



Eric B. Fisher  
Binder & Schwartz LLP  
366 Madison Avenue 6th Floor  
New York, NY 10017

(T) 212.933.4551  
(F) 212.510.7299  
efisher@binderschwartz.com

May 3, 2017

By ECF and E-Mail

The Honorable Martin Glenn  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Courtroom 523  
New York, New York 10004

Re: *Motors Liquidation Company Avoidance Action Trust v. JPMorgan Chase Bank, N.A.*, Case No. 09-00504 (MG)

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Dear Judge Glenn:

We represent plaintiff Motors Liquidation Company Avoidance Action Trust (“Plaintiff”) in the above-referenced action. We submit this letter in opposition to Defendants’ objection to PX-0217, the Title Search Report generated by First American Title Insurance Company (“First American”) and accompanying Declaration of Penny Bagby, dated April 26, 2017 (“Bagby Decl.”). As set out below, PX-0217 is not inadmissible hearsay because it falls within at least five exceptions to the hearsay rule: Fed. R. Evid. 803(6) (business records exception); Fed. R. Evid. 803(7) (absence of a record of a regularly conducted activity); Fed. R. Evid. 803(10) (absence of a public record); Fed. R. Evid. 803(17) (commercial compilations); and Fed. R. Evid. 807 (residual hearsay exception). Accordingly, Plaintiff respectfully requests that the Court admit PX-0217, attached hereto as Exhibit A, and the Supplemental Declaration of Penny Bagby (“Bagby Supp. Decl.”), attached hereto as Exhibit B, into evidence.

**1. The First American Title Search Report Is a Business Record Under Federal Rule of Evidence 803(6)**

Federal Rule of Evidence 803(6) provides an exception to the hearsay rule for:

A record of an act, event, condition, opinion, or diagnosis if (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Fed. R. Evid. 803(6). “Rule 803(6) favors the admission of evidence rather than its exclusion if

it has any probative value at all.” *Phoenix Associates III v. Stone*, 60 F.3d 95, 101 (2d Cir. 1995) (citation, alteration omitted); *see also In re Enron Creditors Recovery Corp.*, 376 B.R. 442, 454-55 (Bankr. S.D.N.Y. 2007) (“Inasmuch as records are maintained in the regular conduct of a business are generally trustworthy and because such evidence is often necessary, ‘the business records exception has been construed generously in favor of admissibility.’”) (citation omitted).

As this Court set forth in its opinion concerning the admissibility of the KPMG Report, “[i]t is settled law that a business record need not be introduced by a witness with personal knowledge of the document.” Order Denying Plaintiff’s Motions to Exclude KPMG Report and Testimony of Maryann Keller, Glenn Hubbard, and Abdul Lakhani, dated April 7, 2017 (Adv. Pro. Dkt. No. 945) (“April 7 MIL Order”), at 7. The custodial witness lays the proper foundation for the business record if she testifies that the document “was kept in the course of a regularly conducted business activity and also that it was the regular practice of that business activity to make the record.” *Id.*; *see also Phoenix Associates III*, 60 F.3d at 101. Here, Ms. Bagby lays the necessary foundation for the Title Search Report because it was “the regular practice of First American to generate title search reports” and the Title Search Report “was made and kept in accordance with First American’s usual practice of generating and maintaining title search reports.” Bagby Decl. ¶¶ 6, 10. Thus, PX-0217 is admissible as a business record. *See Fox v. Nowlin (In re Gordon Duane Nowlin)*, 558 B.R. 907, 910 (Bankr. C.D. Cal. 2016) (overruling hearsay objection to title search report based on Fed. R. Evid. 803(6)); *Katzin v. United States*, 120 Fed. Cl. 199, 213 (Fed. Ct. Claims 2015) (holding any hearsay objection to title report “may be cured by providing a witness to testify as to the . . . preparation of the document”).

