan (e.g. the keeping of servicing and borrower records, collection of periodic payments, enforcement in the form of loan foreclosures, etc.)

141. All mortgage loans are "serviced," meaning the payments are collected and the loan otherwise is administered, including the release of liens upon payoff or the management

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of defaults. The servicer may be an arm of the original lender, or it may be an unrelated third party, in which case it is acting on behalf of the current owner of the loan, typically under a detailed contract known as a "pooling and servicing agreement" or "loan servicing agreement."[22] (emphasis added)

142. However, the right to service a loan on behalf of the note owner (i.e. owner of the debt obligation) is only as good as the note owner's ownership in the note. If another party paid off the debt obligation on the note owner's financial books and records, then the servicer cannot collect on the future cash flows of the note via the mortgage since the debt obligation has been satisfied.

143. When a wholesaler purchases mortgages from originating lenders, the wholesaler becomes responsible for servicing the mortgage loan. Wholesalers normally do not themselves perform the mortgage loan servicing function. Therefore, a wholesaler normally permits the existing relationship between the borrower and the servicer to continue and it pays the servicer to service the mortgage loan.

144. The servicers add an opaque layer to provide a false aura that the mortgage transaction and its related foreclosure are mere simple matters and foreclosures, as they one were under the old outdated originate to hold mortgage model rather than current complex version of the originate to sell mortgage model.

145. The foreclosure and default "legacy" systems and processes utilized by the industry, have not been retooled to document and account for the complexities of a modern-day mortgage transaction and its incumbent number of foreclosures.

146. The processes utilized have been highly automated and even patented in some occasions and involve a series of highly complicated uniform and non-uniform "data transfers" related to each loan and mortgage transaction from its origination through the life-of-the-loan.

147. The costs for the industry to properly comply with the law and due process rights of borrowers and property owners and to fix the known frauds and fatal flaws in their systems, data, and processes are so immense, that they are factored into various cost and risk models and the pricing of the sale of beneficial rights to the stream of note payments; the mortgage

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servicing rights; and the cost of various lender placed insurance policies to insure against the known and identifiable risks.

148. Yet, the industry standard is to foreclose on a loan using a fixed price menu starting at around $1200 for all foreclosures and to automate a complex legal process using lowly paid employees, third party vendors, and even out-sourced foreign vendors as far away as India.

149. In the old days, prior to the public becoming aware of the massive foreclosure frauds, borrowers would simply “walk-away” from homes upon foreclosure at the calculated rate of 95% plus. This combined with low structured payment system simply allowed servicers and their law firm “vendors” to automate and streamline the process and factor in the costs of lawful compliance against the speed in obtaining a judgment, selling the home, and getting a new revenue stream in to replace the lost revenue.

150. This led to incentives being offered by investors as well as fines for delays in not meeting the required “time-lines” that were enforced by the investors.

151. Federal banking regulators conducted a coordinated review of 14 mortgage servicers and identified pervasive problems with their document preparation and oversight of foreclosure processes.[23]

152. The servicers, foreclosure counsel, and their vendors were all aware of the fraudulent practices, but intentionally ignored them and concealed them in a cost vs. benefit analysis that is still a part of the equation for compliance with the Florida Rules of Civil Procedure and Florida as well as U.S. law.

153. The recent multi-billion dollar settlements with no attendant jail sentences has only green-lighted and created a benchmark for the cost of committing fraud (i.e. business as usual).

154. Few of the fatal foreclosure practices, policies, and procedures have been fixed and the industry has instead ramped up its fatal processes by substituting robo-signers executing perjurious affidavits with robo-witnesses and “selected” and “summarized” robo-evidence such as a “servicer’s servicing history” from a current and even past and long gone servicers that only reflect payments and transactions (often flawed and miscalculated as well) of the borrower and intentionally ignores the actual debt obligation, if any, carried on the

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owner of the debt obligation's books that are never produced in litigation and not even accessible to the servicers' witnesses who claim to have authority to testify on behalf of investors.

155. When vey specific existing records, files, and data are requested from servicers, trustees, insurers, document custodians, and investors like Fannie Mae and Freddie Mac are requested in non-party document subpoenas, depositions, production, and other means of the standard discovery, each servicer and their related vendors put up a tremendous fight to conceal the easily and inexpensively retrievable records from the plethora of systems used by each to board (i.e. load/enter), access, and retrieve data related to each borrower's loan, files, and records.

156. This is a part of an industry-wide cover-up and conspiracy of over three-decades, starting with the Resolution Trust Corporation and their efforts to conceal the multi-pledging of promissory notes as in Florida's Taylor Bean Whitaker fiasco and the fact that many of the original wet-ink notes were never placed in the physical possession or control of their note owners, but were in fact pledged as part of other borrowings and financings.

157. While notes are endorsed "without recourse," the fact remains that recourse provisions in reps and warranties underlie each complex mortgage transaction and securitization and require repurchase under various circumstances.

158. Claims, demands, and lawsuits for repurchase of promissory notes that 1) were obtained by fraud; 2) in violation of underwriting guidelines; 3) and in violation of reps and warranties file by investors and certificate holders exceed over hundreds of billions in dollars.

159. These repurchase demands, claims, lawsuits, and actual repurchases can occur before, during, and even after a foreclosure action and are concealed from the borrowers, their counsel, and the Courts.

160. This is one motive why some foreclosures after sale, have been left dormant and title never transferred or the foreclosure activated after several years of inaction.

161. Many foreclosure actions in Florida only list one count for an in rem mortgage foreclosure action and do not list a separate count for the enforcement and collection of the actual note.

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162. Thus, the focus on standing with possession of an original promissory note may be misplaced by many lenders, servicers, lawyers, and even courts.

163. When a servicer files a foreclosure action, it has two remedies available to it. It can 1) accelerate the note and debt obligation and sue to obtain a judgment on the total debt obligation owed; and/or 2) sue in equity to foreclose the lien on the property represented by the mortgage.

164. While a thief, non-holder in possession, or holder may be a Person Entitled To Enforce ("PETE") a promissory note, it's clear to me, some of my colleagues and some courts that a PETE who does not own the "debt obligation," i.e., owns the note that the debt obligation merged into and became suspended under pursuant to Fla. Stat. § 673.3101(2), cannot file and seek an in rem foreclosure action in equity since it is widely accepted that the mortgage follows the note which represents the merged and suspended mortgage debt obligation.

165. When a servicer files a foreclosure action, the servicer is attempting to collect the mortgage debt obligation for which a negotiable instrument was taken.

166. In order to collect that mortgage debt obligation through the mortgage contract, the servicer must be either the real party in interest with standing to foreclose the mortgage contract, i.e., owner of the note *and* mortgage, or it must be acting in the disclosed authorized capacity for the real party in interest with standing to foreclose the mortgage contract, i.e., owner of the note and mortgage, pursuant to the following enforcement remedies under Florida's UCC Article 3 for collecting the mortgage debt obligation that was taken for a negotiable instrument:

A. Upon declaring the note dishonored pursuant to Fla. Stat. § 673.5021(1), severing the note from the underlying mortgage debt obligation so as to permit foreclosure to collect the debt obligation under the terms of the mortgage contract, if "the obligee of the obligation for which the instrument was taken is also the PETE, the obligee may enforce either the instrument [note] or the obligation [mortgage contract]." Fla. Stat. § 673.3101(2)(c); or,

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B. If the PETE is not the obligee for the mortgage debt obligation, "the obligee [mortgagee/note owner] may not enforce the obligation [mortgage contract] to the extent the obligation is suspended [note]. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument." Fla. Stat. § 673.3101(2)(d)

167. In other words, under Florida law, only the *owner of the debt obligation* can collect the debt obligation *once it is no longer merged and suspended under the note upon dishonor*. By operation of law the mortgage contract secures the debt obligation for the note taken. Therefore, it is the owner of the debt obligation represented by the note that owns the mortgage and the equitable right to foreclose. PETE's right to enforce the instrument does not provide PETE the right to enforce the mortgage unless PETE is the owner of the mortgage loan contract. *See Beltway Capital, LLC v. The Greens COA, Inc., et al.*, Case No. 5D13-3148, Opinion Filed December 5, 2014, (Fla. 5th DCA 2014) ("an assignee of the first mortgagee is created by operation of law through ownership of the loan, not by written assignment of the mortgage, much less direct written assignment from the original lender."), *accord Fed Nat'I Mortg. Ass'n* v. *Kensington of Royal Palm Beach Condo, Ass'n, Inc.*, 2012 WL 2365268 (Fla. 15th Cir. 2012); *Oriole Golf & Tennis Club Condo, One J Ass'n, Inc*. v. *Calbo*, No, 03-CIV-21883, 2004 WL 6039691 (S.D. Fla, Jan. 22, 2004) (Hoeveler, J,); *Fed Nat'l Mortg, Ass'n* v. *Countryside Master Ass'n, Inc.*, Case No 12-1790-CA (Fla. 20th Cir, 2012) (Order dated Oct. 3, 2012); *Coral Springs Townhomes II Condo, Ass'n, Inc. v. Fed. Nat'l Mortg. Ass'n*, Case No. 12-CA-25485 (08) (Fla. 17th Cir. 2012) (Order dated Apr, 22, 2013); *The Hamptons at Metrowest Condo. Ass'n, Inc. v. Fed Nat'l Mortg Ass'n*, Case No. 2011-CA-l5322-0 (Fla. 9th Cir. 2011) (Order dated May 17, 2012); *Avanti Condo. Ass'n, Inc. v. Fed Nat'l Mortg. Ass'n*, Case No. 16-2012-CC-009329 (Duval Cnty. Ct. 2012) (Order dated May 23, 2013).

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168. The servicers are concealing the fact that the vast majority of promissory notes are being transferred, sold, and assigned by lengthy contracts with extensive electronic "live" schedules of loans sold as exhibits to those contracts.

169. Another critical fact is that these loans and notes are often the subject of litigation, demands, or claims by their owners for repurchase or substitution for frauds that were committed against both borrowers and investors.

170. Also, title and mortgage insurers may be guiding the servicing of the loan as well as any settlement.

171. Foreclosure counsel, foreclosure defense counsel, and many Courts are making assumptions as to what remedy a foreclosing Plaintiff is seeking.

172. The focus has been on standing and who has the authority or legal right to enforce a Defendant's note. However, in many cases the Plaintiff is not suing to enforce the note obligation, but is suing on the borrower's mortgage.

WALL STREET'S MANUFACTURE OF MODERN MORTGAGE PRODUCTS LED TO AGGRESSIVE ORIGINATION PRACTICES, LAW UNDERWRITING, FRAUD & BORROWER DEFAULTS

173. These high-risk mortgage loans and lending/borrowing practices became the norm as the behavior of lenders changed dramatically with Wall Street's dangling of easy money. TPOs driven by the easy, fast, and big money of Wall Street, offered more and more loans to higher-risk borrowers, including undocumented illegal immigrants. A decade earlier, all a borrower needed to get a mortgage loan was to meet the 4C's of credit.

174. However, from 2002 to 2007, virtually every American would receive dozens of mortgage offers in their mailboxes as well as be bombarded by telemarketers in boiler-rooms promising them fast and easy cash in cash-out refinancing.

175. Lending standards deteriorated dramatically, particularly between 2004 and 2007, as the government-sponsored enterprise (GSE) mortgage market share (i.e. the share of Fannie Mae and Freddie Mac, which specialized in conventional, conforming, non-subprime mortgages) declined. The share of private label securitization grew, rising to more than half of all mortgage securitizations in this period.[24]

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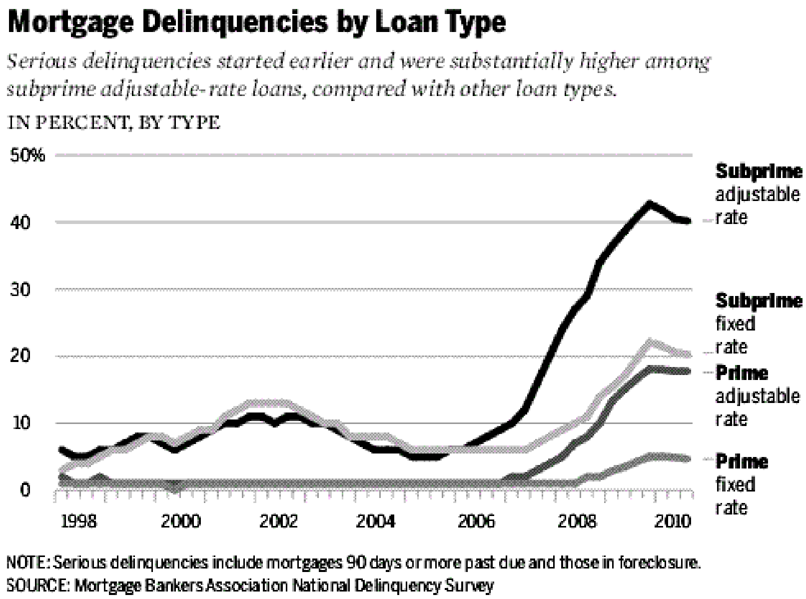
176. As shown in the chart below, prior to the recent financial and mortgage crisis, historically less than 2% of homebuyers lost their homes to foreclosure. However, by 2009 over 40% of subprime adjustable rate mortgages were past due. Subprime mortgages grew from 5% of total originations ($35 billion) in 1994 to 20% ($600 billion) in 2006. In addition to underwriting higher-risk borrowers, lenders and the TPOs aggressive marketed progressively riskier loan options with unheard of borrowing incentives.



177. It was not uncommon to see television and radio commercial advertise, no credit, poor credit, bankruptcy, foreclosure, no money, we have a mortgage loan product for you with no or little money down. In 2005, the median down payment for first-time home buyers was 2%, with 43% of those buyers making no down payment whatsoever.[25]

178. This led to a widespread growth in suspected mortgage loan fraud based upon US Department of the Treasury Suspicious Activity Report (“SARS”) report.

179. To push more mortgages and more securities down their respective pipelines, mortgage qualification guidelines became progressively looser. Loan products marketed included stated income, verified assets (“SIVA”) loans; no income, verified assets (“NIVA”) loans that eliminated proof of employment requirements where borrowers only needed to show proof of money in their bank accounts. “No Income, No Assets” (“NINA”) or Ninja

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loans eliminated the need to prove, or even to state any owned assets.[26] All that was required for a mortgage was a good credit score. The absurd had become the ridiculous.

180. Mortgage products became riskier as well. An interest-only adjustable-rate mortgage (ARM), allowed the homeowner to pay only the interest (not principal) of the mortgage during an initial “teaser” period[27] while others, like World Savings marketed a pick-a-pay “payment option” loan that the homeowner had the option to make monthly payments that did not even amortize the interest for the first two or three year initial period of the loan.

181. Nearly one in ten mortgage borrowers in 2005 and 2006 took out these “option ARM” loans, and an estimated one-third of ARMs originated between 2004 and 2006 had “teaser” rates below 4%. After the initial period, monthly payments could double or even triple for what is called payment shock.

182. The proportion of subprime ARM loans made to borrowers with high credit scores that would easily qualify them for conventional mortgages with better terms increased from 41% in 2000 to 61% by 2006. In addition, mortgage brokers and TPOs in many cases received incentives from lenders to offer subprime ARM's even to those with credit ratings that merited a conforming (i.e., non-subprime) loan.[28]

183. Wall Street and their quants with their high-speed and powerful computers and complicated statistical models took over the real estate financing market. Mortgage underwriting standards dropped precipitously during this boom period. The use of automated loan approvals and property evaluations allowed loans to be made without appropriate review and documentation grew exponentially. In 2007, 40% of all subprime loans resulted from automated underwriting.

184. Where there once was a requirement of a 20% down payment for an 80/20 LTV, lenders were now offering loans that provided borrowers with loans of up to 125% of the property’s value. The chairman of the Mortgage Bankers Association claimed that mortgage brokers while profiting from the home loan boom, did not do enough to examine whether borrowers could repay. Mortgage fraud by lenders and borrowers increased enormously.[29]

185. The Financial Crisis Inquiry Commission, in their January 2011 report, summarized that mortgage lenders ignored the 4’Cs of credit. Eager to get borrowers into their pipeline, TPOs and lenders took borrower's qualifications on faith, often with a “willful and

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blind disregard" for their ability to pay. Nearly 25% of all mortgages made in the first half of 2005 were "interest-only" loans. During the same year, 68% of "option ARM" loans originated by Countrywide Financial and Washington Mutual had low or no-documentation requirements.[30]

186. Where did the money come and go? Who created and collapsed a market for such low-quality private label securitizations? In a Peabody Award winning program, NPR correspondents argued that a "Giant Pool of Money" (represented by $70 trillion in worldwide fixed income investments) sought higher yields than those offered by U.S. Treasury bonds early in the decade. Further, this substantial pool of money (much from the Shadow Banking system) had roughly doubled in size from 2000 to 2007.[31]

187. The supply of relatively safe, income-generating investments had not grown as fast. Investment banks on Wall Street answered this demand with financial innovation such as mortgage-backed securities (MBS) and collateralized debt obligations (CDO). The toxic MBS and CDO products were assigned AAA and safe ratings by the credit rating agencies.[32]

188. In effect, in the modern world of financial intermediation, Wall Street connected this pool of international money to the mortgage market in the U.S., with enormous fees accruing to those throughout the mortgage supply chain. From a mortgage broker selling the loans, to small banks that funded the brokers, to the giant investment banks behind them, everyone in what they called "the game" highly profited for almost a decade. By 2003, the supply of mortgages originated at traditional lending standards had been exhausted. Continued strong demand for MBS and CDO began to drive down lending standards, as long as mortgages could still be sold along the supply chain.

189. Eventually, this speculative bubble proved unsustainable. NPR described it this way in an airing of "The Giant Pool of Money:"

> *"The problem was that even though housing prices were going through the roof, people weren't making any more money. From 2000 to 2007, the median household income stayed flat. And so the more prices rose, the more tenuous the whole thing became. No matter how lax lending standards got, no matter how many exotic mortgage products were created to shoehorn people into homes they couldn't possibly afford, no matter what the mortgage machine tried, the people just couldn't swing it. By late 2006, the average home cost nearly four times what the average family made. Historically it was between two and three times. And mortgage lenders noticed something that they'd almost never seen before. People would close on a house, sign all the mortgage papers, and then default on their very first payment. No loss of a job, no medical emergency, they were underwater before they even started. And although no one could really hear it, that was probably the moment when one of the biggest speculative bubbles in American history popped."*[33]

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190. Until the financial crisis and collapse in 2007, all but a handful of consumer advocates, academics, and insiders understood the complexity of securitization and its potential impact on America. More and more Americans became “sub-prime” borrowers. Traditionally, that moniker was used for borrowers with weakened credit histories and reduced repayment capacity. However, sub-prime came to be regarded as any non-conventional, non-conforming non-A paper loan such as Alt-A and million-dollar-plus Jumbo loans for the wealthy that were over conventional lending limits.

191. Wall Street banks and lenders were fully aware that subprime loans had a higher degree of risk of default than loans to prime borrowers. When a borrower is delinquent in making timely mortgage payments on their loan, the Note Holder, as defined in their note can initiate judicial or non-judicial foreclosure proceedings.

192. America’s National Foreclosure Rate, as reported by the Mortgage Bankers Association, was below 1.5% between 1979 and 2007. Only after Financial Crisis of 2007 and the Great Recession did property foreclosures in American begin to rise in dramatic fashion.

193. The estimated value of American subprime mortgages was $1.3 trillion as of March 2007 with over 7.5 million first-lien subprime mortgages outstanding.[34] From 2004 to 2006, the share of subprime mortgages relative to total originations ranged from 18% - 21% versus less than 10% in 2001 – 2003.[35] The majority of subprime loans were issued in California[36] where subprime lenders such as New Century, IndyMac, Ameriquest and others maintained their headquarters and operations.

194. As more money flowed into mortgage-backed securitization from the Shadow Banking System, there was an overall boom in residential and commercial lending in addition to subprime lending. This was driven by a fast expansion of non-bank independent mortgage originators that despite their smaller share of the market, around 25 percent in 2002, contributed to almost 50 percent of the increase in mortgage credit between 2003 and 2005.[37]

195. In the third quarter of 2007, subprime ARMs, making up only 6.8% of US mortgages outstanding, accounted for 43% of the foreclosures that began during that quarter.[38] By October 2007, approximately 16% of subprime adjustable rate mortgages (ARM) were either 90-day's delinquent or the lender had begun foreclosure proceedings roughly triple the rate of 2005.[39] By January 2008, the delinquency rate had risen to 21% and by May 2008 it

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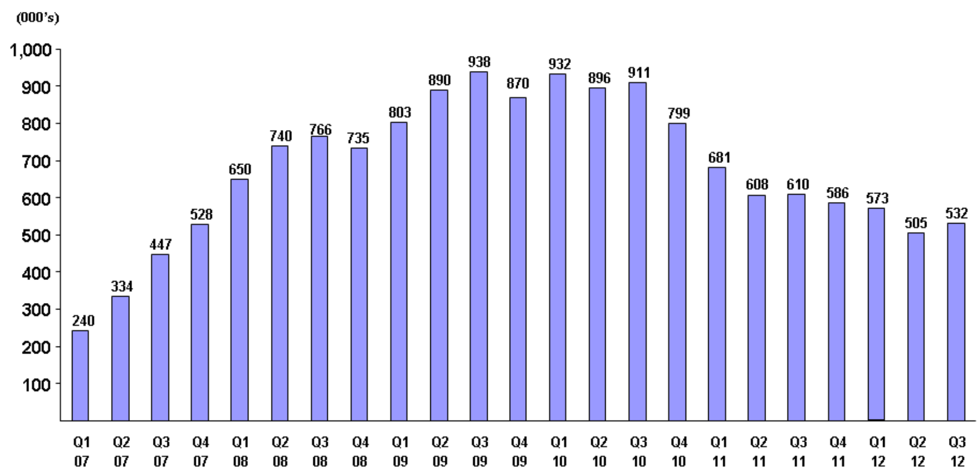
was 25%.[40] During 2007, lenders had begun foreclosure proceedings on nearly 1.3 million properties, a 79% increase over 2006.[41] This increased to 2.3 million in 2008, an 81% increase vs. 2007.[42]

196. By August 2008, 9.2% of all U.S. mortgages outstanding were either delinquent or in foreclosure.[43] By September 2009, this had risen to 14.4%.[44] Between August 2007 and October 2008, 936,439 US residences completed foreclosure.[45] Foreclosures were concentrated in particular states both in terms of the number and rate of foreclosure filings. Ten states accounted for 74% of the foreclosure filings during 2008; the top two (California and Florida) represented 41% of America's foreclosures. The following chart from Realty Trac reflects American Foreclosure Rates from 2007 to 2012.

U.S. Properties With Foreclosure Activity (In Thousands)



SOURCE: Realty Trac Press Release "U.S. Foreclosure Market Report

HIGHER DEFAULTS & FORECLOSURES SHINED A BRIGHT SPOTLIGHT ON THREE DECADES OF FRAUDULENT ORIGINATION, SECURITIZATION & SERVICING FRAUDS & ABUSES

197. The vast increase in foreclosures shined a bright spotlight on the predatory servicing and foreclosure practices that I identified in the early and mid-90s and began reporting on as the new millennium dawned. It also opened the cracks in the foundation of Wall Street's facade of securitization. Courts, which prior to 2007 had seen relatively small numbers of residential and commercial foreclosure actions were now seeing semi-truck's full

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of caseloads of foreclosure actions. They could no longer ignore the obvious frauds, unlawful conduct, and unethical behavior before them.

198. For three decades, servicers and the mortgage industry attempted to keep the façade of the traditional mortgage transaction by intentionally portraying the mortgage servicer as the "lender" and "creditor" through their decades-old fraudulent representations to Florida Courts that they, and not the securitized trust, Fannie Mae, Freddie Mac, FHA, Ginnie Mae or others were both the "owner and holder" of the borrower's promissory note when in fact this was false!

199. After servicers got caught in these intentional misrepresentations in the late nineties and the start of the new millennium, they falsely asserted that Mortgage Electronic Registration Systems Inc. ("MERS") was the holder and owner of borrower's notes.

200. It was only several years ago, that MERS finally publicly acknowledged that it never owned ANY interest in borrowers' promissory notes or any beneficial interest in such notes, despite foreclosing and obtaining tens of thousands of foreclosure judgments in this state under its name.

201. In these Florida foreclosure filings and incumbent pleadings and supporting motions and affidavits, servicers used the name of MERS and claimed that MERS, not the servicer, Fannie Mae, Freddie Mac, or securitized trust was both the owner and holder of the subject promissory note to the foreclosure action. This was a massive fraud upon the borrowers and courts of the state of Florida.

202. In a December 12, 2012 MERS corporate document[46] titled Quick Facts in a section titled Myths vs. Facts MERS prepared to dispel myths about MERS, MERS detailed seven (7) Myths about MERS. Myth 7, directly below, is cut and pasted directly from the actual MERS document:

> **MYTH #7: MERS stores mortgage documents that were previously kept by the servicer or investor.**
>
> MERS doesn't hold any documents on behalf of the servicer or investor. Just as it was prior to MERS, the recorded mortgage or deed of trust is typically held by the servicer, and the note is typically held by the custodian designated by the investor.

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203. ***Tens of thousands of Florida homes were foreclosed on based on the fraudulent premise and averment that MERS <u>was the owner and holder of promissory notes</u> when they finally acknowledged and testified that they never owned promissory notes or ever had any pecuniary interest in a borrower's note.***

204. With the nation experiencing the Great Recession, everyday Americans now asking more questions about Wall Street's machinations and manipulations of the mortgage market, judges and regulators began paying attention to the premise behind America's foreclosure crisis. It didn't take long until almost two decades of my investigation, research, and reporting opened the gates and flooded the dams that Wall Street, banks, servicers, lawyers, and their lawyers had been concealing for three decades, since their cover-up of the RTC debacle.

205. With increasing foreclosures, a new cottage industry of foreclosure defense lawyers and law firms popped up to combat their foreclosure mill counterparts. However, the experience and expertise of consumer lawyers in tackling the complexities of a modern-day mortgage transaction left many in despair for the right answers.

206. Few consumer lawyers have the knowledge, experience, and expertise to battle a well-armed foe. Despite their knack to shooting themselves in the foot, foreclosure mill lawyers win the majority of foreclosure lawsuits due to the inexperience and inability of most consumer lawyers and judges to understand the complexities of a modern-day mortgage transaction. There is no such thing as a simple foreclosure as most foreclosure counsel are apt to claim.

207. The foreclosure mill law firms utilized by the banks and default servicing industry consisted mainly of overworked and underpaid paralegals pushing and executing legal papers without the supervision of real lawyers, who were few and far between in each firm.

208. Foreclosure law firms are commonly referred to as foreclosure mills for their automated and factory-like assembly line approach to their practice of law. Instead of taking a diligent and professional approach to filing foreclosure actions, foreclosure mill lawyers ignored their ethical duties and responsibilities.

209. Instead, they used pre-templated pleadings (some designed by this court) and exhibits that were knowingly false and even fraudulent averments in automated legal

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processes, specially designed to not only promulgate illegal foreclosure actions, but to cover-up and conceal the tracks of their unlawful behavior.

210. Robo-signing was only symptomatic of a much larger problem. The reality was and still is that the decades-old legacy processes, policies, and computer systems and programs employed by the mortgage servicing industry, are fatally flawed, unreliable, and untrustworthy. Further complicating the process is that they could not be scaled to handle the massive wave of foreclosures and human interaction and attention that were necessary when the foreclosure crisis hit in 2007.

211. Servicers were unprepared and ill-equipped to deal with the unprecedented wave of delinquencies when the crisis hit. For decades they merely had to accept and process payments and send only about two percent of loans to foreclosure or “special servicing.” When faced with huge defaults and double-digit delinquencies, the system broke down.[47]

212. They built the entire servicing industry on automation and with paperless process to process payments, not make modifications or adjustments to loans.

213. The problem then and now is that their decade's old (i.e. legacy) assembly line processes, procedures, and systems were not retooled to keep pace and abreast of the complexities of the modern mortgage transactions Wall Street was creating. While Wall Street pushed the mortgage manufacturing and production lines to their “theoretical” limits, their models ignored an outdated foreclosure process that had been operating illegally for almost three decades.

214. The industry’s attempt to prosecute foreclosures from the old “paper document” days of the “originate to hold” mortgage model, turned a willful blind eye to the reality of the massive amount of data and document evidence necessary to foreclose in the modern “originate to sell” mortgage model.

215. In essence, all of the movement, sale, transfer, and pledges of the mortgage loans and their original wet-ink promissory notes were being accomplished by contracts and agreement under Article 9 of the Uniform Commercial Code (“UCC”) that were tracked by a series of lighting fast computer systems. However, the digits outpaced the ability to track and create the necessary paper trail, so when default came, the servicers and banks used UCC Article 3 to foreclose on borrower’s properties and manufacture the paperwork necessary to

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foreclose when known gaps in chains, missing documentation, records and other document deficiencies and defects were identified in the collateral file.

216. These mortgage loans even received their own pet moniker, “scratch and dent.”

217. BusinessWeek profiled one purchaser of scratch and dent loans, Kondaur Capital Corporation. It described ***scratch and dent mortgages*** **that are purchased as residential loans that include story loans, hyper-defaulted loans, loans secured by unique properties,** ***loans with origination fraud, loans with regulatory violations, and loans rejected for investor purchase***.[48] (emphasis added)

218. The industry's hubris was so great that they advertised and marketed their crimes in the open. Banking magazine articles, industry publications, websites, advertisements, presentations, white papers and industry seminars all described the problems and issues they faced with missing documents, assignments, notes, and even fraud.

