

**JUAN AGUIRRE - August 06, 2009**

Page 1	Page 3																																																																											
<p style="text-align: center;">NO. 08-CV-1255</p> <p>CHRISTINA MELINDER ) IN THE DISTRICT COURT                      )                      VS. ) OF GALVESTON COUNTY, TEXAS                      )                      HOMECOMINGS FINANCIAL )                      LLC, and JPMORGAN CHASE )                      BANK, N.A., as assignee of )                      certain assets and )                      liabilities of WASHINGTON )                      MUTUAL BANK by the Federal )                      Deposit Insurance )                      Corporation ) 10TH JUDICIAL DISTRICT</p> <p style="text-align: center;">-----                      ORAL DEPOSITION OF                      JUAN AGUIRRE                      AUGUST 6, 2009                      -----</p> <p>ORAL DEPOSITION OF JUAN AGUIRRE, produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 6th day of August, 2008, from 9:57 a.m. to 4:01 p.m., before Sherry Patterson, a Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand, at the offices of Settle Pou, 3333 Lee Parkway, Eighth Floor, Dallas, Texas, pursuant to the agreements as stated on the record and/or the Texas Rules of Civil Procedure.</p>	<p style="text-align: center;">INDEX</p> <p>1                      2 ATTORNEYS OF RECORD.....02                      3 AGREEMENTS.....05                      4 EXAMINATION BY MR. LEVINE.....05                      5 EXAMINATION BY MR. MCLAIN.....128                      6 FURTHER EXAMINATION BY MR. LEVINE.....135                      7 SIGNATURE AND CORRIGENDA PAGE.....139                      8 CERTIFICATION PAGE.....141                      9 EXHIBITS</p> <table border="0"> <thead> <tr> <th style="text-align: left;">10 NUMBER DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>11 1A Copy, Check No. 1376</td> <td style="text-align: right;">29</td> </tr> <tr> <td>12 1B Compass Bank record, 08/15/06 to 09/13/06</td> <td style="text-align: right;">29</td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>2 Compass Bank record, 09/30/06 to 10/31/06</td> <td style="text-align: right;">82</td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15 3 Compass Bank record, 11/14/06 to 12/12/06</td> <td style="text-align: right;">82</td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>4 Compass Bank record, 12/13/06 to 01/12/07</td> <td style="text-align: right;">82</td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18 5 Compass Bank record, 02/13/07 to 03/13/07</td> <td style="text-align: right;">82</td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>6 Capital One account history</td> <td style="text-align: right;">82</td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>7 Capital One account history</td> <td style="text-align: right;">82</td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>8 Capital One account history</td> <td style="text-align: right;">82</td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>9 Capital One account history</td> <td style="text-align: right;">82</td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>10 Capital One account history</td> <td style="text-align: right;">82</td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>11 Copy, Check No. 1013</td> <td style="text-align: right;">82</td> </tr> <tr> <td>25</td> <td></td> </tr> <tr> <td>12 Copy of back of check</td> <td style="text-align: right;">82</td> </tr> </tbody> </table>	10 NUMBER DESCRIPTION	PAGE	11 1A Copy, Check No. 1376	29	12 1B Compass Bank record, 08/15/06 to 09/13/06	29	13		2 Compass Bank record, 09/30/06 to 10/31/06	82	14		15 3 Compass Bank record, 11/14/06 to 12/12/06	82	16		4 Compass Bank record, 12/13/06 to 01/12/07	82	17		18 5 Compass Bank record, 02/13/07 to 03/13/07	82	19		6 Capital One account history	82	20		7 Capital One account history	82	21		8 Capital One account history	82	22		9 Capital One account history	82	23		10 Capital One account history	82	24		11 Copy, Check No. 1013	82	25		12 Copy of back of check	82																									
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<p style="text-align: center;">Page 2</p> <p>1 ATTORNEYS OF RECORD                      2                      3 APPEARING ON BEHALF OF THE PLAINTIFF:                      4 MR. ALLAN G. LEVINE                      CHRISTIAN, SMITH AND JEWELL, L.L.P.                      5 2302 FANNIN, SUITE 500                      HOUSTON, TEXAS 77002                      6 PHONE: (713) 659-7617                      FAX: (713) 659-7641                      7                      8 APPEARING ON BEHALF OF THE DEFENDANT HOMECOMINGS                      FINANCIAL LLC:                      9                      MR. BRADLEY E. MCLAIN                      10 SETTLE POU                      3333 LEE PARKWAY, EIGHTH FLOOR                      11 DALLAS, TEXAS 75219                      PHONE: (214) 520-3300                      12 FAX: (214) 526-4145                      13                      APPEARING ON BEHALF OF DEFENDANTS JPMORGAN CHASE BANK                      14 AND WASHINGTON MUTUAL BANK:                      15 MR. JUSTIN R. OPITZ                      QUILLING, SELANDER, CUMMISKEY, LOWNDS                      16 2001 BRYAN STREET, SUITE 1800                      DALLAS, TEXAS 75201                      17 PHONE: (214) 871-2100                      FAX: (214) 871-2111                      18                      19                      20                      21 ALSO PRESENT:                      22 MS. CHRISTINA MELINDER                      23                      24                      25</p>	<p style="text-align: center;">Page 4</p> <table border="0"> <tbody> <tr> <td>1 13</td> <td>Copy of check from Texas Farmers Insurance Company to Christina Melinder, Homecomings Financial, Washington Mutual</td> <td style="text-align: right;">118</td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3 14</td> <td>Copy of check from Texas Farmers Insurance Company to Homecomings Financial, Washington Mutual</td> <td style="text-align: right;">119</td> </tr> <tr> <td>4</td> <td></td> <td></td> </tr> <tr> <td>5 15</td> <td>Copy of check from Texas Farmers Insurance Company to Homecomings Financial, Washington Mutual</td> <td style="text-align: right;">119</td> </tr> <tr> <td>6</td> <td></td> <td></td> </tr> <tr> <td>7</td> <td></td> <td></td> </tr> <tr> <td>8</td> <td></td> <td></td> </tr> <tr> <td>9</td> <td></td> <td></td> </tr> <tr> <td>10</td> <td></td> <td></td> </tr> <tr> <td>11</td> <td></td> <td></td> </tr> <tr> <td>12</td> <td></td> <td></td> </tr> <tr> <td>13</td> <td></td> <td></td> </tr> <tr> <td>14</td> <td></td> <td></td> </tr> <tr> <td>15</td> <td></td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </tbody> </table>	1 13	Copy of check from Texas Farmers Insurance Company to Christina Melinder, Homecomings Financial, Washington Mutual	118	2			3 14	Copy of check from Texas Farmers Insurance Company to Homecomings Financial, Washington Mutual	119	4			5 15	Copy of check from Texas Farmers Insurance Company to Homecomings Financial, Washington Mutual	119	6			7			8			9			10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			25		
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<p>1 PROCEEDINGS 2 (Exhibits Nos. 1A and 1B were marked.) 3 MR. LEVINE: Objections reserved for trial. 4 MR. MCLAIN: Yes. 5 MR. LEVINE: Per the Rules. 6 MR. MCLAIN: Yes, we're good. 7 JUAN AGUIRRE, 8 having been first duly sworn, testified as follows: 9 EXAMINATION 10 BY MR. LEVINE (9:57 a.m.): 11 Q. State your name, please. 12 <b>A. Juan Aguirre.</b> 13 Q. Mr. Aguirre, do you live in Texas? 14 <b>A. Yes, I do.</b> 15 Q. In what city? 16 <b>A. Dallas.</b> 17 Q. And by whom are you employed? 18 <b>A. GMAC Mortgage, Homecomings Financial.</b> 19 Q. You're here today as a corporate representative 20 for what entity, sir? 21 <b>A. For Homecomings Financial.</b> 22 Q. How long have you worked for Homecomings 23 Financial? 24 <b>A. Two years, eight months.</b> 25 Q. And what is your position with them?</p>	<p>1 <b>A. I worked with Bryce, Vander Linden &amp; Wernick.</b> 2 Q. And what are they? 3 <b>A. They are a law firm -- bankruptcy law firm.</b> 4 Q. Where? 5 <b>A. Here in Dallas, Texas.</b> 6 Q. How long were you with them? 7 <b>A. Two and a half years.</b> 8 Q. And what was your position? 9 <b>A. I was a case manager.</b> 10 Q. And what were your duties as a case manager? 11 <b>A. We -- my responsibility was working with Wells</b> 12 <b>Fargo. They would refer their bankruptcy loans to us,</b> 13 <b>and we would help prepare all the proof of claims and</b> 14 <b>the motions for release while their borrowers were in</b> 15 <b>bankruptcy.</b> 16 Q. And your title there, case manager? 17 <b>A. Case manager, yes.</b> 18 Q. Is that a paralegal position? 19 <b>A. No, it's not a paralegal position. We --</b> 20 Q. What type of position -- 21 <b>A. I'm sorry?</b> 22 Q. I should -- I apologize. 23 <b>A. No problem.</b> 24 Q. Explain the case manager role in the firm. 25 <b>A. When the cases were referred to us or the loans</b></p>
<p>1 <b>A. Senior litigation analyst.</b> 2 Q. And what are your duties? 3 <b>A. I am -- I represent the company at hearings,</b> 4 <b>trials, depositions, mediations and small claims</b> 5 <b>hearings.</b> 6 Q. For civil detainer actions as well? 7 <b>A. No, no. Just anything regarding servicing of the</b> 8 <b>loans and whenever we're being sued by a borrower or the</b> 9 <b>other way around.</b> 10 Q. And prior to being a senior litigation analyst at 11 Homecomings Financial, what did you do? 12 <b>A. Before becoming a senior litigation analyst with</b> 13 <b>Homecomings, I was a loss mitigation specialist with</b> 14 <b>Homecomings Financial.</b> 15 Q. For how long? 16 <b>A. That was for about, I would say, a year.</b> 17 Q. And what does a loss mitigation specialist do? 18 <b>A. We assist borrowers whenever they're delinquent</b> 19 <b>on their mortgage to make some sort of arrangement</b> 20 <b>either to modify the loan. If they want to sell their</b> 21 <b>home as a short sale, we'll assist them with that. If</b> 22 <b>they want to do it in lieu of foreclosure, we'll assist</b> 23 <b>them with that. So basically assisting the borrowers</b> 24 <b>when they're delinquent.</b> 25 Q. Okay. And prior to that year?</p>	<p>1 <b>were referred to us that were in bankruptcy, we would</b> 2 <b>assist in preparing documents that needed to be filed</b> 3 <b>with the bankruptcy courts. And our attorneys would</b> 4 <b>review them, and our attorneys would then have -- we</b> 5 <b>would file them electronically with the bankruptcy</b> 6 <b>court.</b> 7 Q. So you were supervised by an attorney? 8 <b>A. You can say an attorney, but I also had a manager</b> 9 <b>above me also supervising who supervised the whole area.</b> 10 Q. Okay. You were there for two and a half years? 11 <b>A. Correct.</b> 12 Q. And what training did you have to get that 13 position? 14 <b>A. I used to work with the Chapter 13 trustee's</b> 15 <b>office for five years.</b> 16 Q. In Dallas? 17 <b>A. Yes.</b> 18 Q. And what did you do in the trustee's office? 19 <b>A. I worked with the preconfirmation department. I</b> 20 <b>would help basically with the plans, the Chapter 13</b> 21 <b>plans when the attorneys would submit them, confirming</b> 22 <b>them before the plans were confirmed. If there were any</b> 23 <b>modifications or any amendments to those plans, that's</b> 24 <b>what we would assist them with.</b> 25 Q. And prior to that?</p>

