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The following is a transcript (professionally transcribed) from an audio recording made by Plaintiff Renee S. Yamagishi, who is one of four participants in the telephonic “exploratory ADR conference,” presided over by our federal court’s mediation unit manager, a Mr. Howard Hermann. Mr. Hermann (“MEDIATOR”) opened the session by explaining in a couple of minutes to all parties the purpose of the session, including making the statement just prior to the start of the below transcript that “.... This is NOT a confidential mediation session...” The mediator Mr. Hermann then continued for another minute or so; and without interrupting his speaking, Plaintiff being so apprised by Mr. Hermann, and who has an audio recorder ready to help her review complex legal talks etc., began to record the remainder of this non-confidential telephone conference for her own review. Obviously Plaintiff’s legal position then is that since she, as one real party in interest to the matter at hand, was not offered any disclosure as to who else would be privy to a recording of the session, that she too would be afforded a recording so that she and her colleagues could also later review together, the content and movement of conversation between all parties present on the call.

[Audio file exists as an .m4a audio file, transcribed verbatim below]

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**MEDIATOR**

..... main purpose here is to assess whether this is a case that might benefit from an early referral to some kind of settlement proceeding.

I should say that I have looked at the underlying complaint and at the motion to dismiss which has now been taken off the court's calendar without prejudice to being refiled. So I do have a little bit of background. I usually like to start though with an understanding, not so much about what the claims are in the case, but what the factual situation is in terms of whether there is any trustee sale that is on the calendar, how long ago the property was originally purchased, how far in arrears it might be and information like that. Some of which appears in the pleadings in this case but some of which does not. So let me begin Ms. Yamagishi with you as the plaintiff. This is the house where you live?

**PLAINTIFF**

Yes it is.

**MEDIATOR**

Is that right?

**PLAINTIFF**

Yes

**MEDIATOR**

And it's in Berkeley. And when did you purchase?

**PLAINTIFF**

Well this was a refi in 2006. This is the family home since 19-

**MEDIATOR**

Okay, so a refi in 2006. Okay. And I gather that this is a situation where there have been efforts to modify the loan and they have been unsuccessful?

**PLAINTIFF**

You could say that, I've been denied four times with the prior servicer without an actual logical reason. I have proof of ability to pay but those loan modifications, numbering four attempts, were applied as early as 2008 all the way through to 2012. It was around the end of 2012 that I realized Bank of America was unwilling. There was apparently a breakdown in the loan mod communication process. And subsequent to that, in mid-2013 Bank of America NA service transferred this to Nationstar. So Nationstar has been the servicer since July 2013.

And just to go on the loan mod trajectory here, I have never applied for a loan mod with Nationstar primarily because their QWR letters, my formal inquiries that I needed to know in order to in good faith enter a contract with Nationstar, were at best ambiguous and essentially they contradicted ... They had no idea who the owner was. I have three letters within a 30-day period naming three completely different banks. And so from there I just simply began to continue the QWR out-of-court process for about a year until I absolutely ... And I let them know, I cannot apply for a loan mod until we at least clarify some of the things that I know by law I need to know from you, the servicer. And they essentially didn't respond.

So by 2014 I simply filed for quiet title which, for me, was simply to call in the actual owner. I thought maybe there was a backlog and a lot of paperwork and perhaps the original owner or, I'm sorry, the current owner in 2014 would come forth with a quiet title lawsuit. But we didn't get very far in that for various reasons. So I have, yes, attempted to modify. And I can say without asking for principal reduction. I'm talking back in 2009. For a year and a half Wilshire Credit Corporation was not even responsive. So it was Bank of America and Countrywide starting in about 2010. I'm just letting you know that, yes, I have attempted since 2008 to simply reinstate my good standing without a principal reduction and it's been baffling and quite debilitating not to be approved.

**MEDIATOR**

Okay. I appreciate that there's a great deal of history here. Let me just ask a couple more basic questions and we'll get back to the history if we need to. How much is the amount of the loan at this point from your perspective, Ms. Yamagishi, do you have a sense of how much you owe and what a reinstatement would look like from your perspective? Obviously I'll ask Nationstar in a moment.

**PLAINTIFF**

Well, I have to use a little bit different language, Mister Herman. Just so you know, we're talking some years back I've had to learn the law. So in terms of that question, I owe only the person or institution who proves they own the debt currently today. So in terms of who I owe, that's one question. You're asking what I believe I owe, right? Okay. I can tell you that the original refi amount back in 2006, opposite Aegis Lending Corporation, that I signed, that I honor, was 392,700. That included the refi amount for the credit union and some cash out so that we could complete renovation of the house that we were midway through. So that number was basically 393,000.