219. The 30-years of evidence at my disposal would be too cumbersome to provide for the court, but a new paper I shall release shortly will describe in detail how the industry has engaged in a massive evidence spoliation effort supported by forgery, perjury, and subornation of perjury and business processes to conceal known document defects and deficiencies that would render some notes unenforceable and some debt obligations cancelled.

220. As such, I am detailing and providing a sampling of data, reports, and information I have that will evidence how pervasive and pandemic the spoliation and fraud committed by America’s servicers is Florida and other national courtrooms is.

221. An examination of 30-years of industry publications and papers illustrate many of the problem issues, deficiencies and defects that the industry attempts to cure and are commonly termed “exceptions” by document custodians, servicers, and trustees. Clearing exceptions is another key buzzword in the industry.

222. The exceptions were created by uniform industry document custody processes and procedures that were flawed. These included:

- Endorsing original wet-ink promissory notes in blank.
- Using undated and facsimile stamps for endorsements.
- Creating Assignments of mortgages/notes in blank and pre-notarizing such assignments.

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- Placing endorsements on blank pieces of paper unattached to original wet-ink promissory notes.
- Placing unattached blank pieces of paper with endorsements on them in a collateral file and not attaching them to the original notes.
- Removing and attaching different allonges.
- Creating endorsements years after alleged sale/transfer.
- Not transferring physical possession of original wet-ink promissory notes to their intended trusts and owners.
- Using images of true and certified copies of original notes as they existed at origination in foreclosures, not as they appeared on date of foreclosure.
- Not foreclosing in the name of Fannie Mae, Freddie Mac, or the true owners of the notes.
- Not recording each assignment of mortgage/note.
- Creating and recording assignments of mortgage/deeds and/or notes without any sale or transfer of the note.
- Not documenting and recording transfers and assignments by contracts of notes and loans.
- Concealing the servicing and holder status of loans for Federal Home Loan Banks, mortgage insurers and others.
- Recreating chain of titles with bogus title curative measures.
- Creating a chain of servicers instead of owners.
- Concealing the warehouse lenders and wholesalers who funded the loans.

"FIXING" HOLDER STATUS, OWNERSHIP, DOCUMENT DEFICIENCIES & DEFECTS & ENDORSEMENT CHAINS WITH FABRICATED ALLONGES & ENDORSEMENTS

223. One of the areas of massive foreclosure fraud today surrounds the use of endorsements and allonges.

224. Lynn Szymoniak, a friend and colleague, is a Florida attorney who on behalf of the U.S. Government forced the banks to date to pay out over $95 Million to HUD to be used for foreclosure relief. Szymoniak took her share of the settlement and founded the Housing

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Justice Foundation, an organization dedicated to helping the victims of foreclosure fraud and exposing the crimes of predatory lenders.

225. On their website, the Housing Justice Foundation lists a number of cases in Florida and throughout the country that deal with these “document remediation” and “title curative” practices. In a posting titled “Suddenly Appearing Endorsements Used by Bank-Trustees in Foreclosures,” Szymoniak details a number of cases where endorsements and allonges became a focus of the litigation.

226. In her article, Szymoniak discusses “42 cases with suddenly appearing (often called “ta-da”) endorsements.” I highlight and source a few comments below:

United States Bankruptcy Court, S.D. of California

“The Court is concerned, as a result, that OneWest does not hold the Endorsed Note. But, perhaps more significantly, the Court is concerned that OneWest has determined that business expediency and cost containment are more important than complete candor with the courts.”[49]

Supreme Court of New Mexico

“Without explanation, the note introduced at trial differed significantly from the original note attached to the foreclosure complaint, despite testimony at trial that the Bank of New York had physical possession of the Romeros’ note from the time the foreclosure complaint was filed on April 1, 2008. Neither the unendorsed note nor the twice-indorsed note establishes the Bank as a holder.”

The trial copy of the Romero’s note contained two undated indorsements: a blank indorsement by Equity One and a special indorsement by Equity One to JP Morgan Chase. Although we agree with the Bank that if the Romero’s note contained only a blank indorsement from Equity One, the blank indorsement would have established the Bank as a Holder because the Bank would have been in possession of bearer paper, that is not the situation before us. The Bank’s copy of the Romero’s note contained two indorsements, and the restrictive, special indorsement to JP Morgan Chase established JP Morgan Chase as the proper holder of the Romero’s note absent some evidence by JP Morgan Chase to the contrary. (citation omitted).

Rather than demonstrate timely ownership of the note and mortgage through JP Morgan Chase, the Bank of New York urges this Court to infer that the special indorsement was a mistake and that we should rely only on the blank indorsement. We are not persuaded. The Bank provides no authority and we know of none that exists to support its argument that the payment restrictions created by a special indorsement can be ignored contrary to our long-held rule on indorsements and the rights they create…[50]

Circuit Court of St. John’s County, Florida

“Additionally, the Court is concerned with the authenticity of the documents filed. Plaintiff is asking the Court to ignore the documents filed in the first two Complaints, and to rule solely on the most recent Complaint. However, all three of these documents appear to be inconsistent with one another and have changed as needed to benefit the Plaintiff. For instance, the blank Allonge as filed on both February 10, 2009, and September 22, 2009, remarkably turned into a stamped Allonge on March 3, 2010, with Wells Fargo’s information in the previously blank area. This transformation is most interesting, given that it was argued that the Office of the Comptroller of the Currency closed the First National Bank of Nevada on July 25, 2008, and the stamp did not appear in either of the February or September 2009 filings. Similarly, Assignments appeared and vanished as needed, and the Allonge changed to fit the Plaintiff’s particular purpose at that moment. Accordingly, an evidentiary hearing will be held to determine the authenticity of the Allonge and the appearance of the Assignment.”[51]

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227. Another distinguished colleague and friend, New York bankruptcy attorney Linda Tirelli has been working with me and other colleagues in exposing these very same "remediation" practices. Their "ta-da" Perry Mason-like moments of evidence all of a sudden appearing in foreclosure and bankruptcy litigation are not amusing to either one of us.

228. On March 12, 2014, the New York Post published a story on Ms. Terelli's work wherein it wrote:

> Wells Fargo, the nation's biggest mortgage servicer, appears to have set up ***detailed internal procedures*** to ***fabricate foreclosure papers on demand***, according to allegations in papers filed Tuesday in a New York federal court. In a filing in New York's Southern District in White Plains for a local homeowner in bankruptcy, attorney Linda Tirelli described a **150-page Wells Fargo Foreclosure Attorney Procedures Manual** created November 9, 2011 and updated February 24, 2012. According to court papers, the Manual details "***a procedure for processing [mortgage] notes without endorsements and <u>obtaining endorsements and allonges</u>***."

229. The Wells Fargo's manual Ms. Terilli speaks of is even more disconcerting when you review just a few of the steps in its numerous processes as reflected below:

> Attorney: If an allonge is still needed after a note has been endorsed, forward the allonge attachment to Wells Fargo Default Docs area via email address Defaultallongemailbox@wellsfargo.com and add step Y44, ATTORNEY REQUESTED ALLONGE, to FOR3
>
> - WFHM Default Docs Team: If property is located in an original doc state and attorney has the original note, review the allonge attachment to determine if we have signing authority to execute internally.
> - If WFHM does have signing authority, enter log code FCALGI (ALLONGE SENT FOR INTERNAL SIGNATURE)
> - If WFHM does not have signing authority, enter log code FCALGE (ALLONGE SENT OUT FOR EXECUTION) and mail document for 3rd party signature.
> - After allonge has been executed, enter log code FCALGA (ALLONGE COMPLETED/RETURNED TO ATTORNEY).
> - Complete the Y44 actual date with the date allonge was returned to attorney.

230. The Wells Fargo manual may be reviewed and downloaded at <u>http://stopforeclosurefraud.com/wp-content/uploads/2014/03/foreclosure_attorney_procedure_manual-1.pdf</u> and is attached as Exhibit F-1.

231. As demonstrated, the practice of Wells Fargo and others in the industry is to tamper with the collateral file, remove documents, destroy documents, create documents and even create endorsements and allonges after the fact.

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232. This manual, is the foundation for the strong rebuke of Wells Fargo in recent 30-page opinion (attached as Exhibit G) of Federal Bankruptcy Judge Robert Drain in New York's Southern District wherein in his opinion, Judge Drain stated: "… [T]he blank indorsement, upon which Wells Fargo is relying, was forged," "Nevertheless it does show a general willingness and practice on Wells Fargo's part to create documentary evidence, after-the-fact, when enforcing its claims, WHICH IS EXTRAORDINARY," wrote Judge Drain with emphasis.

233. This was on the heals of another major defeat for Wells Fargo wherein a family who had actually paid off their mortgage was unlawfully foreclosure on by Wells Fargo and the Judge awarded over $3 million in punitive and compensatory damages by Judge R. Brent Elliott of Missouri's 43rd Judicial Circuit.

234. In this Missouri case, the automated robotic foreclosure, evidence and witness processes that I complain of and comment on here was in perfect focus for this Honorable Court to understand when the corporate witness for Wells Fargo testified that: ***"I'm not here as a human being. I'm here as a representative of Wells Fargo."***

235. In his opinion attached as Exhibit H, Judge Elliott chastised Wells Fargo for their "outrageous and reprehensible" decisions and "deceptive and intentional conduct" that "displayed a complete and total disregard for the rights of the borrowers.

236. He went on to state "Defendant Wells Fargo operated from a position of superiority provided by its enormous wealth." "Wells Fargo's decision took advantage of an obviously financially vulnerable family," the judge continued, noting that Wells Fargo showed no evidence of remorse for the harm caused. "***In fact, the Court recalls the lack of remorse and humanity illustrated by a Wells Fargo corporate representative who testified, 'I'm not here as a human being. I'm here as a representative of Wells Fargo,***' " the judge wrote.

237. As shown herein, Wells Fargo is not the only servicer or bank involved in fabricating allonges and endorsements to fix document defects and deficiencies.

238. As shown in the attached deposition (Exhibit J) of a JPMorgan Chase document custody facility employee, the creation of allonges and endorsements after the fact and after

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litigation is contemplated or been initiated. In fact, the allonge and endorsement fabrication is created in order to fix problems and issues with the collateral file.

239. Exhibit J details the entire Chase process of creating alleged allonges after the fact and endorsing “blank pieces of paper” and not the note itself. In the deposition, Ms.

> “Q Okay. So we’ve talked about two instances where nothing really needs to be done, the file–the collateral file is correct. Right?
>
> A Yes.
>
> Q But the collateral file is not always correct. Right?
>
> A Yes.
>
> Q Which is why you have to go to custody and do the extra research. Right?
>
> A Yes.
>
> Q So what happens if the endorsement on the note is not correct? What do you do?
>
> A If the endorsement’s not correct, sometimes we may void that endorsement and create an allonge to take place of that endorsement, if we have signing authority for it.
>
> Q For the allonge?
>
> A For the endorsement, the original lender or whoever gave it to that particular company.”

240. Yet, based on these decisions and on my own personal investigation, research, knowledge, experience, and expertise, servicers and their foreclosure counsel are still providing and filing false and fraudulent pleadings, affidavits, and evidence in judicial foreclosure and mortgage actions in the state of Florida despite consent agreements and multi-billion dollar settlements with state and federal regulators.

241. If a lender is still in business and has granted Wells Fargo such authority, then they may be able to ratify such endorsements if properly and lawfully executed.

242. What is most alarming is the concealment of evidence that occurs to conceal differing chains of titles, owners, and missing documentation. If other evidence showing a different chain is destroyed or if the endorsement was placed on a blank piece of paper and

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days, months, or years later attached to a note, then the servicers and Plaintiffs in foreclosure actions may have to answer to regulators, this and other courts for their conduct.

243. In fact, a common industry practice was to create an "unattached" and an undated "endorsed in blank" piece of paper the industry wrongly inferred was an "allonge!"

244. The unattached piece of paper with an executed endorsement upon its face would then be placed in a file with or without a note, scanned and imaged into an imaging system and then discarded, destroyed, concealed, or even later attached if necessary, upon default by a borrower when a servicer needed to create evidence of note ownership or holder status.

245. Under UCC Article 3, "indorsement" means a signature "**on** an instrument, not on a *blank piece of paper*."

246. In order for the endorsement on an allonge to be valid, the proper document custody process that should have been followed was to: a) determine if room existed on the last page of the note or its backside to see if any room existed for the endorsement; b) only if no room existed, a blank piece of paper should be firmly affixed to the "last page" of the original wet-ink note, so as to prevent its removal and replacement; c) the first page on the face of the note should then be stamped "Allonge Attached;" d) identifying information on the note such as origination date, borrower name, property address, loan number etc. should be placed upon the blank piece of paper; and then e) the endorsement stamp and signature should be placed on the affixed piece of paper to the note (i.e. an allonge).

247. An unattached to an original note blank piece of paper is not an allonge. An unattached to an original note blank piece of paper with an endorsement on its face is not an allonge either. If the endorsement is placed upon the blank piece of paper and then the endorsement and signature are placed on the blank piece of paper while unattached, all someone has endorsed was the blank piece of paper, not the original note itself.

248. Darrell W. Pierce is a Michigan lawyer for the national law firm of Dykema Gossett. Mr. Pierce served as member of the Article 9 Study Committee for the Permanent Editorial Board for the Uniform Commercial Code, as Chair of the Article 9 Filing Project and as the primary drafter of the International Association of Commercial Administrators' Model Administrative Rules for Article 9 filing offices. He is a frequent lecturer and writer regarding UCC matters.[52]

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249. Mr. Pierce authored an article for the Association of Corporate Counsel titled "Allonges: Separate Indorsements Not Effective Unless Affixed." In this article, Mr. Pierce exposes the lender's "dirty secret" of the motives and use of allonges by the mortgage industry when he writes:

> Secured lenders routinely take pledges of instruments (including negotiable instruments under UCC Article 3 and other promissory notes) as collateral. Instruments are subject to special priority rules. Security interests perfected merely by filing a UCC1 financing statement are junior to security interests perfected by possession, without regard to time of filing or possession.
>
> Security interests perfected by "control" (possession plus indorsement) are senior to those perfected merely by filing or possession. Accordingly, secured parties who are relying on instruments as collateral will want to have control over the instruments.
>
> **Instruments may be indorsed to secured parties, b*ut it is a cumbersome process that has to be unwound when the loan is repaid as expected*. It is, therefore, *convenient and common practice to have the requisite indorsements supplied on a <u>separate piece of paper</u>. This keeps the instrument "clean"* so that *it can be returned clean when the secured obligations are paid*. *<u>The separate piece of paper is kept with the instrument but is not typically attached to it</u>*, though the lender or its custodian has authority to do so, at least upon default.**
>
> This practice works well in most cases. **Even though the lender is not yet a "holder" under Article 3, because the indorsement is not attached, the lender has possession and the related loan documents should cause the lender to be a "nonholder in possession of the instrument who has the rights of a holder," that is one who can enforce the instrument as such under UCC §3-301, and compel indorsement under UCC §3-203.**
>
> In addition, **secured parties in (mere) possession have priority over other secured parties except those who have control (possession plus indorsement)**, so the failure to achieve full control does not normally impair priority (no one else will have possession except in rare cases). UCC §9-330(d). ***So, even if a separate indorsement is not initially "affixed" to an instrument, a secured party in possession normally maintains first priority and has the power to negotiate the instrument upon default.***
>
> There are occasions, however, when having an indorsement is critically important. One would be the relatively rare case where one competing secured party has possession for itself as well as for the other competing secured party, so both would be in possession and priority could depend on the effectiveness of an indorsement. Another would be where the maker of a negotiable instrument has defenses against the named payee but the secured party, with the indorsement, would be a holder in due course. Yet another would be an assignment of a note or a casual pledge where the related documents do not clearly provide the lender with the rights of a holder.
>
> Under UCC Article 3, which applies to "negotiable instruments" (as defined in Article 3) and which is commonly applied by courts to non-negotiable instruments, "**indorsement" means a signature "on an instrument… For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument." UCC §3-204(a) (emphasis supplied). Under this rule, a separate assignment document is not sufficient to create the requisite indorsement, unless it is "affixed" to the instrument.**
>
> Some Michigan assignees found out the hard way how important it is to have one's separate indorsement "affixed." In one case, a separate indorsement was not attached to the note in question and the assignee was unwilling to produce the underlying assignment of loans agreement. The court held the separate indorsement was not effective and, because it referenced the unproduced underlying agreement, it did not prove an absolute assignment was intended. *Brown Bark, II, LP v. Bay Are Floor Covering & Design, Inc.,* Case No. 296660, (Mich. Ct. App. May 31, 2011). In the other case, the assignee ultimately had two problems after it took a note and placed it in an envelope with a separate indorsement. Not only was the separate indorsement ineffective because it was not affixed to the note, it turned out the "note" was in fact a color copy of the original note, so the assignee did not even have possession of the note. Without ever having had possession, the assignee did have standing to enforce the note as a lost note under UCC §3-309. *Shaya v. Karam,* Case No. 308905 (Mich. Ct. App. May 6, 2014).
>
> Pledgees and other assignees of notes need to ensure that original notes are delivered to them, and if indorsements are separately provided, that transaction documents properly authorize them to attach the separate indorsements when appropriate.

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250. As shown above, allonges were pre-executed and endorsed on “blank pieces of paper” and then, only upon default, attached to original wet-ink promissory notes to provide “holder status” when in fact, the endorsement was never made ON the original note.

251. This common industry wide practice is designed to keep a clean file and not evidence all the transfers or negotiations of the note. It’s also an admission that the allonge is only attached during default when litigation is contemplated and evidence that no endorsement EVER took place ON the original wet-ink note.

252. Such an industry wide practice allows lenders to conceal all of the contractual transfers of the original note and its income streams which occur by contract and electronic data transfers. This conceals repurchases, repo agreements, double pledges, and other transfers and pledges of the promissory note and its payment stream.

253. In addition to allonges being pre-executed, they are also being fabricated and forged for lenders who no longer exists and went bankrupt years earlier.

254. In a document only provided to me a couple of month ago in deposition where U.S. Bank was the original custodian and is the named “trustee,” I was provided a document that I excerpt below wherein an allonge and endorsement were requested to be created and executed for a bank that was out of business for years.

```
[redacted]
NSPRIV [redacted]8793    SER    2012-02-15-00-00-00    3BL    NOT APPLIED TO COV LINE - TSDOC#443812931
DOC=BILDOC NOTE: PENDING DISB EXISTS FOR SAME AMOUNTSOURCE=SCAN COVLINE=351 COVAMT=205000POLICY#FLA85721
COVTYP=HOMEOWNERSAMERICAN STRATEGIC INSURANCE COMPANYEFFDTE=02/23/12 EXPDTE=02/23/13 PRINTDTE=02/08/12TOTAL
PREM=800 AMT DUE=800 PREM STATUS=
NSPRIV [redacted]8793    SER    2012-02-23-00-00-00    JXF    WORKED SPECIAL REQUEST FOR DOC AUDITRECEIVED
REQUEST FOR AN ALLONGE FROM THE LEGAL LIAISON DEFAULT RESOLUTION FROM AURORA BANK FSB IN INDIANPOLIS
NSPRIV [redacted]8793    SER    2012-02-23-00-00-00    JXF    WORKED SPECIAL REQUEST FOR DOC
AUDITALLONGE(INDYMAC BANK F.S.B. TO RESIDENTIAL FUNDING COMPANY LLC)SENT FOR EXECUTION
NSPRIV [redacted]8793    SER    2012-02-24-00-00-00    JXF    WORKED SPECIAL REQUEST FOR DOC AUDITRECEIVED
EMAIL FROM MAGDALENA KAROL FROM IN OFFICETO FORWARD HER A COPY ONCE ALLONGE IS SIGNED
NSPRIV [redacted]8793    SER    2012-02-29-00-00-00    JXF    WORKED SPECIAL REQUEST FOR DOC AUDITRECEIVED
A PREPARED ALLONGE, FORWARD COPY  TO MAGDALENA KAROL
NSPRIV [redacted]8793    FOR    2012-03-01-00-00-00    (LD    SHANNON BUSH - (CONT) -  APPROVAL.
NSPRIV [redacted]8793    FOR    2012-03-01-00-00-00    [redacted]    [redacted]
```

255. Some may ask what does this mean? The attorney has already been sent the alleged “original note” and if an endorsement is missing, asks for one to be created. Such as endorsement can only be on a separate “piece of blank paper” (i.e. fabricated allonge) that is then sent to the attorney after a Wells Fargo employee “executes the endorsement.”

256. Numerous Florida Courts have cited *Booker v. Sarasota, Inc.*, 707 So. 2d 886, 887 (Fla. 1st DCA 1998) (quoting Black’s Law Dictionary 76 (6th ed. 1990)) that “*an allonge is a*

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piece of paper annexed to a negotiable instrument or promissory note, on which to write endorsements for which there is no room on the instrument itself. Such must be so firmly affixed thereto as to become a part thereof."

257. Thus, the fraudulent allonge practices described herein are troublesome for the industry. When there are no dates on the endorsement; room on the face of the note; no reference of allonge on the front of the note; and a ta da moment when an endorsement or allonge appear that are different that prior generations of the note, any lawyer or judge must question the legal validity and propriety of the note and/or allonge submitted.

258. The mere fact that an allonge was scanned and imaged into a servicer or document custodian's imaging system is prima facie evidence that the allonge was not attached and was scanned as a separate piece of blank paper.

259. The failure to provide tracking data and information from a reliable system of record that specifies a) the date a blank piece of paper was attached to a note; b) the reason for a blank piece of paper being attached; c) the person/entity who attached the blank piece of paper; d) the date the endorsement was placed on the blank piece of paper "attached" to the note; e) the date the endorsement was executed on the blank piece of paper "attached" to the note; f) the person/entity who placed and/or executed the blank piece of paper "attached" to the note; and g) information that reflects that no other allonge was removed and the endorsement was placed ON the note is problematic for any servicer attempting to overcome an objection to the allonge and its endorsement.

260. For several years now, my colleagues and I have been documenting the failed securitization issues of banks and lenders not transferring the original documents and promissory notes to their alleged intended securitized trusts and owners.

261. The lack of proper transfers and in fact, improper transfers to others created a series of document defects and deficiencies that included, but are not limited to the following:

a) Broken endorsement chains (A – B, B – C, D – E);
b) Lost and missing original notes;
c) Color laser copy notes submitted as originals;
d) Two claimed original notes submitted to a court;

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e) A 50% reduced copy of an image introduced and submitted to a Court as an original wet-ink promissory note;
f) Original Notes without signatures on endorsements;
g) Notes with skipping endorsements;
h) Notes with endorsements on copies and not on originals;
i) Notes with endorsements on unattached allonges;
j) Allonges unattached to their original wet-ink notes
k) Allonges copies and taken from other notes and placed onto a different note
l) Allonges unattached to original notes with blank endorsements
m) Notes never endorsed
n) Allonges never dated
o) Assignments in blank and pre-notarized and dated for later fill-ins by unknown Assignors and Assignees;
p) Allonges in blank and pre-executed and undated for later fill-ins by unknown parties;
q) Double pledges of the same note and/or loan to different parties;
r) Robo-signed assignments of mortgages and notes;
s) Post-dated assignments of mortgages and notes;
t) Assignments executed with no lawful authority;
u) Assignors assigning to themselves;
v) Two different parties claiming the ownership of the same note/loan.

RESOLUTION TRUST CORPORATION ("RTC") THE "GENESIS" OF 30-YEARS OF INSTITUTIONALIZED DEFAULT SERVICING INDUSTRY DEFICIENT PROCESSES & FRAUD

262. These practices are not new, but a continuation of 30-years of practices that were created during the days of the Resolution Trust Corporation's disposal of troubled and "toxic" assets. In October 1990, one year after the RTC was formed; a securitization program was established to facilitate the sale of troubled mortgage loans and assets. Mortgage loans were the largest single category of assets in the RTC's inventory. In August 1990, the total volume

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of those loans, held in RTC-controlled institutions, was estimated to be more than $34 billion. The size of this portfolio led the RTC to explore the concept of securitization as a method of broadening the potential range of mortgage loan purchasers because the market for mortgage-backed securities was becoming large and well developed.

263. The RTC's single-family mortgage loan portfolio was unique because most of the loans did not conform to the standards required by Fannie Mae or Freddie Mac. Since most of the RTC's loans were originated for retention in the lender's portfolio, some of the loan underwriting criteria deviated from normal secondary market standards. For example, there were loans with cross-collateralization, loans with non-standard interest rate indexes, loans with high loan-to-value ratios, loans with no mortgage insurance, and many loans that had *significant* *<u>documentation deficiencies</u>*.[53]

264. The RTC standardized the review process implemented by its contractors for due diligence (a thorough review of the individual loans or properties) and loan sale advisory services. However, the mortgage loans it held suffered from serious credit and *delinquency problems and* *<u>document deficiencies</u>*. Consequently, most buyers of the RTC mortgage loan packages tended to be investment bankers and junk buyers. Wall Street investment bankers, like Bear Stearns, created their own special servicing firms such as EMC Mortgage. Litton Loan, Fairbanks Financial, and Ocwen were other servicers with investment bank affiliations who specialized in purchasing *under-performing and non-performing distressed debts*, many with known *<u>document deficiencies</u>*, from the RTC and FDIC. They then remediated the issues and sold the loans to third-party investors while *maintaining the special servicing of the loans*, including foreclosure and collection activities.[54]

265. Many of these remediation measures were created to resolve RTC/FDIC loan document deficiencies. They included robo-signing, manufacturing defaults to start foreclosures, lost note claims and affidavits, blank assignments, new and altered allonges, and endorsements after the fact. These remediation efforts were an attempt to clean or *scrub* the collateral/custodial files for such loans, with a willful blind eye as to the motives and reasons behind so many document deficiencies and defects.

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30-YEARS OF KNOWN DOCUMENT DEFICIENCIES, DEFECTS & UNRELIABLE, UNTRUSTWORTHY, & PROBLEM SERVICING & COLLATERAL FILES, SYSTEMS, DATA, & INFORMATION

266. Nationwide Title Clearing ("NTC") is a Florida corporation that markets itself as a vendor to the mortgage and default servicing industry in order to "fix" these known deficiencies and defects. Its executives have authored a number of white papers and reports detailing the issues the industry faces.

267. NTC is a leading research and document processing service provider to the residential mortgage industry and *serves mortgage lenders, servicers and investors, including <u>eight of the top ten residential mortgage servicers</u> in the country*. NTC was established in 1991, and they claim to understand the "*complex changes that have taken place over the past 20 years*" in the industry.[55]

268. As such, NTC is in a unique "insider position" to witness, understand, analyze, document, and "fix" the evidence required for Florida foreclosure actions. In a White Paper titled Understanding Current Assignment Verification Practices (Exhibit E) authored by NTC executive, Jeremy Pomerantz, NTC wrote:

> The scrutiny of the completeness of collateral review and valid assignment chains has hit the mortgage industry hard, primarily because the *industry went from a securitization process that didn't require assignments to be recorded* to a <u>heavily scrutinized process</u> <u>requiring complete chains to be recorded at the county</u>. ***This has made compliance extremely difficult for many lenders and others, especially because the industry went for so many years without this level of scrutiny***.
>
> As a result, most *lenders-servicers have actually inherited these problems* rather than caused them directly. The result is a new industry-wide focus on assignment verification as part of the mortgage assignment process. This verification is accomplished by conducting a *thorough collateral documentation review* and mortgage/assignment chain audit in order to verify and execute mortgage assignments.
>
> The problem is that many mortgage servicers do not have the resources or procedures in place to ensure that this assignment verification and extensive review is conducted. Additionally, ***there are practices and procedures that are potentially very detrimental that must be explored and avoided***. As difficult as it may be to establish the process initially, omitting assignment verification prior to preparing assignments in today's marketplace will open the door to a multitude of risks.[56]
>
> **…if your portfolio includes complicated acquisitions or securitizations it is very likely that there are deeper issues in your loan files that you need to uncover and resolve before assignment processing can occur. As a note, this process should be completed long before a loan goes into default if at all possible.**
>
> **There is no magic wand that will make your loan files and assignment chains automatically 100% accurate. It takes a physical review of the recorded documents, detailed land records**

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research and industry experience to locate deficiencies so they can be legally mitigated and the loan assigned.[57]

Your assignment is only as accurate as the information used to prepare it. So the obvious question is, how reliable is my source documentation and what do I do about it? The answer is *you have to implement a reliable procedure to conduct the collateral documentation review* and mortgage/assignment chain audit on your source documentation prior to assignment preparation. You may also benefit by obtaining a partner to consult and review your process and source documentation for any other hidden risks.[58]

Conducting a **collateral documentation review** and mortgage/ assignment chain audit as part of your assignment process ***mitigates these risks***:

- Exposure to costly statutory penalties for late lien releases
- **Added litigation by borrowers**
- **Delays and litigation in the foreclosure process**
- **Repurchasing loans from investors or buyers**
- **Threatened lien position**
- **Exposure from clouded title**

If most mortgage servicers attempted to adequately review 100% of the loans in their portfolios, the cost would be prohibitive.[59]

269. However, what was most astonishing, were the following admissions made by NTC and Mr. Pomerantz in their white paper about how NTC helps servicers put the

Resolving assignment <u>chain issues for seasoned and complicated portfolios</u> is similar to <u>taking the pieces of a grenade that exploded and putting it back together again</u>. Your review should examine all three of these sources to conduct an accurate mortgage and assignment chain audit:

- Collateral File
- Imaging systems
- Actual land records

<u>It takes an expert to unearth all the facts to determine the complete and accurate assignment chain</u>. Relying on only one source of information would be looking at only one piece of the puzzle and is likely to lead you in the wrong direction a percentage of the time. Keep in mind, just because a loan is supposed to be in MERS doesn't always mean it is. We've found many examples of loans never having been assigned to MERS on land record, as well as loans that have been assigned multiple times out of MERS by prior investors/servicers, I would assume due to a poor review and preparation process as detailed above.