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<p style="text-align: right;">Page 9</p> <p>1 <b>A. Prior to that I worked at Countrywide Home Loans.</b>  2 Q. And what did you do at Countrywide?  3 <b>A. It was called the work out department, which is</b>  4 <b>the loss mitigation department working with loss</b>  5 <b>mitigation.</b>  6 Q. Was that in Dallas?  7 <b>A. In Dallas also -- well, Plano, up north.</b>  8 Q. Same thing?  9 <b>A. Dallas.</b>  10 Q. And how long were you with Countrywide?  11 <b>A. I think maybe also around two, two and a half</b>  12 <b>years.</b>  13 Q. You get the migrating urge every two and a half  14 years, huh?  15 <b>A. Sort of, except for the trustee part of it. I</b>  16 <b>was there for five years, so --</b>  17 Q. Okay. Prior to Countrywide?  18 <b>A. Prior to Countrywide I worked at Frito Lay.</b>  19 Q. And what did you do at Frito Lay?  20 <b>A. It was just customer service representative.</b>  21 Q. How long?  22 <b>A. That was only temporary. It was only for about</b>  23 <b>eight months.</b>  24 Q. Before that?  25 <b>A. Before that I lived in California, and I was the</b></p>	<p style="text-align: right;">Page 11</p> <p>1 <b>to Frito Lay. It was kind of like a temporary job until</b>  2 <b>I found something a little bit more stable.</b>  3 Q. And prior to your Necessities Of Life work, what  4 did you do?  5 <b>A. I was a vocational rehabilitation counselor.</b>  6 Q. For whom?  7 <b>A. It was called Return To Work.</b>  8 Q. And what was your training for that position?  9 <b>A. I had worked in the Workers' Comp industry for</b>  10 <b>many years before that, and I worked my way up into that</b>  11 <b>position. I worked with Workers' Comp insurance</b>  12 <b>companies; and the experience that I got during that</b>  13 <b>time, I was able to apply for this position.</b>  14 <b>And I was hired on with Return To Work to assist</b>  15 <b>injured workers, helping them either get some sort of</b>  16 <b>new vocational training or try to get them some modified</b>  17 <b>work within their companies, worked with the employers</b>  18 <b>so that these injured workers can get back to full and</b>  19 <b>gainful employment.</b>  20 Q. When you were working for the Workers' Comp  21 department was that a State employer?  22 <b>A. No, it was not a State employer. It was actually</b>  23 <b>a private Workers' Comp insurance company.</b>  24 Q. Which one?  25 <b>A. Oh, gosh, if I can remember. I believe -- it was</b></p>
<p style="text-align: right;">Page 10</p> <p>1 <b>assistant manager to the Necessities Of Life Program for</b>  2 <b>AIDS Project Los Angeles.</b>  3 Q. What is the Cities of Light?  4 <b>A. No. It was Necessities Of Life Program,</b>  5 <b>Necessities.</b>  6 Q. Oh, Necessities?  7 <b>A. Yes.</b>  8 Q. What is that?  9 <b>A. It was the food bank which we provided assistance</b>  10 <b>for individuals with HIV and AIDS in supplementing</b>  11 <b>their --</b>  12 Q. A charitable organization?  13 <b>A. Yes, nonprofit org --</b>  14 Q. A nonprofit organization?  15 <b>A. Correct.</b>  16 Q. How long were you there?  17 <b>A. Three and a half years.</b>  18 Q. What brought you from California to Frito Lay in  19 Texas?  20 <b>A. Well, I wanted to move to Texas; so I moved to</b>  21 <b>Texas, and --</b>  22 Q. It shows good sense.  23 <b>A. Sort of. I want to move back. But I was</b>  24 <b>unemployed when I got here. I wanted to just move here;</b>  25 <b>and I said well, I'm going to move, and I just applied</b></p>	<p style="text-align: right;">Page 12</p> <p>1 <b>called California Compensation, but it was not a State</b>  2 <b>run company.</b>  3 Q. Before that?  4 <b>A. I'm trying to think back that far. Before</b>  5 <b>California Compensation, I -- there was a couple of</b>  6 <b>other -- I can't remember the names, a couple of other</b>  7 <b>Workers' Comp insurance companies that I did work with;</b>  8 <b>but I can't remember their names in California. And</b>  9 <b>before that I was managing a bed and breakfast in Key</b>  10 <b>West, Florida. That was back in the '80s.</b>  11 Q. Been downhill since then, huh?  12 <b>A. Yeah. Now I have to wear a suit to work.</b>  13 Q. And you would manage -- you managed a B &amp; B in  14 Florida?  15 <b>A. In Key West, correct.</b>  16 Q. And before that were you in school?  17 <b>A. Before that I was in school, correct.</b>  18 Q. Where did you go to school?  19 <b>A. I went to College of the Sequoias in Visalia,</b>  20 <b>California.</b>  21 Q. Is that a --  22 <b>A. It's a junior college.</b>  23 Q. Junior college?  24 <b>A. Uh-huh.</b>  25 Q. What's its name again?</p>

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<p style="text-align: right;">Page 13</p> <p>1 <b>A. College of the Sequoias.</b>  2 Q. And where is that?  3 <b>A. Visalia, V-i-s-a-l-i-a, California.</b>  4 Q. Did you get a degree?  5 <b>A. Just an AA in liberal arts.</b>  6 Q. Okay. When you worked at Countrywide, did  7 Countrywide train you?  8 <b>A. Train me for the loss mitigation part?</b>  9 Q. Yes.  10 <b>A. Yes, there was training there.</b>  11 Q. What did the training consist of?  12 <b>A. Computer training, you sat with an individual and</b>  13 <b>learned the system a little bit more, learned how to</b>  14 <b>communicate with the borrowers, how to do the</b>  15 <b>negotiation of a modification or a short sale. If it</b>  16 <b>was a foreclosure, what documents needed to be</b>  17 <b>generated, contacting the attorneys to generate those</b>  18 <b>documents for us. There's just a lot of training.</b>  19 Q. Was the training any different when you went to  20 work for the Chapter 13 Trustee?  21 <b>A. Well, it would be different. It's a totally</b>  22 <b>different company. I mean, everyone has their own ways</b>  23 <b>of training. This was loss mitigation type work. The</b>  24 <b>Chapter 13 Trustee's office is a bankruptcy -- basically</b>  25 <b>trustee. You still get the training of sitting with an</b></p>	<p style="text-align: right;">Page 15</p> <p>1 <b>going for basically Wells Fargo, because that was the</b>  2 <b>client that my area worked for.</b>  3 Q. Did you appear in court for them as well?  4 <b>A. No, I did not appear in court.</b>  5 Q. When you started with Homecomings as a loss  6 mitigation specialist did you have any specific  7 training?  8 <b>A. Yes. Same thing, you sat basically -- they had a</b>  9 <b>long, lengthy training. It was almost three weeks of</b>  10 <b>learning the systems and the processes of how to work</b>  11 <b>the different screens within the system. And then of</b>  12 <b>course you would also sit with someone within the</b>  13 <b>department you were coming in and learning more of the</b>  14 <b>process and how to answer the phones and what to look</b>  15 <b>for when somebody's in delinquency, how to generate</b>  16 <b>certain documents in the system, stuff like that.</b>  17 Q. Is it the same system they use now?  18 <b>A. Not when I first started. When I first started</b>  19 <b>it was ALSAMS [phonetic], if I'm correct, was the name</b>  20 <b>of the system. And then the whole company went through</b>  21 <b>a whole new training for the new system that, if I'm</b>  22 <b>correct, was April or May of '07, if I'm correct, was</b>  23 <b>when the whole new system called MortgageServ, FIS Serve</b>  24 <b>came into play; and we were all -- the whole company was</b>  25 <b>trained in all our offices on the new system.</b></p>
<p style="text-align: right;">Page 14</p> <p>1 <b>individual, computer system, and what you need to do to</b>  2 <b>process the paperwork that needs to be processed. But</b>  3 <b>it -- I mean, of course it's different training.</b>  4 Q. But the same subject matter?  5 <b>A. Not the same subject matter.</b>  6 Q. Troubled loans and work outs?  7 <b>A. Well, yeah, troubled loans, if you want to put it</b>  8 <b>that way. But this was troubled loans, the bankruptcy</b>  9 <b>-- the Chapter 13 Trustee weren't always troubled loans.</b>  10 <b>It could have been an individual who had maybe too much</b>  11 <b>unsecured debt and were current with their mortgage</b>  12 <b>payments, but it was unsecured debt that they were</b>  13 <b>trying basically to wipe out of their credit or couldn't</b>  14 <b>afford to pay all that unsecured debt.</b>  15 <b>Maybe there were too many medical expenses.</b>  16 <b>Chapter 13 Trustee is -- I mean, when you're filing</b>  17 <b>Chapter 13 it's not just a mortgage that they're in</b>  18 <b>default. Sometimes they're not even in default with</b>  19 <b>their mortgage. It could be totally something else that</b>  20 <b>you're in default with or can't afford to pay anymore.</b>  21 Q. Were you trained at the law firm for case  22 management?  23 <b>A. Yes, I was trained. Again, computer systems, and</b>  24 <b>then after that sitting with individuals learning how to</b>  25 <b>generate certain documents, prepare them and get them</b></p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And it's called Mortgage --  2 <b>A. MortgageServ, with no E at the end.</b>  3 Q. Did that have different codes than the earlier  4 system?  5 <b>A. The way it was coded, yes, there's different</b>  6 <b>codes that we had to learn, new codes. But a lot of the</b>  7 <b>codes in our system when a payment comes in the system,</b>  8 <b>you know, knows what code it's going to go into. You</b>  9 <b>know, that's the -- like the cashiering department, they</b>  10 <b>have their coding. Loss mitigation has their coding.</b>  11 <b>Everyone has their coding. But we had to learn new</b>  12 <b>codes in this, yes.</b>  13 Q. When did you start appearing in court for  14 Homecomings?  15 <b>A. Around December of 2007 was my first time I</b>  16 <b>appeared for a mediation.</b>  17 Q. You say December of --  18 <b>A. Of 2007. If I'm correct that was about when I</b>  19 <b>appeared at my first mediation for them.</b>  20 Q. Did you have settlement authority?  21 <b>A. Yes, I did.</b>  22 Q. Have you participated in any of the litigation  23 concerning Homecomings -- class actions against  24 Homecomings for wrongful foreclosure or truth in lending  25 violations?</p>

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<p style="text-align: right;">Page 17</p> <p>1 <b>A. Not in class actions, no, I have not participated</b>  2 <b>in any of those.</b>  3 Q. Do you know the results of any of those?  4 <b>A. No. The only results I know are my own that I</b>  5 <b>attend.</b>  6 Q. How many have you been involved with since 2007?  7 MR. MCLAIN: Objection. Form.  8 <b>A. Do you mean here in mediation, depos, what --</b>  9 <b>which ones?</b>  10 Q. (By Mr. Levine) Trials.  11 <b>A. Trials themselves?</b>  12 Q. Trials themselves.  13 <b>A. Oh, gosh, I can -- I mean, I don't know the</b>  14 <b>number because I -- this is what I do for them all the</b>  15 <b>time. Maybe 20, 25 trials. But there's also hearings</b>  16 <b>and depositions and mediations, like I said, and all</b>  17 <b>these other things that I attend, so --</b>  18 Q. And those are cases of wrongful foreclosure or  19 TILA violations?  20 <b>A. Some of them -- yes. Some of them have been</b>  21 <b>where they're accused of TILA violations or wrongful</b>  22 <b>foreclosure.</b>  23 Q. How many of them went to verdict?  24 <b>A. None of these were Jury trials. They were bench</b>  25 <b>trials where the Judge would either take it into</b></p>	<p style="text-align: right;">Page 19</p> <p>1 <b>A. Yes, there are some.</b>  2 Q. And what -- can you identify the documents, the  3 training materials or manuals or the policies and  4 procedures that are documented?  5 <b>A. I can't --</b>  6 MR. MCLAIN: Objection. Form.  7 <b>A. I can't identify them here. I mean, I don't have</b>  8 <b>them with me.</b>  9 Q. (By Mr. Levine) Just describe them to me so that  10 I can request them to be produced. What would I  11 request? What's the title of the manual or the book or  12 the pamphlet or the material?  13 <b>A. I don't work in the closing department, so I</b>  14 <b>don't know the names of them. You might just want to</b>  15 <b>ask for the closing procedures. I don't know what they</b>  16 <b>would be called.</b>  17 Q. How about for foreclosures?  18 <b>A. The procedures on how to refer out of</b>  19 <b>foreclosure?</b>  20 Q. Well, yeah. How to handle -- how does a loan get  21 to foreclosure? How do you deal with that?  22 <b>A. I don't -- again, I don't work in the foreclosure</b>  23 <b>department. But there are procedures on how to go about</b>  24 <b>referring a file that's been delinquent, the notices</b>  25 <b>that go out. There's procedures on that also.</b></p>
<p style="text-align: right;">Page 18</p> <p>1 <b>submission and -- or make a decision then and there. I</b>  2 <b>can't remember to tell you exactly how many were given</b>  3 <b>right then and there or how many the Judge took into</b>  4 <b>submission.</b>  5 Q. Well, they were all resolved, right?  6 <b>A. They were all resolved that I can remember, yes.</b>  7 Q. And how many as a percentage were resolved in  8 favor of Homecomings?  9 <b>A. I would say the majority of them were in our</b>  10 <b>favor that I can remember.</b>  11 Q. As part of your training at Homecomings were you  12 given any written materials, policies and procedures,  13 manuals, things like that?  14 <b>A. During the training?</b>  15 Q. Yes.  16 <b>A. Yes. They do provide you with a manual, a book</b>  17 <b>that you go through when you're learning the system.</b>  18 <b>And then when you get to a certain department, they have</b>  19 <b>their -- there are different departments within the</b>  20 <b>company. They will provide you with whatever procedures</b>  21 <b>are within that company -- that department.</b>  22 Q. Are there policies and procedures for closing a  23 loan?  24 <b>A. For closing a loan?</b>  25 Q. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And is that in some sort of a manual or booklet?  2 <b>A. Again, I don't work in that department; so I</b>  3 <b>don't know if -- what -- how they have it arranged. But</b>  4 <b>there are procedures on how to -- the process works and</b>  5 <b>how that process is to be worked to get --</b>  6 Q. It is documented?  7 <b>A. Yes.</b>  8 Q. It is documented?  9 <b>A. Yes, it is documented. Yes</b>  10 Q. And is that documentation substantially the same  11 today as it was in 2007?  12 <b>A. That, I couldn't tell you because again, I don't</b>  13 <b>work in that -- I haven't seen them.</b>  14 Q. Okay. And how about obtaining possession of a  15 premises after foreclosure, are there procedures with  16 respect to that?  17 <b>A. That would be the REO department. I'm -- they</b>  18 <b>have procedures on how to go about taking the premises</b>  19 <b>after the foreclosure has been concluded.</b>  20 Q. So there are policies and procedures in the REO  21 department?  22 <b>A. Yes.</b>  23 Q. That's how you would request it?  24 <b>A. I mean --</b>  25 Q. If you were looking to find that out, is that how</p>