It was an interest-only payment if you will. We had the option to pay just the interest, which we were doing so that we could refi after ... This was my ex-husband and I, so that we could refi after the house was completed. It's a 108-year-old house. We were redoing a lot of it and it was going to be greatly improved so we were even assured by the same broker, oh, call us again, we'd be happy to refi you, you guys are doing great here. That never happened because while we were current with our interest-only payment, the global financial crisis hit, he got hurt on the job, my business tanked and we applied for a loan mod without missing a payment. We got zero response for a year and a half.

But I did not continue to make payments to a servicer who could not even respond and kept losing paperwork. So, to answer your question, in my estimation I "owe" \$392,700 in an interest-only payment loan. And I have since applied four times to modify that loan without even asking for a principal reduction, even though technically we were qualified under Hamp and MHA. It has not been my lack of willingness to pay and catch up that has caused the quote arrears. So I have a problem with that. I have an objection to an entity or group of entities in succession who would cause the quote arrears and then charge me for it with extra fees. So that's an area that I would be happy to negotiate and look at but if you want to add it up you can add the number of months since December 2008, multiplied by the interest-only payment at the time which was just under 2000 and you'll come up with what somebody might call arrears. So that's the answer really.

**MEDIATOR**

Okay. Thank you. That's helpful. Last question, and then I'm going to turn to Nationstar. Do you have a sense of the current value of the property? Any kind of approximation?

**PLAINTIFF**

Yeah, I can go on Zillow today and probably see it at 1 million or something. It's in Berkeley. I think we're having a bubble, I don't know. But I can go to Zillow and put in my address, yeah.

**MEDIATOR**

And it's more than a million?

**PLAINTIFF**

I'm just going by Zillow and Redfin or whoever these folks are online.

**MEDIATOR**

I'm just trying to get a very generalized, that's good enough.

**PLAINTIFF**

Okay.

**MEDIATOR**

I appreciate that's not an appraisal or anything like that. All right, let me turn to the representatives from Nationstar and the other defendants. Mister Butler, do you want to get us started from the servicer's perspective? At this point, again really, I'm not looking for legal argument, what I'm looking for is to understand the factual situation from each side's perspective.

**ATTORNEY, REED SMITH LLP**

Sure. And <inaudible 29:16> but I'll do my best. Our understanding essentially is that this is a loan where the mortgage hasn't been paid in 9 1/2 years and it's sort of caused by ... One of the allegations in the complaint is proof of authority which Mrs. Yamagishi loosely alluded to which is essentially the plaintiff is saying that there is no proof of who owns the loan. [But] there is no ownership that must be shown to go about this foreclosure procedure. Our understanding is that this is a fairly standard series of transactions that often occur. I don't see anything irregular in the chain of title. And so from our perspective it's simply just a failure to pay for the last 9 1/2 years. We have contacted the plaintiff, and Mrs. Yamagishi and I have spoken on cordial terms a number of times, however, when we've asked for a settlement agreement she hasn't offered anything. She's stated that she's unable to give us a settlement offer. So at this time, and maybe Fay can correct me if I'm wrong, but I believe that Ms. Yamagishi is approximately \$660,000 in arrears. And our understanding of the property value is \$175,000 at this time. In addition-

**MEDIATOR**

I'm sorry, the property value at this time is what?

**ATTORNEY, REED SMITH LLP**

My understanding was 875,000 but maybe Fay can correct me if I'm misquoting that number.

**MEDIATOR**

I misheard you.

**NATIONSTAR REPRESENTATIVE**

Me too, I thought he said 175,000. We do have a really recent appraisal at right around 1 million. 999K.

**ATTORNEY, REED SMITH LLP**

Okay, thank you. And the last issue that I wanted to briefly raise is that, well essentially, I don't know how important this is to the process but, Ms. Yamagishi has also recently filed a removal motion. And so we're not quite sure how that will play out in terms of the ADR. And lastly-

**MEDIATOR**

Stop for just one second. A removal motion?

**PLAINTIFF**

Can I clarify that, Mister Herman or Mister Butler?

**ATTORNEY, REED SMITH LLP**

I meant a remand motion, I apologize.

**MEDIATOR**

I have to say, I have the docket in front of me, I don't see a remand motion having been filed in the court.

**PLAINTIFF**

That's because I didn't file it yet. We can just set that to the side right now. I was intending to file it in Oakland and Oakland told me that I had to go to San Francisco so it's still in my folder. But regardless of that-

**MEDIATOR**

So you served it on the defendants, giving them a copy but you haven't actually filed it yet?

**PLAINTIFF**

Right, because I thought I could. But we can look at that later. I'm here to proceed with this ADR conference as it is.