Defendants have failed to show that the source of the information underlying the Title Search Report or the method of preparation indicate a lack of trustworthiness.<sup>1</sup> *See In re Enron Creditors Recovery Corp.*, 376 B.R. at 454-55. As Defendants’ own expert confirms, First American is a reliable title insurance company, *see* Draft Hr’g Tr. 28:11-22 May 2, 2017, and Defendants offer nothing to show that the Title Search Report was not made and kept in accordance with First American’s usual practice of generating and maintaining such reports.<sup>2</sup> To the contrary, as Ms. Bagby makes clear, “First American obtains information for its title plant for

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<sup>1</sup> Defendants argue that the input for the search was restrictive and the results are not to be relied upon. Plaintiff disputes this claim. But more to the point, Defendants’ argument goes to weight, not admissibility.

<sup>2</sup> Defendants’ argument that the disclaimer contained in the Title Search Report renders it untrustworthy is unavailing. Plaintiff made a similar argument that the following disclaimer contained in the KPMG Report rendered it untrustworthy and unreliable: “We did not prepare or assist Management in the preparation of the historical financial data or projections provided to us. We have accepted such information as being complete and accurate in all material respects. We have not audited, reviewed, or examined such information, and accordingly do not express an opinion or any other form of assurance thereon.” Plaintiff’s Omnibus Reply Memorandum of Law in Further Support of Its Motions *In Limine*, dated March 31, 2017 (Adv. Pro. Dkt. No. 943), at 4 (quoting KPMG Report, at ii). Despite such a disclaimer in the KPMG Report, the Court admitted it as a business record. April 7 MIL Order, at 7-8.



Eaton County from Data Trace Information Services, LLC (“Data Trace”), a national company that provides real estate title search technology and support services that enable title and settlement services companies to quickly access and search hundreds of regional title databases of publicly available property records through a secure standardized interface.” Bagby Supp. Decl. ¶ 2. Further, “First American title searchers rely upon Data Trace in the course of the regularly conducted business activity of First American for Eaton County, and First American’s reputation as a national title insurance company depends on the accuracy of the information obtained by Data Trace. Bagby Supp. Decl. ¶ 4. Thus, Ms. Bagby confirms that the Title Search Report was based on reliable data and methods.

**2. The First American Title Search Report Is Admissible Under Federal Rule of Evidence 803(7) Because It Shows the Absence of the Eaton County Fixture Filing in the Chain of Title of the Lansing Facilities**

The Federal Rules of Evidence also provide that the absence of a record of a regularly conducted business activity is admissible. Rule 803(7) provides an exception to hearsay for evidence that a matter is not included in a business record described in Rule 803(6) if the evidence is admitted to prove that the matter did not occur or exist, the record was regularly kept for a matter of that kind, and the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness. Fed. R. Evid. 803(7). *See also In re Residential Capital, LLC*, No. 12-12020 (MG), 2016 WL 3240256, at \*4 (Bankr. S.D.N.Y. June 3, 2016); *In re Enron Creditors Recovery Corp.*, 376 B.R. at 458 (holding absence of inter-company payment in records establishes, pursuant to Rule 803(7), that payment was not made). Here, the Title Search Report reflects that a title search of 8001 Davis Highway and associated tax parcel numbers did not locate the Eaton County Fixture Filing. *See* Bagby Supp. Decl. ¶ 6. Additionally, as discussed above, the Title Search Report is a business record under Federal Rule of Evidence 803(6), and Defendants have failed to show that the source of the information is untrustworthy. The Title Search is therefore admissible under Rule 803(7).

**3. The Supplemental Declaration of Penny Bagby Demonstrates That a Diligent Search Failed to Disclose a Public Record Under Federal Rule of Evidence 803(10)**

The First American Title Search Report and the Bagby Supplemental Declaration are admissible under Federal Rule of Evidence 803(10) because they are being offered to prove the absence of a public record, specifically, the absence of the Eaton County Fixture Filing in the chain of title of the Lansing Delta Township Assembly plant and Lansing Regional Stamping plant (the “Lansing Facilities”). Fed. R. Evid. 803(10); *Time Warner Entm’t-Advance/Newhouse P’ship v. Steadfast Orchard Park, L.P.*, No. 07-473, 2008 WL 4350054, at \*5-6 (C.D. Cal. 2008). In *Time Warner*, a party sought to establish that a contract was not binding because it was not recorded by submitting a privately-obtained preliminary title report. In admitting the title report into evidence, the *Time Warner* Court held that the “correct procedure for establishing failure to record is [] submission of the title report and a statement that a diligent search failed to disclose the [] [c]ontract.” *Id.* at \*6 (citing Fed. R. Evid. 803(10)).