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<p style="text-align: right;">Page 21</p> <p>1 you would go about it?</p> <p>2 <b>A. I would go to and say -- go to the REO</b></p> <p>3 <b>department, and I would ask for their procedures on how</b></p> <p>4 <b>they obtain premises, yes.</b></p> <p>5 Q. Okay. Do you know how to obtain possession after</p> <p>6 foreclosure?</p> <p>7 <b>A. I don't work in the REO department, so I don't</b></p> <p>8 <b>know how they go about obtaining those premises or how</b></p> <p>9 <b>they go about doing that.</b></p> <p>10 Q. How did Homecomings come to have this particular</p> <p>11 mortgage loan? How did it originate?</p> <p>12 <b>A. I don't know about the origination or how it</b></p> <p>13 <b>originated. I do know that Homecomings Financial, per</b></p> <p>14 <b>the deed of trust -- what I reviewed really quick, it</b></p> <p>15 <b>has Homecomings there as the origination -- originator</b></p> <p>16 <b>of the loan. But Homecomings was also the servicer</b></p> <p>17 <b>of the loan, so we serviced the loan.</b></p> <p>18 Q. Did Homecomings actually lend the money? Were</p> <p>19 they the lender?</p> <p>20 <b>A. I saw on the deed of trust that Homecomings is --</b></p> <p>21 <b>was the originator of the loan. If they were the actual</b></p> <p>22 <b>lender, I couldn't answer that. I don't know if they</b></p> <p>23 <b>actually gave the money to the borrower to purchase that</b></p> <p>24 <b>property.</b></p> <p>25 Q. Did they own the loan?</p>	<p style="text-align: right;">Page 23</p> <p>1 so --</p> <p>2 Q. Where did you read it?</p> <p>3 <b>A. In just the paperwork that I had with me, you</b></p> <p>4 <b>know, that I -- that I looked at before I came here.</b></p> <p>5 Q. Okay. Tell me what paperwork you looked at</p> <p>6 before you came here.</p> <p>7 <b>A. The deed of trust, the note.</b></p> <p>8 Q. Do you have it in front of you?</p> <p>9 <b>A. No, sir.</b></p> <p>10 Q. Do you have it here?</p> <p>11 <b>A. No, I do not have it.</b></p> <p>12 Q. Where did you see it?</p> <p>13 <b>A. It was provided to me by the paralegal, the legal</b></p> <p>14 <b>manager at the office who was working it. And I was</b></p> <p>15 <b>able to also pull it out from our system -- in our</b></p> <p>16 <b>system, so I have access to the imaging, so --</b></p> <p>17 Q. So you the corporate representative of</p> <p>18 Homecomings here today to answer questions with respect</p> <p>19 to the purchase of the loan by Defendant do not know</p> <p>20 where the money came from, if Homecomings was the</p> <p>21 beneficial owner or not?</p> <p>22 <b>A. I don't work in origination. I specialize in the</b></p> <p>23 <b>servicing of the loan. I can assist you with that.</b></p> <p>24 <b>Again, Homecomings was the name on the deed of trust and</b></p> <p>25 <b>the note; so they obviously must have originated the</b></p>
<p style="text-align: right;">Page 22</p> <p>1 MR. MCLAIN: Objection. Form.</p> <p>2 Q. (By Mr. Levine) At closing, at the time of</p> <p>3 acquisition, did they own the loan?</p> <p>4 <b>A. At -- on the deed of trust and the note it says</b></p> <p>5 <b>that Homecomings Financial was -- has their name on</b></p> <p>6 <b>there. So I couldn't tell you if they were the actual</b></p> <p>7 <b>owner of the loan, but their name was on there.</b></p> <p>8 Q. So they were the legal owner; is that correct?</p> <p>9 <b>A. Per the deed of trust, I know that it has their</b></p> <p>10 <b>name on there; so they -- they were the first ones who</b></p> <p>11 <b>originated the loan.</b></p> <p>12 Q. Were they the beneficial owner as well, or did it</p> <p>13 in fact belong to somebody else?</p> <p>14 MR. MCLAIN: Objection. Form.</p> <p>15 <b>A. What I have looked at is the initial funding with</b></p> <p>16 <b>the master servicer, Homecomings Financial -- Financial</b></p> <p>17 <b>was the servicer, Mers [phonetic] as the nominee and</b></p> <p>18 <b>Deutsche Bank as the trustee. That's from what I kind</b></p> <p>19 <b>of -- going through the paperwork, so --</b></p> <p>20 Q. (By Mr. Levine) And Deutsche Bank itself doesn't</p> <p>21 own the loan. They're acting as a trustee for others;</p> <p>22 are they not? So they're not the beneficial owner.</p> <p>23 MR. MCLAIN: Objection. Form.</p> <p>24 Q. (By Mr. Levine) Isn't that so?</p> <p>25 <b>A. What I read is Deutsche Bank is the trustee,</b></p>	<p style="text-align: right;">Page 24</p> <p>1 <b>loan. I mean, did they actually give her the money, I</b></p> <p>2 <b>mean, I don't -- I don't do originations, so I'm not --</b></p> <p>3 Q. The question is whose money was it that they gave</p> <p>4 to the title company at the closing?</p> <p>5 <b>A. Not being from the origination part of it, I</b></p> <p>6 <b>couldn't tell you exactly. I don't do originations.</b></p> <p>7 Q. Do you know who would know?</p> <p>8 <b>A. I don't work in originations, so I don't know who</b></p> <p>9 <b>would know.</b></p> <p>10 Q. Are you presenting or bringing to this deposition</p> <p>11 any documents in addition to those that were originally</p> <p>12 provided?</p> <p>13 MR. MCLAIN: Not at this time, no. No.</p> <p>14 MR. LEVINE: Do you have a copy of what you</p> <p>15 provided?</p> <p>16 MR. MCLAIN: Not here. He's reviewed what</p> <p>17 we've provided, so --</p> <p>18 Q. (By Mr. Levine) Did you look at the history of</p> <p>19 payments, Mr. Aguirre?</p> <p>20 <b>A. Yes, I did go through them, yes.</b></p> <p>21 Q. Did this loan go in default?</p> <p>22 <b>A. Yes, it did.</b></p> <p>23 Q. When?</p> <p>24 <b>A. Last --</b></p> <p>25 Q. When is the first time it went into default?</p>

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<p style="text-align: right;">Page 25</p> <p>1 <b>A. First time it went in default, I couldn't tell</b>  2 <b>you the exact date. But I do remember the last time it</b>  3 <b>went into default, the cause for the foreclosure and</b>  4 <b>everything, which was -- we received the last payment</b>  5 <b>February 11th of '08 for the January 1 of '08 payment;</b>  6 <b>and we didn't receive any other payment after that.</b>  7 MR. LEVINE: Objection. Nonresponsive.  8 Q. (By Mr. Levine) I'll show you --  9 MR. MCLAIN: Do you need a clean set of  10 documents to work with?  11 MR. LEVINE: I'm sorry?  12 MR. MCLAIN: Do you need a clean set of  13 documents to work with?  14 MR. LEVINE: Yes, I think it would be -- if  15 he had a set in front of him, we could just refer to  16 the Bates labeled document number.  17 MR. MCLAIN: Can we go off the record?  18 MR. LEVINE: Take a five-minute break.  19 (Recess, 10:28 a.m. to 10:30 a.m.)  20 Q. (By Mr. Levine) Mr. Aguirre, you have in front  21 of you the payment history generated by your system; is  22 that correct?  23 MR. MCLAIN: Could you refer to what pages  24 you're referring to? Because we brought the whole  25 production set.</p>	<p style="text-align: right;">Page 27</p> <p>1 <b>A. No, sir.</b>  2 Q. Okay. And you said pool number would mean what?  3 <b>A. It -- like within the pooling of loans, like the</b>  4 <b>pooling of servicing agreement of a bunch of loans. It</b>  5 <b>probably is like a pool of loans that are bunched up</b>  6 <b>usually, and that's probably the pool number that it</b>  7 <b>falls within. I mean --</b>  8 Q. Are you guessing?  9 <b>A. I'm just thinking it -- so it's more of a guess,</b>  10 <b>yeah. And I shouldn't guess. Yes.</b>  11 Q. Okay. So you don't know?  12 <b>A. I don't know.</b>  13 Q. Okay. Next due, what does that refer to?  14 <b>A. Next due is the due date -- the next due date.</b>  15 Q. For what?  16 <b>A. For the payment. That's the next payment that's</b>  17 <b>due.</b>  18 Q. This shows a transaction beginning in July of  19 '06; is that correct, first transaction?  20 <b>A. Yes, July 20th of '06.</b>  21 Q. This report is obviously generated considerably  22 later than that; isn't that so?  23 <b>A. This report was generated on May 1st of '07.</b>  24 Q. So there would have been earlier reports?  25 <b>A. That's the date that -- the job date, meaning the</b></p>
<p style="text-align: right;">Page 26</p> <p>1 Q. (By Mr. Levine) Within that production set you  2 have the transaction history of this loan; do you not?  3 <b>A. I do see the notes that I'm flipping through the</b>  4 <b>pages and the payment history.</b>  5 Q. Okay. If you would go to Bates labeled document  6 HF003.  7 <b>A. 003? Okay.</b>  8 Q. Can you explain to me the information on this  9 page? The loan number I take it refers to the loan  10 that's the subject matter of this lawsuit belonging to  11 Christina Melinder for 70 West 5th Street, correct?  12 <b>A. That's correct.</b>  13 Q. And you've got a pool number. Do you know what  14 that refers to?  15 <b>A. The only thing I can think of is probably what</b>  16 <b>they call the pooling of servicing, so the answer is no.</b>  17 <b>That's the only thing I can think of, so --</b>  18 Q. Okay. The INV number 413, do you know what that  19 means?  20 <b>A. INV number?</b>  21 Q. It starts -- looking -- loan number, you've got a  22 number, then continuing across that line.  23 <b>A. Okay. INV, the only thing I can think of, that's</b>  24 <b>an investor number.</b>  25 Q. And you wouldn't know who that investor is?</p>	<p style="text-align: right;">Page 28</p> <p>1 <b>date it was printed. So if someone would have requested</b>  2 <b>a report, say, April 30th of '07, it would have April</b>  3 <b>30th, '07 on there, so --</b>  4 Q. Okay. Principal balance there reflecting the  5 principal balance of what was originally a \$66,000 loan;  6 is that correct?  7 <b>A. That's correct, 66,000.</b>  8 Q. And the escrow balance at that time is zero. And  9 job date, let's go up there. The job date -- job DT of  10 05/01/07, what does that mean?  11 <b>A. Job date is usually -- it's when -- my</b>  12 <b>understanding was it's when they print this -- this</b>  13 <b>report.</b>  14 Q. Okay. So this report was printed in May of '07?  15 <b>A. That is my understanding. But then I'm looking</b>  16 <b>at the date on top which says December 5th of '08, so</b>  17 <b>I'm getting a little confused here. It could have been</b>  18 <b>printed on December of '08, but --</b>  19 Q. But the job date --  20 <b>A. So I -- I'm just a little confused on that one,</b>  21 <b>so I wouldn't know if that's the date it was printed.</b>  22 Q. Okay. Interest paid -- I'm interpreting that  23 INTPD, that's interest paid to February 1, '07?  24 <b>A. That's correct. That means the interest has been</b>  25 <b>paid up to that date.</b></p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. Principal and interest short, nothing?  2 <b>A. Principal interest short, it says zero.</b>  3 Q. Okay. Looking at this page, can you tell me  4 whether or not it reflects a default in the loan?  5 <b>A. Not on this page.</b>  6 Q. Yet it does reflect a late charge; does it not,  7 number 24?  8 <b>A. Yeah, that -- I'm sorry. I am going to go back</b>  9 <b>on what I said. Her October 6th payment, what the</b>  10 <b>date -- it looks like she didn't make that, because it's</b>  11 <b>showing -- payments are -- after the 15th are considered</b>  12 <b>late.</b>  13 I see where she made her September payment, and  14 then she didn't make her October payment until November  15 13th of '06. So at that point on the 16th she would  16 have been considered late for her October payment, so  17 yes.  18 Q. Do you know when the loan closed?  19 <b>A. The loan?</b>  20 Q. Yes.  21 <b>A. What I remember on the documents, it was July 7th</b>  22 <b>of '06.</b>  23 Q. When was the first payment due?  24 <b>A. I would have to look at the note or the deed of</b>  25 <b>trust to show the -- see the due date when it's due. It</b></p>	<p style="text-align: right;">Page 31</p> <p>1 MS. MELINDER: That's 2nd.  2 <b>A. And then I see 70 -- 70 West 5th Street, so</b>  3 <b>that's what I see in the notation.</b>  4 Q. (By Mr. Levine) Okay. Was that money deposited  5 into a Homecomings account?  6 MR. MCLAIN: Objection. Form.  7 <b>A. I don't know these account numbers. Again, I</b>  8 <b>don't work in the accounting department or cashiering</b>  9 <b>department, so I don't --</b>  10 Q. (By Mr. Levine) Okay. If that payment was  11 deposited in a Homecomings account, you'll assume that,  12 does the payment history reflect credit for the first  13 two payments beginning payment due September 1st? That  14 was the September and October payment on the first  15 mortgage, and we're going to talk about the second  16 mortgage in a minute.  17 <b>A. I'm not going to assume that these were deposited</b>  18 <b>into our account. But if they were received and</b>  19 <b>deposited into one of our accounts, it would show in the</b>  20 <b>system.</b>  21 Q. And it doesn't, does it?  22 <b>A. But again, it's -- on the back it says JPMorgan</b>  23 <b>Chase Bank and payee AEG MSS Dallas. Nowhere on the</b>  24 <b>back -- and I don't know these account numbers, so I</b>  25 <b>don't know who cashed it.</b></p>
<p style="text-align: right;">Page 30</p> <p>1 <b>says here that the first payment was due September 1st</b>  2 <b>of 2006.</b>  3 Q. And we see that by October you were charging a  4 late charge, correct?  5 <b>A. There was a late charge for her October payment</b>  6 <b>that was late, that's what I'm seeing here.</b>  7 Q. Okay. I'll show you what's marked Exhibit 1A and  8 1B. It's copies of Melinder check number 1376 and her  9 Compass Bank statement between -- transactions of August  10 15th to September 13th and the front and back of the  11 check. Can you tell me where this check was credited --  12 or where this payment was credited?  13 MR. MCLAIN: Objection. Form.  14 <b>A. For \$1,220.32?</b>  15 Q. (By Mr. Levine) Yes, sir.  16 <b>A. It looks like it was made to Homecomings</b>  17 <b>Financial, but people who cashed it was JPMorgan Chase</b>  18 <b>Bank in Fort Worth. Who -- AEG -- I mean, I don't see</b>  19 <b>it on the account that -- for that amount.</b>  20 Q. Do you see the notation on the check, what the  21 check is in payment for?  22 <b>A. Yes.</b>  23 Q. What does it say?  24 <b>A. It says first two months and 2cd, which I don't</b>  25 <b>know what that means.</b></p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Does Homecomings maintain an account at JPMorgan  2 Chase?  3 <b>A. I don't know. That's in the cashiering</b>  4 <b>department.</b>  5 Q. Okay, so you don't know. If that payment was  6 received by Homecomings, she wasn't late in her first  7 two payments, was she? She was early; isn't that  8 correct?  9 <b>A. The keyword being if it was received, yes.</b>  10 Q. Yes, okay. Now let's talk about two loans. If  11 you've looked at the file at the closing you see that  12 there were two loans. There was a first and a second,  13 both from Homecomings; are you aware of that?  14 <b>A. I'm aware of the first loan being with us. I</b>  15 <b>don't know about the second one.</b>  16 Q. Well, I'll show you a document Bates labeled  17 JPMC0329.  18 MR. MCLAIN: And I want to stipulate this is  19 a JPMorgan Chase document, not a Homecomings document.  20 MR. LEVINE: That's correct.  21 Q. (By Mr. Levine) Would you look at that document,  22 please. Can you tell me what it is?  23 <b>A. It states on top it says First Payment Notice.</b>  24 Q. Is that a Homecomings document form?  25 <b>A. I can't tell you if it's a Homecomings document</b></p>