**MEDIATOR**

That's fine. I was just confused. Usually when dockets are ... With electronic filing now things are usually very current. All right, Mister Butler let me go back to you to finish up whatever in terms of the background here. Anything more?

**ATTORNEY, REED SMITH LLP**

Just one very brief thing that I sort of stepped away from for a moment which ... The other variable in play is, again this touches briefly on legal issue, but the plaintiff has filed prior cases <inaudible 33:35> and to

our understanding they raise the same causes of action in terms of the proof of authority and her lack of standing to challenge that. The other variable in play in terms of her allegation that Nationstar didn't contact her as per one of the California code <inaudible 34:00> prior to foreclosure to evaluate other options is that she has stated, based on this idea that Nationstar does not own the loan or does not properly service the loan, that she'd be unwilling to speak to Nationstar. Nonetheless, we do have recordings of conversations that she's had with Nationstar which we believe would kick that out of court essentially.

## **PLAINTIFF**

Excuse me, Mister Herman I'm going to object to all the legal argument there. I'm not accepting that as part of this ADR. I'm just letting you know my position because I have a rebuttal to all of it but I'm not going to rebut that here. Okay, thanks.

## **MEDIATOR**

I do appreciate, and I think I mentioned before, I did review the motion to dismiss that was on file which recounted, in part, the res judicata argument about having had prior cases which raised similar things. If this case proceeds in court to a decision, that's all material that the court can deal with. But at this juncture I'm just trying to look past ... Look, the legal argument is important on both ends in various ways. But at this point my job really is to assess whether there are settlement possibilities in spite of the disagreement that you folks certainly have around the legal problem.

So I guess the fundamental question that I have at this point, given the value in the property that exists, one of the things that we are seeing, because of what may be a bubble, what may just be appropriate appreciation of property, is that some cases, even where there have been expanded time when payments haven't been made, the fact that the property values are as high as they are, sometimes creates opportunity to resolve cases that didn't exist in the past. But the first premise would have to be that the parties in front of us actually could make an agreement that everybody would bind to.

So, for example, in this situation I guess one of the threshold questions about whether a mediation or a settlement conference or any kind of discussion would make sense would be that at the end of the day, at the end of that discussion, and again, this is kind of a question essentially for you Ms. Yamagishi, whether you could see yourself, on appropriate terms, entering into an agreement with Nationstar, either to modify the loan and start making payments to Nationstar as the servicer, or to, for example, somehow reinstate or buy out the loan and take out a loan with some other financial entity and such.

But when there is these allegations going back and forth around whether or not the defendants here are actually, whether you would contract with them I guess that's kind of the first premise. Because it wouldn't make sense to send this into a settlement proceeding in which the fundamental contentions were that these are the wrong parties and that you couldn't make agreements. And not make payments to them.

## **PLAINTIFF**

I understand. Right. May I speak?

## **MEDIATOR**

Yes, we turn to you. Fundamentally because that's a threshold issue that we do need to address.

## PLAINTIFF

Of course, that would be a threshold issue. And I appreciate how you put that. I am of course willing to negotiate with Nationstar. Number one, I'm forced to. And that's okay. In the sense that there is no other entity who is claiming ... Making the debt collection claims. Or claiming to represent a party that has the right to collect payment or foreclose. Other than Nationstar and their attorneys. So, yeah, given.

And in terms of prospects for settlement, absolutely I would like to explore offers, an offer. I would like to propose and explore offers and counter offers with Nationstar and their attorney. Because, number one, I can still believe or hold a legal position that, to my satisfaction, a current, true, proven injured party hasn't shown itself. And I can still however negotiate a settlement with the only entities who are coming to make claim. As long as there's a settlement that no other entity can come back in the future and say, hey, it was me. I have to be protected and indemnified against a future claimant, whether they claim to be the true owner or a new servicer that says, oh, that doesn't matter that you settled with Nationstar, we're the real owner. I'd obviously have to be protected from that.

But going back to what I'd like to see happen, I think you asked that in a sense: this is our family home since 1965. I grew up here. I'm the eldest, I have a certain responsibility and it's also a home that I plan to keep. We plan to keep in the family. So I understand and I accept fully that in 2006, June 26, I entered a loan contract against Aegis Lending Corporation. I'm a person of my word. I'm not trying to all of a sudden erase my contract. But I had to make sure that I didn't pay the wrong party because I understood that I could be liable if the right party came along. Well, it looks like if we can settle and indemnify against that then I'm protected from that risk. So I'm okay there. Right? Okay?