The same is true here. As the First American Title Search Report demonstrates and Ms. Bagby declares, a “diligent search of First American’s title plant for Eaton County for the property address 8001 Davis Highway, Lansing MI 48917 with a beginning search date January 1, 2000 and an ending search date June 1, 2009, disclosed only three mortgages and liens listed on the Title Search Report, and failed to disclose the UCC financing statement recorded in Liber 2113, page 660.” Bagby Supp. Decl. ¶ 6. Thus, the Title Search Report and the Bagby Supplemental Declaration are admissible under Rule 803(10).

#### **4. The First American Title Search Report Falls Within Federal Rule of Evidence 803(17)**

The First American Title Search Report is admissible pursuant to Federal Rule of Evidence 803(17), which provides a hearsay exception for “[m]arket quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.” Fed. R. Evid. 803(17). Courts regularly admit documents, including title search reports, based on commercial data sources when they are commonly used among professionals in the relevant field as a reliable source of information. *See In re Gordon Duane Nowlin*, 558 B.R. at 910 (overruling hearsay objection to title search report based on Fed. R. Evid. 803(17)); *U.S. Bank, National Association v. UBS Real Estate Securities Inc.*, 205 F. Supp. 3d 386, 441-42 (S.D.N.Y. 2016) (admitting evidence under Rule 803(17) concerning borrowers’ debts as listed on their mortgage applications and other information about borrowers that was based on commercial data sources, including Mortgage Electronic Research System, Accurant, Data Verify, Data Tree, Sitex, and Lexis-Nexis); *U.S. v. Cassiere*, 4 F.3d 1006, 1018-19 (1st Cir. 1993) (published monthly listing of properties sold, their sale prices, and the dates of sales was admissible under Rule 803(17) because appraisers used publication as source for comparable sales); *U.S. v. Masferrer*, 514 F.3d 1158, 1162 (1st Cir. 2008) (market quotes obtained from Bloomberg database were admissible pursuant to Rule 803(17)); *Breland v. Levada Ef Five, LLC*, No. 14-158, 2016 WL 1717207, at \*9 n.7 (S.D. Ala. Apr. 28, 2016) (spreadsheet of daily natural gas spot prices obtained from EIA.gov was admissible under Rule 803(17)).

Here, as set forth in the Bagby Supplemental Declaration, Data Trace “enable[s] title and settlement services companies to quickly access and search hundreds of regional title databases of publicly available property records.” Bagby Supp. Decl. ¶ 2. Title search companies, including First American, regularly rely on the information compiled by Data Trace in conducting their title searches, and First American’s reputation as a national title search company depends on the accuracy of the title information compiled by Data Trace. *See* Bagby Supp. Decl. ¶ 4. Further, Data Trace provides First American with the images of all of the recorded instruments from the Eaton County Register of Deeds, which is updated every thirty days, further enhancing the reliability of the information maintained in the Data Trace database. Bagby Supp. Decl. ¶ 5. Because the publicly available information compiled by Data Trace is reliable and title searchers such as First American regularly rely on such information, the First American Title Search Report is admissible under Federal Rule of Evidence 803(17).

BINDER &  
SCHWARTZ

**5. The First American Title Search Report Is Admissible Pursuant to the Residual Hearsay Exception**

Even if the Title Search Report were not admissible under Federal Rules of Evidence 803(6), 803(7), 803(10), or 803(17), it is admissible under Federal Rule of Evidence 807, which provides that a hearsay statement may be admitted if “(1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the interests of justice.” Fed. R. Evid. 807. For the reasons stated above, the Title Search Report is fundamentally trustworthy—it was prepared by a national title search company that is indisputably experienced in conducting title searches and it was based on reliable data.

\* \* \*

For the reasons set forth above, Plaintiff respectfully requests that the Court overrule Defendants’ objection to the First American Title Search Report and admit PX-0217 and the Bagby Supplemental Declaration into evidence.

Respectfully submitted,

/s/ Eric B. Fisher

Eric B. Fisher

Attachments

cc: All counsel of record

# **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----x  
In re:

MOTORS LIQUIDATION COMPANY, f/k/a  
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (MG)  
(Jointly Administered)

Debtors.