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<p style="text-align: right;">Page 33</p> <p>1 form because I've never seen this form in the notice  2 payment, so -- all I see is Homecomings Financial -- to  3 mail all correspondence to Homecomings Financial.  4 That's all I see here, so I can't tell you if it was a  5 Homecomings Financial form.  6 Q. Did you look at the closing documents of the loan  7 transaction?  8 <b>A. I skimmed through. Like I said, I looked through</b>  9 <b>the note and the deed of trust. I know there was a HUD1</b>  10 <b>somewhere that I just skimmed through somewhere also.</b>  11 Q. Did you know there was a first and a second at  12 that closing, first loan and a second loan at that  13 closing, both to Homecomings?  14 <b>A. I understand that this was the only loan was</b>  15 <b>Homecomings, because this was the loan number that I was</b>  16 <b>reviewing and looking at, which was the first loan.</b>  17 Q. Did you see the transfer from Homecomings to  18 Washington Mutual in the file anywhere?  19 <b>A. Not what I was looking through, no.</b>  20 Q. So you weren't aware that Homecomings made a  21 first and a second and then transferred the second to  22 Washington Mutual?  23 <b>A. I knew that the second was with Washington</b>  24 <b>Mutual; but I was not aware -- I mean, I was looking at</b>  25 <b>this loan first, the -- I didn't know that the second</b></p>	<p style="text-align: right;">Page 35</p> <p>1 front of you.  2 MR. LEVINE: May I walk around and approach  3 the witness?  4 MR. MCLAIN: Sure.  5 MR. LEVINE: Because I don't want to start  6 tearing papers out.  7 Q. (By Mr. Levine) Okay. I'm looking at closing  8 documents on the transaction.  9 MR. MCLAIN: Can I ask where those came  10 from, since we didn't produce them?  11 MR. LEVINE: These are my documents.  12 Q. (By Mr. Levine) Do you recognize this first  13 payment notice as a Homecomings form?  14 <b>A. It's similar to the one you showed me before. I</b>  15 <b>don't recognize it, so --</b>  16 Q. Customer of Homecomings Financial Network, do you  17 see the Homecomings address printed there?  18 <b>A. I do see that, yes.</b>  19 Q. Okay. This is a copy of the note; is it not?  20 <b>A. It looks like a copy of the note, yes.</b>  21 Q. This is a copy of the deed of trust?  22 <b>A. It does look like the deed of trust.</b>  23 Q. Prepared by Homecomings?  24 <b>A. That's what the document states on top.</b>  25 Q. You don't dispute that, do you? You don't think</p>
<p style="text-align: right;">Page 34</p> <p>1 was transferred from us to Washington Mutual.  2 Q. Was it your understanding when you looked at the  3 file that this was supposed to be a borrower occupied  4 property?  5 <b>A. What I read through the notes says Ms.</b>  6 <b>Melinder -- I don't want to pronounce it incorrectly --</b>  7 <b>the borrower was living in the residence.</b>  8 Q. At the time of closing?  9 <b>A. I don't know at the time of closing if she was in</b>  10 <b>the property. I know that she -- that was her primary</b>  11 <b>residence is what I was aware of.</b>  12 Q. All right. The documents on the closing said  13 that this was supposed to be a loan to somebody who was  14 going to have this home as a primary residence, and I  15 think a document said she had to move into it within 60  16 days. Are you familiar with that?  17 <b>A. Again, I didn't read word for word; but my</b>  18 <b>understanding from what I kind of read was that this was</b>  19 <b>going to be her primary residence and she was to live in</b>  20 <b>the property.</b>  21 Q. Was that a condition of the loan?  22 <b>A. My understanding is that it is a condition of the</b>  23 <b>loan. It was a condition that that would be her primary</b>  24 <b>residence, correct.</b>  25 Q. I don't believe you have copies of everything in</p>	<p style="text-align: right;">Page 36</p> <p>1 somebody other than Homecomings prepared it, do you?  2 <b>A. You asked me to look at it; and it states that --</b>  3 <b>what it states on top of the document, prepared by, it</b>  4 <b>is a copy, so --</b>  5 Q. Do you recognize this document I-4 family rider  6 as part of the transaction?  7 <b>A. I did see that when I was going through the</b>  8 <b>documents, something similar to that, yes.</b>  9 Q. Did you see this statement of occupancy?  10 <b>A. I would have to go through these documents to see</b>  11 <b>if that was within these.</b>  12 MR. MCLAIN: Here, just go ahead and look at  13 his.  14 Q. (By Mr. Levine) You'll recognize that document?  15 <b>A. I would have to say no, because I --</b>  16 Q. Have you ever seen a statement of occupancy,  17 before?  18 <b>A. I have never seen this one that I can think of,</b>  19 <b>because I was thinking of what I saw in my documents;</b>  20 <b>but I've seen one before in the past.</b>  21 Q. And does that go to a different type of loan?  22 <b>A. What do you mean by different type loan?</b>  23 Q. Well, we said this was supposed to be an owner  24 occupied loan, a primary residence; and I see that this  25 is an investment property transaction.</p>

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<p style="text-align: right;">Page 37</p> <p>1 MR. MCLAIN: I'm going to object to form.</p> <p>2 <b>A. Okay. My understanding, it was an occupied</b></p> <p>3 <b>primary residence. Obviously this document you're</b></p> <p>4 <b>showing me states that it was an investment property.</b></p> <p>5 MR. MCLAIN: I'll object to form, because</p> <p>6 this document doesn't establish it's related to the loan</p> <p>7 we're talking about today. This could be the second</p> <p>8 lien. You haven't shown anything that says it goes to</p> <p>9 the note he's here to testify about.</p> <p>10 Q. (By Mr. Levine) You saw the closing statement?</p> <p>11 <b>A. The HUD1 yes.</b></p> <p>12 Q. Do you see the two loans identified in there?</p> <p>13 <b>A. I guess it's principal amount of new loan and</b></p> <p>14 <b>principal amount of new loan, so it -- \$12,000 loan; and</b></p> <p>15 <b>I think it's -- this is very small, looks like 60 or --</b></p> <p>16 Q. Do you see who's making it?</p> <p>17 <b>A. On the third page it states lender, Homecomings</b></p> <p>18 <b>Financial.</b></p> <p>19 Q. For both loans?</p> <p>20 <b>A. I couldn't tell you if it's for both loans. All</b></p> <p>21 <b>I see is it says lender Homecomings Financial.</b></p> <p>22 Q. Well, the other documents will come up. Did you</p> <p>23 see the -- I'll show you Bates label JPMC0351. It</p> <p>24 refers to a nonowner occupied transaction.</p> <p>25 MR. MCLAIN: What's -- this is a JPMorgan</p>	<p style="text-align: right;">Page 39</p> <p>1 <b>probably who entered that information.</b></p> <p>2 Q. All right. This loan -- I refer you to a</p> <p>3 document, Homecomings 0150.</p> <p>4 <b>A. 0150?</b></p> <p>5 Q. Yeah. Would you tell me what that document is?</p> <p>6 <b>A. It states escrow waiver on the right-hand side.</b></p> <p>7 Q. So this loan did not require taxes or insurance</p> <p>8 to be escrowed?</p> <p>9 MR. MCLAIN: Objection. Form.</p> <p>10 Q. (By Mr. Levine) Is that correct?</p> <p>11 <b>A. They're waiving the escrow -- what I'm reading at</b></p> <p>12 <b>the bottom is that the lender and/or its assignees</b></p> <p>13 <b>retains the rights to force the requirement of an escrow</b></p> <p>14 <b>account if the borrower fails to act responsibly or is</b></p> <p>15 <b>at any time in default of any other terms of the</b></p> <p>16 <b>mortgage documents.</b></p> <p>17 Q. And according to your records, this loan was in</p> <p>18 default all the way back in October of '06, right?</p> <p>19 MR. MCLAIN: Objection. Form.</p> <p>20 <b>A. I noticed when I was looking at the payment</b></p> <p>21 <b>history that the October payment did not come in on a</b></p> <p>22 <b>timely basis, so there was a late fee assessed as we</b></p> <p>23 <b>discussed earlier.</b></p> <p>24 Q. (By Mr. Levine) Well, can you impose a late fee</p> <p>25 if the loan isn't in default?</p>
<p style="text-align: right;">Page 38</p> <p>1 Chase document you're asking him to testify about? I'll</p> <p>2 object.</p> <p>3 <b>A. I see NOD in occupancy, so I don't know what NOD</b></p> <p>4 <b>means on someone else's documents.</b></p> <p>5 Q. (By Mr. Levine) Do you know a loan officer</p> <p>6 Heather Emanuel or Jack Medlin [phonetic]?</p> <p>7 <b>A. I have no idea, no, sir.</b></p> <p>8 Q. Looking at this account, did you charge for force</p> <p>9 placed insurance?</p> <p>10 MR. MCLAIN: Objection. Form.</p> <p>11 <b>A. I'm going to have to go through -- forced place</b></p> <p>12 <b>insurance was placed on there. I mean, if the borrower</b></p> <p>13 <b>doesn't have insurance on the property, force placed</b></p> <p>14 <b>insurance is placed on the loan. I was trying to go</b></p> <p>15 <b>back in my head from looking at the screens, because I</b></p> <p>16 <b>can't -- I mean, I see something here that says escrow</b></p> <p>17 <b>hazard transferred to HFN; so I don't know if that means</b></p> <p>18 <b>that forced place insurance was placed on the property.</b></p> <p>19 Q. (By Mr. Levine) What is that transfer between</p> <p>20 the two Homecomings entities there?</p> <p>21 <b>A. Where it says escrow --</b></p> <p>22 MR. MCLAIN: Objection. Form.</p> <p>23 <b>A. Where it says escrow hazard transferred to HFN?</b></p> <p>24 Q. (By Mr. Levine) Yes.</p> <p>25 <b>A. I don't know. That's insurance department</b></p>	<p style="text-align: right;">Page 40</p> <p>1 <b>A. If it's not in default?</b></p> <p>2 Q. Yes.</p> <p>3 <b>A. If it's not in default. But this one was in</b></p> <p>4 <b>default. They have a grace period of 15 days from the</b></p> <p>5 <b>due date, which is the 1st. And this late charge was</b></p> <p>6 <b>assessed on the 16th, meaning that the October payment</b></p> <p>7 <b>was late; so a \$25 charge was applied.</b></p> <p>8 Q. So the loan was in default as far as you're</p> <p>9 concerned as of that date, correct?</p> <p>10 <b>A. By reviewing the documents, looking at what I</b></p> <p>11 <b>have here, yes, it was in default of --</b></p> <p>12 Q. Thank you. Were charges made in the account at</p> <p>13 any point for force placed insurance?</p> <p>14 <b>A. There's a few payments that were paid out. Some</b></p> <p>15 <b>of the coding -- it looks like back in July 12th of '07</b></p> <p>16 <b>some payments did go out. And I don't know if those</b></p> <p>17 <b>were towards like flood insurance, hazard insurance,</b></p> <p>18 <b>because the codes -- there's codings there that are part</b></p> <p>19 <b>of the escrow codings, but I couldn't quite --</b></p> <p>20 Q. Can you tell me whether or not Homecomings</p> <p>21 purchased insurance from Balboa -- are you familiar with</p> <p>22 the Balboa Insurance Company?</p> <p>23 <b>A. That is our force placed -- that's who we use for</b></p> <p>24 <b>force placed insurance, yes.</b></p> <p>25 Q. And their name pops up in different places in the</p>