But at this point, just to give you a brief overview of what these almost 10 years have cost me and my family, it has cost me my successful healing practice. I could no longer work. This is a debilitating, disabling, stressful, expensive and in some ways, absolutely traumatizing experience for me. It has cost me money, time, my livelihood and family relationships, if you will. In terms of my capacity to spend time with my growing children.

So I am, number one, unwilling to continue that hijacking of my life. I'm not saying you guys are hijackers, I'm saying my life has been hijacked by holding this position and continuing to work toward some kind of effective settlement that everybody can live with. And I'm including Nationstar when I say that. We all have to at the end of the day, come up with something that says, okay, we settled this. And we can go on to other things.

So, yes, I understand that I could litigate for another 10 years. I'm unwilling to do that. Even though I may believe fully that I have legal grounds and a solid argument and the law is on my side. My life would still be hijacked. So I'm just giving you that backdrop to say that I believe that this case is ripe for mediation and settlement and that there is some ... Number one, I would seek outside funding options. I would seek private funding to come up with an offer from me to all parties, as long as the indemnity clause is ironclad. That there be no further or future claims that could arise out of that same June 26, 2006 note. So that that would be clear.

I can tell you, I have a 40-page chain of title analysis that refutes what Mister Butler claims is customary or

traditional or proper. It's a completely fatally defective chain of title. And I will go into argument just a little bit, tit for tat, Mister Butler. I also have a proven chain of title that makes total and complete sense supported also by public record of a major \$9.3 billion lawsuit involving this trust, Bank of America and FHFA in which Bank of America conclusively abandoned their claim in 2014 by filing a responsive pleading into my quiet title action that says, we have no interest in this property. At the time that they knew or should have known that they had just bought it back from FHFA.

So I've got a chain of title I can put alongside the four assignments that Nationstar and their attorneys have which are in the public record and say, everything in those four assignments is completely broken and makes it absolutely ... There are impossible chain of title assertions in there. And here's something that makes complete and total sense. FHFA bought it on day one of operation, Bank of America was forced to buy it back in 2014. Two months later they abandoned it. Public record. 50 attorneys on either side of that case. So I could do this and spend another 10 years and get my life hijacked or I could pay ransom, bottom line.

### **MEDIATOR**

But it sounds like, if I'm understanding you correctly, you are, at this point, you're interested in moving on. And if there could be some resolution, I think I'm hearing you say that you would prefer, legal arguments aside, to find a way to put this behind you and essentially pay the contract that you entered into.

### **PLAINTIFF**

No, I'm not going to pay the contract I entered into. It's going to be more than one dollar, but I completely refute any dollar amount based on everything that I just said and the entire history. Yeah, it's a least one dollar but it has nothing to do with claims that I refute.

### **MEDIATOR**

Okay, I think what I understood you to say, and I need to be clear about this, is that back in 2006 that you did owe \$393,000 on the property. You entered into a loan agreement that had you owing 393, or just below \$393,000. That was the principal amount of the loan, right?

### **PLAINTIFF**

I can understand why you would interpret what I just said as admitting that I owed that or that I owe that now. That was a predatory loan. There were defects with the loan itself, with the note and the deed of trust. However, that amount of money that was funded, if you will, by parties unknown, did pay off my co-op credit union ... It was a refi, so it did pay off the 247,000 that was still owed on that original refi coming into this loan. Yeah, I'm not refuting that. They're not making a claim because they were paid. But the loan itself had fatal defects. And I could argue that another 10 years. And I understand it. It was a confession of judgment, improperly executed, it was predatory. Aegis is not the source of funds and everything was misrepresented about it. They even told my father that he had to sign the deed of trust in order to release his name from the co-op credit union loan. False. That's why my father's name is on there. My late father. But my name is the only name on the note. There are fatal defects from day one, Mister Herman.



## **MEDIATOR**

At this point I'm just trying to assess whether, fundamentally, whether it's a waste of time for you to sit down with either a mediator or a settlement judge to try to work through some of this or not. Let me turn back to Nationstar for a minute. I think what I am hearing is willingness on the plaintiff's part to set some of the legal claims that might have stood in the way of entering into an agreement, to set those to one side. Obviously there's still a disagreement about the amount that's owed and what may be reasonable. But from Nationstar's point of view, what's your view, given that there is equity in this property and that it might be possible to rework something, either through you or through someone else, what's your view about entering into ... If plaintiff really were past the question of acknowledging that she could enter into an agreement with you about this, is there any interest on the defendant's part in participating in some kind of a settlement procedure?