The purpose of the review is to ensure that you have controls in place and supporting documentation to verify that each assignment is prepared accurately and legally. Reviews based on all three parts (collateral files, imaging systems and on property reports gathered from actual land records), ensures the highest level of accuracy.[60]

Complicated acquisitions or securitizations should be clearly identified as trouble spots in your portfolio.

270. Even more alarming was NTC's further admissions of how unreliable, inaccurate, and untrustworthy servicer and document custodian files, records, and systems that produce original paper, copy paper, and imaging copy evidence for Florida courts were. NTC and Pomerantz went on to write:

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> **Misleading Collateral Files.** *Relying solely on the contents of what was in a collateral file can be misleading. As an example, collateral files commonly have old unrecorded fully executed original assignments in the file that can appear to resolve a missing assignment issue*. However, if you blindly recorded this document, you might actually cloud the title by complicating an assignment chain or recording an erroneous assignment without realizing it. You should first verify what assignments were actually recorded at the county to determine if the unrecorded assignment from the collateral file is necessary or not and also to determine what specific assignments are missing, if any.
>
> During our reviews, we *very often* find that the assignment in the file was already recorded, or something entirely different is on record. We've learned you can never be entirely sure unless you check first.
>
> **Downside of Custodial Reports.** It is *no longer a good practice to rely solely on custodial reports as your single source of information for a review of the collateral. Custodians are necessary to verify that the documentation in the collateral file meets agency guidelines. However, it's often discovered that the files are not current* and custodians are not reviewing documents in the same way that an experienced assignment provider would. *While they are likely doing everything they are supposed to be doing to meet agency guidelines, custodians don't confirm what is also on land record, and often try to always match assignments to the endorsement chain, which is sometimes impossible to exactly match***.** Hence we sometimes find that the assignment requested by a custodian, if prepared and recorded, could inadvertently cloud title rather than fix the chain. We often have to go back to the custodian on behalf of clients and explain what documentation is needed to verify a chain of assignments. It is good to keep in mind that custodians have specific purpose and it is not to verify assignment chains, so use these reports only in combination with other sources and compare all the pieces.
>
> **Drawbacks to Imaging Systems.** *Relying exclusively on imaging systems is also problematic. It is very common for the imaging system to be missing a document or to have a document indexed incorrectly.* It will cause you a lot of distress if there is a key document that is actually of record or contained in the collateral file that is not in your image system. This can make it appear that there is a gap in an assignment chain when in fact there may not be or one that can be easily resolved.
>
> *Conversely, it can appear to be in the name of MERS or your firm when in fact there are additional unknown assignments on record. To reiterate, during our reviews, we often find assignments recorded on land records that are not in the imaging system or collateral file.*

271. NTC in its paper has not only bared how weak and inaccurate the systems, processes, paper and imaging records of servicers and document custodians are, but shown the extent that the industry, NTC, and vendors will go to "put the grenade back together" (i.e. evidence spoliation).

INDUSTRY'S ASSIGNMENT PROCESSES & PRACTICES LEADS TO SIGNIFICANT LEGAL ISSUES

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272. The industry created a series of common assignment practices that also led to legal issues with standing and the fraudulent practice of robo-signing. The common assignment processes that were problematic included:

- Preparing pre-notarized and unrecorded "assignments in blank" for mortgages/deeds that were executed and notarized by alleged assignors with assignees left blank to be filled in later.
- Not recording many assignments of mortgages/deeds created.
- Destroying and replacing assignments of mortgages/deeds.
- Creating assignments of mortgages/deeds
- Using MERS to replace assignments.
- Not updating the MERS database.
- Assigning only the mortgage and not the note.
- Not really transferring ownership in the note.
- Not having ownership of the note and mortgage on dates of assignments.
- Using assignments to create assignments of servicers and a chain of servicers, not note owners.

273. To illustrate the assignment in blank issue and one primary motive, one may look to the recommendation below made in the Fall 2000 issue of CMBS WORLD.[61]

> ***Include "in blank" documents in your initial loan package***. Have the law firm ***include executed endorsements "in blank" and assignments "in blank" for all recorded/filed documents***. The trustee should be able to stamp in the required assignment language and move on. ***<u>If you make a practice of having the documents run from your correspondent to the trust without going through your name, notify everyone in advance so that those documents are not listed as an exception.</u>*** This step will automatically reduce the number of exceptions and reduce the level of "artificial stress" that surrounds the securitization.

274. As you can see, it was a common practice for the real lender in many table-funded deals, the wholesaler, to hide and conceal its involvement in the chain and their funding of the loan. These lenders took possession of the original wet-ink note and may have held a blank assignment and blank endorsed note or a blank piece of paper with endorsement placed loosely in the file that were later removed from the file or destroyed.

275. Sometimes, these lenders appear in entries in MERS records, but one rarely sees any note endorsement or assignment of mortgage recorded naming the wholesaler.

276. It is argued by some of my colleagues that the primary motivation for this process was that the loan and note were pre-sold and even transferred, more than once, in advance of the borrower's actual execution of the note and mortgage, thus creating a note with a payee

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that is different than the obligee for the debt since the entity that gave the borrower the funds received at the closing transaction is not the payee on the note.

277. Unless transfers and assignments occurred prior to the borrower's execution of the promissory note, there is no proof that a negotiable instrument was ever created.

278. Unless the debt obligation received at the closing transaction merged with and was suspended under the note as required under Fla. Stat. § 673.3101(2), a negotiable instrument cannot be created as a matter of law. If these transfers or assignments did in fact occur, they occurred prior to the execution of the note and without knowledge of the borrower when he/she executed the note. Either way, the process calls into question whether a valid and enforceable negotiable instrument was ever created under Florida law as a result of these practices.

279. MortgageOrb.com is a leading online news site covering the real estate finance industry. Its daily news wire covers all aspects of the residential and commercial real estate worlds: origination, securitization, servicing, regulatory changes, government policies and the industry's impact on the national and global economics. It features stories and information from industry leading publications such as Servicing Management, Secondary Marketing Executive, and Commercial Mortgage Insight.

280. NTC's Pomerantz and other industry professionals provided their insights on the assignment issues facing the mortgage industry in a MortgageOrb.com story by John Clapp titled "Servicers Still Reeling From Missing Assignments" and published on November 17 2010 as excerpted below:

> **Discrepancies between information contained in county records and information in servicers' files or imaging systems; flimsy placeholders that vaguely indicate a mystery assignee exists; last beneficiaries of record that are no longer in business, let alone easy to locate and persuade to execute a document - these are only a handful of the considerations with which servicers must contend when trying to perfect their collateral files.**
>
> Although **providing a clear chain of title has seemingly relinquished its position as servicers' main document-management concern for the moment**, remedying missing mortgage assignments remains a tedious aspect of the business. **The number of missing assignments is huge, according to vendors that handle documents, and it is the result of rapidly changing loan ownership and lackluster due diligence. "The loan volume was so big and so strong in '07 and '08, and everybody was too busy to keep up with the process,"** says Tina Lindsey, vice president of sales for Rekon Technologies. "They were maybe keeping track of the fact that documents hadn't been received yet, but they weren't actively procuring them to ensure they were received."
>
> Nowadays, **servicers are forced to confront errors caused by shortcuts of the past.** Some shops are, whether to raise capital or simply tidy up their portfolio, selling off their distressed assets -

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transactions in which buying entities are being more demanding about clear title. **In other cases, companies that bought loans are using missing assignments to support repurchase requests.**

Not least among the reasons for servicers to perfect collateral is the growing judicial requirement for files to be airtight. "What's becoming more and more prevalent is, when you go into a courtroom, it's [the judge's] courtroom, and they make rules on their interpretation and their personal opinion," says Mike Wileman, president and CEO of Orion Financial. "We've seen it for years in bankruptcy. Anytime they're holding the lender's or servicer's feet to the fire to get their documents in order, I think they're justified, and there's not much you can do."

Increasingly, *the note and the recorded deed are being viewed as a single legal instrument, despite the fact they are two separate documents,* Wileman says. When failing to match for the judiciary the chain of title on the note with the chain of title on the land record, lenders run the risk of having their liens stripped. Jeremy Pomerantz, senior vice president of Nationwide Title Clearing (NTC), says that, **as pervasive as the mentality has become that the note and deed must be in sync, its basis is impractical. "The assignment used to be on record, in effect, [to indicate the entities that are] supposed to receive notice if anything happened on the land record with the mortgage," he says, alluding to items such as tax-default notices. "The owner of the note may want nothing to do with the day-to-day operations and maintenance of that mortgage." Thus, servicers are typically the parties listed on assignments.** Perfecting the chain of title can be a tedious process. Vendors tasked with preparing missing assignments often have to turn to lender-tracing, which, as the name suggests, involves finding the last lender on record and getting an officer who has signing authority to execute the document.

Because the mortgage and banking industries have seen massive consolidation and a spree of closings in recent years, such officers can be hard to come by. Lost assignment affidavits might suffice in some counties, but the acceptance of such affidavits varies from jurisdiction to jurisdiction. Moreover, their rigor might be put to the test should a loan enter litigation. As made clear by the ongoing foreclosure affidavit scare, it benefits servicers to ensure their outsource companies and legal counsel execute documents with precision.

Wileman notes that Orion Financial has had to kick back to foreclosure attorneys lost assignment affidavit requests where firsthand knowledge of a loan transfer is referenced. Occasionally, attorneys resend the documents but remove language that implies firsthand knowledge. Other times, the request for execution simply goes away. **Complicating matters further, servicers' own imaging systems can produce a different chain of title than what appears at the county level. If a client of NTC requests that the company prepare an assignment based on the lineage found in the client's system, NTC protects itself with an indemnification clause, Pomerantz explains. "They're not asking us to make up a beneficiary - they have someone on record in their images or in the file," he says. "We can't force them to do a $50 or $100 title search on every loan when they believe what they have is correct, so we have review processes and contract language to ensure all the bases are covered."**

Assignment work has drawn the ire of at least one state attorney general - Florida's Bill McCollum. Earlier this year, McCollum's office launched an investigation into Docx LLC, a now-defunct subsidiary of Lender Processing Services (LPS), for using documents that "appear to be forged, incorrectly and illegally executed, false and misleading." According to a statement issued by LPS at the time, the documents used terms "Bogus Assignee" and "Bad Bene" in place of actual assignees. **"These placeholders were used to flag the document to prevent further processing,"** LPS said. **"Unfortunately, on occasion, incomplete documents were inadvertently recorded before the missing information was obtained."** According to professionals in the doc management world, *such placeholders are not altogether uncommon, although controls should not allow such identifiers to be printed and processed.* In a statement released in early October, LPS noted that servicers and attorneys provided Docx with the information used to prepare assignments and that Docx was not involved in determining whether the assignments would be used in court proceedings. In bulk loan deals, buyers and sellers were provided leverage to complete transactions quickly, "but years down the road, your options have all washed away," says Rekon's Lindsey.

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"That's why it behooves the industry to make sure they're carrying the documentation sooner rather than later," she says. "It's one of those things where, the older it gets, the messier and uglier and more expensive it gets" to cure.

281. These systemic industry problems with collateral files and servicing data were widely known throughout industry. In the August 2004 issue of Secondary Marketing magazine, J. Eric Westerhausen, an industry insider wrote a very prescient article titled "Keep A Close Eye On Loan File Quality To Control Document Exception Problems." In the article, Westerhausen wrote:

> "…secondary marketing managers use exception data to enhance their price execution through more accurate and timely monitoring of file quality."
>
> "Lenders who in the past have made liberal use of documentation waivers to accelerate final certification may find themselves under a microscope this year."
>
> "Lenders whose pipelines depend too heavily on refinances will push marginal loans through the system as they try to stay in business. This will result in a short-term 'bottom feeding effect.' Reworked marginal loans will generally exhibit higher post-closing exception rates as well."
>
> "Lenders seeking to grow servicing portfolios in 2004 will fuel demand for acquired servicing. When servicing transfers begin in earnest, systemic collateral document exception problems associated with the refi-boom will begin to surface."
>
> "The most common examples of these include unrecorded security instruments, missing Intervening assignments or missing title policies. The deferred costs associated with addressing the document exceptions will be faced, at this point, with an increase in the size of holdbacks."
>
> "These factors set the stage for what may well prove to be an industry-wide test to see who most effectively managed quality in their 2003 production. If lenders do not consistently benchmark their quality to validate origination and post-production processes for each production channel, unknown and unacceptably high defect rates will go undetected."
>
> "In a perfect world, lenders would have complete, accurate and timely data associated with credit and collateral file exceptions."
>
> "Since systemic quality issues are exponentially magnified in bulk transactions, more critical due diligence will be necessary as the market moves into a servicing sale mode."
>
> "Known defect rates are likely to be understated due to production pressures to get product through the system in 2002 and 2003."

282. MBA NewsLink is the daily newsletter of the Mortgage Bankers Association.[62]

283. Orion Financial Group specializes in providing mortgage assignments, lien releases and document retrieval to mortgage servicers, investors, and lenders.[63]

284. In their August 16, 2010 MBA NewsLink published a Q&A with an industry insider named Mike Wileman of Orion Financial Group, that is excerpted as follows:

> **MBA NEWSLINK:** Foreclosures and related actions are being slowed by new document issues in the courts. Can you describe what's happening?

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MIKE WILEMAN: In many courtrooms, judges have begun demanding that recorded mortgage and title documents be proved valid before they will grant a foreclosure. In some cases, they're taking liberties with the law and dragging out the process, basically delaying the inevitable…

What we're finding is that many lien holders in fact can't prove that they own the mortgage because of shoddy record-keeping, often stemming from the high-volume days of the mid-decade. That's making it difficult to protect lien holder interests in a foreclosure or bankruptcy.

NEWSLINK: When does this become apparent?

WILEMAN: It's usually only when an account goes through a foreclosure or the modification process that documentation deficiencies from the past--such as missing loan assignments, unrecorded mortgages, title policies and the like--become evident. What you often find is that all of the necessary loan documentation is not all in one place; the collateral file is with the custodian, the servicing file is somewhere else. All of those things create a perfect storm of problems and confusion.

Finding and correcting missing documentation at a later date can delay a foreclosure, hold up the proof-of-claim process in a bankruptcy proceeding or delay or prohibit the lender from selling off the loan to a third-party. This is a serious issue for mortgage companies and banks trying to protect their assets in foreclosures and bankruptcy proceedings. It's also an issue for lenders trying to modify mortgage loans. It's especially difficult to resolve for those who can't handle the compliance processes themselves.

NEWSLINK: How did this problem evolve?

WILEMAN: There were so many corporate acquisitions in the mortgage business during the 10 years prior to the industry collapse that it was not uncommon for one company to acquire loans from another one and discover later that there had been no consistent paperwork or filing and little commonality in the documentation procedures and systems. In many cases, loan assignments and other documentation had not been done properly when loans were purchased. Sometimes loan documents were not entered into the system properly.

With *mortgage companies too busy blowing and going, the top priority was originating as many mortgages as they could. As a result, they neglected the less sexy, compliance end of the business*.

NEWSLINK: Is it having a negative effect on other areas of the business?

WILEMAN: Yes, particularly in the secondary market where missing mortgage documentation, *such as proof of clear title to the property, makes it difficult for loan investors to buy and sell mortgages.*

NEWSLINK: If you're a loan investor, what should you look out for?

WILEMAN: First, make sure that the proper paperwork has been done. You don't want to buy a loan with bad or inadequate documentation; that just sets you up for potential losses in the future. There's a certain strategy that needs to be executed when you're a buyer of loans. If your focus is taken off that strategy in order to correct poor documentation, you could possibly put yourself into a losing proposition.

Similarly, if the documentation and title are not in proper order, it could keep you from selling the loan later. It could also greatly reduce the desired price you receive for the loans because the documentation is faulty. One of our clients has been able to buy properties for as little as $700 in part because of poor documentation. They are only willing to pay that amount because they not only have to invest a lot of money into the property, but also in cleaning up the title chain to transfer the property ownership.

Companies with REO properties on their books who are trying to get rid of them must put a process in place to prove they have clear title and can transfer the property to the new buyer quickly and efficiently. By doing that, they can demand higher prices for their loans or, at the very least, remove the liability from their balance sheet that much quicker.

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THE INDUSTRY'S FRAUDULENT ASSIGNMENT PROCESSES & PROCEDURES CATCHES UP WITH REGULATORS & COURTS

285. After decades of false and fraudulent pleadings, affidavits, and assignments, the industry's robo-signing practices, a practice I first identified in the 90s, became the focus state and federal attorneys general and regulators.

286. In my 2008 Sue First and Ask Questions Later report, I focused foreclosure defense counsel, judges, and regulators on robo-signing practices.

287. As more media and legal exposure came upon the industry, courts of all states began to question the standard industry practices that have permeated and infected foreclosure case files across the nation.

288. This business as usual model went virtually unchallenged until a foreclosure law firm in Ohio started filing foreclosure actions in Federal Court in Ohio to speed up foreclosures by bypassing docket backloads in local Ohio courts.

289. Armed with only imaged copies of notes without the proper endorsement chain; redacted and unreliable servicing histories and summaries; newly minted and often void, fraudulent, and/or robo-signed assignments of notes/mortgage/deeds; and a robo-signed perfunctory affidavit executed by vendors acting as officers of lenders, foreclosure attorneys across the nation obtained tens if not hundreds of thousands of summary judgments based with not only scant evidence, but evidence that has now become known as fabricated, false, fraudulent, and even forged.

290. Thus, the servicers and their lawyers continued their digital path of programmed fraud into state and federal courtrooms across the nation until one Federal judge in Ohio, followed by other judges and a few state court judges in Florida and New York sounded the alarms.

291. Judge Christopher Boyco sent tremors across the foreclosure industry when his watershed ruling and order[64] broke the foreclosure bar's dam dismissing dozens of foreclosures in Case No. 1:07CV2282 in the United States District Court Northern District Of Ohio Eastern Division followed by orders by judges Rose,[65] O'Malley[66], and Dowd in the same district.

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292. In his ruling and opinion, Judge Boyco took the servicers and foreclosure bar to the wood shed in his footnotes when he publicly rebuked their practices and attitudes by stating:

> *"Plaintiff's, '**Judge, you just don't understand how things work,' argument reveals a <u>condescending mindset</u>** and **quasi-monopolistic system** where financial institutions have traditionally controlled, and still control, the foreclosure process. Typically, the homeowner who finds himself/herself in financial straits fails to make the required mortgage payments and faces a foreclosure suit, is not interested in testing state or federal jurisdictional requirements, either pro se or through counsel. Their focus is either, 'how do I save my home,' or 'if I have to give it up, I'll simply leave and find somewhere else to live.' **In the meantime, the financial institutions or successors/assignees rush to foreclose, obtain a default judgment and then sit on the deed, avoiding responsibility for maintaining the property while reaping the financial benefits of interest running on a judgment**.*
>
> ***The financial institutions know the law charges the one with title** (still the homeowner) with <u>maintaining the property</u>. **There is no doubt every decision made by a financial institution in the foreclosure <u>process</u> is driven by money**. And **the legal work which flows from winning the financial institution**'s favor is highly lucrative. There is nothing improper or wrong with financial institutions or law firms making a profit — to the contrary, they should be rewarded for sound business and legal practices. However, **unchallenged by underfinanced opponents**, **the institutions worry less about jurisdictional requirements and more about maximizing returns**. Unlike the focus of financial institutions, the federal courts must act as gatekeepers, assuring that only those who meet diversity and standing requirements are allowed to pass through. Counsel for the institutions are not without legal argument to support their position, but their arguments fall woefully short of justifying their premature filings, and utterly fail to satisfy their standing and jurisdictional burdens.*
>
> ***The institutions seem to adopt the attitude that since they have been doing this for so long, unchallenged, this practice equates with legal compliance. Finally put to the test, their weak legal arguments compel the Court to stop them at the gate.** The Court will illustrate in simple terms its decision: "Fluidity of the market" — "X" dollars, "contractual arrangements between institutions and counsel" — "X" dollars, **"purchasing mortgages in bulk and securitizing"*** — "X" dollars, ***"rush to file, slow to record after judgment"** — "X" dollars, "the jurisdictional integrity of United States District Court" — "Priceless." [emphasis added]*

293. The origins of these measures, decades ago, were based on the premise that the vast majority of home and property owners being foreclosed on who "didn't pay their mortgages," would "walk away" and not challenge the foreclosure process.

294. This led to risk/reward evaluations by each servicer, lender, and insurer in the industry wherein cutting and shaving costs to increase profit, by implementing one of more the following measures, became the standardized norm in default servicing and foreclosure:

- Reducing manpower and human interaction via automation;
- Shifting servicing, customer support, and computer power to "back-office" outsourced vendors, some in as far away countries such as India, Philippines, Mexico, and Columbia;

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- Standardizing the processes, protocols, and processes across servicing function lines and departments such as collections, loss mitigation, foreclosure, REO and bankruptcy;
- Using uniform and standardized mortgage instruments and promissory notes as much as possible;
- Seeking and lobbying for uniform and national laws to overcome state laws and regulation that were restrictive, difficult, and costly to comply with;
- Using uniform and standardized legal processes, practices, pleadings, affidavits, pleadings, motions, securitizations, private mortgage registration, assignments, testimony, and even "business records!"

295. However, two particular cases, filed by the servicers and alleged lenders themselves to quiet title in the state of Massachusetts Land Court, came back to bite the industry and expose the problems I first warned of over a decade earlier.

296. The seminal *U.S. Bank N.A. vs. Ibanez* case from the Massachusetts Supreme Court highlights the problematic procedures the industry uses that creates void, not voidable, assignments and clouds title to property.

297. U.S. Bank N.A. and Wells Fargo Bank N.A. each filed separate actions in the Massachusetts Land Court for a declaration of clear title after each foreclosed on residential mortgages and purchased the property at the foreclosure sale. In both instances, the trial court ruled that the foreclosure sales were invalid because the foreclosure sales named U.S. Bank and Wells Fargo as the mortgage-holders, but neither had yet been assigned the mortgages at the time of the respective foreclosure sales, therefore, at the time of the publication of notice and foreclosure sale, neither had an interest in the mortgages. Both moved to vacate the judgment on the grounds that they could demonstrate that they were the holders of the note and mortgage at foreclosure.

298. An excellent analysis of Ibanez case was provided by attorneys Deborah Thorne and Ethel Badawi of the law firm of Barnes & Thornburg who wrote an article about the legal ramifications of the servicers' abuses for the ABI Journal, the journal of the American Bankruptcy Institute.

299. In the *Ibanez* case, U.S. Bank National Association and Wells Fargo Bank NA each filed separate actions in the Massachusetts Land Court for a declaration of clear title after

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each foreclosed on residential mortgages and purchased the property at the foreclosure sale. In both instances, the trial court ruled that the foreclosure sales were invalid because the foreclosure sales named U.S. Bank and Wells Fargo as the mortgage-holders, but neither had yet been assigned the mortgages at the time of the respective foreclosure sales, therefore, at the time of the publication of notice and foreclosure sale, neither had an interest in the mortgages. Both moved to vacate the judgment on the grounds that they could demonstrate that they were the holders of the note and mortgage at foreclosure. Because the two actions addressed the same issues, the cases were heard together on appeal. As Thorne and Badawi, the facts are as follows:

> In 2005, Antonio Ibanez took out a loan for $103,500, which was secured by a mortgage to the original lender, Rose Mortgage Inc. The original mortgage was properly recorded, and several days later**, Rose Mortgage executed an assignment of the Ibanez mortgage in blank.** The assignment was eventually stamped with the name of Option One Mortgage Corp. as assignee, which was recorded on June 7, 2006. **Prior to the recording of the Option One mortgage assignment, Option One executed a subsequent assignment in blank. U.S. Bank asserted that Option One assigned the Ibanez mortgage to Lehman Brothers Bank FSB, which was assigned to Lehman Brothers Holdings Inc.,** which then assigned it to the Structured Asset Securities Corp., as part of a securitization, and then assigned it to U.S. Bank, as trustee, for the Structured Asset Securities Corp. Mortgage Pass-Through Certificates, Series 2006-Z.
>
> On July 5, 2007, U.S. Bank, as trustee, purchased the Ibanez property at the nonjudicial foreclosure sale. The foreclosure deed and the statutory foreclosure affidavit from U.S. Bank, as trustee, were recorded on May 23, 2008. On Sept. 2, 2008, **American Home Mortgage Servicing Inc., "as successor-in- interest" to Option One, executed an assignment of mortgage to U.S. Bank, which was recorded nine days later. It is unclear from the facts described in the case whether this was a new assignment or if the prior blank assignment by Option One was stamped with U.S. Bank as assignee.**
>
> Similarly, in *Wells Fargo v. LaRace*, Mark and Tammy LaRace gave a mortgage to Option One as security for a $103,200 loan, and the mortgage was recorded on the same day, on May 19, 2005. On May 26, 2005, ***Option One executed an assignment in blank.*** Well Fargo asserted that Option One assigned the mortgage to Bank of America on a July 28, 2005, and pursuant to a sale and serving agreement, Bank of America assigned the mortgage to Asset Backed Funding Corporation (ABFC) in an Oct. 1, 2005, mortgage loan-purchase agreement. **AFBC then assigned the LaRace mortgage to Wells Fargo, as trustee for a pool of securitized mortgages. However, Option One remained the record-holder of the mortgage**. The foreclosure sale occurred on July 5, 2007, and the statutory foreclosure affidavit and foreclosure deed were executed on May 7, 2008, by Wells Fargo.
>
> In both *Ibanez* and *LaRace*, ***the alleged assignments to both mortgages were not recorded at the time of the foreclosure sale, and neither U.S. Bank nor Wells Fargo produced executed documentation of the alleged assignments***. Because Massachusetts permits nonjudicial foreclosure, strict compliance with the statutory requirements is imposed on mortgage-holders. One of these requirements is that the power of sale can only be exercised by the mortgagee. The Massachusetts Supreme Court held that U.S. Bank and Wells Fargo lacked the authority to exercise the power of sale because they were not the assignees of the mortgages at the time of the notice of sale and subsequent foreclosure sale.

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INDUSTRY, SERVICERS & VENDORS CREATE SUSPECT & FRAUDULENT PROCESSES & PROCEDURES TO FIX & CURE TITLE ISSUES, FRAUD, MISSING DOCUMENTS & COLLATERAL

300. With industry wide known issues with collateral, a number of vendors were established to review and *fix* the documents in the collateral files. The "fixing" of files goes by a number of names in the industry that include "document remediation," "file scrubbing," "title curative," "exception processing," and "exception file resolution."

301. While there are lawful and ethical remedial measures that can be taken, it's the unlawful and questionable industry-wide practices that must be examined.

302. The issue with these "fixes" is that upon a notice of default or at minimum on the filing date of the foreclosure action, all data, records, and files of the servicer, document custodian, and vendors should be preserved and placed on legal holds.

303. In any other criminal or civil case, this would be widely acknowledged and accepted at spoliation, destruction, fabrication, and tampering with evidence.

304. Such as when a crime is committed, a servicer can't simply hire a Pulp Fiction like "clean up" crew to clean up the crime scene, put the grenade back together, and leave the scene before the police arrive and put up the yellow tape and preserve the evidence at the crime scene.

305. Yet, this has been and still is the industry practice of over three decades and this Honorable Court and the committee should not allow or condone such "bulk-foreclosure" and "remediation" practices.

306. Some of the primary reasons these remediation practices were created were to: a) intentionally conceal the owners of borrower debt obligations, notes or the defined note holder in paragraph one of the borrower's uniform promissory note; b) insure holder in due course status when fraud was known to each HDC; c) avoid assignee liability for the frauds and torts committed against the borrower from origination to servicing to foreclosure; d) fix broken chains of title; e) create standing and authority to foreclose; f) avoid property liability and community assessments on abandoned properties; g) avoid intangibles taxes on note transfers; h) avoid recording taxes; i) make known unenforceable notes and debts enforceable; j) conceal mortgage insurers' and other co-obligors note ownership or holder status; k) conceal

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document defects and deficiencies; l) conceal claims paid by title insurers; m) conceal repurchases and substitutions of loans and promissory notes for violations of reps and warranties; n) conceal multiple and double pledges of promissory notes to other entities; and m) conceal failure of depositors to securitized trusts to transfer possession of original notes to trusts.

307. SolomonEdwardsGroup ("SEG") is a national financial services consulting and staffing firm. A press release[67] released on Reuters described how SEC consultants have hands-on experience identifying and providing remediation for significant loan documentation problems and how they could help banks and servicers ***"scrub" files*** and determine which foreclosures may have been tainted by incorrect loan documentation and processing issues such as robo-signing.