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<p style="text-align: right;">Page 41</p> <p>1 account. So that is your company?                  2 <b>A. No, Balboa is not our company. We don't --</b>                  3 Q. It's just a company you contract with?                  4 <b>A. That's a company we use for homeowners'</b>                  5 <b>insurance, yes.</b>                  6 Q. Okay. Did you have insurance from Balboa in                  7 place on this property at any time in the history of the                  8 loan?                  9 <b>A. I know it looks like insurance was paid out here.</b>                  10 <b>I don't know if it was with Balboa or if it was force</b>                  11 <b>placed. I don't have the screen -- because there's an</b>                  12 <b>insurance screen I can go to and pull it up on the</b>                  13 <b>computer; but I don't have that screen in front of me,</b>                  14 <b>so I don't know if those were for Balboa or not.</b>                  15 Q. What premiums do you pay Balboa?                  16 <b>A. I don't know what premiums are paid. I mean, it</b>                  17 <b>all depends on the property itself. I don't know what</b>                  18 <b>premiums are paid to them.</b>                  19 Q. What arrangements does Homecomings have with                  20 Balboa with respect to placement of insurance on                  21 Homecomings loans?                  22 <b>A. I don't know the arrangements. I don't work in</b>                  23 <b>the insurance department. All I know is that when we</b>                  24 <b>force place insurance, Balboa is the insurance that's</b>                  25 <b>used.</b></p>	<p style="text-align: right;">Page 43</p> <p>1 Q. What does Balboa have to do with this                  2 transaction?                  3 <b>A. All I see is an individual by the name of Mark</b>                  4 <b>from some office called, and Balboa's phone number was</b>                  5 <b>provided.</b>                  6 Q. Why would you provide the Balboa phone number?                  7 <b>A. I did not provide the Balboa number. A certain</b>                  8 <b>individual did. I don't know why they provided it.</b>                  9 Q. And you don't know what -- what interest Balboa                  10 has in this loan?                  11 <b>A. They -- as I stated earlier, I don't know if</b>                  12 <b>Balboa was part of the insurance, if it was force placed</b>                  13 <b>or not. I just saw that some payments went out.</b>                  14 Q. HF0048.                  15 <b>A. 0048, okay.</b>                  16 Q. Transaction number 20302, does that refer to                  17 force placed insurance?                  18 <b>A. FP flood insurance of 1,627. Force placed flood</b>                  19 <b>insurance, so that's what I'm understanding there.</b>                  20 Q. So this was force placed insurance, correct?                  21 <b>A. From what I'm reading is it's the flood insurance</b>                  22 <b>was force placed.</b>                  23 Q. If you'll look at HF0068.                  24 <b>A. Okay.</b>                  25 Q. Middle of the page where it says tree fell on top</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. And does part of that premium get kicked back to                  2 Homecomings?                  3 MR. MCLAIN: Objection. Form.                  4 <b>A. I don't know. I don't work in the insurance</b>                  5 <b>department, so I don't know how those funds work.</b>                  6 Q. (By Mr. Levine) Okay. Did Homecomings                  7 receive -- did Homecomings make any claim against Balboa                  8 Insurance for any damages to this property?                  9 <b>A. I don't know who the claims were made towards</b>                  10 <b>or -- I'm just aware there was damage to the borrower's</b>                  11 <b>property, but I don't know who the claims were made to.</b>                  12 <b>Again, I don't work in the insurance department; so I</b>                  13 <b>don't know who they were made to.</b>                  14 Q. Do you know if you collected any money from                  15 anybody other than Farmers Insurance?                  16 <b>A. The only information regarding some funds that</b>                  17 <b>came in were copies of the -- some checks that I saw in</b>                  18 <b>these documents.</b>                  19 Q. Would you look at HF0072.                  20 <b>A. Okay.</b>                  21 Q. About three-quarters down the page, transaction                  22 15305.                  23 <b>A. Okay.</b>                  24 Q. Read that paragraph to yourself, please.                  25 <b>A. (Witness reading document.)</b></p>	<p style="text-align: right;">Page 44</p> <p>1 of property.                  2 <b>A. I see that.</b>                  3 Q. Filed insurance claim. And what is the coding?                  4 <b>A. I don't know what the HSNB means. I don't know</b>                  5 <b>what those initials mean.</b>                  6 Q. Could that be has been?                  7 <b>A. I couldn't tell you. I didn't write that.</b>                  8 Q. Who could translate this?                  9 <b>A. Probably the individual who entered the note.</b>                  10 Q. Who entered it?                  11 <b>A. C Stinford [phonetic], that's what I'm seeing</b>                  12 <b>here. If I'm correct that's probably from the same</b>                  13 <b>note. I don't know who that individual is.</b>                  14 Q. If you'll look at HF0071.                  15 <b>A. Okay.</b>                  16 Q. Transaction 20112, what is that about?                  17 <b>A. I've got to find it first.</b>                  18 Q. See where it says ICC Balboa/DHensley?                  19 <b>A. I do see that, but I couldn't tell you what it's</b>                  20 <b>about.</b>                  21 Q. Okay. Take a look at HF0239.                  22 <b>A. Okay.</b>                  23 Q. MortgageServ is your system?                  24 <b>A. Yes, it is.</b>                  25 Q. What does this document tell us?</p>

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<p style="text-align: right;">Page 45</p> <p>1 <b>A. What I'm reading is just the bottom part of it?</b>  2 Q. Yes.  3 <b>A. All I know is this is the insurance loss draft</b>  4 <b>information, and it's from the MortgageServ from the</b>  5 <b>borrowers with the borrower's address. I'm not trained</b>  6 <b>in this screen. This is an insurance screen just</b>  7 <b>stating date of loss.</b>  8 Q. Who reported it? Does this tell you who reported  9 it?  10 <b>A. I would have to read it since I'm not familiar</b>  11 <b>with this.</b>  12 Q. Is it Homecomings that reported it?  13 MR. MCLAIN: Object. Form.  14 <b>A. I don't know who reported it.</b>  15 Q. (By Mr. Levine) Okay. That's your answer then.  16 Do you know to whom it was reported?  17 <b>A. I don't know who reported it, so I don't know to</b>  18 <b>whom it was reported.</b>  19 Q. Can you tell whether or not you charged the  20 Melinder loan with insurance premiums?  21 <b>A. From what I read earlier, it looked like some</b>  22 <b>funds were paid out. I think flood insurance was paid</b>  23 <b>out. That's all I can remember.</b>  24 Q. You don't know who it was paid to?  25 <b>A. No, I don't know.</b></p>	<p style="text-align: right;">Page 47</p> <p>1 <b>A. Speed pass?</b>  2 Q. Isn't that what it's called, the use -- well  3 we'll --  4 <b>A. You mean speed pay?</b>  5 Q. Speed pay.  6 <b>A. To make payment over the phone?</b>  7 Q. Yeah, something like that. Okay. We'll hold off  8 your answers to those questions until after the lunch  9 break.  10 <b>A. Okay.</b>  11 Q. Did you have policies or procedures to deal with  12 Hurricane Ike?  13 <b>A. That, I don't know.</b>  14 Q. Well, you don't know if Homecomings was actually  15 a lender; but you do know that Homecomings was a  16 servicer of this loan, correct?  17 <b>A. Homecomings was a subservicer, correct.</b>  18 Q. Subservicer?  19 <b>A. Yes.</b>  20 Q. Who was the servicer?  21 <b>A. From what I looked at, the master servicer was</b>  22 <b>RFC, Residential Funding Corporation.</b>  23 Q. Oh, yes. And on whose behalf are you servicing  24 the account or were you servicing the account?  25 <b>A. As a subservicer we were basically doing the work</b></p>
<p style="text-align: right;">Page 46</p> <p>1 Q. You just know that money went out of the account?  2 <b>A. It didn't -- it was paid through the account. I</b>  3 <b>don't know if it was money that was sitting there or we</b>  4 <b>paid out because it was needed.</b>  5 Q. You don't know?  6 <b>A. I don't know.</b>  7 Q. What is the basis -- what authorizes you to  8 charge late fees?  9 <b>A. On the note or the deed of trust it states that</b>  10 <b>after a certain date --</b>  11 Q. Will you point to me the language in the document  12 that you think authorizes you to impose late fees? And  13 if you could refer to it by a Bates labeled page.  14 MR. MCLAIN: It should be after the deed of  15 trust.  16 Q. (By Mr. Levine) Would you like to postpone  17 answering that until after the lunch break when you'll  18 have a chance to review the deed document?  19 MR. MCLAIN: Let's do that. Let's give him  20 a chance to look through it.  21 Q. (By Mr. Levine) Okay. So if you'll please look  22 for that. I'm also going to be asking you what  23 authorizes you to charge property inspection fees? What  24 authorizes you to charge for the use of the speed pass  25 system?</p>	<p style="text-align: right;">Page 48</p> <p>1 <b>for Residential Funding, so as subservicer -- there's a</b>  2 <b>master servicer; and then you'd have a subservicer who</b>  3 <b>does basically the sending out of the letters and</b>  4 <b>collecting of the payments and stuff like that.</b>  5 Q. Did you look at the foreclosure aspects of the  6 file?  7 <b>A. What parts? I mean --</b>  8 Q. Did you see the deed, the substitute trustee's  9 deed?  10 <b>A. I don't remember seeing that, no.</b>  11 Q. Do you know who appointed the substitute trustee?  12 <b>A. No, I do not.</b>  13 Q. Do you know whether the person who appointed the  14 substitute trustee was an employee of Homecomings or  15 someone else?  16 <b>A. That, I don't know.</b>  17 Q. Do you know whether or not the person that  18 appointed the substitute trustee had received a power of  19 attorney to do so or was otherwise authorized to do so?  20 <b>A. That, I don't know.</b>  21 Q. What do you know about the Farmers Insurance  22 checks?  23 <b>A. All I know is -- if those are the checks that are</b>  24 <b>within the documents, I just saw the checks and the</b>  25 <b>amounts on the checks.</b></p>