-----x  
MOTORS LIQUIDATION COMPANY AVOIDANCE  
ACTION TRUST, by and through the Wilmington Trust  
Company, solely in its capacity as Trust Administrator and  
Trustee,

Adversary Proceeding

Plaintiff,

Case No. 09-00504 (MG)

against

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.  
-----x

**DECLARATION OF PENNY BAGBY**

I PENNY BAGBY, Production Center Manager, declare as follows:

1. I have personal knowledge of the facts stated herein because I am the Production Center Manager of First American Title Insurance Company ("First American"), and I am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

2. First American is one of the largest title insurance companies in the nation and it operates throughout the United States and internationally. First American provides

comprehensive title searches for homebuyers and sellers, real estate agents and brokers, mortgage lenders, commercial property professionals, homebuilders and developers, title agencies and legal professionals to facilitate real estate purchases, construction, refinances or equity loans.

3. First American maintains a title plant for Eaton County that is posted geographically. First American's title plant is contains all of Eaton County Register of Deeds records beginning from 1/1/1995. Data is provided to First American electronically by Eaton County Register of Deeds, and is updated every 30 days. First American's general practice for producing title search reports involves running a property index and general name search within the title plant. All recorded instruments other than released or discharged money matters within the timeframe requested by the customer are listed on the title search report

4. Attached is a true and correct copy of a Title Search Report generated by First American for the property address 8001 Davis Highway, Lansing MI 48917 with a beginning search date January 1, 2000 and an ending search date June 1, 2009. This document was created on December 15, 2016 (the "Title Search Report").

5. The attached Title Search Report was made at or near the time of the title search performed by First American and described therein.

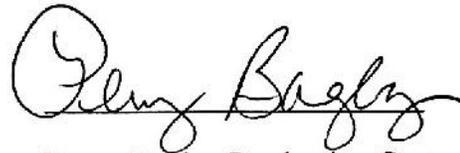
6. It is the regular practice of First American to generate title search reports, such as the attached Title Search Report.

7. The attached Title Search Report was made and kept in accordance with First American's usual practice of generating and maintaining title search reports.

8. The attached Title Search Report was made by, or from information transmitted by, persons with knowledge of the information contained in the Title Search Report.

9. The attached Title Search Report was made by persons who make such reports as part of their regular business activity at First American.

10. The attached Title Search Report was made and kept in the course of regularly conducted business activity of First American.



Penny Bagby, Production Center Manager

Sworn to before me this  
26<sup>th</sup> day of April, 2017

  
Notary Public

EMILY M. NEWHOUSE  
Notary Public, State of Michigan  
County of Ottawa  
My Commission Expires June 27, 2019  
Acting in the County of Ottawa



TITLE SEARCH REPORT

Beginning Search Date: January 01, 2000 @ 8:00 AM Search File No.: 765097  
Ending Search Date: June 01, 2009 @ 8:00 AM Property Address: 8001 Davis Highway, Lansing, MI  
Revision A 48917  
Loan Number: Reference No.:

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**Legal Description of Property:**

(SEE EXHIBIT A LEGAL DESCRIPTION)

(the Property)

**Instruments shown in this search report include:**

1) Mortgages and liens recorded in the office of the Register of Deeds for Eaton County, Michigan during the period of this search.

1. Financing Statement recorded in Liber 1773, page 512, covers more land.
2. Continuation recorded in Liber 2195, page 639.
3. Claim of Lien recorded in Liber 2000, page 485, covers more land.

NOTE: The above information is to be used for reference purposes only. It is not to be relied upon as evidence of title nor as evidence of compliance with any of the provisions of PA 123 of 1999. The issuance of this search is not to be construed as a promise to insure. This search is being provided for a reduced rate and the company's liability shall in no event exceed the amount paid for said information. The company reserves the right to decline any application for the issuance of a title policy based on the information provided in this document.

**Tax Information:**

4. All Taxes paid to and including 2015  
2016 Summer Taxes PAID in the amount of \$66,692.96  
2016 Winter Taxes DUE in the amount of \$488,046.34, includes \$415,396.37 for 326-1 Carrier CR and \$4,580.43 for Carrier Creek Maint  
Tax Item No. 235-040-331-010-02  
Property Address: 8001 Davis Highway, Lansing, MI 48917  
Special Assessment for Carrier Creek Drain: 20 Parts, 12 Paid, 8 DUE.