308. In the release, Candace Caley, a SEG partner and head of its national financial practice, said, "There is no magic bullet here. Technology and outsourcing got the industry into this situation. Only by focusing experienced, knowledgeable and competent resources on this problem can we restore confidence in the industry and the process."

309. "Our teams not only comb through the files to identify issues, but also have the experience to know which files can be successfully salvaged and which can't.

310. Richmond Group has been delivering nationwide document retrieval, lien release and assignment preparation services to the mortgage industry since 1994. Due to *industry needs, and requests* from existing Clients, they expanded their services to include those listed in their website's directory of services.

311. On their website and in promotional materials, the Richmond Monroe Group offers the following services, including "title curative" services.

- Complete ***scrub down of pools of loans to ensure they are clean and exception free***
- Preparation of Lost Note Affidavits
- Preparation of Lost Assignment Affidavits
- Preparation of Lost Mortgage Affidavits
- Preparation of Allonges
- Preparation of Lost Allonge Affidavits

312. In the Richmond Monroe Group ad that follows, the company references the legitimate title curative services such as: a) obtaining copies of recorded mortgages; locating

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missing title policies; and c) correcting missing intervening assignments by locating the lender for signatures.

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313. However, the trouble with the ad is when the Richmond Monroe Group advertises it can create missing documents such as lost assignment affidavits and “allonges.” You simply can’t recreate a missing allonge since the endorsement must be on the note itself and the allonge attached to the note. The missing allonge would have to be reestablished by a court since it would be a missing “page” of a note!

314. DKR Collateral Dynamics is yet another firm offering fixes to collateral file issues. On its website[68] it provided details on it dealt with endorsement issues when using allonges. It posted the following:

- Allonges will be prepared with precision to ensure that the rights to the note are transferred properly.
- Each Allonge goes through a quality control check to ensure accuracy.
- Allonges can be signed on behalf of the client through the use of a resolution of the entity that owns the loan or through the use of a Power of Attorney.
- ***Allonges can be emailed as a PDF file, imaged on a CD or a hard copy can be printed and sent overnight to the client.***

315. You cannot email, mail, or send an executed allonge. The mailing, emailing, or even using a CD evidences people are using “imaged” and “copied” allonges (a practice I have witnessed in many cases) that were executed. Such execution was on a blank piece of paper, not an allonge!

316. Furthermore, one cannot use an imaged or copy of a signature or endorsement on a blank piece of paper to be later attached to a note. That is not an allonge, but a fabrication of vital evidence! Also, the term lost allonge is almost an oxymoron. How can you prove a lost allonge was ever attached or endorsed while it was on the note if it is lost?

317. As excerpted directly below I was provided a LPOA from Bank of America to SPS in a Florida case. Paragraph 6 of the LPOA from Bank of America directs SPS to remediate (the term used by the industry) any defects in “transfer or reconveyance” documents provided by other trustees and servicer including “***<u>note endorsements.</u>*** A cut from the LPOA and shown directly below:

6. Correct or otherwise remedy any errors or deficiencies contained in any transfer or reconveyance documents provided or prepared by Trustee or a prior transferor, including, but not limited to note indorsements.

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318. Add to this the above referenced evidence, articles, and papers as well as the evidence known to this Honorable Court and the committee, the servicers and document custodians' "paper trail," records, files, and systems are not reliable, trustworthy, or accurate to a degree of certainty.

319. As noted by NTC's Pomorantz, only an expert can recreate an assignment trail and must have access to all the date and records to fix the issues. However, the question for this and other courts to answer is are these remediation and title curative measures lawful?

320. Can a third-party vendor or servicer destroy known records, documents, and evidence in a file; alter or change known records, documents, and evidence in a file; conceal known records, documents, and evidence in a file; and/or manufacture new records, documents, and evidence in a file after litigation is contemplated?

CERTIFICATE-HOLDERS TO SECURITIZED TRUSTS SUE TRUSTEES & EXPOSE INDUSTRY'S DOCUMENT DEFECTS & DEFICIENCIES

321. The facts presented herein in my comments are supported by extensive research, investigation, and litigation by numerous parties, including owners of certificates in RMBS such as Fannie Mae, Freddie Mac, PIMCO, Blackrock and the National Credit Union Administration Board.

322. In a lawsuit filed on December 16, 2014, the NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of U.S. Central Federal Credit Union, Western Corporate Federal Credit Union, Members United Corporate Federal Credit Union, Southwest Corporate Federal Credit Union, and Constitution Corporate Federal Credit Union against U.S. BANK N.A. and BANK OF AMERICA, N.A. in the United States District Court for the Southern District of New York alleged that:

> U.S. Bank and Bank of America as trustees to 99 RMBS trusts had contractual and statutory duties to address and correct problems with the mortgage loans and to protect the trusts' and the certificate-holders' interests. The trustee (U.S. Bank and Bank of America) for each trust had three primary duties. First, the t**rustee must take possession and acknowledge receipt of the mortgage files, review the documents in the mortgage files, identify any mortgage files that lack a complete chain of title or that have missing documents, and then certify that the mortgage files are complete and accurate. If the trustee identifies defects in the mortgage files, it must notify the appropriate parties and take steps to enforce the responsible party's obligation to cure, substitute, or repurchase any mortgage loans with defective mortgage files.**

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If U.S. Bank and Bank of America discovered a breach of the representations and warranties concerning the mortgage loans, including but not limited to representations concerning the characteristics of the mortgage borrowers, the collateral for the mortgage loans, and assurances that the mortgage loans were originated in accordance with applicable underwriting criteria, they must notify the appropriate parties and take steps to enforce the responsible party's obligation to cure, substitute, or repurchase the defective mortgage loans. If the trustee fails to exercise this duty, then the trusts and the certificate-holders would suffer losses properly borne by the party responsible for the defective loans.

U.S. Bank and Bank of America also were required to act to protect the interests of the trust and the certificate-holders when it became aware of defaults concerning the trust. Thus, **when they discovered a default, or were notified by other parties, such as servicers, of defaults like breaches of representations and warranties with respect to the underlying mortgage loans, they had to act prudently to investigate those defaults, notify certificate-holders of the defaults, and take appropriate action to address the defaults.**

U.S. Bank and Bank of America *<u>even failed to perform the threshold duties of taking full possession of the original notes and mortgages</u>* and properly <u>reviewing the mortgage loan files for irregularities</u>. If they had fulfilled their obligations*, a significant percentage of the mortgage loans in the trusts would have been <u>repurchased or substituted</u>*.

Moreover, an overwhelming number of events alerted U.S. Bank and Bank of America to the fact that the trusts suffered from numerous problems, yet they did nothing. First, the trusts suffered enormous losses due to the high number of mortgage defaults, delinquencies, and foreclosures caused by *defective loan origination and underwriting*. ***Second, highly publicized government investigations and enforcement actions, public and private litigation, and media reports highlighted the mortgage originators' systematic abandonment and disregard of underwriting guidelines and the deal sponsors' poor securitization standards in the years leading up to the financial crisis***. As summarized below, these actions and reports detail the incredible volume of defective loans and notorious activities of the originators, sponsors, and other players in the RMBS industry. Yet U.S. Bank and Bank of America failed to take steps to preserve their rights or hold the responsible parties accountable **for the repurchase or substitution of defective mortgage loans in direct contravention of their obligations as trustees.**

U.S. Bank and Bank of America also failed to address servicer and/or master servicer defaults and events of default. They knew that the master servicers and servicers were ignoring their duty to notify other parties, including U.S. Bank and Bank of America as trustees, upon the master servicers' and servicers' discovery of breaches of the mortgage loan representations and warranties. Despite their knowledge of these ongoing defaults and events of default, U.S. Bank and Bank of America failed to act prudently to protect the interests of the trusts and the certificate-holders.

Had U.S. Bank and Bank of America adequately performed their contractual and statutory obligations, **breaching loans would have been removed from the loan pools underlying the certificates and returned to the responsible party.** Defendants' improper conduct directly caused losses to certificate-holders like the Plaintiffs. Even after ample evidence came to light that the trusts were riddled with defective loans, U.S. Bank and Bank of America shut their eyes to such problems and failed to take the steps necessary to protect the trusts and certificate-holders.

U.S. Bank and Bank of America failed to act in part because protecting the best interests of the trusts and the certificate-holders would have conflicted with U.S. Bank and Bank of America**'s** interests. As participants in many roles in the securitization process, they were economically intertwined with the parties they were supposed to police.

Because of the widespread misconduct in the securitization process, U.S. Bank and Bank of America had incentives **to ignore other parties' misconduct in order to avoid drawing attention to their own misconduct**. Thus, U.S. Bank and Bank of America failed and

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unreasonably refused to take action to protect the trusts and certificate-holders against responsible party breaches.

THE FAILURE TO PROPERLY & LAWFULLY TRANSFER ORIGINAL NOTES & LOANS TO SECURITIZED TRUSTS & OTHER INVESTORS

323. The evidence presented in the vast number of foreclosures where securitized trusts were alleged to allege ownership of a borrower's note and loan shows what has become to be known as the securitization fail scenario.

324. In order to cover-up the fact that many loans and original notes were never transferred into the physical possession and custody of their intended trusts as represented in public filings with the SEC, servicers have used new assignments and endorsements on alleged allonges to attempt to recreate a title chain.

325. If this Honorable Court and committee were to ever read all of the depositions I have been a party to; see the evidence I have been exposed to; and read all of the policy and procedures manuals I have read, it would be apparent and clear to this why any Florida Court should not accept a servicer or trust's claims, defenses, and allegations without extensive discovery.

326. In one American Home Mortgage case I am involved with, our own research identified that the mortgage and note that were being refinanced with another subsequent note and mortgage was not paid off, but re-securitized into another securitization involving HSBC.

327. Even after the recent national mortgage foreclosure settlements and mortgage-backed securities litigation whose settlements are measured in the hundreds of billions of dollars over the past few years, rampant, systemic, endemic, forgery, spoliation of evidence, and perjury still exist.

328. Little, if anything has changed in the mindset of the industry except that the affidavits I now see are actually executed by real notaries who witness real signatures on affidavits, assignments or mortgage/deeds and other foreclosure documents.

329. However, the frivolous and even fraudulent pleadings, motions, and testimony I have witnessed for over 20-years, have now been amplified in a manner I have never seen before due to the increases in caseloads for both the courts and I.

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330. While my initial research, investigation, and reports were originally conducted in the nineties through 2003/2004, the amount of data, discovery, trials, depositions, and regulatory actions from 2011 to present, has presented me with a plethora of additional information, data, and facts which makes the much heralded "robo-signing" scandal and settlement pale by comparison.

331. Today, automated "robo-foreclosures" by the attempted and many times successful admission of automated "robo-evidence" that consists of unreliable, unverified, undated, and unauthenticated alleged "business records" that attempt to overcome hearsay objections is now the servicing industry "programmed" norm.

332. This data and information, is often taken from only small samples (2 years or so) of prior servicers' "servicing" data, often a mere "summary" from often unreliable and unknown alleged systems of record, often owned and programed by third-party vendors such as LPS/Fidelity/Black Knight's MSP, LSAMS, or other systems not owned or programmed by the servicer.

333. These "servicing summaries" are introduced as alleged "business records" with no backup, support, data, calculations, interest rate adjustments, suspense/unapplied activity, schedules of all payments made, payments applied and process dates, and dates payments were received which are all extremely relevant to review, test, and analyze the balances and figures provided for simple red flags that may determine additional testing, auditing, and review.

334. The term garbage in – garbage out is appropriate in that without any records to review, I nor anyone, including this Honorable Court or a jury, can ascertain if the balances provided are correct. Due to the servicers, foreclosure counsel, MERS, and LPS history, one cannot simply accept what they place on paper or testify to without testing for validity and accuracy.

335. I, nor any servicer's witness, can test or audit a loan without all life-to-date servicing records being provided from each servicer and the data mapping and loan boarding protocols used in the boarding of servicing information and data from prior servicers along with the data, records, files, and their related calculations, balances, and payment information provided.

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336. Without such a careful analysis and audit, the Court and borrower's counsel are simply left to accept the word of the servicer saying this is your payoff, redemption amount, deficiency, or payment amount is.

337. Despite the recent settlements that exceed over one hundred billion dollars, the consent agreements reached with state and federal regulators, and the new best servicing practices (some of which I originally propounded over a decade ago) implemented and supervised by a newly constituted Consumer Finance Protection Bureau ("CFPB"), it's not only back to business as usual, but back to business with more aggressive, unethical, and fraudulent predatory servicing and foreclosure acts.

338. While predatory servicing and foreclosure practices were finally accepted by regulators and the Courts as to the fraudulent execution of affidavits and assignments, they have now been replaced by false and potentially perjurious testimony and additional fabricated evidence to turn "lemons" not into lemonade, but into champagne.

339. Legal scholars, advocates, and certain judges have opined that in relationship to a securitized trust, you can't fix what is already broken and that if the borrower's notes were not conveyed in strict accordance with the applicable trust agreement and state trust law, the assets were not made part of the trust's corpus.

340. While I make no legal opinion, I am familiar with trust requirements and I am a trustee to Pew family trusts.

341. I have been asked often by borrower's counsel whether I have an opinion as to whether the borrower needs discovery in order to know who owns a mortgage loan, whether a note is secured by a separate instrument and how much is owed on the loan.

342. When it comes to a securitization transaction and evidence exists of a securitization fail scenario and fabricated evidence to attempt to get a lone into a trust that should have already been in there via the PSA and MLPA, then extensive discovery is required in my opinion for a judge's ultimate decision.

343. It is also my belief and opinion that each Court should allow the full and complete production of all of the data, documents, files, information, and records related to the borrower's loan, note, mortgage, collateral file, property, borrower, and each related complex transaction to deconstruct the transaction for the Court's review and ultimate decision.

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344. It is my desire that this Honorable Court not only heed my opinions, but also my warnings and act accordingly with their inherent power.

345. All parties to foreclosure lawsuits should be allowed to investigate through discovery each case to the fullest extent allowable to ascertain and evidence the real facts, not merely the alleged facts of each alleged servicer and/or lender.

346. I recall the first time I was qualified as an expert witness by a judge here in Florida who used to sit on the Florida Court of Appeals.

347. My recollection in the paraphrasing of that exchange went something like this. Judge Emerson Thompson said to the client's attorney that it was not necessary to qualify me since he read my affidavit, much of which is contained in Exhibit D as to my bona fides, qualifications, expertise, and experience and research history.

348. He then proceeded to question me directly for over 30-minutes and said to me that while he agreed and understood that perhaps the vast majority of foreclosure actions, perhaps as high as 80% may have contained elements of fraud, what did the foreclosing Plaintiff in this specific action do wrong?

349. He made some form of analogy to the effect that while a serial killer may have committed many murders before, what evidence was there that the serial killer committed this murder? What were the specific facts, evidence, and testimony in "this specific case" that would lead to my testimony that the servicer was committing fraud?

350. I then proceeded to provide him with my opinions based on the limited specific data, information, and facts I had obtained in that particular case.

351. I have taken Judge Thompson's words to heart in that in any case I am involved with, I want and need to see the specific evidence, ALL of it, to render the best opinion I can for a Court.

352. However, for the reasons submitted herein and the obvious motives, the servicers and foreclosure counsel do not wish any court or borrower's counsel to see how abysmal the servicer and lender's records, files, and books are, let alone how unreliable, untrustworthy and potentially fraudulent they may be.

353. As shown herein, there is a plethora of digital data, records, files, and evidence that are inexpensively and easily retrievable for each servicer and lender that would prove or

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disprove their representations, both in and out of court, as well as support any claims, defenses, evidence and testimony they may provide.

354. While I am not a judge nor will ever be one, I do require all of the relevant data, information, facts, and records available to give any Court and any client reliable opinions on such issues as whether a note is likely forged, whether a note is likely secured, whether there is a likelihood that a note has been double pledged; the amount owned on the note; and/or whether there exists some evidence that the provisions of the note and alleged security have not been followed.

355. A borrower or foreclosure defendant cannot make an educated and informed decision as to what course or action is in his or her best interests without having access to data and evidence regarding the above issues.

356. Also, a borrower's attorney cannot properly advise his client and make an educated and informed decision as to what course or action is in his client's best interests without having access to data and evidence regarding the above issues.

357. Should they: payoff the note or pay the arrears; deed in lieu, short sale, or enter into a cash for keys arrangement; sue other parties for claims they may have; enter bankruptcy and proceed with an adversary complaint; file complaints with the CFPB or OCC; take additional legal action or settle?

358. As a social and market researcher, I never could accept missing or incomplete data for my analyses. If researchers or clients were concealing data that was known to exist, that was a major 'red flag" to come to the conclusion that they were hiding something that they didn't want known that would or could affect and perhaps alter my opinions.

359. It is said in the research world that you can get research (i.e. data) to say whatever it is that you want it to say. In fact, there was a well-known book titled How to Lie with Statistics written by Darrell Huff in 1954 that illustrated common errors, both intentional and unintentional, associated with the interpretation of statistics, and how these errors could lead to inaccurate conclusions.

360. Mortgage servicing data, information, records, files, and evidence are no different.

361. Today, servicers and the industry have created a set of "simplified" foreclosure processes to put forth a pre-constructed set or even recreated set of "servicing data" that only

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puts forth before a Court the facts, data, and information the "servicer" wants the Court, borrower, and opposing counsel to see, rather than the real facts, information, and data surrounding a very complex mortgage transaction.

362. These highly automated processes and protocols are specifically designed to raise the value of the foreclosed property; claims for insurance; reduce timelines; reduce foreclosure litigation costs and, most importantly to foreclosure and bankruptcy actions, conceal known document deficiencies and defects as described herein.

363. Securitization fail and robo-signing was the subject of testimony of Adam J. Levitin Associate Professor of Law Georgetown University Law Center before the House Financial Services Committee Subcommittee on Housing and Community Opportunity.

364. Professor Levitin highlighted one of the primary motives for robo-signing when he testified:

> To this sad state of affairs, there now come a variety of additional problems: faulty foreclosures due to **irregularities ranging from procedural *defects* (including, but not limited to *robo-signing*) to outright <u>*counterfeiting of documents*</u>; <u>*predatory servicing*</u> practices that precipitate borrower defaults and then overcharge for foreclosure services that are ultimately paid for by investors**; and ***questions about the validity of transfers in private-label mortgage securitizations.*** While the extent of these problems is unknown at present, the evidence is mounting that they are not limited to one-off cases, but that there may be pervasive defects throughout the mortgage servicing and securitization processes.
>
> The *servicing problems stem from servicers'* ***failed business model***. Servicers are primarily in the *transaction processing business* and are failing miserably at trying to adapt themselves to the loan modification business. Servicers' business model also encourages them to cut costs wherever possible, even if this involves cutting corners on legal requirements, and to lard on junk fees and in-sourced expenses at inflated prices. The financial incentives of mortgage servicers also encourage them to foreclose, rather than modify loans in many cases, even when modification would maximize the net present value of the loan for investors.
>
> The chain of title problems are highly technical, but **they pose a potential systemic risk to the US economy**. <u>***If mortgages were not properly transferred in the securitization process, then mortgage-backed securities would in fact not be backed by any mortgages whatsoever***</u>. The chain of title concerns stem from transactions that make assumptions about the resolution of unsettled law. If those legal issues are resolved differently, then **there would be a failure of the transfer of mortgages into securitization trusts**, which would cloud title to nearly every property in the United States and would ***create contract rescission/putback liabilities in the trillions of dollars, greatly exceeding the capital of the US's major financial institutions.***
> These problems are very serious. At best they present problems of fraud on the court, clouded title to properties coming out of foreclosure, and delay in foreclosures that will increase the shadow housing inventory and drive down home prices. At worst, they represent a systemic risk that would bring the US financial system back to the dark days of the fall of 2008.

365. My research over the last decade indicates that often, the trustees to securitized trusts and/or their document custodians did not receive the physical possession of borrower's

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original wet-ink promissory notes that were held back by warehouse lenders, aggregators, originators, and some servicers.

366. A conformed or “true and correct” copy of the borrower’s original wet-ink note was made at closing and then imaged into an imaging system of the originator, warehouse lender, and/or original servicer after its delivery.

367. Copies and/or images of unattached allonges with endorsements in blank as well as pre-notarized assignments in blank were placed into the collateral/custodial file shipped to documents custodians.

368. The document custodians certifying the contents of the original collateral files did not maintain, preserve, copy, or image the contents of the files as they were received or as they were shipped out, but merely “inventoried” the contents of the file in providing their initial, interim, and final certification and exception reports.

369. Custodians specifically excluded from their representations that the contents of the file, especially the original wet-ink promissory notes, were in fact genuine and enforceable.

370. This allowed unscrupulous lenders, originators, and servicers who were in dire financial straits, to maintain possession of the original notes and pledge those original notes for advances from Federal Home Loan Banks, the Federal Reserve, the GSEs, and other financial institutions and only send images and copies of notes to securitized trusts.

371. This then created two trails of a borrower’s loan and loan documents, especially the alleged original note. The images and copies were transferred to the securitized trusts and while the originals stayed put with originators and securitizers like Countrywide.

372. Countrywide/BOA executive, Linda DeMartini, admitted the practice before a Federal Bankruptcy judge.

373. The judge in his opinion wrote: ***“She [DeMartini] testified further that it was customary for Countrywide to maintain possession of the original note and related loan documents.”*** DeMartini was the operational team leader for the litigation management department at Bank of America Home Loans.

374. Even the American Banker magazine, the industry bible for bankers, devoted considerable attention to the matter in its article titled “Word for Word: That Bank of America Exec's Testimony on Countrywide Mortgage Docs.”[69]

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375. That assertion certainly seems to suggest that the failure to transfer a promissory note from Countrywide Financial to the security trust in this case was not an isolated error—but a matter of policy at Countrywide Financial.[70]

376. The American Banker article referenced a number of points and directed readers to the Judge's Order and the transcript of the hearing where DeMartini testified and wrote:

> That's when *American Banker*, citing the judge's ruling in the case[71] a few days earlier, reported that DeMartini had told the court that **Countrywide (now a part of B of A) routinely didn't bother to transfer essential documents for loans sold to investors**. (Gretchen Morgensen mentioned the ruling in her *New York Times* column[72] the next day.)

377. American Banker also paid for ($60) and posted the transcript on its website at http://cdn.americanbanker.com/media/pdfs/CountrywideDiMartini112910.pdf after Bank of Americas counsel refused to send the transcript.

378. In the New York Times article, Morgenson wrote in part:

> KUDOS to the Congressional Oversight Panel for publishing a thoughtful and thorough report last week on the mortgage documentation mess. It argued that, yes, in fact, these paperwork problems may have significant implications for banks, investors and the stability of the financial system.
>
> But the meat of the report comes in its analysis of the threats that false loan documentation may pose to banks' balance sheets and to financial stability in the broader economy. These perils are related to the possibility that banks will have to buy back loans from investors if they were based on false documentation, or if the proper records required when setting up mortgage securities trusts were not kept, the report said.
>
> "There are scenarios whereby wholesale title and legal documentation problems for the bulk of outstanding mortgages could create significant instability in the marketplace," the report stated.
>
> Litigation from investors in mortgage-backed securities is likely, the report concluded. "Claimants will contend that the securitization trusts created securities that were based on mortgages which they did not own," the report said. "Since the nation's largest banks often created these securitization trusts or originated the mortgages in the pool, in a worst-case scenario it is possible that these institutions would be forced to repurchase the M.B.S. the trusts issued, often at a significant loss."
>
> Consider a lawsuit in the United States Bankruptcy Court in Camden, N.J. It involves a Countrywide loan and a note that was supposed to have been deposited in a mortgage pool issued by the lender in 2006.
>
> In an opinion published last Tuesday, the chief judge, Judith H. Wizmur, cited testimony from an executive at Bank of America, which bought Countrywide. The lender's practice, the executive said, was "to maintain possession of the original note and related loan documents." Countrywide did this even though the pooling and servicing agreement governing the mortgage pool that supposedly held the note required that it be delivered to the trustee, the court document shows.
> If Countrywide's practice was to hold onto the note, then investors in this pool and others may question whether the security was constructed properly and legally and may be able to require Bank of America to buy back their securities.

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379. As shown herein and as predicted, investors in these securitized trusts have filed a multitude of lawsuits and settled for tens of billions with the securitization transaction parties.

FANNIE MAE INDEPENDENT COUNSEL (BAKER HOSTETLER) VALIDATES MY ALLEGATIONS, RESEARCH, FINDINGS & FRAUDULENT INDUSTRY PRACTICES

380. From 1990 to 2004, Fannie Mae was the mortgage industry's leader that promulgated many of the standard origination, delivery, document custody, servicing, and foreclosure practices in the mortgage and default servicing industries via their stated selling and servicing guidelines.

381. The mortgage servicing industry typically followed Fannie Mae's lead and guidelines in the servicing of mortgages. The majority of Pooling and Servicing Agreements ("PSA") in existence for securitized loan transaction reference that loans should be serviced in accordance to Fannie Mae servicing and operational guideline.

382. What Fannie says is usually how the primary and secondary mortgage market operates and that is why I honed in on Fannie Mae's board and executives as well as others.

383. In 2004, I authored a report that I sent to the board of directors and CEO of Fannie Mae, Freddie Mac and other mortgage industry leaders. These leaders included William Harrison and Jamie Dimon at JPMorgan Chase and BankOne; Kerry Killinger at WAMU; Ace Greenberg and James Cayne at Bear Stearns; and a host of other servicers and lenders from Ocwen to Merrill Lynch.

384. In response to my reports to Fannie Mae's CEO and board, in 2005, Fannie Mae's Office of Corporate Justice retained the law firm of Baker & Hostetler LLP to conduct an independent investigation of concerns expressed by me about Fannie Mae business practices in connection with single-family mortgages. I had accused Fannie Mae of "aiding, abetting and sanctioning ... predatory lending and servicing schemes," as well as committing accounting and securities fraud, and racketeering violations.

385. Due to Fannie's unique and powerful position in the industry, I viewed Fannie Mae as responsible for much of the damage being inflicted on mortgage borrowers by unscrupulous lenders and servicers. Fannie Mae approved lenders and servicers; maintained servicer profiles and ratings; created uniform mortgage applications, data transfers, notes,

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mortgages, deeds of trust, and other mortgage documents; and created uniform document custody and servicing guidelines. While Fannie Mae was not alone, its sister Freddie Mac always joined in the family business, Fannie Mae was considered the most powerful force in the secondary mortgage marketplace.

386. Many in the secondary mortgage market, from lenders and brokers to servicers, document custodians, trustees, and foreclosure law firms, looked to Fannie Mae for direction and guidance on secondary market best practices. These practices were and still are detailed in the lengthy Fannie Mae Servicing and Selling Guides that the industry had adopted to blindly follow as shown herein. After all, even before their conservatorship, Fannie Mae was widely and wrongly perceived to be a government agency by an intentional falsely created public perception. What was good for Fannie Mae, was good for the mortgage industry and America!

387. At the time, while Fannie Mae benefited from the income stream created by the wrongdoing, I feared Fannie Mae's failures would result in both civil and criminal liability that would affect shareholder value, our nation's financial markets, and ultimately the U.S. taxpayer. As now known, my years of unheeded warnings came true!

388. I began my communications to members of Fannie's Board of Directors starting in December 2003 and called for an independent investigation of the allegations in my very detailed reports, especially my 2004 report sent to Fannie Mae's board. The Board of Directors decided to conduct an internal review of these concerns and on September 12, 2005, Fannie Mae's Office of Corporate Justice retained Baker & Hostetler LLP and Mark Cymrot to conduct the investigation and issue a report. I believed that since Fannie Mae was such an important force in the mortgage industry, it had a duty and responsibility to end abusive lending, servicing, and foreclosure practices that had now spread across America.

389. The subsequent report was completed in 2006 and presented to Fannie Mae's board on or about May 19, 2006. Contrary to prior assurances and agreements, I was not provided a copy of the final report for my final review and analysis. It was not until Pulitzer winning reporter, Gretchen Morgenson of the New York Times obtained a copy of the report that I was finally allowed to review Mr. Cymrot's facts, analysis, and opinions. I reviewed a copy of the report early in 2012 in Naples, Florida and was asked by Ms. Morgenson for my comments and analysis. I withheld many of my comments and analyses until today.

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390. A feature article on the Fannie Mae Independent Counsel report appeared in print in the New York Times on Super Bowl Sunday, February 5, 2012, on page BU1 of the New York edition with the headline: A Tornado Warning, Unheeded. The report was also attached to the web edition of the story, available for download.

391. With recent national settlements by the OCC, Federal Reserve, and 49 state attorneys general, I am compelled to provide this response to not only set the record straight, but to provide a historical perspective that will educate jurists, media, lawyers, and all Americans.

392. As you will learn in this response, I first discovered fraudulent foreclosure practices such as fraudulent, forged, false, and robo-signed foreclosure pleadings and affidavits in the mid-nineties. Those in media and government who allege such practices were mere sloppiness, errors, and the end-result of a new millennium securitization boom are either disingenuous or misinformed.

393. The real question should be, why doesn't the secondary mortgage market clean up its abusive and fraudulent origination, securitization, servicing, foreclosure, bankruptcy, document custody, and legal practices? Why can't they simply introduce and authenticate the known and existing sale, purchase, securitization, servicing, accounting, financial, and document custody agreements, documents, data, files, and records that are known to not only exist, but are easily and inexpensively retrievable from their automated systems of record?