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<p style="text-align: right;">Page 49</p> <p>1 Q. Do you know where they are now, those funds?                  2 <b>A. No, I don't know where those funds are.</b>                  3 Q. Do you know how the checks got changed from being                  4 payable to Christina Melinder along with Homecomings and                  5 Washington Mutual to Homecoming -- or Homecomings and                  6 Washington Mutual without Ms. Melinder's name?                  7 <b>A. No, I do not.</b>                  8 Q. Yet you're the corporate representative of the                  9 company who is going to testify in court with respect to                  10 that?                  11 <b>A. I am the corporate representative that's been</b>                  12 <b>asked to come here and be deposed regarding the</b>                  13 <b>servicing of the loan and some information.</b>                  14 Q. Well, you were -- do you have the notice of your                  15 deposition handy?                  16 MR. MCLAIN: I mean, I can go -- do you have                  17 a copy for him to look at?                  18 MR. LEVINE: Yeah.                  19 Q. (By Mr. Levine) I'll ask you to take a look at                  20 the first two pages of it. Do you see the agenda items?                  21 <b>A. Yes.</b>                  22 Q. Okay. Read the first agenda item and tell me if                  23 you're here on behalf of that agenda item.                  24 <b>A. The purchase of the loan by Defendant. If that's</b>                  25 <b>talking about the origination of the loan, I don't</b></p>	<p style="text-align: right;">Page 51</p> <p>1 <b>codes are from different departments for many different</b>                  2 <b>things, so I have to look at my coding list.</b>                  3 Q. Okay. You'll be able to do that then?                  4 <b>A. If I had a copy of the coding list which</b>                  5 <b>describes what each code is, it breaks it down.</b>                  6 Q. But you don't have that list?                  7 <b>A. No, sir.</b>                  8 Q. Okay. Next?                  9 <b>A. The history of each sale, transfer and assignment</b>                  10 <b>of the note, deed -- trust deed or other instrument</b>                  11 <b>executed by Plaintiff related to the accounts, including</b>                  12 <b>whether the sale transfer or assignments was recorded in</b>                  13 <b>Galveston County. Regarding the transferring and</b>                  14 <b>assignment of the note, I couldn't tell you exactly how</b>                  15 <b>that's done.</b>                  16 Q. Yeah. You don't even know that it was                  17 transferred from Homecomings to WAMU, do you?                  18 <b>A. No.</b>                  19 Q. Yes, okay. Go on.                  20 <b>A. The identity of the servicer of this account, the</b>                  21 <b>holder in due course and beneficial owner. I know that</b>                  22 <b>we are the servicer of the account -- or Homecomings</b>                  23 <b>Financial was servicer -- subservicer of the account for</b>                  24 <b>Residential Funding. The holder in due course and</b>                  25 <b>beneficiary owner, I wasn't quite sure who the actual</b></p>
<p style="text-align: right;">Page 50</p> <p>1 <b>discuss origination. I mean, I don't -- I didn't deal</b>                  2 <b>with the origination, so --</b>                  3 Q. Okay. Next?                  4 <b>A. The history of payments, charges, debits, credits</b>                  5 <b>related to the loan and the basis of unapplied balances.</b>                  6 <b>I can go through the payment history and see what's been</b>                  7 <b>charged.</b>                  8 Q. And you've been doing that?                  9 <b>A. Yes.</b>                  10 Q. And you've said what you knew and what you didn't                  11 know?                  12 <b>A. Correct.</b>                  13 Q. Okay.                  14 <b>A. The account -- accounting and servicing system</b>                  15 <b>used by you from inception of the account to present</b>                  16 <b>date, including the transaction code list. I guess</b>                  17 <b>you're talking about servicing notes?</b>                  18 Q. Yes.                  19 <b>A. Which -- yes, I went over the servicing notes</b>                  20 <b>with you, yes.</b>                  21 Q. Okay, yes.                  22 <b>A. The detail of each credit and debit to the</b>                  23 <b>account, including definitions for each corresponding</b>                  24 <b>transaction code. I can give you an idea of what the</b>                  25 <b>credits and the debits on the account are. Some of the</b></p>	<p style="text-align: right;">Page 52</p> <p>1 <b>owner is, so -- at that point, because I think you asked</b>                  2 <b>that question earlier.</b>                  3 Q. Yeah.                  4 <b>A. Okay. Next one?</b>                  5 Q. Yes.                  6 <b>A. Okay. Attorney's fees, suspense, unapplied</b>                  7 <b>account, late fees, property inspection, broker price</b>                  8 <b>opinion, force placed insurance that had been charged or</b>                  9 <b>added to the account and any interest that has been</b>                  10 <b>charged for those items, which I was going to go look</b>                  11 <b>for you.</b>                  12 Q. Okay.                  13 <b>A. Insurance claims, premium payments, claims</b>                  14 <b>proceeds. I saw a couple of checks regarding some</b>                  15 <b>insurance moneys, but I don't know what those moneys are</b>                  16 <b>or where they are. Obtaining possession of the premises</b>                  17 <b>and disposing --</b>                  18 Q. Excuse me. With respect to that, do you know                  19 who's entitled to the money?                  20 <b>A. No.</b>                  21 Q. Okay.                  22 <b>A. Obtaining possession of the premises and</b>                  23 <b>disposing of contents, I can talk about -- a little</b>                  24 <b>about how REO or after the foreclosure and the securing</b>                  25 <b>of the property.</b></p>

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<p style="text-align: right;">Page 53</p> <p>1 Q. Do you know the facts of this case with respect 2 to those things? 3 <b>A. I know that a hurricane hit the home. A tree 4 fell on the home. Per the borrower, everything was 5 destroyed and mold in the house.</b> 6 Q. How do you know that? 7 <b>A. There's a note stating that.</b> 8 Q. From the note in the transaction history? 9 <b>A. Yeah, exactly. Where she called and stated that 10 information, that there was seven to eight feet of water 11 in the home. And my understanding is that the borrower 12 was not making her payments. It was in default. There 13 was a notice placed on the home to make sure that things 14 were taken out of there, I think it was November.</b> 15 Q. Where does that appear? 16 <b>A. It was on -- a note that I received from someone 17 in the office.</b> 18 Q. Is that on the transaction history? 19 <b>A. I don't know if it is or not. I don't think it 20 is.</b> 21 Q. And to your knowledge, was there ever a forcible 22 detainer action filed so that you could have possession 23 of the house? 24 <b>A. I don't know if there was a detainer.</b> 25 Q. You don't know whether or not or do you know that</p>	<p style="text-align: right;">Page 55</p> <p>1 <b>was she living there? Was it abandoned? Was it --</b> 2 Q. I'm asking you that question. Do you know? 3 MR. MCLAIN: Objection. Form. 4 <b>A. I don't know was she. She's right there.</b> 5 Q. (By Mr. Levine) You don't know? 6 <b>A. I don't know if she was living there or not.</b> 7 Q. Who would know? Who at Homecomings would know? 8 MR. MCLAIN: Objection. Form. 9 <b>A. We can maybe find out through the inspection, 10 because there's property inspections that are done when 11 someone isn't making their mortgage payments and they 12 think the home is abandoned.</b> 13 Q. (By Mr. Levine) We're going to go through the 14 property inspections. Do you know who performed the 15 property inspections? 16 <b>A. No, I do not.</b> 17 Q. Have you ever seen a property inspection report? 18 <b>A. I've seen --</b> 19 Q. On this property. 20 <b>A. Not on this property.</b> 21 Q. Okay. We'll get into that after lunch. Go 22 ahead. 23 <b>A. Oh, I didn't know you wanted me to continue.</b> 24 Q. Yes. 25 <b>A. Okay. Charges of predatory lending practices by</b></p>
<p style="text-align: right;">Page 54</p> <p>1 there was never a lawsuit filed for you to gain 2 possession of the premises? 3 <b>A. All I know is that the property was foreclosed 4 upon, and it was secured.</b> 5 Q. Secured? 6 <b>A. Meaning we secured the property, because of the 7 interest on the property. We have to board it up and do 8 stuff -- whatever's needed to be done to the property to 9 secure the property.</b> 10 Q. Do you know whether or not the borrower was in 11 possession of the property at that time? 12 MR. MCLAIN: Objection. Form. 13 <b>A. The borrower was still on the loan. It was 14 still -- their name was on the loan. I don't know --</b> 15 Q. (By Mr. Levine) Was she in possession of the 16 house? 17 MR. MCLAIN: Objection. Form. 18 <b>A. You mean was she living in the house?</b> 19 Q. (By Mr. Levine) Yes. Were her things in the 20 house? Did she have access to the house? 21 MR. MCLAIN: Objection. Form. 22 <b>A. I don't know if she had access to the house. I 23 mean --</b> 24 Q. (By Mr. Levine) It was her house; wasn't it? 25 <b>A. I don't know if it was her house or not. I mean,</b></p>	<p style="text-align: right;">Page 56</p> <p>1 <b>Homecomings. I have nothing to do with origination or 2 any of that, so --</b> 3 Q. You don't know about any of the actions against 4 Homecomings alleging predatory lending practices against 5 them? I thought you testified in some of those cases. 6 <b>A. You're asking me for -- I'm thinking about this 7 case. We're talking about this one here. You're asking 8 about charges of predatory lending practice by 9 Homecomings?</b> 10 Q. Yes, in other cases. Are you aware of them? 11 <b>A. I've been aware of lawsuits against Homecomings 12 for predatory lending, yes.</b> 13 Q. Yes. 14 <b>A. Lawsuits against Homecomings, yes.</b> 15 MR. MCLAIN: I think his testimony earlier 16 was that he was involved in servicing issues, not 17 predatory lending issues. He doesn't deal with 18 origination issues, so all he may know about it -- I 19 don't think he's been involved in those cases. 20 MR. LEVINE: Well, I think his earlier 21 testimony was that he was. 22 MR. MCLAIN: No. He -- I objected to that. 23 He never said that. He said he was involved in cases of 24 wrongful foreclosure or servicing issues. Is that -- 25 was that your testimony earlier?</p>

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<p style="text-align: right;">Page 57</p> <p>1 <b>A. Well, my testimony was that -- I mean, I'm aware</b>  2 <b>that there's predatory -- that people sue us for</b>  3 <b>predatory lending out there, I mean, yeah. But I</b>  4 <b>don't -- I'm not an expert on those things because I</b>  5 <b>don't do originations.</b>  6 Q. (By Mr. Levine) Okay.  7 <b>A. Next one?</b>  8 Q. Next one.  9 <b>A. Okay. Changes in lending practices by</b>  10 <b>Homecomings as a result of 10A and 10B.</b>  11 Q. 10A and 10B above are the things you just read.  12 <b>A. I don't do originations, so I don't know if</b>  13 <b>there's changes in that.</b>  14 Q. Okay.  15 <b>A. The analysis of compliance with Texas Finance</b>  16 <b>Code 343, High Cost Loan Checklist in the loan</b>  17 <b>transaction. Again, that's -- it sounds like</b>  18 <b>origination, and I don't know what a loan -- High Cost</b>  19 <b>Loan Checklist --</b>  20 Q. So you can't testify with respect to that?  21 <b>A. No. I am not -- I don't do originations.</b>  22 Q. Okay.  23 <b>A. The affirmative defense raised by you. The</b>  24 <b>topics are limited to time -- in time to the period of</b>  25 <b>January 1, 2004 to present time. 2004? I thought this</b></p>	<p style="text-align: right;">Page 59</p> <p>1 it.  2 Q. Who is Scott Zeiss [phonetic]?  3 <b>A. Scott Zeiss is our litigation analyst in</b>  4 <b>Pennsylvania.</b>  5 Q. Have you talked with him about this case?  6 <b>A. No, I have not.</b>  7 Q. I think you said you reviewed the Homecomings  8 Bates labeled documents?  9 <b>A. I skimmed through them. I did look through them,</b>  10 <b>yes.</b>  11 Q. What else did you do to prepare for this  12 deposition?  13 <b>A. I went on the computer system to look at defaults</b>  14 <b>and where the escrow was paid on it, certain screens in</b>  15 <b>the system just to get a little bit more familiar with</b>  16 <b>what the loan is about.</b>  17 Q. And when you looked at that default screen, how  18 many defaults did you see?  19 <b>A. The screen doesn't show how many defaults. What</b>  20 <b>I meant by -- the screen shows what -- the amount of</b>  21 <b>default. It shows what the unpaid principal balance is,</b>  22 <b>what the balance on the loan was. That's the screen I</b>  23 <b>looked at.</b>  24 Q. Does it show what triggered the default?  25 <b>A. What triggered --</b></p>
<p style="text-align: right;">Page 58</p> <p>1 <b>loan was --</b>  2 Q. That's just a limitation, a time for any of these  3 topics. Don't let that throw you.  4 MR. MCLAIN: And I'll object to anything  5 before 2006. That's when this loan was, so anything  6 before 2004, that time is irrelevant to this case.  7 Q. (By Mr. Levine) Do you know what affirmative  8 defenses were raised by you?  9 <b>A. No, sir.</b>  10 Q. Did you read the lawsuit?  11 <b>A. Which -- I'm -- no, not that I can think of. I</b>  12 <b>mean, I just went through some paperwork that was given</b>  13 <b>to me.</b>  14 Q. So you didn't see the original petition or any of  15 the amended petition?  16 <b>A. Oh, the petition, I didn't see the petition.</b>  17 Q. Did you see your answer?  18 <b>A. The answers to the petition?</b>  19 Q. Yes. Your answer.  20 <b>A. The answer to the petition?</b>  21 Q. Yes.  22 <b>A. I went through -- there was some answers where</b>  23 <b>there were some objections; and I kind of just skimmed</b>  24 <b>through it, if that's the one you're talking about. I</b>  25 <b>mean, if you showed it to me I can tell you if I've seen</b></p>	<p style="text-align: right;">Page 60</p> <p>1 Q. What triggered the default. A particular  2 payment, a particular event?  3 <b>A. It doesn't break down like the day that it</b>  4 <b>happened. A default is when someone usually doesn't</b>  5 <b>make their mortgage payment they fall in default, yes.</b>  6 Q. Automatically?  7 <b>A. If they don't make a mortgage payment, yes.</b>  8 Q. Okay. And if money is held in suspense, does  9 that appear on the default screen?  10 MR. MCLAIN: Objection. Form.  11 <b>A. If there's money applied in suspense, it will</b>  12 <b>have a certain area that shows that money unapplied</b>  13 <b>funds; and it will have whatever amount is unapplied on</b>  14 <b>that little box.</b>  15 Q. (By Mr. Levine) And who determines when you  16 apply the funds that are unapplied?  17 <b>A. That would be the cashiering department. If</b>  18 <b>there's enough funds to make a payment, that's the</b>  19 <b>cashiering department. I don't know how they do their</b>  20 <b>applications, but that's in our Iowa office.</b>  21 MR. LEVINE: I suggest we take our lunch  22 break now.  23 MR. MCLAIN: Okay.  24 (Recess, 11:42 p.m. to 12:50 p.m.)  25 Q. (By Mr. Levine) would you take a look at HF0048.</p>