## **ATTORNEY, REED SMITH LLP**

The defendants would be interested in a nonbinding sort of panel mediation potentially. My concern with the process though is that, as we mentioned, we have asked for the plaintiff to make a settlement offer for the duration of the case, about six months, and we haven't received one. And my understanding of the reason why is that the plaintiff still basically thinks that the defendants don't own the loan and don't have a right to it. Whereas we feel that the plaintiff's claims are ... Essentially don't have merit. So I'm struggling, while in theory we'd be open to it, I'm struggling to see where the parties would come together on the basis that we don't think the claims have any merit and have already being litigated and the plaintiff thinks that we don't have any ownership of the loan.

## **PLAINTIFF**

You know what? Mister Butler, it hasn't been litigated. And that was the basis of the state court awarding my injunction. There was no res judicata. The 2017 quiet title case was dismissed without prejudice prior to a hearing on demurrer, and prior to the court even receiving my objection to demurrer. So there was no trial, there was no consideration of the merits.

## **ATTORNEY, REED SMITH LLP**

That wasn't the only ... I don't want to get into these arguments around it but we differ in our opinions about that.

## **PLAINTIFF**

Okay.

## **MEDIATOR**

Excuse me folks. Maybe I'm mishearing, but Ms. Yamagishi, I think I heard you say that, regardless of what might have transpired in the past, that so long as somehow the settlement made clear, there was some clear representation from Nationstar that nobody else is going to come after you and claim ownership of the property and that they have a right somehow to foreclose or seek payments from you, that that would have

to be a component of the settlement. But notwithstanding whatever argument you might make in court if the case were litigated, I think I understood you to say that for settlement purposes, you would be willing to enter into some kind of a settlement contract with Nationstar. Is that right?

**PLAINTIFF**

Yes, but I must add on that scenario that we're talking about my retention of the property, of our family home. So immediately that brings up a reputable title company to make sure that the title at the end of the day is proper and in favor of myself with regards to my outside funder having a deed of trust if you will, but a valid one that I'm agreeing to. In other words, it's one thing ... Let me go back and reiterate. Yes, I am willing to negotiate with the current claimants who appear to be Nationstar and none other, I don't see others, and we'd have to have something ... I'm going to assume here that defendant Aztec Foreclosure is taking direction from Nationstar, so the two in a sense are connected in terms of their role, Aztec's role as substituted trustee. But, yes, Nationstar and their attorneys, I'm willing to negotiate with them, yes.

**MEDIATOR**

Mister Butler, that feels a little different from what you were saying the position of the plaintiff had been previously.

**ATTORNEY, REED SMITH LLP**

Yes, potentially. As I said, we are certainly open to settlement possibilities. We would just like to make sure that there is actually a possibility of some common ground. It's difficult because I know the plaintiff certainly has no obligation to start that process right now-

**MEDIATOR**

Let me take it one step further. Given that this is a property for which payments have not been made ... Let me turn back. Regardless of the reasons, let me turn back to the plaintiffs on this. Ms. Yamagishi, is it correct that you have not been making any kind of payments to anyone on the underlying loan for something like nine years?

**PLAINTIFF**

Yes, that's been correct. You do understand that my payments were refused for the first four years of that, 3 1/2, refused. And you do understand that my position has been, I can only pay an entity who proves they own the debt. And Nationstar has given me nothing but grief and contradiction. It's all in my exhibits. Their own letters contradict themselves. So I couldn't pay somebody who didn't know-

**MEDIATOR**

But in order to settle this case-

**PLAINTIFF**

Yes

**MEDIATOR**

You're going to need to pay Nationstar something.

**PLAINTIFF**

Yeah, and Nationstar can also consider what this has cost me. So we've got claims in both directions.

**MEDIATOR**

The amount would have to be negotiated and that would be part of what would happen in the mediation or settlement conference.

**PLAINTIFF**

Right.

**MEDIATOR**

But the fundamental notion that you don't get to stay in a property for nine years owing money on a mortgage and not paying anybody, there's just no possibility that anybody ... That any case would be settled with no payment going from the homeowner to the entity that is seeking to foreclose. It just doesn't happen. It would be a waste of everybody's time. If you're not going to be willing to pay something, in acknowledgment of the fact that you've had the property under this loan or whatever ... If you're not going to ever be willing to pay anything toward that loan, we are wasting our time.

**PLAINTIFF**

Yeah, I didn't say that, sir. I said I'm willing to pay ransom. That means money from me. I do want to point out though, because nobody has seen me file this yet, but I may file it as part of my affidavit statement legal position, and that is the chain of title that I referred to here only verbally involving Bank of America abandoning their claim. In other words, Bank of America owned the entire contents of the MLMI trust series 2006 HE5 on July 23, 2014, when they filed a responsive pleading that they had absolutely no interest in my loan.