**First American Title Insurance Company**

**Important - Read Carefully:** This report is not an insured product or service or a representation of the condition of title to real property. It is not an abstract, legal opinion, opinion of title, title insurance commitment or preliminary report, or any form of title insurance or guaranty. This report is issued exclusively for the benefit of the applicant therefor, and may not be used or relied upon by any other person. This report may not be reproduced in any manner without First American's prior written consent. First American does not represent or warrant that the information herein is complete or free from error, and the information herein is provided without any warranties of any kind, as-is, and with all faults. As a material part of the consideration given in exchange for the issuance of this report, recipient agrees that First American's sole liability for any loss or damage caused by an error or omission due to inaccurate information or negligence in preparing this report shall be limited to the fee charged for the report. Recipient accepts this report with this limitation and agrees that First American would not have issued this report but for the limitation of liability described above. First American makes no representation or Warranty as to the legality or propriety of recipient's use of the information herein.

5. All Taxes paid to and including 2015  
2016 Summer Taxes PAID in the amount of \$123,749.40  
2016 Winter Taxes DUE in the amount of \$152,688.33  
Tax Item No. 952-350-331-010-01, as to Industrial Facilities Tax  
Property Address: 8001 Davis Highway, Lansing, MI 48917

NOTE: On the above tax amount(s), there may also be due an amount for interest, penalty and collection fee.

EXHIBIT A  
LEGAL DESCRIPTION

File No.: 765097

Land situated in the City of Lansing, County of Eaton, State of Michigan, is described as follows:

The Northwest 1/4 of Section 33, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan.

The Southwest 1/4 of Section 33, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan, North of Interstate 96.

The Northeast 1/4 of Section 33, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan, West of Interstate 96.

The Southeast 1/4 of Section 33, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan, West of Interstate 96.

MILLETT HIGHWAY:

Beginning on the South line of Section 28, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan, at a point South 89 degrees 53 minutes 59 seconds East 33.00 feet from the Southwest corner of Section 28; thence running along the Easterly right of way line of Guinea Road North 00 degree 26 minutes 42 seconds East 33.00 feet; thence along the Northerly right of way line of Millett Highway South 89 degrees 53 minutes 59 seconds East 2499.41 feet to the Westerly line of the Michigan Department of Transportation right of way; thence along said Westerly line South 00 degree 06 minutes 01 seconds West 33.00 feet to the South line of Section 28; thence continuing along said Westerly line South 00 degree 04 minutes 26 seconds East 33.00 feet to the Southerly right of way line of said Millett Highway; thence along said Southerly line, being 33.00 feet South of and parallel with the North line of Section 33, Town 4 North, Range 3 West, North 89 degrees 53 minutes 59 seconds West 2499.58 feet to the Easterly right of way line of Guinea Road; thence North 00 degree 07 minutes 28 seconds West 33.00 feet to the point of beginning.

GUINEA ROAD:

Beginning on the West line of Section 33, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan, at a point South 00 degree 07 minutes 28 seconds East 33.00 feet from the Northwest corner of Section 33; thence running along the Southerly right of way line of Millett Highway South 89 degrees 53 minutes 59 seconds East 33.00 feet; thence along the Easterly right of way line of Guinea Road South 00 degree 07 minutes 28 seconds East 2678.82 feet to the East/West 1/4 line of Section 33; thence continuing along said Easterly right of way line of Guinea Road South 00 degree 08 minutes 19 seconds West 2529.65 feet to a point 100 feet North of as measured perpendicular to the South line of Section 33; thence parallel with said South line North 89 degrees 59 minutes 07 seconds West 33.00 feet to the West line of the Southwest 1/4 of Section 33; thence parallel with the South line of Section 32, Town 4 North, Range 3 West, South 89 degrees 51 minutes 45 seconds West 33.00 feet to the Westerly right of way line of Guinea Road; thence along said Westerly line, being 33.00 feet Westerly of and parallel with the East line of Section 32 North 00 degree 08 minutes 19 seconds East 2529.53 feet to the East/West 1/4 line of Section 32; thence continuing along said Westerly right of way line North 00 degree 07 minutes 28 seconds West 2678.57 feet to the Southerly right of way line of Millett Highway; thence North 89 degrees 08 minutes 24 seconds East 33.00 feet to the point of beginning.