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<p style="text-align: right;">Page 61</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. Transaction 20302.</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. Could you explain that to me?</p> <p>5 <b>A. I thought we went over this one. FP flood</b></p> <p>6 <b>insurance of 1,627.</b></p> <p>7 Q. Yes, sir.</p> <p>8 <b>A. FP, my understanding would be force placed</b></p> <p>9 <b>insurance of 1,627. ADV, advise will need to send</b></p> <p>10 <b>covered --</b></p> <p>11 Q. What is that?</p> <p>12 <b>A. I don't know what that means.</b></p> <p>13 Q. Covered 03 --</p> <p>14 <b>A. 030.</b></p> <p>15 Q. Nine payments?</p> <p>16 <b>A. I don't know what that means. Will need to send</b></p> <p>17 <b>covered 03/07, dash, 09/07 payments. That's what -- I'm</b></p> <p>18 <b>just reading.</b></p> <p>19 Q. You can't --</p> <p>20 <b>A. I don't know what that means.</b></p> <p>21 Q. Let's drop down to 0302. There's a number --</p> <p>22 one, two, three, four such transactions. If you go down</p> <p>23 to the one at 1436 -- well, they're all -- okay. I</p> <p>24 guess these are minutes? Proof of coverage, you see</p> <p>25 that?</p>	<p style="text-align: right;">Page 63</p> <p>1 <b>account.</b></p> <p>2 Q. And when was that imposed?</p> <p>3 <b>A. I don't know the exact date. I mean, I just --</b></p> <p>4 <b>I'm going back and looking at the screen that I was</b></p> <p>5 <b>looking at where it showed an amount owed on the escrow</b></p> <p>6 <b>line.</b></p> <p>7 Q. Did you ever charge her account for escrow</p> <p>8 payments?</p> <p>9 <b>A. Charge her account meaning --</b></p> <p>10 Q. Meaning take money from her payment -- principal</p> <p>11 and interest payment and apply it to an escrow or</p> <p>12 declare her in default for not having paid enough money,</p> <p>13 anything of that nature?</p> <p>14 MR. MCLAIN: Objection. Form.</p> <p>15 MR. LEVINE: It is a compound question.</p> <p>16 Should I break it down?</p> <p>17 MR. MCLAIN: Yeah, I appreciate it.</p> <p>18 Q. (By Mr. Levine) All right. I want you to</p> <p>19 explain each escrow charge that has been made in the</p> <p>20 history of the account. It's probably more compound</p> <p>21 than fact, even though it's not a compound question.</p> <p>22 But if you get the drift, I want to know where you say</p> <p>23 she owes you escrow money and as a result take money</p> <p>24 that she pays you for something else and apply it to</p> <p>25 escrow.</p>
<p style="text-align: right;">Page 62</p> <p>1 <b>A. Proof of coverage, yes.</b></p> <p>2 Q. What is that?</p> <p>3 <b>A. Proof of coverage -- I don't know what the RMV --</b></p> <p>4 Q. Would that be remove?</p> <p>5 <b>A. I don't know, sir.</b></p> <p>6 Q. We had talked earlier about the waiver of escrow.</p> <p>7 Do you remember on this account there was a waiver of</p> <p>8 escrow?</p> <p>9 <b>A. I remember the document, yes. You had -- there</b></p> <p>10 <b>was a document that said waiver.</b></p> <p>11 Q. Yes. And we talked about the initial checks for</p> <p>12 the first two payments which couldn't -- are not</p> <p>13 accounted for. Do you recall that?</p> <p>14 <b>A. It -- this document?</b></p> <p>15 Q. Yes.</p> <p>16 <b>A. Yes, I remember that check.</b></p> <p>17 Q. Okay. Was an escrow ever imposed?</p> <p>18 <b>A. Throughout the life of the loan?</b></p> <p>19 Q. Yes.</p> <p>20 <b>A. Like paying taxes or insurance?</b></p> <p>21 Q. Yes.</p> <p>22 <b>A. When I reviewed the loan there was a negative</b></p> <p>23 <b>amount in the escrow line, so that means that funds were</b></p> <p>24 <b>paid out for insurance purposes or taxes. So that means</b></p> <p>25 <b>that it was imposed, and there was an escrow owed on the</b></p>	<p style="text-align: right;">Page 64</p> <p>1 <b>A. I would -- I don't have the screen with me. The</b></p> <p>2 <b>screen that I saw was -- where it shows there was a</b></p> <p>3 <b>negative in the escrow meaning that we paid out funds</b></p> <p>4 <b>towards either insurance, taxes, school taxes.</b></p> <p>5 Q. But you don't know when, and you don't know how</p> <p>6 much, and you don't know whether or not any unapplied</p> <p>7 funds were used for it?</p> <p>8 <b>A. Not all of them. I mean, just by looking at this</b></p> <p>9 <b>page here, HF0013 shows where some escrow funds were</b></p> <p>10 <b>paid out. And I think we discussed that before we went</b></p> <p>11 <b>to lunch. And that -- that's all I can see there, so --</b></p> <p>12 Q. Can you now tell me when you considered this</p> <p>13 account in default, each time you considered the account</p> <p>14 in default?</p> <p>15 <b>A. I don't know when they considered it, but my</b></p> <p>16 <b>understanding is a payment is due on the 1st of every</b></p> <p>17 <b>month. They're given 15 calendar days to make that</b></p> <p>18 <b>payment without being charged a late charge. I would</b></p> <p>19 <b>have to go through every transaction. But we had</b></p> <p>20 <b>discussed that the first payment that we showed was in</b></p> <p>21 <b>October that we got late, that -- and that there was a</b></p> <p>22 <b>late charge.</b></p> <p>23 Q. So the account as far as your records are</p> <p>24 concerned has been in default from the beginning? If</p> <p>25 you didn't apply the first two payments, as represented</p>

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<p style="text-align: right;">Page 65</p> <p>1 in that check, and if in fact you got that money, you 2 would be declaring her in default because she's two 3 months behind all the way through the loan; wouldn't 4 you? 5 MR. MCLAIN: Objection. Form. 6 <b>A. We received a payment September 5th which paid</b> 7 <b>her September payment. We did not receive her October</b> 8 <b>payment until November. And that's what my system</b> 9 <b>shows.</b> 10 Q. (By Mr. Levine) And is that some payment that 11 you received other than the proceeds of the check that's 12 Exhibit 1? 13 MR. MCLAIN: Objection. Form. 14 <b>A. Well, again, we received these. I don't know if</b> 15 <b>this one --</b> 16 MR. LEVINE: What's the basis? 17 MR. MCLAIN: He's never testified they 18 received this. 19 Q. (By Mr. Levine) Yes. If you received them, 20 that's the question. Your testimony is you don't know 21 whether they were received or not; is that correct? 22 <b>A. I don't know if this one was received. I do see</b> 23 <b>that payments were received in September and one in</b> 24 <b>November, because of my -- but this one I don't know if</b> 25 <b>this one was received because it doesn't show it here in</b></p>	<p style="text-align: right;">Page 67</p> <p>1 Q. So you're continually now in arrears, right? 2 <b>A. From that point the account is delinquent, yes.</b> 3 Q. So it's going to continue on that she was in 4 default and charged late fees throughout, correct? 5 <b>A. Yes, that's correct.</b> 6 Q. Let's talk about property inspection fees. What 7 entitles you or authorizes you to charge her property 8 inspection? 9 <b>A. You had me look into that during my break --</b> 10 <b>lunch break, and it's on -- if I'm correct it's in the</b> 11 <b>deed of trust, which is number --</b> 12 Q. Is that Paragraph 6? 13 <b>A. No, Paragraph 14, sir.</b> 14 Q. 14, okay. 15 <b>A. Yes.</b> 16 Q. And that says that you can -- what is the purpose 17 of a property inspection? 18 <b>A. 14, do you want me to read this?</b> 19 Q. No. I'm asking you what the purpose of a 20 property inspection is. 21 <b>A. The purpose of a property inspection, my</b> 22 <b>understanding is when a loan is in default and we're not</b> 23 <b>getting payments or the loan is -- we need to go see,</b> 24 <b>just make sure the property is occupied or abandoned and</b> 25 <b>if we have to go -- need to go secure it, just to</b></p>
<p style="text-align: right;">Page 66</p> <p>1 <b>my system.</b> 2 Q. Correct. Is the September payment that you see 3 there from the proceeds of that check? 4 <b>A. This was a payment for the amount of 501.65 is</b> 5 <b>what I read here.</b> 6 Q. Yes. Something other than the payment -- excuse 7 me. Some payment other than the proceeds of that check, 8 if that check is real? 9 <b>A. These were received in September. I don't see</b> 10 <b>those, so obviously they're from another source.</b> 11 Q. Okay. So if you don't have the first two months 12 from this check, you would have received additional 13 funds that would have caught up the default? 14 <b>A. Repeat the question, please. I got a little lost</b> 15 <b>there.</b> 16 Q. Okay. I'm trying to understand the consequences 17 to the account if you don't apply the first -- the first 18 check, that Exhibit 1 payment. If the account is in 19 default, you show that in October, a late payment? 20 <b>A. Yeah. The October payment was not received until</b> 21 <b>November, correct.</b> 22 Q. When is your next late payment? Not late 23 payment -- late fee -- late fee imposed? 24 <b>A. The next late fee was imposed on November 16th</b> 25 <b>for that November payment.</b></p>	<p style="text-align: right;">Page 68</p> <p>1 <b>protect the interest of the property.</b> 2 Q. And the reason -- when was your first property 3 inspection? 4 <b>A. I'm just looking at -- it's showing June 6th of</b> 5 <b>'07 is one of the -- where it shows property inspection.</b> 6 <b>I don't know if there's one before that.</b> 7 Q. Okay. And what -- who made the inspection? 8 <b>A. I don't know, sir.</b> 9 Q. Is there a particular company that you use to 10 make those inspections? 11 <b>A. I'm aware of one. If I'm correct it's called</b> 12 <b>First American. If I'm correct, that's the company we</b> 13 <b>use for property inspections.</b> 14 Q. And did they make all of the property 15 inspections, to your knowledge? 16 <b>A. That, I don't know.</b> 17 Q. Okay. And what does the inspection consist of? 18 <b>A. My understanding is they drive by the property to</b> 19 <b>make sure that it's not abandoned or if it is abandoned</b> 20 <b>are there cars parked in front, is the lawn being</b> 21 <b>maintained. My understanding is they also will check</b> 22 <b>like utilities, are they on or are they off. And</b> 23 <b>that -- and that's basically what I know about property</b> 24 <b>inspections.</b> 25 Q. Okay. And is this somehow documented?</p>