So I could say that nobody but Bank of America owned it at the time that they abandoned it. So they abandoned it, not me. So we can litigate, but I'm saying to all parties present here ... I was in a car accident earlier this month. Luckily nobody was hurt, nobody else was involved. I hydroplaned in Portland, Oregon, spun around once, hit the meridian twice and I'm now getting chiropractic and I'm basically healing. But it was a wake-up call. I have a grandchild who's going to be a year old in a week or so. I have a reason to settle. I mean we all would. Who wants to be hijacked this way? But I have a recent wake-up call and a birthday party for my one-year-old and only grandchild coming up next month.

So I'm kind of giving you the human side of why it's worth it for me, given all that I've discovered in discovery that could be litigated, to go back to my credit union that my family has banked with for 55 years, that's refinanced for renovations on this house, this very house since then, and say, look, I want to make an

offer to these folks, and put you guys in first position, credit union, and take it from there. I understand.

But I just didn't want you to feel that I'm saying, to anybody here, that some entity that claims that I haven't paid has the right to say, well, you owe us and you don't get to live in a house for free. I'm disagreeing with that premise. I'm saying we have had legal dispute for several years. And whenever you have a legal dispute, in any type of contract, people do decide to cut their losses and settle without ever having to admit that their legal argument was faulty or false in some way, because nothing I have written or filed or stated, ever, with regards to this controversy has been knowingly false, deceptive or untrue. So my position is as it stands.

## **MEDIATOR**

I think I'm hearing you loud and clear. And certainly one of the premises that is often true in settlements is just what you said, that people can hold onto their legal positions as much as they want, but sometimes practical problem-solving sort of wins out and there are other things that matter to one side or both sides more than being proved right.

## **PLAINTIFF**

Right.

## **MEDIATOR**

I think what you're saying is, and that's your position at this point, okay. Then the question is, does it make sense ... Right now the court has said, it's stayed the litigation pending this conversation. And then the question is, if this conversation were to be then taken to the next level, whether it makes sense to try that. I think what I'm hearing Nationstar say is that Nationstar has been hoping to receive an offer to get a sense of what you are willing to do by way of resolution. And then we could take it from there.

So I guess the question is, whether it makes sense to put this into some kind of a mediation or do we need as a first step, maybe Ms. Yamagishi, for you to make that proposal that you're talking about so that there's a sense of whether this is in the ballpark in terms of making sense to proceed. That would be the other way that we could go would be to let you make that kind of a proposal and then, presumably, from Nationstar's perspective, you believe that the amount owed includes all these arrearages and things like that, so you're looking for something that approximates those numbers that you mentioned earlier. And presumably, Ms. Yamagishi, you believe it should be a somewhat lower amount, correct? Mister Butler?

## **ATTORNEY, REED SMITH LLP**

Yes, if I may, I was just going to say, we would prefer to have Ms. Yamagishi make an offer first just to make sure that we're in the same ballpark I think before we arrange a formal mediation and put time and effort into that. The other thing that the defendant would ask is that whatever process occurs be done expeditiously for the reason that, as discussed, this process has been going on for nearly 10 years and so we just want to make sure that, if we're able to settle that would be excellent, but we want to make sure if not, that the case does proceed without too much delay.

Lastly, I would add, although I'm not sure that it's relevant, based on what I've heard from the plaintiff, that Nationstar could consider making a small payment to the plaintiff in order to vacate and dismiss her claim with prejudice. However, as plaintiff has stated, it sounds like, and as she's stated previously, it sounds like her aim is to stay in the home. And so I don't see that as being necessarily productive. But I would turn it over to her.

## **MEDIATOR**

Ms. Yamagishi?

## **PLAINTIFF**

Yeah, that's out of the question, the last thing. I'm going to say that, in terms of me making an offer first, it has been the current law firm who's contacted me and, in their initial contact ever with regard to this current complaint filed in May of this year, their initial offer was, we'd like to know if you have a particular settlement demand. Quite cordially, Mister Butler and I have spoken a couple of times about that. And I have said, well, you folks have proposed such a thing, what's your offer? And they have not put one forth.

I think we're at a point now where I think I've made it clear, my intended outcome is to retain possession and title to the home and that this 10-year fight has cost me and my family dearly. And there's a monetary amount that could be put forth I'm sure. And there's that which is beyond price, but there's certainly a monetary amount. Even just loss of business income and costs of suit. But I can say that before I put forth an offer, I believe that we should decide or need to decide the format of that presentation. In other words, I'm insisting on an in-person meeting to discuss that. I'm not going to just put it out there. I'd like to know who's sitting there. Clearly we've got rules of court under ADR that a person in attendance, at least one of the persons in attendance, I don't know if it would be Ms. Janati, I'm sorry if I'm not saying that right.