EXCEPTING THEREFROM:

That part of the Northeast 1/4 and the Northwest 1/4 of Section 33, Town 4 North, Range 3 West, Delta Township, Eaton County, Michigan, beginning on the North-South 1/4 line of said Section at a point South 00 degrees 04 minutes 23 seconds East 50.00 feet from the North 1/4 corner thereof; Thence running parallel with the North line of said Northeast 1/4 South 89 degrees 32 minutes 53 seconds East 122.26 feet; Thence parallel with said 1/4 line South 00 degrees 04 minutes 26 seconds East 25.00 feet; Thence South 89 degrees 32 minutes 53 seconds East 374.28 feet to the Westerly

right of way line of Interstate Highway 1-69/1-96; Thence along said right of way line Southeasterly 40.32 feet along the arc of a 7,742.44 foot radius curve to the left whose central angle is 00 degrees 17 minutes 54 seconds and whose chord bears South 06 degrees 48 minutes 23 seconds East, 40.32 feet; Thence parallel with the North line of said Northeast 1/4 North 89 degrees 32 minutes 53 seconds West 501.27 feet to said North-South 1/4 line; Thence parallel with the North line of said Northwest 1/4 North 89 degrees 53 minutes 59 seconds West 107.74 feet; Thence parallel with said 1/4 line North 00 degrees 04 minutes 26 seconds West 65.00 feet; Thence South 89 degrees 53 minutes 59 seconds East 107.74 feet to the point of beginning.

## **EXHIBIT B**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re:

MOTORS LIQUIDATION COMPANY, f/k/a  
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (MG)  
(Jointly Administered)

Debtors.

-----X  
MOTORS LIQUIDATION COMPANY AVOIDANCE  
ACTION TRUST, by and through the Wilmington Trust  
Company, solely in its capacity as Trust Administrator and  
Trustee,

Adversary Proceeding

Plaintiff,

Case No. 09-00504 (MG)

against

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

-----X

**SUPPLEMENTAL DECLARATION OF PENNY BAGBY**

I PENNY BAGBY, Production Center Manager, declare as follows:

1. I have personal knowledge of the facts stated herein because I am the Production Center Manager of First American Title Insurance Company ("First American"), and I am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

2. First American obtains information for its title plant for Eaton County from Data Trace Information Services, I.L.C ("Data Trace"), a national company that provides real estate title search technology and support services that enable title and settlement services companies to quickly access and search hundreds of regional title databases of publicly available property records through a secure standardized interface.

3. Data Trace is a commercial database available to any title or settlement service company. Title insurance companies regularly purchase access to Data Trace in order to conduct title searches.

4. First American title searchers rely upon Data Trace in the course of the regularly conducted business activity of First American for Eaton County, and First American's reputation as a national title insurance company depends on the accuracy of the information obtained by Data Trace.

5. Data Trace provides First American with the images of all recorded instruments from the Eaton County Register of Deeds. This data is maintained in First American's title plant for Eaton County, and is updated every 30 days.

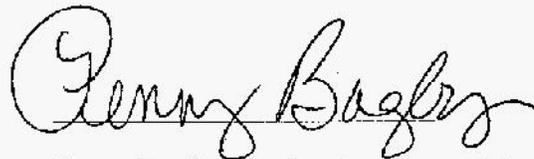
6. A diligent search of First American's title plant for Eaton County for the property address 8001 Davis Highway, Lansing MI 48917 with a beginning search date January 1, 2000 and an ending search date June 1, 2009, disclosed only the three mortgages and liens listed on

the Title Search Report, and failed to disclose the UCC Financing Statement recorded in Liber  
2113, page 660.

\* \* \*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the  
United States of America that the foregoing and true and correct.

Dated: May 2, 2017  
Largo, Florida

A handwritten signature in cursive script that reads "Penny Bagby". The signature is written in black ink and is positioned above the printed name.

Penny Bagby, Production Center Manager