394. Why are they spending billions in legal fees, settlements, and fines while ramping up many of the more aggressive frauds in a business model and process that is not only fatally flawed, but unethical, unlawful, and potentially criminal? The answer comes in several paragraphs of Mr. Cymrot's report when he states:

- "Masked by the improper pleadings is *a <u>substantive legal issue</u> of whether <u>MERS or servicers</u> <u>have standing to foreclose</u>*."[73]
- "Fannie Mae's policy instructs servicers and MERS to *commence foreclosure proceedings in their <u>own names</u> if permitted under state laws*. While this policy is based upon reasonable legal arguments and policy considerations, ***the issue is not resolved in case law***."[74]
- It is axiomatic that the practice of ***submitting <u>false pleadings</u> and <u>affidavits</u> is <u>unlawful</u>***.[75]
- With his complaint, Mr. Lavalle has identified an issue that Fannie Mae ***needs to address <u>promptly</u>***.[76]

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- As a result of the Florida cases, the *Legal Department is* ***formulating a more <u>immediate</u> solution*** *for the issues raised in those cases, including a* **directive to <u>attorneys and servicers</u>** ***in Florida <u>directing corrective action.</u>***[77]

- It appears *unlikely that substantial numbers of borrowers* who have defaulted on their mortgages ***could meet the <u>heavy legal burden</u> to avoid foreclosure***. **Borrowers seeking damages also would face a difficult burden to demonstrate that Fannie Mae is responsible for the** ***<u>attorneys' misconduct</u>*** and the **conduct was the proximate cause of damages**. Prompt correct action, however, should be taken and would mitigate these risks.[78]

- On the issue of transparency, ***the mortgage industry has become <u>more complex</u>*** and more efficient as it has matured but with a loss of transparency to borrowers.[79]

- …the requirement of having ***notes endorsed in blank*** and the **creation of MERS** were developments *introduced to reduce paperwork* and the cost of transactions. They have, as Mr. Lavalle suggests, **reduced *<u>somewhat</u>* the transparency** from the borrowers' vantage.[80]

- Mr. Lavalle proposes that Fannie Mae return to the days when each promissory note is endorsed and each note is returned stamped "paid in full." *He wants an <u>audit trail for mortgage servicing and ownership</u>, and he proposes that borrowers be entitled to circumvent predatory servicers by dealing directly with their note owners*. He also would give borrowers access to the MERS database - which **contains considerable information regarding servicing histories** - for a fee.[81]

- These *proposals are not practical*, *not legally required* by the mortgage documents, *and not necessary to meet borrowers' needs*. **Borrowers *<u>do not have a legal right</u>* or *an <u>identifiable interest</u> in <u>knowing the current owners of their mortgages</u>* or in the *<u>complex transactions</u> that underlie the secondary mortgage markets***.[82]

- **Mr. Lavalle's proposal that the <u>owner or Fannie Mae</u>, as trustee, <u>should accept loan repayments or otherwise interact directly with borrowers</u> *is <u>contrary</u> to the concept of a secondary market***.[83]

- ***Ownership interests in mortgages are now fractured into a <u>variety of income streams</u>*** *due to the advent of mortgage-backed securities ("MBS")*. **No single owner would have the *<u>means or authority to accept payments</u>***.[84]

- *He expresses fear that Fannie Mae does not have adequate procedures to protect the 15 million freely negotiable promissory notes in its portfolio.* ***Mr. Lavalle has identified an important legal issue - lost notes threaten the enforceability of Fannie Mae's mortgages and expose borrowers to financial risks***.[85]

- *"While Mr. Lavalle is partial to extreme analogies that undermine his credibility, he has become knowledgeable about the mortgage industry. He* ***<u>has identified significant issues</u>*** *but, in* ***our view,*** *<u>does not always analyze them correctly</u>. In proposing solutions****, he generally <u>undervalues the benefits to homeowners</u> of efficient <u>mortgage markets operated at low costs</u>*** *and* ***overstates the needs of borrowers to have information about the status of their loans in the secondary markets for mortgages****."*

395. I can summarize, interpret, and extrapolate Mr. Cymrot's findings and comments as follows. Admittedly, in order to have the secondary mortgage market operate efficiently at low costs, servicers and their foreclosure lawyers ***<u>unlawfully</u>*** *submitted false pleadings and affidavits* in judicial foreclosure cases. They did so even when 1) there was *a substantive legal issue of whether MERS or servicers had standing to foreclose*; 2) Fannie Mae's *policy*

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instructed servicers and MERS to commence foreclosure proceedings in their own names; and 3) while the policy was based upon reasonable legal arguments and *policy considerations,* **the issue was not yet resolved in case law**.

396. In addition, Fannie Mae and the secondary mortgage market's attitude was that 1) ***the mortgage industry had become <u>more complex</u>***, but with a loss of transparency to borrowers; 2) **Borrowers *<u>did not have a legal right</u>* or *an <u>identifiable interest</u> in <u>knowing the current owners of their mortgages</u>* or in the *<u>complex transactions</u> that underlie the secondary mortgage market***; 3) owners of Promissory Notes/Loans and Fannie Mae, as trustee and the defined "Lender or Note Holder" in paragraph one of the "Uniform" Fannie Mae/Freddie Mac promissory note can't accept loan repayments or otherwise interact directly with borrowers (despite stating the opposite in its own uniform note) because it *is contrary to the concept of a secondary market.*

397. If that were not enough, Mr. Cymrot opined that the ***"ownership interests in mortgages are now fractured into a <u>variety of income streams</u>*** *due to the advent of mortgage-backed securities ("MBS")*. **No single owner would have the *<u>means or AUTHORITY to accept payments</u>*" *AND* "***unlikely that borrowers* who defaulted on their mortgages ***could meet the <u>heavy legal burden</u> to avoid foreclosure***. **Borrowers seeking damages also would face a difficult burden to demonstrate that Fannie Mae is responsible for the *<u>attorneys' misconduct</u>*!"**

398. Fannie Mae's CEO and Board of Directors were instructed by its own independent counsel to address the issue promptly and notify the law firms in Florida to cease such actions and take corrective measures. As history shows, this was not done!

399. Instead, Fannie Mae, servicers, foreclosure law firms and the rest of the industry continued to maintain a culture and climate that institutionalized fraud, forgery, misrepresentation, and deception. Today, robo-signing continues and has been complemented and supplemented with live corporate dummy witnesses we now call robo-witnesses who provide robo-evidence in order to pull additional frauds on the Courts by known perjurious testimony suborned by not only foreclosure mill law firms, but by some of the nation's largest, well-known and previously respected white-shoe law firms.

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400. Time-and-time again, you see a massive and coordinated effort to conceal and destroy evidence, keep known electronic data from the Courtroom and a series of "file scrubbing, remediation, and title cure" efforts employed to "fix the collateral file" AFTER litigation holds and evidence preservation should have legally been placed.

401. In essence, the servicers their lawyers and vendors are manufacturing and fabricating evidence, while destroying and concealing known existing evidence, that would either destroy the set of false facts being promulgated in foreclosure actions or seriously diminish the credibility and reliability of the evidence presented and the witnesses presenting such evidence.

402. Many major industry vendors openly discuss these processes in advertisements, white papers, websites, and other marketing materials. This will be the subject of another upcoming paper I am in the process of finalizing that will make robo-signing look like a pimple compared to the industry's malignancy that has been growing and ignored for over three-decades!

403. One of the most widely used collateral file "remediation firms" markets a collateral documentation review and mortgage/assignment chain audit to mitigate known industry-wide risks. These risks include: 1) exposure to costly statutory penalties for late lien releases; 2) added litigation by borrowers; 3) delays and litigation in the foreclosure process; 4) repurchasing loans from investors or buyers; 5) threatened lien positions; and 6) exposure from clouded title.

404. The decades of cover-up is referenced by Mr. Cymrot in his report when he stated that the OFHEO (n/k/a FHFA) regulation "*does not require Fannie Mae to report suspected cases of fraud to borrowers*, but *also does not relieve Fannie Mae from disclosing fraud to victims or law enforcement pursuant to undefined and largely non-existent* '**legal requirements**.' Fannie Mae must take legal or business action it may deem 'appropriate.' **Fannie Mae's reluctance to contact borrowers arises from *its <u>lack of privity with borrowers</u>* as a secondary market company** and its concern for its *potential liability for the reports*."[86]

405. Yet, the Uniform Fannie Mae promissory note signed by virtually all borrowers in America in paragraph one states "I understand that the *Lender* may transfer this Note. The

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Lender OR ***anyone*** *who* ***<u>takes this Note</u>*** ***<u>by transfer</u>*** AND who ***is entitled to*** ***<u>receive payments</u>*** *under this Note* is called the **"Note Holder."** Note Holder is referenced and described 25 times in the uniform note and Lender is referenced and described 10 times. Conspicuously absent is the terms "servicer" which not even referenced once in the uniform promissory note.

406. Cymrot also reported that "Fannie Mae, however, **does not have an institutional policy for reporting fraud to borrowers or other potential victims**. Fannie Mae appears to be making decisions regarding the disclosure of fraud and misrepresentation findings on an *ad hoc* basis. In our view, **Fannie Mae should create a corporate policy for determining when** ***its findings of misrepresentations or fraud in mortgage lending or servicing*** **should be reported to** ***law enforcement,*** ***<u>borrowers</u>*** ***and potential victims***."

407. As you see, the foreclosure frauds and abuses that have plagued our financial and legal system over the last eight-years are not mere errors or sloppy paperwork that resulted as a result of securitization. They were meticulously planned, even patented by some of the perpetrators. The cost of doing business (i.e. fraud), has now been pegged by our nation's federal and state regulators. Many of the recommended "servicing best practices" I detailed in my 2004 report to Fannie Mae have now become Federal law or part of Justice Department consent agreements with major lending and servicers.

408. While my call for a "voluntary" and non-profit mortgage industry National Compliance Center was ignored for years by the industry, the Dodd-Frank Bill with Elizabeth Warren's persistence made a federally funded Consumer Finance Protection Bureau ("CFPB") that would now oversee "mandatory" compliance a reality. The industry widely bemoans additional regulation and oversight that it could have voluntarily ascended to a decade earlier if they had heeded my warnings and recommendations. Yet, there is little sign that its serious in changing its errant ways.

409. The resulting federal investigations initiated by the reports and work of my colleagues and I in 2010, have now resulted in over $50 billion in fines, legal costs, regulatory settlements with government agencies and settlements with investors. However, these "no-blame game" settlements and their ensuing reports and consent or settlement orders cannot whitewash the fact that serious crimes and frauds were committed - - not once, twice, or on

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rare occasions, but in vast majority of American foreclosures over the last three decades, not merely the last few years!

RELEVANT & KEY QUOTES IN FANNIE MAE INDEPENDENT COUNSEL (BAKER HOSTETLER REPORT)

410. In analyzing past and current relevant market issues in mortgage servicing, securitization, and foreclosure practices, I have highlighted below what I believe are relevant and key quotes from the 142-page report. I have excerpted what I believe are the relevant and key quotes that have significance this Honorable Court and the committee.

411. In doing so, below I have highlighted and footnoted “meaningful” key quotes and comments in the report and bullet points of facts, positions, and Cymot’s analysis, findings, and opinions that are significant.

412. I believe these comments will shed significant light into the abuses and willful blind eye that turned to the abuses, but the CEOs and boards of directors of many of America’s largest lenders, servicers, and GSEs. Directly below, are footnoted excerpts and highlights from the report:

- “Masked by the improper pleadings is *a substantive legal issue of whether MERS or servicers have standing to foreclose*.”[87]
- “Fannie Mae's policy instructs servicers and MERS to *commence foreclosure proceedings in their own names if permitted under state laws*. While this policy is based upon reasonable legal arguments and policy considerations, ***the issue is not resolved in case law***.”[88]
- It is axiomatic that the practice of ***submitting false pleadings and affidavits is unlawful***.[89]
- With his complaint, Mr. Lavalle has identified an issue that Fannie Mae ***needs to address promptly***.[90]
- As a result of the Florida cases, the *Legal Department is* ***formulating a more immediate solution*** *for the issues raised in those cases, including a* **directive to attorneys and servicers in Florida directing *corrective action.*[91]**
- It appears *unlikely that substantial numbers of borrowers* who have defaulted on their mortgages ***could meet the heavy legal burden to avoid foreclosure***. **Borrowers seeking damages also would face a difficult burden to demonstrate that Fannie Mae is responsible for the *attorneys' misconduct*** and the **conduct was the proximate cause of damages**. Prompt correct action, however, should be taken and would mitigate these risks.[92]
- On the issue of transparency, ***the mortgage industry has become more complex*** and more efficient as it has matured but with a loss of transparency to borrowers.[93]
- …the requirement of having ***notes endorsed in blank*** and the **creation of MERS** were developments *introduced to reduce paperwork* and the cost of transactions. They have, as Mr. Lavalle suggests, **reduced *somewhat* the transparency** from the borrowers' vantage.[94]

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- Mr. Lavalle proposes that Fannie Mae return to the days when each promissory note is endorsed and each note is returned stamped “paid in full.” *He wants an audit trail for mortgage servicing and ownership, and he proposes that borrowers be entitled to circumvent predatory servicers by dealing directly with their note owners*. He also would give borrowers access to the MERS database - which **contains considerable information regarding servicing histories** - for a fee.[95]

- These *proposals are not practical*, ***not legally required*** **by the mortgage documents, *and not necessary to meet borrowers' needs*. Borrowers *do not have a legal right* or *an identifiable interest in knowing the current owners of their mortgages* or in the *complex transactions that underlie the secondary mortgage markets***.[96]

- **Mr. Lavalle's proposal that the owner or Fannie Mae, as trustee, should accept loan repayments or otherwise interact directly with borrowers *is contrary to the concept of a secondary market***.[97]

- ***Ownership interests in mortgages are now fractured into a variety of income streams*** *due to the advent of mortgage-backed securities ("MBS")*. **No single owner would have the *means or authority to accept payments*.**[98]

- *He expresses fear that Fannie Mae does not have adequate procedures to protect the 15 million freely negotiable promissory notes in its portfolio.* ***Mr. Lavalle has identified an important legal issue - lost notes threaten the enforceability of Fannie Mae's mortgages and expose borrowers to financial risks.***[99]

- *The* ***internal audits and external reviews do not currently specifically test security procedures for mortgage documents to ensure notes are not lost. We recommend this control be added to future reviews.***[100]

- The OFHEO regulation does not require Fannie Mae to report suspected cases of fraud to borrowers, but also does not relieve Fannie Mae from disclosing fraud to victims or law enforcement pursuant to undefined and largely non-existent “legal requirements.” Fannie Mae must take legal or business action it may deem “appropriate.” **Fannie Mae's reluctance to contact borrowers arises from *its lack of privity with borrowers* as a secondary market company** and its concern for its *potential liability for the reports*.[101]

- Fannie Mae, however, **does not have an institutional policy for reporting fraud to borrowers or other potential victims**. Fannie Mae appears to be making decisions regarding the disclosure of fraud and misrepresentation findings on an *ad hoc* basis. In our view, **Fannie Mae should create a corporate policy for determining when its findings of misrepresentations or fraud in mortgage lending or servicing should be reported to law enforcement, borrowers and potential victims**.[102]

- Mr. Lavalle also claims that Fannie Mac's policy of removing certain loans from MBS pools raises questions as to whether the sale is a “true sale,” which affects its accounting treatment. *The Rudman Report discovered one true sale issue, which Fannie Mae is now taking steps to address.* ***In addition, Fannie Mae did not obtain true sale legal opinions prior to the recent restatement***. It now has two law firms reviewing true sale questions.[103]

- Mr. Lavalle ***questions how promissory notes*** **are accounted for on servicers' and Fannie Mae's accounting books when Fannie Mae transfers holder status to the servicer at the time of foreclosure**. It appears that Mr. Lavalle has *incorrectly analyzed the issue*. Even **when holder status changes, ownership does not change**; thus, ***mortgages are properly maintained on Fannie Mae's books as assets*.**[104]

- The cases raise a substantive issue of whether MERS has standing to conduct foreclosures. MERS, Mr. Lavalle points out, has taken inconsistent positions in different cases. While MERS claims it can conduct foreclosures in its own name, *MERS successfully defeated a borrower's effort to cancel a note, in part, by* ***arguing that the borrower had failed to join an indispensable party****, Fannie Mae*.[105]

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- **MERS regularly brings foreclosure actions on behalf of parties that own a beneficial interest in mortgages** registered on its system. MERS was conceived as a registry for mortgages; ***the <u>original concept did not include the idea that MERS would conduct foreclosures in its own name</u>***.[106]

- **We have not been able to determine *when or why MERS began bringing <u>foreclosure actions in its name</u>***; the Fannie Mae employees involved have since left the company. ***MERS, however, has not instituted controls over the servicers who conduct foreclosures or their attorneys***. *MERS has the servicer retain counsel. MERS has authorized an employee of the servicer to act as an officer of MERS for the purpose of approving pleadings.*

- In *MERS v. Cabrera,* the judge started an extraordinary show cause hearing regarding nine foreclosure cases by reading portions of inquiries from Mr. Lavalle and his mother, Ms. Pew. **MERS counsel *was forced to <u>concede that the complaints contained inaccurate allegations</u> regarding its interests in promissory notes*. *The complaints allege that MERS is the "holder and owner" of promissory notes when <u>neither is true</u>*. This allegation *hides the relationships of the parties who will benefit from the foreclosure* and *masks a serious legal issue***. The judge was troubled that MERS changed its stance after filing "thousands and thousands of cases" stating that it owns the note."[107]

- The **judge accused MERS of filing "false affidavits" and questioned whether foreclosures should be allowed to go forward**. MERS' attorney made the concession that **"My understanding is lost note affidavits and lost note counts are routinely filed by mortgagees and note holders… acknowledged the practice should be "modified."[108]**

- ***Fannie Mae does not authorize attorneys to represent that MERS holds or owns promissory notes***. The Servicing Guide states **"MERS will have no beneficial interest in the mortgage, even if it is named as the nominee for the beneficiary in the security instrument."[109]**

- ***MERS' concession that <u>false statements are routine</u> <u>does not appear to be isolated to Florida</u>***. Other courts have questioned the accuracy of MERS' pleadings**. A *review of reported cases and pleadings reveal <u>that MERS counsel are misrepresenting to courts that MERS is the owner or holder of defaulted promissory notes</u> in at least 7 states.*** While these reported cases are small in number, **the *law firms undoubtedly are making the same representations in other foreclosures, and given the experience in Florida, these cases could be indicative of a broader problem within these states***. While Fannie Mae officials do not have a single opinion, some officials believe *foreclosure counsel are sacrificing accuracy for speed*.[110]

- *MERS recently amended its Rules of Membership to prevent servicers from pleading that MERS owns the note and to require MERS certifying agents to have possession of the note* before conducting foreclosures in MERS' name.[111]

- **While MERS took the brunt of the public criticism for false affidavits, servicers' counsel were the ones representing MERS and filing the false statements**. ***<u>There is no reason to believe they are acting any differently when representing servicers directly</u>***. ***The legal issue of whether servicers have standing to bring foreclosures also is unresolved***, although there are more precedents supporting servicer standing.[112]

- ***Fannie Mae's position is that servicers have a beneficial interest in the mortgages they service, <u>the servicing rights</u>***. When borrowers remit their fees to servicers each month, the servicers forward most of the payment to *Fannie Mae,* ***the owner or trustee of the notes***, but they also receive a portion of the payments as their servicing fee. ***Fannie Mae's position is that ownership of servicing rights is a sufficient interest to give servicers standing to bring foreclosure actions*.[113]**

- Mr. Lavalle, nonetheless, suggests that foreclosures could still be unwound because an ***<u>indispensable party</u>*, the owner of the promissory note, was not a party to the action**. **Three cases from lower courts do not resolve the issue, and therefore the accuracy of pleadings is particularly important to avoid misleading borrowers and the courts**. Fannie Mae is entitled to take the **legal position that MERS or servicers have standing to sue, provided the pleadings *clearly set forth the <u>facts</u>***.[114]

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- Fannie Mae's Servicing Guide states **that routine legal proceedings *generally should not be initiated in Fannie Mae's name*, *even though it would clearly satisfy the standing requirements in all states as the <u>owner and holder</u> of the promissory note*. Foreclosures are conducted in Fannie Mae's name only when it is the mortgagee of record, which generally means it is an older loan, *or if a filing in MERS or the servicer's name would require the imposition of a <u>transfer tax</u>*.**[115]

- Servicing Guide, VIII-IOS. Footnote 71 states: "**In either situation, the attorney (or trustee) should subsequently have *title vested in our name in a manner that will not result in <u>the imposition of a transfer tax</u>***. Examples of ways to accomplish this include the ***assignment of the foreclosure bid or judgment to us, inclusion of appropriate language in the judgment that directs the sheriff or clerk to issue a deed in our name*, *recordation of an assignment of the mortgage or deed of trust to us immediately before the foreclosure sale***, recordation of a grant deed to us immediately following the foreclosure sale, etc. The servicer and its selected foreclosure attorney (or trustee) must determine the most appropriate method to use in each jurisdiction.[116]

- **Fannie Mae's guidelines do not provide specific pleading guidelines**. Servicers and their attorneys are required to comply with the applicable state laws. Although foreclosure actions generally are not to be initiated in Fannie's name, the Guide states that if the borrower asks who owns the note, the servicer is to inform them that Fannie Mae owns it.[117]

- **Fannie Mae's position is that by *having the servicer foreclose, the borrower continues to deal with the company with whom it already has a relationship*. The <u>*servicer is in the best position to make adjustments to loan records and has the most detailed information about the loans*</u>. *In addition, if the borrower has complaints, it is <u>likely against the servicer</u>, and they can be litigated during the foreclosure*.**[118]

- *On the issue of* ***producing the promissory note during the foreclosure***, the Servicing Guide states that **most servicers have a *<u>copy</u> of the note* and can *<u>begin foreclosure proceedings with copies</u>*** in jurisdictions that allow it. For jurisdictions that require the original note, the servicer can request it from Fannie Mae.[119]

- For *jurisdictions that allow only the "holder" of the note to conduct a foreclosure*, **Fannie Mae *transfers <u>possession</u>* of the note to the *<u>servicer temporarily</u>*** in accordance with a statement in its Servicing Guide, which says: *In some jurisdictions, only the "holder" of the note may conduct a foreclosure*. In any jurisdiction in which our servicer must be the holder of the note in order to conduct the foreclosure, we temporarily transfer our possession of the note to our servicer, effective automatically and immediately before commencement of the foreclosure proceedings. *When we transfer our possession, our servicer becomes the holder of the note during the foreclosure proceedings*.[120]

- In Fannie Mae's view, ***no documents need be exchanged or <u>physical possession of the note</u> passed to signify a change in holder status***. The Guide states: ***The transfer <u>of our possession</u>, and <u>any reversion of possession</u> to us, are evidenced and memorialized by our publication of this paragraph*. *This Guide provision may be relied upon by a court to establish that the servicer conducting the foreclosure proceeding has possession, and is the holder, of the note during the foreclosure proceedin***g, unless the court is otherwise notified by Fannie Mae.[121]

- **Possession of the note automatically reverts to Fannie Mae if the borrower reinstates the loan or the servicer stops servicing the loan** for Fannie Mae. *Fannie Mae's position has a <u>reasonable legal basis</u>,* ***but the courts may or may not accept it***. **The issue is whether stating that holder status is transferred without a physical transfer of the note is enough to make the servicer the holder**. The U.C.C. defines a "holder" as: "(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession ...., **In order to be a holder, the servicer must be in possession of the promissory note that was *endorsed in <u>blank</u> to Fannie Mae*.***[122]*

- In *MERS v. Cabrera,* the trial court held that **MERS did not have physical possession of the promissory notes, as it alleged, and thus it did not "hold" the notes**. *It stated when a note is in the hands of an agent, the principal can have constructive possession of the note. However, the converse was*

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not true. As MERS was an agent of the servicer or the owner of the note, it could not have constructive possession based on the servicer's possession of the note, the court held. As MERS was an agent of the servicer or the owner of the note, it could not have constructive possession based on the servicer's possession of the note, the court held.[123]

- **Most foreclosures are conducted by servicers** (even where MERS or Fannie Mae are the named plaintiff), and the servicers are responsible for choosing counsel.[124]

- Fannie Mae's NSO **does not perform quality assurance of attorney conduct or the legal positions taken in pleadings**. ***Fannie Mae views foreclosure counsel as the attorney of the servicer*. The Legal Department has had a view that it can insulate Fannie Mae from responsibility *for servicer and attorney misconduct* if they are independent contractors and *not under Fannie Mae's direct supervision***. This approach is under review. **Legal positions taken by counsel can have state-wide or national impact, like the *standing issue that is currently being litigated in Florida***. **Since Fannie Mae authorizes servicers to execute legal documents on its behalf and receives the benefit from foreclosures, some plaintiffs may argue that servicers and their counsel are not independent contractors, and therefore may not be insulated from liability for misconduct by servicers or their attorneys.[125]**

- **Fannie Mae believes that *lost note affidavits are the servicer's responsibility* and *cannot be effectively reviewed under the current system*. Fannie Mae has delegated the execution of lost note affidavits to servicers**. *It does not believe that it is in a position to make a subjective call as to whether a servicer has lost a note.* **The party executing the affidavit makes a sworn statement under penalty of perjury as to whether the note is lost**, and an attorney advises the executing party regarding the legality of the affidavit. "**The servicer must comply with all applicable law related to foreclosures**." The use of a lost note affidavit also is not captured as computer data, so reviewing lost note affidavit usage would be manual. **Fannie Mae's servicing consultants also do not investigate whether notes are really lost when servicers use lost note affidavits**. Fannie Mae views such an investigation as unnecessary because **document custodians are responsible for retaining mortgage documents and must bear an expense if they are unable to locate mortgage documents.** For these reasons, Fannie Mae believes that servicers are not likely to state that the notes are lost, stolen or missing if they in fact are not. Some in the **Legal Department, however, suspect foreclosure attorneys may be taking short cuts by misrepresenting that the notes are lost**.[126]

- ***We conclude that foreclosure attorneys in Florida are routinely filing false pleadings and affidavits regarding the plaintiffs - MERS or servicers - interest in the proceedings and regarding lost, missing or destroyed promissory notes. The practice could be occurring elsewhere. It is axiomatic that the practice is improper and should be stopped. Fannie Mae has not authorized this unlawful conduct. As a result of the MERS hearings in Florida, Fannie Mae recognizes the issue and is taking action to correct it.[127]***

- For instance, *Fannie Mae's policy of having promissory notes endorsed in blank, undated and without recourse was intended to reduce significant administrative costs*. **When notes are endorsed in blank and mortgage assignments are not recorded in land records, however, *borrowers cannot identify the chain of owners and servicers*.**[128]

- When Fannie Mae purchases mortgages, **Fannie Mae requires the lender to endorse the promissory notes "in blank" and without recourse**. ***Promissory notes in this form are bearer instruments that can be negotiated without endorsement. Promissory notes, which establish the obligation to repay the loan, are governed by Article 3 of the Uniform Commercial Code ("UCC"). The sale of promissory notes is also now covered under Revised UCC Article 9*. As a result of Fannie Mae's policy of requiring lenders to endorse notes in blank, *notes do not contain a series of endorsements that would permit the borrower to identify the chain of ownership*. *Secondary market transactions*, however, do not affect a borrower's payments or other obligations under the mortgage.** They also do not necessarily affect the servicer with whom the borrower interacts.[129]

- Mortgages are treated differently from promissory notes under the law. ***Mortgages, which establish the security interest in the home, are governed by UCC Article 9, and the obligation to record the***

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***mortgage is governed by state laws that vary from state to state*. The purpose of land record laws is to give public notice of liens on real property**. These laws do not require and do not provide a mechanism for recording promissory notes. When a lender sells to Fannie Mae a mortgage that is not registered with MERS, the lender or the servicer must prepare a mortgage assignment." If the lender is not the servicer, **the lender must assign the mortgage <u>to the servicer</u> and record the assignment in the land records**.[130]

- **Fannie Mae's *<u>position</u> is that it <u>does not need to appear in the land records</u> in order to have the benefit of the security provided by the mortgage*.** UCC§ 9-203(g) **and its accompanying <u>comment</u>** state that the *transfer of an obligation secured by a security interest also transfers the security interest*. Thus, the **transfer of the promissory note, which is the obligation, <u>also transfers the mortgage</u>**, which is the security interest. **Once the note is sold to Fannie Mae, the mortgage also transfers, despite the fact that the servicer, lender or MERS' name appears in the land records**. ***Borrowers thus <u>cannot determine the chain of owners</u> from public records.***[131]

- *Prior to the creation of MERS - the borrower* **could look to the land records to follow the "*<u>chain of servicers</u>*."** If a mortgage is registered with MERS, however, *MERS is the mortgagee of record*. *Fannie Mae does not require lenders to register mortgages they sell or service for Fannie Mae with MERS*.[132]

- In either case, **MERS becomes the mortgagee of record in the county land records**. ***All subsequent transfers of ownership or servicing rights among MERS members are recorded electronically***. **As long as the loan is sold and transferred to a MERS member, the identity of the record mortgagee never changes during the life of the loan *even though the owner and servicer might*. If a borrower has not kept historical records of payments, the land records no longer will provide a *<u>chain of servicers</u>* for the borrower to use to trace problems**.[133]

- Reasons for Endorsement and Recording Policies - - The purpose of both developments was to reduce paperwork and lower the costs of mortgage administration, which should have the effect of lowering interest rates. ***If notes were endorsed (as they once were), Fannie Mae would incur the considerable <u>administrative cost</u> of endorsements*** *for millions of transactions*. **MERS was created, in part, to <u>eliminate the need to record mortgage assignments</u> in state land records *when <u>servicing rights were transferred</u>***.[134]

- ***<u>Borrowers rarely, if ever, need to know the current owner, or chain of owners, of their mortgage</u>***. *Income streams from mortgages have been fractured and sold as MBS's*. In many cases, **none of the numerous owners would have the legal right to resolve issues with a servicer**. Mr. Lavalle's proposal to ***allow borrowers to avoid an unscrupulous servicer by paying the <u>owners</u> or <u>trustee</u> is unworkable***. ***<u>The owners are too numerous</u>*** **and Fannie Mae does not have facilities to deal directly with the public**.[135]

- Fannie Mae has chosen, consistent with its charter, to require servicers to provide information to and assist borrowers with problems **rather than interact with borrowers directly**… **The Guide also instructs servicers to inform borrowers that Fannie Mae is the *owner of their notes <u>if they ask</u>*.**[136]

- *When* ***servicing rights*** *are transferred*, Fannie Mae requires the servicers to notify and provide information to borrowers about the transfer. RESPA also requires servicers of "federally related mortgage loans" to inform borrowers of any assignment, sale or transfer of the servicing of a loan.[137]

- ***Mr. Lavalle' s complaint about transparency is the <u>natural consequence of mortgage markets becoming more complex and fractured</u>. The requirement to have notes endorsed in blank and the creation of MERS are designed to add efficiency to the mortgage markets and reduce costs, which should benefit homeowners with lower interest rates and more choices. These developments, however, have made the system less transparent.*** Mr. Lavalle complains that a lack of transparency has made it easier for predatory servicers to flourish. Fannie Mae has addressed this issue by requiring servicers to disclose information to borrowers and through other enforcement efforts detailed in the predatory servicing section. These disclosures respond to Mr. Lavalle' s proposal that borrowers have access to the MERS' database for a fee: they should be able to get relevant information from the servicers.