## **NATIONSTAR REPRESENTATIVE**

Yeah, Fay. You can call me Fay Janati.

## **PLAINTIFF**

Fay Janati. Would you be present and would you be able to have the full authority to settle such a thing?

## **ATTORNEY, REED SMITH LLP**

I apologize. In terms of an ADR process, I believe that would be something that we might consider once we actually have a number offer. And I think that really gets to the concern that we have is, before we suspend all of the litigation and before we consider sitting people down, flying people out, taking them away from their companies, sitting them down to discuss this process, we want to make sure that we have some kind of ... We have a number that basically tells us we have some potential of settlement.

**PLAINTIFF**

I don't understand.

**ATTORNEY, REED SMITH LLP**

I don't understand necessarily the reticence to provide that number.

**MEDIATOR**

This is Mister Herman. Let me suggest something. I think what I'm hearing Ms. Yamagishi say is that her preference would be for Nationstar to go first. In some ways I think ... Maybe I'm misunderstanding, but typically, the financial entity in cases like this has or is able, rather quickly, to put forth either a loan payoff amount or a reinstatement quote, one or the other, as an opening position. And typically that is the opening position of the financial institution, that in order to resolve the case, plaintiff either needs to bring the loan current by means of reinstatement or needs to just pay it off. Do we know what those amounts are here? Could they be gotten very expeditiously?

**ATTORNEY, REED SMITH LLP**

It certainly could be gotten very expeditiously. I would ask Fay, Fay do you feel comfortable giving a number here or would you prefer-

**NATIONSTAR REPRESENTATIVE**

The number that I'm giving out is approximate numbers which is not the exact number. The approximate payoff is \$666,418.13. As far as the reinstatement, I can tell you in a few minutes. And I do want to mention also the account is due for 12/1/2008. The last payment received from homeowner was November 1, 2008. So in July 2013 when we got the account, the account was already due five years. The approximate, again, keep in mind this is approximate number, we do need to get an exact number, but I'm giving approximate numbers. The reinstatement quote, the amount that I gave you before is only good for November 28. The amount 666,418.13 for payoff. And for reinstatement \$321,687.79. So, yes, like you said, this is the opening demand from us.

**PLAINTIFF**

Okay. Ms. Janati, I have a question. Can Nationstar provide any type of documentation of who it is that you're collecting for exactly?

**NATIONSTAR REPRESENTATIVE**

Ma'am, I see that we give you letter not long ago and explained everything to you, yes.

**PLAINTIFF**

I meant like an actual signature of somebody that has proof of the purchase. You see, this goes to the heart of everything, if you really look at it because, really, without proof of purchase transaction, anybody can say

I represent somebody that owns the loan, especially if the true owner has abandoned their claim. So all I'm trying to say is, you've just given us some numbers, and that's fine. And by the way, Mister Herman, some of those numbers hike up the 1955 a month payment, interest-only, up to somewhere around 3000 a month. Based on I guess interest rate changes and other fees. I'm not sure. Some kind of Nationstar internal process. But if you were to look at it, you would see monthly amounts that are being computed there that add up to that 666k that include monthly payments that have hiked up to 3000 or more. But anyway, and I'm in dispute of all of it, all of it. But I do appreciate Ms. Janati that you're adding up Nationstar's numbers. Okay. But I'm asking if ... Who's injured here? Where are they?

## **MEDIATOR**

Okay, you asked, Ms. Yamagishi, for them to kind of go first. And again, I appreciate that you folks have very different views on the legal arguments to be made. But as a practical matter, looking at putting this case behind you, Nationstar is saying, there are two ways you can put this case behind you from their perspective. One, is you obviously have to go some other third-party lender, is essentially pay off the loan. Then we're out of it, Nationstar is gone, you have a new loan with whoever you have, but it's going to cost about \$660,000 to do that. And then you would have tied them ... And they would presumably, as part of that settlement, they would make representations that they had a right to it and that they're transferring any title ... Title is going to transfer to you and the new lender and you'll have a property that's currently selling at worth \$1 million, with 300 something thousand dollars worth of equity in it. That's what it would take. Just as a practical matter, I'm not saying it's right, but that's how you would move on. Alternatively, you could pay them the 320 something amount and start making payments to them. That's their proposal. They're saying as a practical matter, they're willing to enter into negotiations with you maybe but you need to come forward with a counterproposal first.

## **PLAINTIFF**

Okay. So let me see if I understand....