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The borrowers should have ready access to information about their payments, escrows, fees and other relevant information concerning their mortgages.

- Mr. Lavalle 's proposed solution that ***borrowers be given the option to <u>conduct transactions directly with note owners</u> or Fannie Mae is impractical* and not consistent with Fannie Mae' s mission. Ownership interests in mortgage income streams have been fractured due to the advent of MBS's. *No single owner would have authority to bind others, and no mechanism exists for owners to resolve servicing disputes.*** Fannie Mae, as owner or trustee for MBS's is not intended to, and not capable of, interacting directly with borrowers; it operates in a secondary market in which its customers are lenders and servicers. Mr. Lavalle has provided examples of situations in which borrowers have had difficulty obtaining information, even in litigation. We have not been able to examine the full context of these problems. *As discussed below, Fannie Mae reviews certain servicer conduct and has taken steps to prevent or uncover **predatory servicing practices***.[138]

- Mr. Lavalle expresses concern about two Fannie Mae policies regarding the handling of promissory notes: (I) notes are required to be endorsed in blank, undated and without recourse, and (2) original notes are not consistently returned to the borrower stamped "cancelled" and "paid in full." Mr. Lavalle questions whether Fannie Mae has adequate procedures in place to keep track of 15 million promissory notes that **it has in its possession or is held for its account**. Mr. Lavalle claims that the endorsement-in-blank policy leads to trillions of dollars of missing or lost negotiable paper. **Mr. Lavalle bases his claim that the problem is widespread by extrapolating from routine filing of lost note affidavits in Florida foreclosure proceedings**. He acknowledges that every entity operating in the secondary mortgage market has the same policy. ***According to his calculations, about $6 trillion worth of bearer paper exists due to this practice. Since these notes are negotiable instruments, Mr. Lavalle contends borrowers face dire consequences from their mishandling. <u>A holder in due course, for instance, can recover even when the maker has defenses or has paid the note in full</u>***.[139]

- **Mr. Lavalle also criticizes Fannie Mae's policies regarding the return of original notes upon payoff. Fannie Mae's policies allegedly are having an adverse impact on borrowers and on the value of Fannie Mae's mortgages and mortgage-backed securities. Original promissory notes are not routinely returned to borrowers stamped "cancelled" and "paid in full" when they pay off their loans**. He feels that satisfactions or lien releases, which are now permitted under state laws, do not adequately protect borrowers should their original promissory notes end up in the wrong hands. Mr. Lavalle claims this practice leaves borrowers at risk for years after they have paid off the note. ***Mr. Lavalle has supplied us with cases of borrowers subjected to claims by multiple lenders alleging ownership of the same notes.*** Mr. Lavalle proposes that lenders be required to return the original promissory notes stamped "paid in full" with each payoff, Mr. Lavalle fears that if the notes are mishandled, borrowers could bring class action lawsuits, exposing Fannie Mae to great liability.[140]

- *The risk Mr. Lavalle perceives from lost or mishandled notes arises from the rights given a **<u>holder in due course</u>** by the UCC*. **A borrower can be required to pay a note twice - even one that is lost or stolen - if the note comes into the hands of a holder in due course. Under UCC Article III, a maker of a note *(i .e.,* the borrower) is "discharged" of liability under the note *<u>once payment has been made in accordance with the note</u>*. If, however, the party who comes to possess the note is a holder in due course without notice of the discharge, the discharge is not effective against that party**. ***Generally speaking, a holder in due course <u>is a good faith purchaser of a note for value</u>. An individual who finds or even steals a promissory note endorsed in blank can become a person entitled to enforce the promissory note. Against a person entitled to enforce, the borrower can assert defenses, such as the note has already been paid***. ***<u>If, however, the lost or stolen note is transferred to a holder in due course, the note can be enforced without regard to many of the borrower's defenses, including discharge. The borrower is, thus, at risk to paying twice if the original promissory note is not properly protected.</u>*** *The borrower would have the expensive and unenviable task of trying to collect from the custodian that was negligent in losing the note, from the servicer that accepted payments, or from others responsible for the predicament.*[141]

- ***These criteria include having the capabilities to track the receipt and release of documents and the <u>physical location of documents, and maintaining secure storage facilities that have controls to ensure the security of custody documents</u>*. The custodian also must *install the MORNET Custodian***

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Certification System, an electronic service that enables it to transmit MBS pool certifications. Each document custodian must subscribe to Fannie Mae's Selling, Servicing. and Forms Guides to ensure that all are aware of Fannie Mae's latest policies and procedures.[142]

- **Lenders must have a Custodial Agreement with one of the certified custodians for all MBS pools they deliver to Fannie. The promissory note is one of the custody documents the custodian holds. When the document custodian receives documents from the lender. It must review and certify them in the same manner as Fannie Mae's Herndon facility. The lender electronically submits to the custodian a Schedule of Mortgages, which includes data about the individual mortgages in each MBS pool for which the custodian will maintain documents**.[143]

- **The custodian must compare the information recorded in the Schedule of Mortgages to the information contained on the related notes to ensure it is the same. If the document custodian receives all the required documents and determines that they contain the correct information and are consistent with Fannie Mae's requirements, it sends an electronic certification of the MBS pool to Fannie Mae**.[144]

- **After the custodian has certified the MBS pool, it "must exercise control over all documents that are retained in its custody**. If a lender transfers documents to a different custodian, *the new custodian must recertify the MBS pool, by indicating that it has received all required documents* and that any new documents required in connection with the transfer satisfy Fannie Mae's requirements."[145]

- The Guidelines for Document Custodians also state that "[O]nce the documents related to an MBS pool are delivered to the document custodian, the note and, if applicable, ***the assignment of the mortgage to Fannie Mae must remain in the custodian's possession at all times,*** *unless the lender needs to obtain documents to perform a specific servicing function (such as the initiation of foreclosure proceedings or satisfaction of a mortgage that has been paid-in-full*)."[146]

- **The lender must submit a Request for Release/Return of Documents form to obtain the documents from the custodian, and if the documents are *released on a temporary basis***. *The lender must return the documents as soon as it no longer needs them*. When an MBS pool has been liquidated, meaning that all the individual mortgages in the pool have been liquidated, the lender should send a written request within 30 days of liquidation of the MBS pool to the document custodian to return any remaining documents to the lender. **The current Custodian Guidelines, however, do not have any provision for centralized reporting of lost notes, or a procedure for requiring the custodian or the servicer to report the missing note to the borrower.**

SERVICER & DEFAULT SERVICING INDUSTRY SYSTEMS, PROCESSES, & PRACTICES HISTORICALLY UNRELIABLE & UNTRUSTWORTHY

413. As shown herein, the systems, processes, and procedures used to process foreclosure actions in the state of Florida were unreliable, untrustworthy an even fraudulent. Yet, few of these practices and processes, except actually having a notary notarize a real signature, have changed.

414. I have warned each of these servicers, foreclosure counsel, Fannie Mae, Freddie Mac, government regulators and the Courts how unreliable and untrustworthy these servicing systems and processes are for over three decades now.

415. As shown herein, these system and process deficiencies and defects are widely known to the industry.

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416. The April 1, 2012 issue of Mortgage Banking ran a story titled “Rethinking servicing technology: is it time for an upgrade of mortgage servicing technology? Many experts agree servicers need help from some new and innovative solutions.”

417. In the story, various industry executives and the author of the story, George Yacik former editor at American Banker and The Bond Buyer, describe the known issues that the default and mortgage servicing industry still face. I except part of the article below

> “From 2002 through 2009, industry originations totaled $2 trillion or more nearly every year, peaking at $3.8 trillion in 2003, according to the Mortgage Bankers Association (MBA). The lone exception was 2008, when industry originations totaled ‘only’ $1.5 trillion. A large percentage of those loans were subprime.”
>
> **“The major servicing systems were built as workflow-management tools. That worked well when they were built, and defaults were not a significant issue”**
>
> **“Servicing systems were not designed for the challenges that the industry threw at them. They were designed to handle performing loans, which they handled very well--but they were not designed to handle non-performing loans,”** says Karun Khanna, chief operating officer at IndiSoft LLC, a Columbia, Maryland-based servicing software developer.
>
> **“Processes, people and technology worked well when we were dealing with thousands and even tens of thousands of loans,”** said Dan Scheuble, chief operating officer of Lender Processing Services (LPS), Jacksonville, Florida, which operates the industry's largest servicing technology system. **“But when we hit hundreds of thousands of delinquent loans, the systems broke down. The systems were built to handle millions of loans but only thousands of defaults at a 1 percent default rate, but then that number doubled in the worst real estate depression ever.”**
>
> **“Part of the problem servicers have always had is that when the road is going fine and everyone is making their monthly payments, the systems can hum along and can handle the extra volume--in fact, the more the better,”** said E.J. Kite, chief information officer at Wingspan Portfolio Advisors, a specialty servicer in Carrollton, Texas.
>
> **“But the industry introduced new business lines and new products, and didn't build new systems to accommodate them. So the minute there was a problem--the volume rose, the crisis hit, there were more defaults--they couldn't handle that with existing technology.” “There was a lack of investment in technology by the big lenders,”** Scheuble said. **“Lenders were only interested in making more loans.”**
>
> **“Previously there was not a lot of focus on improving technology,”** agrees Dave Vida, president of the loan servicing division and corporate chief strategy officer at LenderLive Network Inc., Glendale, Colorado. **“The focus instead was on outsourcing off-shore. The big servicers were focused on driving costs of servicing down.”**
>
> Before the crisis, there was no new technology that had come out that was compelling enough to get the big servicers to change their systems, according to Vida**. “Their systems were heavily embedded in their-processes. And it was too expensive to change them.”**
>
> *In addition to the tsunami of defaults that servicing systems have had to deal with, they've also had to deal with a multitude of strict-and constantly changing mandates by various regulators that have come down in the wake of the default crisis.*
>
> These range from loss-mitigation procedures to how to handle foreclosures, which are not the same in every jurisdiction, even within the same state. In addition to that, **the industry has been**

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handed unprecedented mortgage modification programs--which existing servicing systems never contemplated - and were told to make them work.

"There have been new laws, new regulatory requirements, consent orders, Dodd-Frank--just a tremendous amount of new requirements," said Scheuble. **"And it wasn't just the amount of changes, but the velocity of change. Since HAMP [the Home Affordable Modification Program] came out, there have literally been changes to it on a monthly basis."**

Servicing systems were just not designed to handle all those changes.

"Before, you could set your own timetable to make changes, but now industry regulations mandate the deadline," said Jeff Cerny, vice president of professional services at Southfield, Michigan based CCC Servicing Systems, a servicing technology provider. "As long as the fix is defined, you're OK, but the problem is that the fix keeps getting redefined."

"It's expensive and time-consuming to make changes, and then the next day you have to do it again," said Rick Smith, senior managing director of Clayton Holdings LLC, Tampa, Florida. "You make one change--there's another one waiting behind it."

Smith notes that big banks like Bank of America and JPMorgan Chase have tens of millions of credit card customers, many times the number of mortgage servicing customers that they have, yet **their card portfolios have never experienced the types of fiascos that their mortgage portfolios have**. But the two different types of credit products, and the servicing each requires, are just not comparable. "Servicing a credit-card account is not the same as servicing a mortgage," he said.

"*There are several different types of mortgages, all with different interest rates, different payments to different entities, different government entities you report to, different foreclosure rules. Each state has its own required foreclosure steps, and within each state different counties and municipalities have their own rules. Then there are the national compliance rules. There are more 'events' that can happen than with a credit card or an automobile loan*. ***It's a million times more complex than a credit card account,"*** Smith said.

Another problem servicing systems have had to deal with is that many current mortgage servicers did not originate the loans they are now servicing. That's made more complicated by the fact that many of those originating companies no longer exist, victims of the subprime industry collapse. Yet, the current servicers are being asked--if not required--**to try to modify loans where <u>they don't possess a complete loan file.</u>**

"Servicing systems were never built to be able to re-originate a loan, and that's what they are being asked to do," said Kevin Wall, senior vice president of default services in the Dallas office of Santa Ana, California - based CoreLogic.

"They don't have past data because they didn't originate the loans, and as a result they cannot perform future calculations," says Wall. **Many of the loans, he noted, were originally no-documentation loans, but in order to get a modification the borrower must be able to verify his or her income.**

As a result, *many companies find themselves handling modifications individually on Excel spreadsheets at the desktop level, outside the main servicing system*. That makes file sharing difficult within organizations, *particularly when a company has multiple servicing facilities <u>scattered around the country or even overseas</u>*.

Clearly, then, servicing systems were simply not designed to handle the avalanche of bad loans and new regulations that have been heaped upon them over the past several years. If anything, software system designers can probably only be faulted for lack of imagination for failing to predict what they would be faced with.

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But servicers can t simply sit on their hands and wait until all the bad loans run off. That could take years. In the meantime, they have to update their systems not only to deal with the industry's current crisis but prepare for the loans of the future. The question is, what will those systems need to have in order to deal with those loans?

The words that come up most frequently among those interviewed are “flexible,” “adaptable,” “dynamic,” “integrated,” “transparent” and “customizable.”

“Systems must be customizable,” says Wingspan's Kite. “***In the past, big banks just added new systems on the side. As a result, <u>there was too much disparate data in different places</u>. So what you had was one person looking at 19 different screens, because <u>nothing was in a central place. It was not stored in a single trusted source</u>.”' You need*** **that.** It's difficult to manage a business when all the different lines are telling different stories."

LPS' Scheuble agrees, although he prefers to use a medical analogy. “You need a primary care physician to watch over everything,” he said.

Scheuble notes that in today's environment, regulators are requiring servicers to give borrowers multiple chances to cure defaults before they proceed with a foreclosure, whereas in (*he past a loan would usually go from delinquency to foreclosure sequentially without reverting back a step.* ***Now a loan will bounce around from loss mitigation to foreclosure and back again, something servicing systems were not designed to accommodate*****.**

New systems must be able to take that into consideration and be able to watch the handoffs from one department to another and then back again, he says.

<u>Without that kind of integration, there could be data integrity problems</u>**. “*****<u>Some lenders have big problems in that regard,</u>*****” Scheuble says. “The system must work end-to-end, otherwise you're going to get killed.”**

“You must have sufficient flexibility to handle any regulatory change,” said ServiceLink's Whitworth. “That means that systems must be ‘agnostic’ platforms, not hard-coded point solutions, as these platforms cripple servicers in a hyper-regulatory environment.”

GCC Servicing Systems’ Cerny says new systems need to be flexible in order to be able to handle all of the different requirements imposed by the hundreds--if not thousands--of local authorities and reporting agencies, not to mention lenders, investors and borrowers. “Not all lenders and political divisions handle things the same way. Systems need to accommodate those differences,” he said.

DataQuick's Walsh says future systems must also have a greater ability to use predictive analytics. ***“The business isn't just about collecting and remitting anymore, it is much more about forecasting and managing default probability and loss severity,” he said. “In order to understand that, servicers need to have a very good grasp of value and relevant borrower behavior that impacts value as well as their ability to repay.”***

About <u>70 percent of this task can be handled through technology</u>, Walsh says, while the other 30 percent requires human oversight. Historically, analytical solutions have not been available in core servicing systems, and when they are, they are not adequately integrated with core systems, he says.

Ravi Ramanathan, president and chief executive officer of Decision Ready Solutions Inc., Irvine, California, said **new servicing systems must be able to help companies learn from past mistakes so as not to repeat them in the future.**

“We've lived through the crisis and need to learn from it,” he said. “The best way to understand what not to do is to study your own data and find out what went wrong. Today's loans provide an education on pricing and underwriting on the front end.”

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> **"Therefore, servicing systems should be able to provide look-backs and create a repository of data that allows originators and servicers to re-engineer what they have been doing to create a 'what not to do' database**," Ramanathan said.
>
> ***"Servicing needs to be focused, and everything <u>must be done correctly every step of the way</u>--and technology can help,"*** added Gagan Sharma, president and chief executive officer of BSI Financial Services Inc., Irving, Texas. ***"For example, technology can improve the way foreclosure document, data are gathered and reported, and ensure that a borrower's signature is authenticated before a foreclosure is filed,"*** he said.
>
> For IndiSoft's Khanna, ***new systems must be able to provide real-time communications to stakeholders, such as borrowers, servicers<u>, investors, insurance companies</u> and regulators*****.** In addition, the platform must be able to provide the same information within the organization no matter which employee is handling the loan, and no matter the type of loan.
>
> **Do servicers understand they have to change? Perhaps more accurately, are they prepared to make the investment to make those changes? The opinion is divided somewhat on this score. Not all servicers have fully bought into that idea, or perhaps they're in denial.**
>
> IndiSoft's Khanna says the industry is "still in a reactive mode" and will need to put out today's fires before it can be fully proactive and deal with the future. That may take until 2014, he says.
>
> "The industry is still not over the hump. It will still be a very challenging environment over the next two years," adds Khanna.
>
> Then, he says, servicers will start making significant investments in technology. "It's hard to do that when you're behind the eight ball. They're still dealing with the default onslaught at the moment. They will start investing when they get past the crunch, but I'm not sure we're past the crunch yet."
>
> **"We've come a long way, but we're not there yet,"** agrees RMS' Helm. **"As an industry, we're either proactive or reactive. It's hard to be proactive in this environment." The industry should have been proactive when loans started to go bad,** he said.
>
> **But whether it's today or two years from now, the industry is facing a major financial commitment for a long overdue overhaul of its servicing systems.**

418. The mortgage industry for three decades has committed massive fraud upon Florida courts and borrowers. Such frauds are now widely known to this court, other courts, lawmakers and regulators.

419. As such, the question for courts and regulators is do servicers and banks get a get free get out of jail card *and* a free pass to ignore laws by lawmakers and rules imposed by the Courts to conceal the acts that led to the virtual collapse of the entire world's financial system? Can any court or borrower, accept the blind representation of a lender, servicer, or bank without trustworthy, reliable, and authenticated evidence to support each averment, state, fact, figure, calculation, balance, and representations.

420. A plethora of data and evidence exists, but will the Courts mandate its production and open the black box of financial alchemy and servicer processes for all to see who truly stands behind the curtain, if anyone?

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421. Courts across the nation have moved to electronic discovery and mandated the preservation of all data in litigation. Yet, servicers and their foreclosure counsel are litigating complex modern-day foreclosure cases in the dark paper and digital copy age.

422. A modern foreclosure is complex litigation that involves hundreds, if not thousands of fields of data, information, and images being transferred amongst dozens of parties, of which the servicer and their "servicing" system of record acts as a mere hub to the many spokes leading to all other parties to the transaction. A typical mortgage should produce from thousands to tens of thousands of paper documentation retrieved from the various computer systems of record in use.

423. In the vast majority of cases, the servicing system being used is not even owned by the servicer, but licensed by a vendor who is responsible for programming the system, boarding data into the system, fixing errors in the system, building and developing the system, and eve entering data to the system.

424. All of the answers to borrower, court, regulators, and investor's questions are contained in the vast array of computer systems tied to each mortgage loan transaction.

425. Bank of America alone has 300 applications running on its proprietary system of record that it planned to reduce to under 180 by year-end 2014!

426. Thus, only a forensic examination of each mortgage loan's digital DNA (all electronic and digital data, images, and information on a loan) from a variety of disparate sources and systems can provide borrowers, their counsel, the court and even a servicer's designated corporate witness with the information, data, and evidence to answer critical questions such as:

a. Who had physical possession of the borrower's original wet-ink promissory note on any given date in time?
b. Who has authority to act as a P.E.T.E. or enforce the note and/or mortgage?
c. Who owned the borrower's original wet-ink promissory note on any given date in time?
d. How much is the actual debt obligation that is booked on the note owner's books and financial records?
e. When were endorsements of notes actually placed or allonges attached?
f. Did the Assignor have any right to assign to the Assignee on the date of assignment?
g. Has any co-obligor paid any portion of or all of the debt obligation they guaranteed?
h. Did the QA/QC systems detect fraud at origination thus, damaging HDC status?

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i. Who were the real lenders and "note holder" (not holder of a note) as defined in the note?
j. How much is actually due from the borrower and what portion, if any, is secured or may be subrogated to other undisclosed parties?
k. Who has the final authority to approve assumptions of the obligation, modify, and or mediate and settle all claims?
l. Who are all the indispensable and real parties in interest?
m. Does the servicer have authority to prosecute the foreclosure action and have its employees testify for other entities who are the plaintiffs or owners?
n. Were the endorsements valid and lawful or were they fabricated?
o. Were services charged to the borrower's account actually performed?
p. Were fees and services charged to the borrower's account marked-up by the servicer?
q. Was the principal balance properly amortized?
r. Were late fees properly calculated?
s. Were ARM adjustments properly and timely made?
t. Were ARM adjustments accurate?
u. Was the escrow account properly maintained and calculated?

427. These are just a few handfuls of the many questions that need to be answered in a modern-day mortgage foreclosure and that can only be answered, by the extensive data, files, and record residing and easily retrievable Loan Origination Systems, Selling & Delivery Systems, Document Custody & Tracking Systems, Securitization Systems, Warehouse Lending Systems, Due Diligence, Quality Control & Assurance Systems and other systems used and accessed.

428. A forensic review and analysis should include all user manuals and guides as well as their interfaces and protocols so it can provide a borrower, lender, or Court with a digital trail of the original note and collateral file during its infancy and sale and securitization gestation period.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES INVESTIGATION & SETTLEMENT WITH OCWEN FINANCIAL CORPORATION

429. As I was completing the writing of my comments for this Court, a major development occurred that not only validates virtually everything I advised this Honorable Court and the committee of, but should raise additional questions for the Court to review.

430. On Monday, December 22, 2014, Benjamin M. Lawsky, Superintendent of Financial Services, announced that to address serious conflict of interest issues uncovered during a New York State Department of Financial Services (NYDFS) investigation —

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William C. Erbey will step down from his position as Executive Chairman of Ocwen Financial Corporation (OCN) and from his positions as Chairman of the Board of Directors of each of four related companies: Altisource Portfolio Solutions S.A. (ASPS), Altisource Residential Corporation (RESI), Altisource Asset Management Corporation (AAMC), and Home Loan Servicing Solutions, Ltd. (HLSS). As of these resignations, Mr. Erbey will have no directorial, management, oversight, consulting, or any other role at Ocwen or any related party, or at any of Ocwen's or the related parties' affiliates or subsidiaries.[147]

431. Additionally, Ocwen — the fourth-largest mortgage servicer in the country and *largest subprime mortgage servicer in the United States* — will undertake significant operational reforms to **address serious servicing misconduct and conflict of interest issues** at the company; have an NYDFS-selected, independent monitor on site for up to an additional three years; and provide "hard-dollar" assistance to New Yorkers totaling $150 million.

432. I personally warned Erby, Ron Ferris (CEO) and the entire Ocwen board in person of the predatory servicing issues, including robo-signing, since early in this millennium during an annual meeting I attended.

433. My warnings came in personal communications, phone calls, emails, and even attendance at an annual meeting over a decade ago in their board room where I was the only outside shareholder present before Erby and the entire Ocwen board!

434. Yet, instead of addressing their fraudulent and predatory servicing practices, Ocwen went on a buying spree. Ocwen is currently the fourth largest mortgage loan servicer and the largest servicer of subprime loans in the United States, servicing an unpaid principal balance (“UPB”) of approximately $430 billion.

435. Ocwen has grown more than ten-fold in the last several years. Beginning in 2009, Ocwen significantly expanded its servicing operations through the acquisition of several major servicers of home loans, as well as the acquisition of mortgage servicing rights (MSRs) for hundreds of billions of dollars in UPB. A timeline of those acquisitions and Ocwen’s problems is listed below:

> **September 2011:** New York state’s superintendent of financial services, Benjamin M. Lawsky, reaches a pact with Goldman Sachs Group Inc. approving the sale of its mortgage servicing business to Ocwen Financial Corp., with new standards to prevent foreclosure abuses.
>
> **November 2011:** Mr. Lawsky approves the sale of Morgan Stanley MS +0.99%’s mortgage servicing business to Ocwen, imposes similar foreclosure abuse conditions.

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October 2012: Ocwen agrees to pay $750 million in cash and stock to acquire Homeward Residential Holdings Inc, a lender and servicer.

December 2012: Mr. Lawsky, citing alleged violations of the 2011 agreement, refuses to approve Ocwen's plans to approve to buy Homeward Residential and the mortgage-servicing unit of Residential Capital LLC, demanding that Ocwen bring on a monitor to oversee the company's mortgage operations. Mr. Lawsky later approves to the Homeward and Residential Capital deals after Ocwen agrees to put the monitor in place.

December 2013: Ocwen reaches a $2.1 billion settlement with the Consumer Financial Protection Bureau and 49 states over alleged homeowner abuses.

February 2014: Mr. Lawsky blocks Ocwen's plans to buy the rights to collect payments on $39 billion of loans from Wells Fargo WFC +0.91% & Co., citing concerns about the company's rapid growth. Mr. Lawsky also says he is examining Ocwen's relationships with affiliated firms, saying he has uncovered potential conflicts of interest.

August 2014: Mr. Lawsky alleges that Ocwen earned as much as $65 million a year from distressed homeowners by routing home insurance fees to affiliated companies; Ocwen says it will restate earnings due to accounting problems and discloses Securities and Exchange Commission investigation of dealings with related companies.

October 2014: Mr. Lawsky says Ocwen backdated thousands of letters to borrowers that prevented them from being able to promptly correct problem loans. Ocwen apologizes. Ocwen sets aside $100 million for New York settlement.

November 2014: Ocwen, Wells Fargo cancel planned sale of mortgage-servicing business.

December 2014: Ocwen criticized by mortgage-settlement watchdog over its compliance with the 2012 mortgage-practices settlement.

December 2014: Ocwen Executive Chairman William Erbey agrees to step down as part of $150 million settlement with Mr. Lawsky.

436. According to the NYDFS press release, in 2010 and 2011, the regulator participated in a multistate examination of Ocwen, as well as entities ultimately acquired by Ocwen. **The examination of Ocwen identified, among other things, deficiencies in Ocwen's servicing platform and loss mitigation infrastructure, including (a) robo-signing, (b) inaccurate affidavits and failure to properly validate document execution processes, (c) missing documentation, (d) wrongful foreclosure, (e) failure to properly maintain books and records, and (f) initiation of foreclosure actions without proper legal standing**.

437. Accordingly, Ocwen and NYDFS entered into an Agreement on Mortgage Servicing Practices on September 1, 2011. In June 2012, the Department conducted a surprise examination of Ocwen to assess its compliance with the 2011 Agreement, and uncovered significant violations. Consequently, on December 5, 2012, Ocwen entered into a Consent

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Order with NYDFS, which required Ocwen to retain an independent compliance monitor for two years.

438. **During the course of the Monitor's review, it identified numerous and significant additional violations of the 2011 Agreement, as well as New York State laws and regulations. For example*, <u>a limited review</u> by the Monitor of <u>478 New York loans that Ocwen had foreclosed upon revealed 1,358 violations of Ocwen's legal obligations</u>, or about <u>three violations per foreclosed loan</u>*.** These violations included:

- **Failing to confirm that it had the right to foreclose before initiating foreclosure proceedings;**
- **Failing to ensure that its statements to the court in foreclosure proceedings were correct;**
- **Pursuing foreclosure even while modification applications were pending ("dual tracking");**
- Failing to maintain records confirming that it is not pursuing foreclosure of service members on active duty; and
- Failing to assign a designated customer care representative.

439. I would advise this Honorable Court and the committee that the information, research, and much of the authoring of my comments, except for the December 22, 2014 Ocwen came weeks, months, years, and decades in advance of both the NYDFS announcement about Ocwen and the Court's recent request for comment. I was and am still completing authorship of a few books, guides, papers, and books dealing with many of these issues to be presented to the public, courts, government regulators, and foreclosure counsel.

440. However, most pertinent to my comments and the NYDFS regulatory action were additional findings, comments and action by the agency detailed below in their release:

> The Department and the Monitor also identified, among other issues, (a) inadequate and ineffective information technology systems and personnel, and (b) widespread conflicts of interest with related parties.
>
> ***In the course of its review, the Monitor determined that Ocwen's information technology systems are a <u>patchwork of legacy systems and systems inherited from acquired companies, many of which are incompatible</u>***. A frequent occurrence is that a fix to one system creates unintended consequences in other systems. **As a result, Ocwen regularly gives**

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borrowers incorrect or outdated information sends borrowers backdated letters, unreliably tracks data for investors, and maintains inaccurate records.

Ocwen's core servicing functions rely on its inadequate systems. Specifically, Ocwen uses comment codes entered either manually or automatically to service its portfolio; each code initiates a process, such as sending a delinquency letter to a borrower, or referring a loan to foreclosure counsel. With Ocwen's rapid growth and acquisitions of other servicers, the number of Ocwen's comment codes has ballooned to more than 8,400 such codes. Often, due to insufficient integration following acquisitions of other servicers, there are duplicate codes that perform the same function.

Despite these issues, Ocwen continues to rely on those systems to service its portfolio of distressed loans. Ocwen's reliance on technology has led it to employ fewer trained personnel than its competitors. For example, ***Ocwen's Chief Financial Officer recently acknowledged, in reference to its offshore customer care personnel, that Ocwen is simply "training people to read the scripts and the dialogue engines with feeling."*** ***<u>Ocwen's policy is to require customer support staff to follow the scripts closely, and Ocwen penalizes and has terminated customer support staff who fails to follow the scripts that appear on their computer screens</u>.*** In some cases, ***this policy has frustrated struggling borrowers who have complex issues that exceed the bounds of a script and have issues speaking with representatives at Ocwen capable of addressing their concerns***. Moreover, Ocwen's customer care representatives in many cases provide conflicting responses to a borrower's question. ***Representatives have also failed in many cases to record in Ocwen's servicing system the nature of the concerns that a borrower has expressed, leading to inaccurate records of the issues raised by the borrower.***

The Department's review of Ocwen's mortgage servicing practices also uncovered a number of conflicts of interest between Ocwen and four other public companies (the aforementioned "related companies"), all of which are chaired by Mr. Erbey, who is also the largest individual shareholder of each and the Executive Chairman of Ocwen.

Despite Mr. Erbey's holdings in these companies, Mr. Erbey has not in fact recused himself from approvals of several transactions with the related parties. Mr. Erbey, who owns approximately 15 percent of Ocwen's stock, and nearly double that percentage of the stock of Altisource Portfolio, has participated in the approval of a number of transactions between the two companies or from which Altisource received some benefit, including the renewal of Ocwen's forced placed insurance program in early 2014.

Ocwen's close business relationship with related companies is particularly evident in its relationship with Altisource Portfolio, which has dozens of subsidiaries that perform fee-based services for Ocwen. In one example, Altisource Portfolio subsidiary Hubzu, an online auction site, hosts nearly all Ocwen auctions. In certain circumstances, Hubzu has charged more for its services to Ocwen than to other customers — charges which are then passed on to borrowers and investors. Moreover, Ocwen engages Altisource Portfolio subsidiary REALHome Services and Solutions, Inc. as its default real estate agency for short sales and investor-owned properties, even though this agency principally employs out-of-state agents who do not perform the onsite work that local agents perform, at the same cost to borrowers and investors.

Bnmekhbsr nehmsdqdrs`qd`krn duhcdms`sngdqkdudkr nesgd Nbvdmnqf`mhy`shnm- Enqdw`lokd+ct qhmf hsr qduhdv+sgd Lnmhsnq chrbnudqdc sg`s Ocwen's Chief Risk Officer concurrently served as the Chief Risk Officer of Altisource Portfolio. The Chief Risk Officer reported directly to Mr. Erbey in both capacities. This individual seemed not to appreciate the potential conflicts of interest posed by this dual role, which was of particular concern given his role as Chief Risk Officer.

441. In addition to Ocwen's payments to New York homeowners are two critical components of the homeowner relief portion of the settlement that provides for: a) Ocwen will

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provide upon request by a New York borrower that ***borrower's complete loan file, which <u>includes all information from all systems</u>, including comment codes, at no cost to the borrower***, regardless of whether such borrower's loan is still serviced by Ocwen; and b) Ocwen will provide every New York borrower who is denied a modification, short sale, or deed-in-lieu of foreclosure, a detailed explanation of the reasons for denial.

442. There is absolutely no reason why Florida borrowers, especially those in foreclosure with Ocwen as a servicer or sub-servicer and related affiliates, should not be afforded similar documents when requested in discovery or that Ocwen and all servicers in Florida foreclosures should by Court rule be mandated to provide mandatory disclosures.

443. However, additional Significant Operational Reforms ordered by the New York regulator shines yet another spotlight on the unreliability and untrustworthiness of Ocwen and other servicers and loans it acquired from Saxon, American Home, Homeward, Residential and others.

444. Under the agreement, to help address conflict of interest issues, Ocwen will expand its Board of Directors by two independent board members in consultation with the Monitor. These additional directors will not own equity in any related party company. Moreover, Ocwen's Board will contain no more than two executive directors at any time.

445. ***The Monitor will also review the adequacy and effectiveness of Ocwen's operations, and assess Ocwen's progress in complying with recommended corrective measures. Such an assessment will include but is not limited to the following areas***:

- **<u>Information technology systems</u>** and personnel, including with respect to record keeping and borrower communications;
- Number of **personnel and the training and expertise of its personnel in <u>all</u> servicing operations**;
- **<u>Onboarding process</u> for newly acquired mortgage servicing rights**, including Ocwen's ability to onboard newly acquired MSRs without interruption to servicing newly acquired loans or its existing loan portfolio;
- **Controls in identifying and correcting errors made by Ocwen's personnel or systems**;
- Risk management functions;

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- Contracts or proposed contracts with third parties, including but not limited to related parties;

- **Fees charged by Ocwen to borrowers or mortgage investors**; and

- The Ocwen borrower experience.

446. The Monitor will also review and assess Ocwen's current committees of the Board of Directors. The Ocwen Board will consult with the Monitor concerning, among other things, ***the structure, composition, and reporting lines of such committees, and whether certain committees should be either disbanded or created***. The Board will consult with the Monitor to determine which decisions should be committed to the specific oversight of the Board's independent directors, or a committee comprised of such independent directors, including, but not limited to:

- Approval of transactions with related parties;

- Approval of transactions to acquire mortgage servicing rights, sub-servicing rights, or otherwise to increase the number of loans serviced by Ocwen;

- Approval of new relationships with third-party vendors;

- ***Determinations as to whether Ocwen's servicing, compliance, and information technology functions are adequately staffed***;

- ***Determinations as to whether Ocwen's servicing, compliance, and information technology personnel are adequately trained***;

- ***Determinations as to whether Ocwen's information technology infrastructure and ongoing investment in information technology systems are adequate***;

- Determinations as to whether Ocwen is adequately addressing the issues identified by the Operations Monitor and the Compliance Monitor; and

- Determinations as to whether Ocwen is treating borrowers fairly and is communicating with borrowers appropriately.

447. This is one of the most far-reaching servicing regulatory actions ever implemented; putting in place in-house directors and independent monitor to oversee the entirety of Ocwen's servicing operation.

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448. It also focuses in on key areas I desire this Honorable Court and committee to focus on, the issues of: a) the unreliability and untrustworthiness of the servicing systems, data, and evidence presented by servicers in foreclosure actions; b) the continued concealment of vital system data and evidence that may be contrary to the servicers' pleadings; c) the continued fabrication of evidence by servicers and vendors; d) the flawed systemic default servicing and foreclosure processes being implemented; e) the use of servicing histories give the illusion of the actual amount of debt obligation; f) the lack of competency of servicer employees, especially witnesses and affiants; g) the rote reading of scripts and information from screens from knowingly flawed servicing systems; and h) fabricating and spoliation of evidence by backdating default letters.

449. In other words, despite the warnings, consent orders, fines, sanctions, and agreements, Ocwen continued to thumb a willful and blind eye to the fraud to enrich its executives.

450. I originally completed my comments and was going to file them in early December of 2014, but there have been so many recent developments that further prove and support my comments that I have to keep adding new and additional information that this honorable Court must take notice of.

451. On January 12, 2015, the state of California announced plans to suspend Ocwen's license to do business in the state for failing to comply with administrative and judicial orders of a Court to turn over documents evidencing their compliance with California laws.

452. Ocwen's stock price, which had reach a high of almost $60 a share in October of 2013 reached a low of just over $5.50 soon thereafter.

453. California's action accused Ocwen of defying requests for information by the California Department of Business Oversight, that licenses nonbank mortgage lenders and providers of collection and foreclosure services.[148]

454. Ten days later, Ocwen entered into yet one more consent order with the California Department of Business Oversight and agreed to pay $2.5 million in penalties for a third-party auditor who would ensure Ocwen complies with the California regulators' requests for information.

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455. The state had moved to suspend Ocwen's license to operate in California after Ocwen had repeatedly failed to provide loan files it had requested about its servicing operation even when the department issued an administrative subpoena compelling it to do so.[149]

456. If the largest state in the Union has to go to such extraordinary measures to get Ocwen to comply with necessary, valid and lawful requests, what chance does a Florida homeowner or borrower with Ocwen with their servicer have of the company responding to their RESPA requests, discovery requests and a subpoena issued by the borrower's lawyer?

457. As shown in my comments, this behavior is no different than that of other leading servicers in America foreclosing on Florida property owners.

GOVERNMENT EVIDENCE OF MERS & SERVICER FRAUDS & ABUSES IN FLORIDA COURTS

458. It is now well known to the Courts and public that servicers, MERS and MERSCORP and their counsel have historically for decades provided false and fraudulent pleadings, affidavits, and evidence in judicial foreclosure and mortgage actions across America, particularly in the state of Florida.

459. The U.S. Justice Department, 50 state Attorneys General, The Federal Reserve, The OCC, and numerous other state and federal regulators including the FHFA have verified and validated my decades of investigation, research, analyses, opinions, and most importantly, my findings. History itself, validates my warnings, forecasts, and predictions.

460. I have more information regarding the basis of this truth than does the average layman because of my expertise and experience, but the fact that most of the population believes that MERS and servicers have systematically utilized false documents should be of concern to borrowers generally and to courts particularly when determining whether any of their records and pleadings are trustworthy.

461. The Federal Reserve Board on April 13, 2011 announced formal enforcement actions that required ten major U.S. banking organizations to address a pattern of misconduct and negligence related to deficient practices in residential mortgage loan servicing and

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foreclosure processing. These deficiencies represent significant and pervasive compliance failures and unsafe and unsound practices at these institutions.[150]

462. The Federal Reserve took these actions to ensure that firms *under its jurisdiction* promptly initiate steps to establish m***ortgage loan servicing and foreclosure processes that treat customers fairly, are fully compliant with all applicable law, and are safe and sound***.

463. The ten banking organizations are: Bank of America Corporation; Citigroup Inc.; Ally Financial Inc.; HSBC North America Holdings, Inc.; JPMorgan Chase & Co.; MetLife, Inc.; The PNC Financial Services Group, Inc.; SunTrust Banks, Inc.; U.S. Bancorp; and Wells Fargo & Company. Collectively, these banks and servicing organizations represented 65 percent of the servicing industry, or nearly $6.8 trillion in mortgage balances.

464. Each of the consent orders required the parent holding companies to improve **oversight of residential mortgage loan servicing and foreclosure processing conducted by bank and nonbank subsidiaries.**

465. In addition, the enforcement actions ordered the banking organizations that have servicing entities regulated by the Federal Reserve (Ally Financial, SunTrust, and HSBC) to promptly correct the many deficiencies in residential mortgage loan servicing and foreclosure processing. Those deficiencies were identified by examiners during reviews conducted from November 2010 to January 2011.

466. Yet, I discovered these abusive and fraudulent uniform predatory servicing practices beginning in the early 90s, but especially in my research from 1995 to 2000 when I released the first of my public reports and papers and began warning the CEOs, Chairman, and boards of such organizations, banks and servicers such as Bank One, WAMU, Bear Stearns, Ocwen, EMC Mortgage, JPMorgan Chase, Freddie Mac, Fannie Mae and others.

467. In addition to the Federal Reserve's actions against the ten major banking institutions referenced above, additional actions were taken against Mortgage Electronic Registration Systems, Inc. ("MERS") and their parent, MERSCORP and Lender Processing Services ("LPS") for their support of the unlawful foreclosure actions.

468. The Fed actions required LPS to address deficient practices related primarily to their document execution services that LPS, through its prior subsidiary DocX, LLC, and LPS Default Solutions, Inc., provided to servicers in connection with foreclosures. MERS was

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required to address significant weaknesses in, among other things, oversight, management supervision, and corporate governance.

469. The LPS action was taken jointly with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, while the MERS action is being taken jointly with those agencies and the Federal Housing Finance Agency.

470. Both companies, in the implementation of their coordinated processes with the ten financial institutions and other servicers, supported a series of fraudulent and unlawful practices that constituted unsafe banking practices.

471. Years ago, attorneys for MERS informed me that the information in the MERS' system is only as accurate and reliable as the information entered into the system by servicers and others. In other words, Garbage In – Garbage Out.

472. In addition to my own research and experience indicating that MERS documents are more likely than not false, my opinions and comments in this regard are also based on numerous government documents. For example, the OCC, the Board of Governors of the Federal Reserve, the OTS, and the FDIC examined the services provided by MERS and MERSCORP to Examined Members pursuant to the provisions of 12 U.S.C. § 1867(c), on behalf of themselves and other appropriate Federal banking agencies as defined in 12 U.S.C. § 1861(b)(1).

473. The OCC, the Board of Governors of the Federal Reserve, the OTS, and the FDIC found that MERS and MERSCORP:

a) failed to exercise appropriate oversight, management supervision and corporate governance, and failed to devote adequate financial, staffing, training, and legal resources to ensure proper administration and delivery of services to Examined Members; and

b) have failed to establish and maintain adequate internal controls, policies, and procedures, compliance risk management, and internal audit and reporting requirements with respect to the administration and delivery of services to Examined Members.

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474. This Honorable Court and the committee can find a true and genuine copy of the "Consent Order" by and between MERS and MERSCORP with the OCC, the Board of Governors of the Federal Reserve, the OTS, and the FDIC that I personally reviewed at http://www.federalreserve.gov/newsevents/press/enforcement/enf20110413a12.pdf.

475. Further, I would note that a study done by the San Francisco County documents that in the same of county land records it sampled of MERS records. Their investigation resulted in 112 loans whereby the beneficiary as entered on the Trustee's Deed upon Sale conflicted with the investor information present on the MERS database for a reported 58% failure rate. (See Figure 5.6-A *MERS Conflicts with TDUS* of the study that may be downloaded and/or reviewed at http://aequitasaudit.com/images/aequitas_sf_report.pdf.

476. Such an error rate in my opinion, in any business, is unacceptable and would make such data and records untrustworthy and unreliable.

477. Based on my own personal investigation, research, knowledge, experience, and expertise, national servicers and their foreclosure counsel have historically for decades provided false and fraudulent pleadings, affidavits, and evidence in judicial foreclosure and mortgage actions in the state of Florida.

478. My opinion in this regard is corroborated by several of the investigations and consent orders reached with state and federal regulators and attorneys general.

479. However, I sounded the alarm on MERS and the servicers actions as early as 2000! Yet, nothing was done for over a decade.

480. To illustrate that these abuses were not recent events that were the result of increased securitization, I would point to two settlements with the Federal Trade Commission ("FTC") and two stipulated orders, one on or about October 24, 2003 and one on September 4, 2007 as described below.

481. A true and genuine copy of a PDF file of a "Stipulated Order" agreed to and entered into on or about October 24, 2003 by and between the United States, Federal Trade Commission ("FTC"), Department of Housing and Urban Development ("HUD") and Fairbanks Capital in the *United States of America vs. Fairbanks Capital Corp*. et al in the United States District Court for the District of Massachusetts in Case No. 03-1229 can be

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personally reviewed and/or downloaded directly from the FTC website address located at http://www.ftc.gov/sites/default/files/documents/cases/2003/11/0323014stip.pdf.

482. A true and genuine copy of a PDF file of a "Modified Stipulated Order and Judgment" agreed to and entered into on or about September 4, 2007 by and between the United States, Federal Trade Commission ("FTC"), Department of Housing and Urban Development ("HUD") and one servicer, Select Portfolio Servicing, Inc. and SPS Holding, Corp. in the *United States of America vs. Fairbanks Capital Corp. et al* in the United States District Court for the District of Massachusetts in Case No. 03-1229 can be personally reviewed and/or downloaded directly from the FTC website address located at http://www.ftc.gov/sites/default/files/documents/cases/2007/08/070802selectportfoliomodiifiedstip.pdf.

483. In January 2013, agreements between 13 mortgage servicers and federal banking regulators were reached that ended the Independent Foreclosure Review for those participating servicers. In the summer of 2013, GMAC Mortgage and EverBank also reached agreements with the federal banking regulators that ended the Independent Foreclosure Review for those servicers. The Agreement includes the following servicers and their affiliated mortgage companies: America's Servicing Co; Aurora Loan Services; BAC Home Loans Servicing; Bank of America; Beneficial; Chase; Citibank; CitiFinancial; CitiMortgage; Countrywide; EMC Mortgage Corporation; Everbank/EverHome Mortgage Company; GMAC Mortgage; Goldman Sachs; HFC; HSBC; Litton Loan Servicing LP; Metlife Bank; Morgan Stanley; National City; PNC; Saxon Mortgage; Sovereign Bank (now known as Santander Bank); SunTrust Mortgage; U.S. Bank; Wachovia; Washington Mutual; Wells Fargo; and Wilshire Credit Corporation.

484. Additional consent orders by the financial institutions with federal regulators on fraudulent and predatory servicing practices can be downloaded at the OCC site at http://www.occ.gov/topics/consumer-protection/foreclosure-prevention/correcting-foreclosure-practices.html and the Federal Reserve at http://www.federalreserve.gov/newsevents/press/enforcement/2014enforcement.htm.

485. Most importantly, the links directly below will show to this Court, how the Supreme Court for the state of New Jersey handled a very similar matter, having appointed

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masters and a couple of judges to oversee a massive disclosure of each servicer in the state and how they processed affidavits and foreclosures in that states.

486. A review of the affidavits filed in that matter along with all of the documents produced will show the systemic nature of the fatal and flawed "processes, protocols, and procedures" of the mortgage and default servicing industry.

487. I have provided this Honorable Court and the committee with a sample of the certifications and affidavits in that matter and a sample of procedure and process manuals in Exhibit F and particular emphasis should be placed on Exhibit F-1 that is the Wells Fargo Home Mortgage "Foreclosure Attorney Procedure Manual" that can also be downloaded at http://stopforeclosurefraud.com/wp-content/uploads/2014/03/foreclosure_attorney_procedure_manual-1.pdf.

488. While virtually all major servicers are still filing false pleadings and evidence, I highlight for this Court, one of the nation's largest servicers, Bank of America ("BOA").

489. BOA has historically provided false and fraudulent pleadings, affidavits, and evidence in judicial foreclosure and mortgage actions in Florida. BOA has historically allowed foreclosure actions to be carried out under it's name and in its capacity as trustee for securitized trusts wherein it turned a willful blind eye to their own or other servicers' prosecution of foreclosure actions that contained false and fraudulent pleadings, affidavits, and evidence.

490. This is evidenced by their settlement and a Consent Order with the Office of Comptroller of the Currency ("OCC") entered into on or about April 13, 2011. (See at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf)

491. BOA executed a "Stipulation and Consent to the Issuance of a Consent Order," dated April 13, 2011 with the OCC wherein BOA consented to the issuance of a Consent Cease and Desist Order by the OCC. BOA committed to taking all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices identified by the OCC, and to enhance BOA's residential mortgage servicing and foreclosure processes.

492. In the Consent Order, the OCC found that BOA:

a) filed or caused to be filed in state and federal courts affidavits executed by its employees or employees of third-party service providers making various assertions, such *as ownership of the mortgage note and mortgage*, the

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amount of the principal and interest due, and the *fees and expenses chargeable to the borrower*, in which the *affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records*, when, in many cases, they *were not based on such personal knowledge or review of the relevant books and records*;

b) *filed or caused to be filed in state and federal courts*, or in local land records offices, *numerous affidavits or other mortgage-related documents that were not properly notarized*, including those not signed or affirmed in the presence of a notary;

c) *litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned* and, if necessary, *in the <u>possession</u> of the <u>appropriate party</u> at the <u>appropriate time</u>*;

d) failed to devote *sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes*;

e) *failed to devote to its <u>foreclosure processes</u> <u>adequate oversight</u>, internal controls, <u>policies, and procedures</u>, compliance risk management, <u>internal audit</u>, third party management, and <u>training</u>*; and

f) *failed to sufficiently <u>oversee outside counsel</u>* and other *<u>third-party providers</u>* <u>handling foreclosure-related services</u>.

493. By reason of the conduct described directly above, BOA was found by the OCC to engage in unsafe or unsound banking practices.

494. Based on my own personal investigation, research, knowledge, experience, and expertise, alleged trustees, such U.S. Bank, Deutsche Bank National Trust Co., and HSBC Bank USA, N.A. ("trustees") have historically sanctioned, condoned, and allowed false and fraudulent pleadings, affidavits, and evidence in judicial foreclosure and mortgage actions across Florida.

495. These trustees have historically allowed foreclosure actions to be carried out under its name in its capacity as trustee for securitized trusts wherein it turned a willful blind eye to servicers' prosecution of foreclosure actions that contained false and fraudulent pleadings, affidavits, and evidence.

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496. HSBC is another bank that executed a "Stipulation and Consent to the Issuance of a Consent Order," dated April 13, 2011 with the OCC wherein HSBC consented to the issuance of a Consent Cease and Desist Order by the OCC. HSBC committed to taking all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices identified by the OCC, and to enhance HSBC's residential mortgage servicing and foreclosure processes.

497. In the Consent Order, the OCC found that HSBC:

a) filed or caused to be filed in state court affidavits executed by its employees or employees of third-party service providers making various assertions, such as the note attached to the complaint is a true copy, the mortgage/deed was recorded, and the amount of principal due, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

b) filed or caused to be filed in state courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

c) litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned at the appropriate time;

d) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes;

e) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and

f) failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

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498. By reason of the conduct described directly above, HSBC was found by the OCC to engage in unsafe or unsound banking practices.

499. A true and correct copy of the Consent Order can be downloaded from the OCC website located at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47d.pdf.

RECOMMENDATIONS & OPINIONS

500. As reflected above, herein, and in the attached, my research, investigation, and analyses over the last two-decades as well as that of the research, investigation, and analyses of state and federal regulators such as the OCC, Federal Reserve, FTC, and federal and state attorneys general as well as the Fannie Mae Independent counsel and consumer lawyers I collaborate and work with evidence that America's servicers and trustees have carried out wrongful, unlawful, and fraudulent foreclosure actions across the nation, and particularly in Florida, over the last three decades with impunity and a callous disregard for the rule of law and rules of civil procedure.

501. They have also historically provided inaccurate payment information, loan records, and evidence of note ownership and the authority to enforce the terms of a note or conduct foreclosure actions across the nation and the state of Florida.

502. It is my opinion and comment that it is absolutely necessary for each borrower in a foreclosure action to be able to obtain and conduct *extensive* electronic discovery in order to determine: a) who is the Note Holder as defined in paragraph one of the Florida borrower's uniform note; b) who they should make payments to and pay off the note; c) who can properly cancel and return their original wet-ink promissory note upon payoff to avoid any additional liability; d) who is properly entitled to the proceeds of their payoff to avoid any additional liability to an undisclosed holder in due course; e) who can properly satisfy and execute a satisfaction of their mortgage; f) who they must notice in any legal proceeding concerning the loan and property; g) who they can seek approval of assumptions of the note from; h) who they can negotiate and mediate the settlement of any claims with; i) who they must name in any potential quiet title claim or other legal proceeding; j) who has the legal right to accelerate; k) who has the legal right and/or authority to initiate, file, and prosecute a

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foreclosure action in the state of Florida; l) who has the legal right and/or authority to modify their mortgage; and m) who has the legal right and/or authority to mediate, arbitrate, and settle their claims in any Florida foreclosure action.

503. As the court may likely infer, I am extremely familiar with the litigation of these types of cases because of my over twenty-five years of research and investigation into these matters and my work as an expert witness in other similar types of cases, many of which are described in the following endnote.[151]

504. Based on my experience, research, investigation, and expertise, my opinion and comments is that any Court in the state of Florida should not rely on template foreclosure legal filings unless that template is carefully crafted and supported by the plethora of documents and data, known to exist, filed as exhibits to the initial foreclosure complaint or summarily in an "initial disclosure" to the borrower with the filing of the suit.

505. This practice would significantly reduce foreclosure filings and caseloads in Florida Courts.

506. Borrower/defendants in Florida foreclosure actions who have competent counsel would then be immediately compelled, rather than years later in the Courts, to accept the servicers' modification, short sale, and/or deed-in-lieu offers and settle the case without Court intervention.

507. As for servicers, they would be compelled to retool their Model-T and outdated foreclosure factory processes and only bring foreclosure actions that were lawful and justifiable under the laws of the state of Florida with admissible evidence and testimony.

508. Mere conclusory statements of servicers in pleadings with regard to: a) who is a holder; b) who is a holder in due course; c) who owns, holds, and/or has possession of a borrower's original wet-ink promissory note; or d) or who owns a borrower's loan without supporting evidence should not be accepted or condoned, lest we allow the servicers and their foreclosure counsel to continue filing fraudulent foreclosure actions in the state of Florida.

509. Servicers, from the immediate filing of their foreclosure actions, should support their complaints with the following processes and evidence:

a) An immediate inspection of the original wet-ink promissory note and the entirety of the collateral/custodial file and all contents ever placed in the file since origination; or

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a. An authenticated and certified copy by hand and not automated document feed, of all contents contained in the collateral/custodial file supported by an independent notary.
b. An authenticated and certified copy by hand and not automated document feed, of the original note on the date of filing, made by the Clerk of Court in the county in which the foreclosure action is to be filed.
c. Or, best yet, the filing of the original wet-ink promissory note with the filing of the lawsuit with any allonges attached.

b) The production of financial, accounting, and general ledger entries of the Note Owner, not servicing records of the servicer, recognizing the borrower's debt obligation or note as an asset of the alleged note owner on that specific date in time;
c) The production and/or identification of all sale, transfer, document custody, and servicing contracts and agreements with appropriate schedules listing the loan/note;
d) Evidence of payment or consideration paid;
e) All authorizations, powers of attorney, and corporate resolutions for those executing assignments and note endorsements;
f) All authorized signature page documents listing each person authorized to execute assignments and note endorsements;
g) The investor matrix and information contained in the servicer's system;
h) All specific loan-level data files ever created and transferred, especially MISMO related and similar uniform data files;
i) The production of all document custody records and entries in the document custodian's system of record and tracking system as well as:
    a. All bailee letters and trust receipts;
    b. The warehouse lender's wire and release;
    c. All requests for file/document releases;
    d. All assignments executed or drafted in the file, whether recorded or not and in blank or not;
    e. All allonges executed or drafted in the file, whether attached or not and in blank or not;

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510. My experience is that the documents provided by servicers of Florida mortgage loans in efforts to foreclose on homes contain an unusual high incidence of false, fabricated, and even forged documents and evidence. Thus, it is my comment and opinion that any averment in a foreclosure pleading, testimony or evidence in a case should not be accepted as true without careful scrutiny and analysis of the records vis a vis each of the exact systems that have produced them.

511. This is because the "servicing" summaries and redacted and/or incomplete histories produced in litigation are far more often than not prepared in anticipation of and specifically for purposes of foreclosure and mortgage litigation.

512. In fact, the summaries used in the majority of cases are specifically for litigation purposes as they are often referred to as the "judgment figures" and some servicers prepare redacted spreadsheet-like summaries and histories that leave out significant payment information, transactions, and the payment application data.

513. Also, the assignments of mortgages/deeds/notes that are created immediately prior to foreclosure or in certain cases, after foreclosure and those that are created after the notice of default or intent to accelerate are in the vast majority of times specifically created by or for the servicers for purposes a judicial foreclosure.

514. Today, automated "robo-foreclosures" by the attempted and many times successful admission of automated "robo-evidence" that consists of unreliable, unverified, undated, and unauthenticated alleged "business records" that attempt to overcome hearsay objections is now the servicing industry "programmed" norm.

515. Servicers in Florida foreclosure actions consistently attempt to have "servicing summaries" (alleged to be "business records") introduced as evidence pursuant to the business records exception to the "hearsay" rule with no backup, support, data, calculations, interest rate adjustments, suspense/unapplied activity, schedules of all payments made, payments applied and processes, and dates payments were received are provided.