## **MEDIATOR**

It doesn't mean you have to agree with them or like their premises but that is the practical scenario where we're in and it may be the thing to do would be to explore ... So one option would be for us to explore a counterproposal. Your making a counterproposal in some ... Set a timeframe now for you to figure out what that counterproposal would be. We have another call like this one not too far down the line. And assess whether you are so far apart that it makes no sense at all to even have an in-person meeting like the one that you're talking about or does it make sense to have a mediation and really get the people from the bank, from Nationstar, to fly out here if they need to to participate in an in-person settlement meeting like would be contemplated <inaudible 73:17> the rules. But I think that's what I'm hearing is that Nationstar might well be willing to do that, but they'd like to hear something from you about what you are willing to do.

## **PLAINTIFF**

Before flying people. I find that a little backwards or troubling. Can I just give my opinion? To me, we're at a point where we should meet in person. In other words, this accounting that we just heard is essentially what I've been getting in statements in the mail. It's now 666, to reinstate is 300 whatever. I mean this is not

news. I've been in dispute about all of this. Not about the amount but about the fact that ... Let me put it this way. We know what these amounts are. This starting point is not a secret starting point. I get it [statements]. I get it every month.

Obviously I've been in litigation since 2014 calling forth objections to various aspects of their claim and their making of the claim etc., including the amount. So obviously we're having a dispute that's resulted in litigation. Okay. But to say, well, if it's too low, we're not even going to bother meeting with you, to me that's backwards. How many years of litigation do we have to have on the table to say, you know, this warrants some kind of meeting, let's get together.

Now on that note, I would like to kind of disclose or let folks know that I am willing to fly to Texas. And one reason for that, for an in-person mediation, and one reason for that is I actually have tentatively a spokesperson sort of negotiation spokesperson assistant who's a nonlawyer but who is experienced in this arena if you will. And experienced in negotiating settlements in this specific arena who I would have accompany me in that meeting. He's in Texas. Nationstar's headquarters is in Texas. It kind of makes sense. I would like to propose at this early juncture that my counteroffer would be made in person under those circumstances. And in fact, that ADR processes as dictated by the court and local rules call for an in-person mediation. So I'm not sure why we're reticent for that. I'd like to propose we meet in Texas.

#### **MEDIATOR**

Mister Butler, any thoughts?

#### **ATTORNEY, REED SMITH LLP**

I would have to run the plaintiffs flying out to Texas by the client, obviously. In terms of having a spokesperson attend, that's again, something I'd have to go back and research to see if that's permitted if they are not a legal representative of the plaintiff.

#### **PLAINTIFF**

It is. They don't have to be a bar lawyer to be accompanying me. But you can check that.

#### **ATTORNEY, REED SMITH LLP**

I'm not sure about that.

#### **MEDIATOR**

I apologize but I realize we've been on the phone for an hour and I have another one of these calls set for 11 o'clock and I'm going to need to wrap up our conversation right now. I think there's plenty of food for thought. It sounds like, Mister Butler, let's take this last proposal about the notion of ... That would not be a mediation or a settlement conference under our court's program because a settlement conference, the judges are here in San Francisco, they're not flying to Texas and neither are our mediators who are volunteers off the court's panel of mediators flying to Texas. But it does sound like there's a proposal for something that would essentially be a direct settlement meeting not mediated by a third-party that the plaintiff is proposing to take place at Nationstar's office in Texas. Why don't we adjourn this call for a couple



of days and come back on the phone later this week, give Mister Butler a chance to run that by and pick up the conversation then. Ms. Yamagishi, would that be acceptable to you?

**PLAINTIFF**

Yes, Mister Herman, that sounds very reasonable, thank you.

**MEDIATOR**

Mister Butler, could we do that? Just adjourn for a couple days and let's find a time perhaps on Thursday or Friday where we can all get back on the phone and finish off this conversation? I don't imagine it will take very long.

**ATTORNEY, REED SMITH LLP**

Yes. It's going to have to be Friday if it's me or maybe I can-

**MEDIATOR**

For continuity's sake, I would appreciate your staying on this. So I could talk with you at noon on Friday or at 12:30 or at 1:30.

**PLAINTIFF**

And I'm free at any time on Friday.

**ATTORNEY, REED SMITH LLP**

I could do 1:30.

**MEDIATOR**

All right 1:30. And I have another call at two, so we'll cut off ... We're not going to spend more than another half an hour figuring this out. So another call at 1:30. Use the same telephone information as today please and we'll continue the conversation then. I appreciate everybody's patience through this call. There do seem to be some prospects worth exploring here so let's finish it off.

**PLAINTIFF**

Thank you very much.

**MEDIATOR**

1:30 on Friday, November 2. Thank you everyone.

**ATTORNEY, REED SMITH LLP**

Thank you.

**NATIONSTAR REPRESENTATIVE**

Thank you.