516. This type of information is crucial to determining the merits of any borrower or lender's claims. It is critical that any borrower and their counsel be able to review, test, and analyze documents relating to ownership, payment history, fees, principal and interest

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balances, etc. for the documents or data provided may reveal red flags which suggest additional testing, auditing, review, and additional areas of discovery.

517. Due to servicers of Florida mortgages and their foreclosure counsels' historical and willful non-compliance with Florida law and the Florida Rules of Civil Procedure, a borrower, the borrowers attorney, or a Court cannot simply accept what they place on paper or testify to without testing for validity and accuracy.

518. Neither I, nor a servicer's witness, can test or audit a loan without all servicing AND NOTE OWNER records being made available, especially life-to-date transaction and payment histories, records, and data.

519. A servicers' right to service a loan on behalf of a Note Owner is only as good as that Note Owner's ownership of the borrower's debt obligation. If the debt obligation has been paid, even by a third-party co-obligor such as sureties, endorsers, and/or guarantors per paragraph 8/9 of the "uniform" promissory note, then that servicing right is not effective.

520. There simply are no legitimate reasons to conceal the production of vital records, documents, and evidence such as the original wet-ink promissory note, assignments, cancelled checks, and other evidence of note ownership such as the Note Owner's financial and accounting books and records evidencing the existing ownership of the borrower's debt obligation.

521. Any effort to not produce such evidence are red flags for indicia of fraud and predatory servicing and foreclosure abuse that this Court can stop by creating rules and pleading templates that require further evidence of Note Ownership, recognition of debt obligation, and physical possession of the original wet-ink promissory note.

522. The servicing, default servicing, loss mitigation, and foreclosure functions of servicers are highly automated by computer and electronic means as illustrated by some of the servicers' manuals and guides contained in Exhibit F.

523. The documents, records, and evidence that are necessary to analyze and validate legitimate note ownership with the lawful authority to accelerate, modify, consent to assumption and transfer, and/or foreclose are not that difficult to access and retrieve.

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524. In a most simplistic review, the following data, documents, records, files, and evidence should be easily retrievable with a few keystrokes with minimal cost, time, and effort:

- The production of the original "wet ink" promissory note, all assignments, allonges, and other original wet-ink documents and copies contained in the borrower's "collateral/custodial" file; (Document Custodian)
- Corporate resolutions, authorizations and powers of attorney for endorsers and assignors of notes and assignments; (Note Owner)
- Custodial and collateral records indicating the dates and times: (Document Custodian)
    - Any exceptions to the file (i.e. missing notes, assignments, endorsements, signatures etc.)
    - Indorsements on the note or allonge were placed
    - Assignments and allonges were created
    - The note was placed into the file
    - The file was placed into the secured vault
    - The note and other documents were certified
    - The file was signed out or signed in
    - The note and/or file was received from other sources
    - Unrecorded and blank assignments were taken out or placed in the file
- Borrower Payments (Servicer's Servicing History & Imaging System)
- Payments Made to Third Parties & Charged/Assessed to Borrower's Account (Servicer's Servicing History & Imaging System)
- Checks/Wires For Proof of Payment Of Note (Note Owner's Imaging System)
- Warehouse Lender's Releases & Wire Confirmation (Warehouse Lender's Trading System)
- All Contracts/Agreements Related to Purchase of Note ("Note Owner's" Closing Binder)
- All Schedules of Loans Sold ("Note Owner's" Closing Binder)

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- Sub-Ledgers & Ledgers "Recognizing" Note As Debt Obligation, Asset Or Note Receivable ("Note Owner's" Financial/Accounting System)
- All Assignments of Mortgage/Deed Recorded & Unrecorded (Document Custodian's Collateral File)
- All Bailee Letters and Evidence of Note/Pool Assignments (Servicer Transaction File & Document Custodian's Collateral File)

525. The common industry-practice of pleading verifiers, declarants, affiants and witnesses of simply taking figures, information, and data from a computer screen whose data, calculations, and information is often provided by third-party outsourced vendors, cannot be a substitute for a homeowner's right to discover whether valid authentication of these business records and evidence can be provided by a true and legitimate records custodian and a competent, knowledgeable, and reliable witness.

526. When notes are alleged to have been transferred to a securitized trust, then a careful review and analysis of all relevant trust documents, trust agreements, and exhibits must be conducted to insure that the strict provisions of the trust agreement were complied with.

527. These documents should be part of the initial pleadings as exhibits, referenced, their location and custody disclosed, and/or provided soon after filing for initial disclosures.

528. Without access to and a reading, review, and analysis of all documents for a securitized trust or GSE, no employee, affiant, or witness for the servicers could properly attest to the facts required to prove up and testify to note ownership and the note's chain of title in live testimony or verify a pleading.

529. Servicers' and their witnesses often do not even have access to such records, let alone have read, reviewed, audited, or tested them for their accuracy and veracity.

530. Without access to and a reading, review, and analysis of all documents for a securitized trust's document custodian, no employee, affiant, or witness who does not work for the document custodian for the Trust can properly attest to the facts required to a) prove up and testify to the physical possession and custody of a borrower's original wet-ink promissory note; b) when and if allonges were ever attached; c) what assignments were ever created; d) what was contained in and/or removed from the collateral file; e) the dates endorsements were

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placed upon any note or allonge; f) what the borrower's original note looked like and contained on any given date; and g) that the foreclosing Plaintiff had physical possession of the borrower's note with any attached allonge with blank endorsement on the dates of default, acceleration, and foreclosure.

531. The facts, information, data, and amounts pulled from computer screens by the servicers, their declarants, affiants, and witnesses, are only as accurate as the system's computation of the data entered. Due to the historical inaccuracies of servicing records and histories, borrowers, their counsel and experts must be given an opportunity to obtain and analyze evidence regarding the accuracy of the data, boarding process, payments, and calculations going into the computer system, before any court can determine the legitimacy, reliability and accuracy of the figures, balances, calculations, and demands.

532. Thus, in order to determine note ownership and the party that is defined as the "note holder" in paragraph one of a borrower's promissory note, all of these agreements, contracts, and their exhibits, schedules, and amendments must be gathered, produced, reviewed, read, and analyzed. This is especially true of the Schedule of Loans/Mortgages exhibits that accompany a PSA and MLPA which typically are electronically kept and updated throughout the life of a trust. (a live document/exhibit)

533. However, loans and notes sold and transferred to securitized trusts can be "kicked-out" immediately prior to or after the closing date of a securitized trust and they can be substituted or repurchased at a later date due to a failure to meet deal stips or for violations of reps and warranties. Thus, an examination of a securitized trust's document custody, loan schedules, financial, and accounting records must be produced and reviewed to determine if a particular note is still reflected as an asset of the trust and still in its physical custody, possession, and control.

534. As stated herein, originators, warehouse lenders, lenders, and securitizers often failed to ship and transfer the original wet-ink promissory notes of borrowers loans and notes sold and transferred to securitized trusts in recent years. Instead, they kept the originals to use for other pledges and sales and only sent copies, color laser copies, and images of a borrower's note to the custodians for securitized trusts. This was one of the motivating factors for robo-signing in the "Securitization Fail" scenario. Thus, all documents, data,

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information, policies, and records related to the movement, shipment, physical custody, certification, and exception of receipt and control of the original wet-ink promissory notes of borrowers, especially when endorsed in blank, must be gathered, produced, reviewed, audited, and analyzed.

535. Just because a servicer or its witnesses says it is so, does not mean it is so.

536. As shown, the industry is fully aware of these facts and have attempted certain “remediation” efforts to attempt to “fix” the various document defects and deficiencies attempting to “remedy” the defects, deficiencies, and frauds committed against both borrowers and investors in mortgage-backed securities (“MBS”).

537. Servicers, lenders, and their foreclosure/mortgage litigation counsel and vendors such as MERS, SPS, JPMorgan Chase, Ocwen, Nationstar, Wells Fargo, and Bank of America try to put forth false assertions that foreclosures are simple matters and that they have possession of the borrower’s original wet-ink promissory note, when in fact, often all they hold or have at the time is an undated, and uncertified copy of an unauthenticated, undated, and uncertified “image” of the borrower’s alleged promissory note. Thus, all of the document custody records, data, policies, and files as described above and herein, must be produced and reviewed in my opinion, to determine physical possession and custody of an original note and most specifically: a) on what date they received any note endorsed in blank; b) what did the note look like and contain on such date; c) any alterations to the note; d) from whom the note was shipped; and e) for whose beneficial interest the servicer, attorney, or custodian may be “holding” the original wet-ink promissory note for?

538. This is due to the fact that some lawyers, law firms, servicers, and vendors are carrying out “remediation” and “title curative” measures involving fabricating, forging, destroying and/or concealing existing evidence such as mortgage/deed/note assignments, note endorsements, and allonges, especially when a prior lender/note holder such as America Home Mortgage or New Century has gone bankrupt and is out of business. Thus, a careful analysis of the document custody files, records, data, certification reports, exception reports, tracking reports, policies and procedures must be gathered, preserved, produced, reviewed, and analyzed to ascertain if the collateral/custodial file is “clean,” “scratch and dent,” or “toxic!”

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539. A modern-day mortgage transaction, especially a private label or GSE securitized mortgage loan, is a highly complex transaction whereby a plethora of electronic data is created, as illustrated herein, that must be gathered, preserved, produced, tested or audited, and analyzed to validate and verify:

a) The truthfulness and veracity of all written and verbal testimony given in a foreclosure/mortgage action;

b) The authenticity and genuineness of all mortgage related instruments and evidence produced in a foreclosure/mortgage action;

c) The genuineness of all signatures of signatories on loan, transfer, and assignment documents as well as their authorization, especially those alleged "officers;"

d) The reliability, accuracy, precision, truthfulness, trustworthiness, dependability, and truthfulness of balances, figures, calculations, fees, numbers, data, and information derived from computer systems, documents, records, and files produced in a foreclosure/mortgage action;

540. The "paper" and "document trails" put forth as evidence in a foreclosure and/or mortgage action are highly suspect and must be carefully examined, analyzed, and compared against all the electronic, financial, accounting, and custodial data, records, and files available.

QUALIFICATIONS & MATERIALS RELIED UPON

541. I am a foreclosure examiner, researcher, investigator, and expert with over 20 years of experience in examining and documenting predatory foreclosure, servicing and securitization frauds, abuses, and schemes.

542. I have been asked by counsel in Florida foreclosure matters to document in detail the source of my expertise with regard to commenting on the Court's recent amendments to the Florida Rules of Civil Procedure for foreclosure matters in the above assigned case number and styled heading.

543. Exhibit D, that I personally prepared, details my credentials, research, investigation, and experience over the last two decades in researching and investigating the mortgage servicing, default servicing, document custody, and foreclosure practices of the

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mortgage servicing industry, including those servicers, banks, trustees, and vendors who initiate and prosecute foreclosure actions in the state of Florida.

544. I became involved in researching the special servicing, default servicing, mortgage servicing, and securitization practices, processes and systems utilized in the mortgage-banking industry in the early nineties for personal reasons. My mom and dad, Anthony and Matilde Pew, were victims of what are now widely regarded and recognized in the mortgage industry as predatory lending and servicing practices.

545. Predatory servicing and predatory mortgage servicing are terms I first coined in 1999/2000 reports, see infra., to describe a series of fraudulent, abusive, and oppressive mortgage servicing and foreclosure practices that I witnessed first hand while attempting to protect family interests and thousands of other borrowers across the nation.

546. I mention the fact that I coined these phrases because they are now widely utilized and accepted by the banking industry and state and national financial regulators. This is illustrated in the Comptroller's Handbook for Mortgage Banking published and distributed by the Office of Comptroller & Currency ("OCC") last retrieved by me on August 5, 2014, at http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/a-mb.pdf.

547. As this Honorable Court knows, the OCC is an independent bureau within the U.S. Department of the Treasury that was established by the National Currency Act of 1863 and serves to charter, regulate, and supervise all national banks and thrift institutions and the federal branches and agencies of foreign banks in the United States. One of the OCC's primary functions is to ensure the safety and soundness of the national banking system. The OCC Comptroller's Handbook for Mortgage Banking uses the terms I coined as follows:

> "*Care must be taken to avoid practices that may be considered to constitute predatory servicing and that may separately violate one or more federal statutes, such as the FTC Act, the Fair Debt Collection Practices Act, FCRA, RESPA, and TILA.*"[152]

> "*Determine whether the board of directors or its mortgage banking committee, consistent with its duties and responsibilities, has adopted mortgage banking policies that adequately cover all facets of the servicing operation, including servicing nontraditional loan products or loans to subprime borrowers. Policies and controls should be in place to ensure compliance with applicable law, including the prevention of predatory servicing practices…*"[153]

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"*Determine the level of customer complaints pertaining to mortgage banking that the bank has received since the previous examination. Determine whether*:

• *any customer complaints may indicate predatory servicing practices*."[154]

548. In the OCC Comptroller's Handbook for Mortgage Banking, a number of the predatory servicing practices investigated and identified by me as early as 1990/1991 are defined as predatory servicing practices that include:[155]

- Failure to properly credit mortgage payments that are made on time, as a pretext for imposing unjustified late fees, and knowingly reporting borrowers to credit bureaus for the resulting false delinquencies.

- Force-placing high-cost insurance coverage on borrowers despite documentary evidence that satisfactory insurance is in effect. (When escrow accounts are insufficient to make these higher insurance premiums, monthly mortgage payments are increased, leading to further delinquencies and late fees.)

- Charging fees for services not specifically sanctioned in loan documents.

- Charging late fees when the only delinquency is attributable to earlier late fees or delinquency fees.

- Threatening borrowers with unjustified foreclosures (i.e., those caused solely by the servicer's own predatory servicing practices).

- Failure to respond to customer inquiries and complaints about these practices in an adequate or timely manner, including as defined by RESPA.

549. In my research, investigation, and analysis of large wide-page "dot-matrix printouts of my family's servicing histories in the early nineties, I discovered that the mortgage servicing system used by the majority of banks and servicers in America, the Mortgage Servicing Platform ("MSP") f/k/a the "CPI System" by Computer Power, Inc. in Jacksonville, Florida was historically and fatally flawed, unreliable, and inaccurate, as not only described herein by myself and in the attached exhibits, but by the very own declaration of an employee of Select Portfolio Services, Brent Rasmussen attached as Exhibit I filed in a Federal District Court by Fairbanks Capital.

550. Exhibit I is a true and correct copy of the order I first obtained years ago in the case.

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551. Prior to my extensive research and investigation of the mortgage servicing industry, I already had developed investigative and research skills in the social sciences and marketing research for which my work has been internationally recognized. (see http://en.wikipedia.org/wiki/Nye_Lavalle)

552. It was from this expertise, that I have acquired over twenty-five years and 40,000 hours of research and investigation into the mortgage and default servicing industry. Because Florida foreclosure counsel has insisted I document my expertise for the Court in detail, I would point out that I am known, recognized, and/or credited with being the following:

a.) The person first responsible for researching, identifying, and coining the mortgage industry-wide and regulatory used term "predatory mortgage servicing" and/or "predatory servicing" in the nineties.

b.) The first person to comprehensively research, identify, and report on predatory mortgage servicing practices.

c.) The first person, in the nineties, to research, identify, and report on the predatory mortgage servicing practice now widely known, recognized, and/or defined by courts, lawyers, and government regulators as "robo-signing."

d.) The first person, in the nineties, to research, identify, and report on the predatory mortgage servicing practice of providing false pleadings, affidavits, declarations, and evidence in foreclosure and bankruptcy actions in state and federal courts.

e.) The first person, in the nineties, to research, identify, and report on the predatory mortgage servicing practice of servicer witnesses providing false and incompetent testimony in affidavits, declarations, depositions, hearings, and trials.

f.) One of the first persons, in the late nineties and early 2000, to research, identify, report, and publicly warn the mortgage industry on the use of Mortgage Electronic Registration Systems ("MERS") and the legal and industry problems that would ensue.

g.) The first person, in 2003/2004, to seek the establishment of a National Compliance Center to issue a set of industry wide mortgage servicing "best practices" and voluntarily oversee the compliance of lenders and servicers to stop predatory servicing and foreclosure abuses.

h.) The person, from 2000 to 2004 to warn the board of directors, CEOs, Chairmen, and other C-Level executives at Fannie Mae, Freddie Mac, Bear Stearns, WAMU, Chase, BankOne, Ocwen, Merrill Lynch, and many other banks, servicers, and Wall Street firms on the financial, accounting, legal, operational, and reputational

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risks of ignoring fraudulent and predatory lending, servicing, and securitization abuses and a warning of the widespread impact on the nation and world's financial markets.

553. I am also recognized as an expert in this area due to my prior warnings and reports, which caused the Board of Directors of Fannie Mae in 2004 to perform an independent counsel investigation with regard to my concerns with Fannie Mae's servicing, foreclosure, accounting, document custody, and securitization issues. I have attached hereto as Exhibit A which is a report titled REPORT TO FANNIE MAE REGARDING SHAREHOLDER COMPLAINTS BY MR. NYE LAVALLE; OCJ CASE NO. 5595.[156]

554. Exhibit B is a true and correct copy I downloaded from the New York Times website at the time, date, and website address referenced on the printout of the article itself.

555. I again want to stress that I was asked by Florida foreclosure counsel to document my experience, expertise, research, and investigation as they desire this Honorable Court to have adequate evidence and an understanding of the issues at stake in this matter. Reading the entire report would help the Court to understand the breadth of my expertise in this area as well as provide the Court with the mindset of the industry's leader, Fannie Mae whose lead, many, including the majority of servicers and their foreclosure counsel in Florida, followed by agreement.

556. Again pursuant to Florida counsel's instructions to me to provide this Court with detailed information about my expertise to render opinions with regard to the questions identified at the outset of this declaration, I need to advise this Court that Daniel Junk and I provided a report to Jennifer Brunner, the former Secretary of State for Ohio regarding alleged robo-signing practices. Based on this report, Ms. Brunner and her office conducted an investigation regarding our allegations of robo-signing notarization abuses.

557. Following that review of our reports and findings, Ms. Brunner made a criminal referral to the U.S. Attorney in Ohio[157] that led to the first national foreclosure moratorium by all major banks and servicers. This was followed by the national foreclosure investigation and eventual settlement with U.S. Attorney General and forty-nine state Attorneys General of major banks and servicers such as Bank of America, JPMorgan Chase, Wells Fargo, and many others.

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558. In addition to the above, I was instrumental in working with colleagues to bring about the FTC investigation of Fairbanks Capital, now known as Select Portfolio Servicing f/k/a Fairbanks Capital ("SPS").

559. Over the last three-decades, I have extensively researched and analyzed the foreclosure, mortgage servicing, document custody, and default servicing practices, processes and procedures of the mortgage and default servicing industry generally. As a result of this research I have experience and expertise with regard to the processes and practices of the vast majority of mortgage servicing companies, banks, lenders, trustees, and their foreclosure counsel and vendors who file and prosecute foreclosure actions in the state of Florida, allegedly on behalf of often unnamed note holders, note owners, and mortgage owners (depending on complaint allegations)

560. I also have extensive expertise with regards to MERS' practices and procedures.

561. Key amongst my research is my examination of the major servicers' foreclosure, assignment, affiant, declarant, witness, and evidence processes and protocols. I have researched and/or reviewed and analyzed the trustee and servicers' foreclosure, collection, affidavit, affiant, witness, and evidence practices, protocols, and/or processes and reviewed relevant complaints, motions, affidavits, training materials, checklists, and guides gathered in other litigation that was not governed by any protective and/or confidentiality order as described herein and in the attached.

562. I have been involved as a consulting and/or testifying expert in a number of foreclosure lawsuits involving the majority of mortgage servicers prosecuting foreclosure actions in the state of Florida.

563. Analysis of discovery evidence produced by these servicers and their vendors has helped me develop expertise with regards to their servicing and document handling processes and enables me to know what "data," records, files, and documents would be key in determining ownership of a mortgage loan and whether there are likely false document issues related to any foreclosure case filed in this state.

564. A true and correct copy of a Loyola Consumer Law Review article titled LOSING THE PAPER – MORTGAGE ASSIGNMENTS, NOTE TRANSFERS AND CONSUMER PROTECTION that describes and analyzes many of the legal issues regarding foreclosure

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fraud and robo-signing practices can be downloaded at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2168189. (See, pages 473 and 474 of the journal and pages 6 and 7 of the paper)

565. A true and correct copy of a 2004 report I provided to the board of directors and executive officers of the following entities: of Fannie Mae, JPMorgan Chase, Washington Mutual, EMC Mortgage, and Bear Stearns; this report prompted Fannie Mae's board to conduct the independent counsel investigation identified here can be downloaded at https://www.scribd.com/doc/35680546/2004-Report-on-Predatory-Lending-amp-Servicing-Practices-amp-Their-Effect-on-Corporate-Compliance-Conduct-Ethics-amp-Accounting. This report was provided to Freddie Mac, its board, and lawyers in Florida.

566. A true and correct copy of a report titled: Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled, & Disadvantaged that I authored in 1999/2000 can be downloaded at http://www.msfraud.org/Articles/predbear.pdf. This report was provided to Freddie Mac, its board, and lawyers in Florida.

567. A true and correct copy of a report titled 21st Century Loan Sharks that I authored in 1999/2000 can be downloaded at http://documents.jdsupra.com/197d1b59-e33e-47e0-92b0-d61992e9ed22.pdf. This report was provided to Fannie Mae, Freddie Mac, Chase, Ocwen, Bear Stearns, EMC, other lenders, servicers and their boards, and lawyers in Florida.

568. A true and correct copy of a report titled You Can't Trust the Mortgage Paper Trail that I authored in 2012/2013 that has been widely distributed to lawyers, regulators, and advocates can be downloaded at https://www.scribd.com/doc/135685970/paper-trail.

569. Exhibits F2- F5 are true and correct copies of process documents and certifications of major servicers and filed by servicers in the Superior Court of New Jersey, In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities, Administrative Order 01-2010, Union County, Docket No. F-00238-11 and updates to those documents since their filing and in the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities, Docket No. F-059553-10 (N.J. Super. Ch. Div., Mercer Co.).

570. Additional documents filed in response the New Jersey Supreme Court directive to change foreclosure practices and filings in that state. (see

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http://www.judiciary.state.nj.us/superior/f_59553_10.htm and http://www.judiciary.state.nj.us/superior/f_00238_11.htm.)

571. I have also relied upon the following:

a) The Financial Crisis Inquiry Commission, U.S.A. Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the U.S.- Official Government Edition January 2011; pursuant to P.L. 111-21; ISBN: 978-0-16-087727-8.

b) Interagency Review of Foreclosure Policies and Practices; Federal Reserve System, Office of the Comptroller of the Currency, Office of Thrift Supervision; April, 2011 found at http://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf.

c) Wall Street and the Financial Crisis: Anatomy of a Financial Collapse; U.S. PERMANENT SUBCOMMITTEE ON INVESTIGATIONS: COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS (April 13, 2011) found at http://www.hsgac.senate.gov//imo/media/doc/Financial_Crisis/FinancialCrisisReport.pdf?attempt=2.

572. From 1996-2012, I have served as a robo-signing, foreclosure fraud and predatory mortgage servicing, securitization, and foreclosure investigator, researcher, and expert and have participated in the following investigations and cases or the work product and protocols developed by me were used in said investigations and cases.

573. *Report and analysis of Chase Home Finance* robo-signing activities provided to Ohio Secretary of State, Jennifer Bruner, led to her issuing a criminal referral to the U.S. Attorney's Office. The referral days later resulted in a Federal and all 50 state Attorney's General investigation of Chase and the residential mortgage servicers robo-signing, servicing, and foreclosure practices that resulted in first Chase and then a nationwide foreclosure moratorium by all major servicers. The investigation resulted in over $35 billion dollar in settlements and mandatory changes to the servicing and foreclosure practices of major U.S. residential mortgage servicers, many of which were recommended as best practices in the report to Fannie Mae, Freddie Mac, Chase, WAMU, and others.

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574. *MERS v. Enzo Cabrera, et al.* Case No. 05-02425-CA 05 Miami-Dade - - *Sua Sponte* Contempt Hearing on fraudulent foreclosure practices in Florida. Honorable Jon Gordon of Miami/Dade County cites my warnings to MERS and industry about fraudulent assignments, affidavits, and pleadings and questions MERS counsel and general counsel on my warnings reading directly on pages 15 to 23 of hearing transcript found at http://www.floridalegal.org/housing.htm (Part 1) and introduces my warnings as the Court's own Composite Exhibit 1.

575. Independent Counsel Report To Fannie Mae Regarding Shareholder Complaints By Mr. Nye Lavalle OCJ Case No. 5595.

576. Investigation, data compilation, reports, information, and documentation of Fairbanks Capital's predatory servicing practices provided to investigators, regulators and advocates that led to FTC investigations and settlements with Fairbanks Capital in 2003 and 2009.

577. Investigation, data compilation, reports, information, and documentation of EMC Mortgage's predatory servicing practices provided to investigators, regulators, and advocates that led to FTC investigations and settlements with EMC Mortgage in 2008.

578. Federal Housing Finance Agency ("FHFA") Office of Inspector General Investigation Report titled "Evaluation of FHFA's Oversight of Fannie Mae's Management of Operational Risk" Report EVL-2011-004 on pages 20 to 21 referenced Lavalle's Warnings & Fannie Independent Counsel Report.

579. Federal Housing Finance Office of Inspector General Investigation Report titled "FHFA's Oversight of Fannie Mae's Default-Related Legal Services - - AUD 2011-004" dated September 30, 2011 (In late 2010, FHFA initiated a special review of Fannie Mae's oversight of its attorney network; and in early 2011 preliminarily concluded that the Enterprise's controls over the network were inadequate. FHFA specifically noted that Fannie Mae was alerted in May 2006 by the internal report that some of its foreclosure attorneys were sacrificing accuracy for speed, i.e., filing false documents in foreclosure proceedings. FHFA also stated that it had found no evidence that Fannie Mae's receipt of this information caused the Enterprise to make any improvements in its oversight of its law firms. Further, FHFA found that Fannie Mae never developed and implemented the computer system that was

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identified in the 2006 internal report as a potential means to improve its oversight of the law firms.

Respectfully submitted this 3rd day of February, 2015.

/S/ *Nye Lavalle*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing comments have been served on the Committee Chair, Kevin B. Cook, Rogers Towers, P.A., 818 A1A N., Suite 208, Ponte Vedra Beach, Florida 32082-8217, kcook@rtlaw.com, and on the Bar Staff Liaison to the Committee, Ellen Sloyer, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, esloyer@flabar.org on this 3rd day of February, 2015.

/S/ *Nye Lavalle*

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[112] Cymrot & Biggs, *supra* Page 27
[113] Cymrot & Biggs, *supra* Page 27
[114] Cymrot & Biggs, *supra* Page 28
[115] Cymrot & Biggs, *supra* Page 28
[116] Cymrot & Biggs, *supra* Page 28
[117] Cymrot & Biggs, *supra* Page 29
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[126] Cymrot & Biggs, *supra* page 34
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[137] Cymrot & Biggs, *supra* Page 43
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[151] Mortgage Electronic Registration Systems Inc. vs. Lawrence Rumbough et al - - Case No. 2002-CA-007515-O (Expert Deposition Testimony & Affidavit); HSBC National Association vs. David Townsend, et al - - Case No. 2009-CA-022974- O (Expert Hearing Testimony & Affidavit); Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Steams Mortgage Funding Trust 2006-AR4, Mortgage Pass-Through Certificates, Series 2006-AR4 vs. Ismael Morales and Yuli M. Morales et al - Case No. 2008-CA-033215 (Expert Affidavit); Washington Mutual Bank F/K/A Washington Mutual Bank, FA vs. George C. Kalivretenos, et al Case No. 48-2008-CA007717 (Expert Affidavit); JPMCC 2004-CIBC10 PLANTATION COMPLEX, LLC, a Florida limited liability Company vs. MERCEDE REALTY ASSOCIATES, LLC, a Florida limited liability company, and ANDREW J. COHEN, CASE NO.: 11-01112 CA 4 (Expert Affidavit); LANDMARK BANK N.A., a national banking association vs. DIANA'S DAY INC., ET AL, CASE NO. CACE 12-006645 (Expert Affidavit); WELLS FARGO BANK, N.A. SUCCESSOR BY MERGER TO WELLS FARGO HOME MORTGAGE, INC. vs. EDWARD JONES ET AL, CASE NO. CA CE 09-023175 (Expert Affidavit); LIBERTY ATLANTIC INVESTMENTS, LLC, a Florida limited liability company vs. MAYPORT PROPERTIES, LLC, a Florida limited liability company, KIRIT PATIDAR, et al, Case No.: 16-2010-CA-001931 (Expert Affidavit); Washington Mutual Bank vs. Elizabeth H. Coursen - - Case No. 2006-CA-008521 –NC (Expert Affidavit) Removed to Federal Court (Expert Affidavit); JPMORGAN CHASE BANK, N.A., AS ACQUIRER OF CERTAIN ASSETS AND LIABILITIES OF WASHINGTON MUTUAL BANK FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR WASHINGTON MUTUAL BANK vs. SHERONE D. WAISOME et al, CASE NO. 09-CA-5717 (Expert Affidavit). I have also advised attorneys with regard to obtaining and understanding discovery in foreclosure cases, where I have not actually testified. This experience is relevant, of course, because in order to this job I have to be intimately familiar with the discovery process.

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[154] "Examination Procedures – Customer Service." *Comptroller's Handbook – Mortgage Banking*. Washington, D.C.: Comptroller of the Currency, 1994. 132. Print.

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