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<p style="text-align: right;">Page 69</p> <p>1 <b>A. My understanding is that a property inspection</b>  2 <b>report is forwarded to that department for records</b>  3 <b>purposes.</b>  4 Q. What department?  5 <b>A. I don't remember the department, if it's the</b>  6 <b>collection department or what department actually</b>  7 <b>requests these inspections. If it's the default</b>  8 <b>department, if it's collection department, I really</b>  9 <b>don't remember exactly the department that requests</b>  10 <b>these.</b>  11 Q. Let's be clear. The purpose of the inspection  12 report is to secure the loan interests of Homecomings?  13 It's not done for the benefit of the borrower.  14 <b>A. The inspection report is basically to see if the</b>  15 <b>property has been abandoned or if it's occupied to</b>  16 <b>protect the interest -- the company's interest in the</b>  17 <b>property, correct.</b>  18 Q. Okay. And how much did you charge the borrower  19 for that property inspection?  20 <b>A. Per the document, it looks like 11.25 every time</b>  21 <b>a property inspection was conducted.</b>  22 Q. I'll suggest to you that's not the same charge  23 all the way through, but we'll see about that. \$11 was  24 added then to her obligation to you; is that correct?  25 <b>A. That is then charged to the borrower, correct, to</b></p>	<p style="text-align: right;">Page 71</p> <p>1 <b>A. Again, I don't know if there's interest charged.</b>  2 <b>But if the borrower wasn't in default, she wasn't in</b>  3 <b>default and maybe those inspection fees shouldn't have</b>  4 <b>been done at that point. But according to our records,</b>  5 <b>the borrower was in default.</b>  6 Q. And the fees were charged?  7 <b>A. Correct.</b>  8 Q. Okay. The speed pay charge, is that what it's  9 called?  10 <b>A. Speed pay, it's when a borrower makes a payment</b>  11 <b>over the phone.</b>  12 Q. Now, the late charge fee is mentioned in the deed  13 of trust; isn't it?  14 <b>A. Yes, it is.</b>  15 Q. And the speed --  16 <b>A. (Inaudible.)</b>  17 Q. Excuse me?  18 <b>A. Well, actually it's on the note. The late charge</b>  19 <b>is on the note.</b>  20 Q. The late charge is on the note?  21 <b>A. It's saying -- yeah. And the inspection is</b>  22 <b>mentioned on the deed of trust.</b>  23 Q. Okay. But the loan documents, the note, the deed  24 of trust, do encompass the terms late fee and property  25 inspection charge. That's correct, right?</p>
<p style="text-align: right;">Page 70</p> <p>1 <b>the loan.</b>  2 Q. And your understanding is that you're entitled to  3 do that when the loan is in default?  4 <b>A. My understanding is we're entitled to do property</b>  5 <b>inspections when the loan is in default.</b>  6 Q. Okay, that's fine. Does your system impose an  7 interest charge on the borrower that includes interest  8 on that inspection report?  9 <b>A. That, I don't know.</b>  10 Q. Is it possible that your numbers reflect an  11 interest charge for inspection reports?  12 <b>A. As stated, I don't know regarding interest</b>  13 <b>charges on inspection reports.</b>  14 Q. Would you agree with me that if a loan is not in  15 default and if an inspection is made and a charge made  16 and if interest is charged then on the inspection report  17 and on the late fees, is that also something that would  18 be added to the borrower's account?  19 <b>A. Again, I don't know if interest is accrued on</b>  20 <b>these charges. I've already stated that. But the late</b>  21 <b>charges and the inspection fees are added to the</b>  22 <b>borrower's account, yes.</b>  23 Q. And so if interest is charged on that and if  24 there was no default, that would be a bad thing;  25 wouldn't it?</p>	<p style="text-align: right;">Page 72</p> <p>1 <b>A. It is mentioned, yes, on the deed of trust and --</b>  2 Q. It is contemplated by the borrower that under  3 some circumstances she can be charged for late fees if  4 she's late and inspection fees if she's in default?  5 <b>A. Correct.</b>  6 Q. Okay. Where in the documents are you authorized  7 to charge her for speed pay?  8 <b>A. A payment that's made over the phone, the</b>  9 <b>borrower is made aware at the time that we are going to</b>  10 <b>be charging 8.99 or \$10 or whatever the fee is. They're</b>  11 <b>made aware of that -- because they give them a total,</b>  12 <b>this is the amount we're going to take off for principal</b>  13 <b>and interest or your payment and there's an additional</b>  14 <b>fee. Borrowers are made aware of that.</b>  15 MR. LEVINE: Objection, nonresponsive.  16 Q. (By Mr. Levine) Where in the documents, the note  17 and the trust deed, does it contemplate that you are  18 authorized to charge a fee for the speed pay?  19 <b>A. Speed pays are not mentioned on the deed of trust</b>  20 <b>and the note.</b>  21 Q. Thank you. When did you first start charging  22 this account for a speed pay charges?  23 <b>A. I would have to look, whenever she made her first</b>  24 <b>payment over the phone.</b>  25 Q. How does one make a payment over the phone?</p>

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<p style="text-align: right;">Page 73</p> <p>1 <b>A. They contact the company. They advise that they</b>  2 <b>want to make a payment over the phone. They provide</b>  3 <b>banking account information. It's run through the</b>  4 <b>computer system. They're informed that there's going to</b>  5 <b>be a charge to that transaction.</b>  6 <b>And then we get paid through the bank. If</b>  7 <b>there's funds in there, we get paid. If there's no</b>  8 <b>funds, then the bank lets us know that, you know, there</b>  9 <b>was no funds. But that's when the fee is charged.</b>  10 Q. Okay. Who does the borrower call in order to  11 start that process?  12 <b>A. They would just call the 800 number for the</b>  13 <b>company. And I don't know exactly the way the system</b>  14 <b>works; but there's for payments, you know, questions.</b>  15 <b>I'm sure there's --</b>  16 Q. Okay. You think there's an 800 number that's  17 made known to the borrowers?  18 <b>A. Yes. It should be made known. Usually it's only</b>  19 <b>the payment statement information that they get.</b>  20 Q. Okay. And if a borrower calls do they get a live  21 person, or do they get a recording?  22 <b>A. When the system first picks up it is, of course,</b>  23 <b>a recording informing them that -- who they've contacted</b>  24 <b>and stuff. And then these transactions have to be made</b>  25 <b>with a live person. A live person informs them that</b></p>	<p style="text-align: right;">Page 75</p> <p>1 <b>exactly what the fee is going to be at that point along</b>  2 <b>with the total amount of what's going to be withdrawn</b>  3 <b>out of that account.</b>  4 Q. What information does the borrower have to give  5 that live person?  6 <b>A. Depending on what account they're going to</b>  7 <b>withdraw it from, they need to give the checking account</b>  8 <b>number, the tracking number for the check, you know, all</b>  9 <b>those numbers on the bottom, a check number, the bank,</b>  10 <b>the information that's needed to go in and withdraw the</b>  11 <b>funds from that checking account.</b>  12 Q. And is that wire transfer used to accomplish the  13 payment?  14 <b>A. Wire transfer?</b>  15 Q. From the bank.  16 <b>A. Oh, I don't --</b>  17 Q. I mean, if I send you a check I understand  18 there's a piece of paper that goes through the mail; and  19 you open it up, and you deposit it, and there's a paper  20 trail.  21 <b>A. Uh-huh.</b>  22 Q. What is the paper trail in the case of the speed  23 pay?  24 <b>A. I couldn't tell you on the paper trail. That's</b>  25 <b>something that that department could probably --</b></p>
<p style="text-align: right;">Page 74</p> <p>1 <b>they're going to be pulling the funds from whatever</b>  2 <b>account they provided and the fee that it's going to</b>  3 <b>cost to make that payment. And then it's processed</b>  4 <b>through the computer system.</b>  5 Q. And it's your belief that each time such a call  6 was made, the live person that the borrower speaks with  7 is told that there's going to be a charge?  8 <b>A. My understanding is that the person who's taking</b>  9 <b>the payment is to inform the borrower that there is a</b>  10 <b>charge when a payment is going to be taken out of a bank</b>  11 <b>account or going to be done over by the phone.</b>  12 Q. Each time?  13 <b>A. My understanding is that that's what they're</b>  14 <b>supposed to do whenever there's a payment made over the</b>  15 <b>phone.</b>  16 Q. And how do they know they're supposed to do that?  17 Is there a document that gives them some -- a script,  18 something like that they're supposed to follow?  19 <b>A. I don't work in that department, so I don't know</b>  20 <b>what scripts or procedures they have in place. But I'm</b>  21 <b>sure there's training on how to properly go into the</b>  22 <b>system and do those payments.</b>  23 Q. They do -- do those people tell how much the  24 charge is going to be?  25 <b>A. Yes. The -- my understanding is they tell them</b></p>	<p style="text-align: right;">Page 76</p> <p>1 Q. I would imagine there's a wire transfer from the  2 bank to another account that would be the bank's -- the  3 lender's account. Does that make sense?  4 <b>A. Oh, no, it makes sense. Yeah, that's -- but you</b>  5 <b>were asking for a paper trail. I don't know about the</b>  6 <b>paper trail, but I know that the wire -- the funds are</b>  7 <b>wired from that account to our account so the payment</b>  8 <b>can be made to the borrower's account.</b>  9 Q. So presumably the borrower's bank statement would  10 reflect a wire transfer to the lender's account?  11 <b>A. On their bank statement it more than likely</b>  12 <b>should show where the funds were withdrawn from that</b>  13 <b>account, yes.</b>  14 Q. Can that be done automatically, or do you have to  15 call each time?  16 <b>A. Payments can also be done over the Internet</b>  17 <b>through the computer system. You don't have to call all</b>  18 <b>the time or you don't have to send a payment. With</b>  19 <b>technology nowadays, there's various ways of making that</b>  20 <b>payment.</b>  21 Q. Well, let's be careful here. We're talking about  22 a particular time period, the time period of this loan.  23 So is the same technology used today as was then?  24 <b>A. I can tell you that back then pay by phone was</b>  25 <b>done. I cannot tell you if the computer system online</b></p>

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<p style="text-align: right;">Page 77</p> <p>1 <b>payments were -- if they were in effect at that time.</b>  2 <b>That, I cannot tell you.</b>  3 Q. In the telephone communication between the  4 borrower and the live person at Homecomings, is the  5 conversation recorded?  6 <b>A. I don't know if it's recorded or not. Sometimes</b>  7 <b>they state conversation might be recorded for training</b>  8 <b>purposes. I don't know if that -- her conversations got</b>  9 <b>recorded or not.</b>  10 Q. Would you take a look there at HF02 -- excuse  11 me -- yeah, 233 and 024 -- 0233 and 0234.  12 <b>A. Okay.</b>  13 Q. Can you tell me what these documents are?  14 <b>A. 0233 states evidence of insurance for mortgagee</b>  15 <b>interests. And the second one is Texas Farmers</b>  16 <b>Insurance Company Flood Insurance Processing Center.</b>  17 Q. These documents come from your files, correct?  18 <b>A. These documents are in our file, yes.</b>  19 Q. Is it fair to say then that on the date of these  20 letters Homecomings knew that the property was insured?  21 <b>A. I can't say that on the dates of the letters</b>  22 <b>that Homecomings was aware, because it could have been</b>  23 <b>mailed a couple of days afterwards. I mean --</b>  24 Q. As of the 0234 it's dated July 18th of '07 --  25 <b>A. Okay.</b></p>	<p style="text-align: right;">Page 79</p> <p>1 anything, did Homecomings do when it learned from Texas  2 Farmers that the flood insurance policy that expires in  3 October can't be renewed?  4 <b>A. What would they do if --</b>  5 Q. What, if anything, would Homecomings do upon  6 receiving notice that the insurance would not be  7 renewed?  8 <b>A. If we don't have proof of insurance or new</b>  9 <b>insurance with us or from the borrower, we would then</b>  10 <b>put the insurance -- get force placed insurance on the</b>  11 <b>property to protect the property.</b>  12 Q. If you knew in July that the insurance would not  13 be renewed, would you have contacted the borrower?  14 <b>A. Again, we don't know if we knew in July. But if</b>  15 <b>we were aware that insurance with -- we would inform</b>  16 <b>them after we put force placed insurance. She was also</b>  17 <b>cc'd on this letter, so your borrower should have been</b>  18 <b>aware that it was not going to be renewed.</b>  19 Q. She would have been aware, yeah. The question is  20 what would Homecomings have done? Would Homecomings  21 have communicated with her?  22 <b>A. That's something the insurance department</b>  23 <b>might -- I wouldn't know if they're contacted. But if</b>  24 <b>there's no proof of insurance, force placed insurance is</b>  25 <b>put on the property.</b></p>
<p style="text-align: right;">Page 78</p> <p>1 Q. -- excuse me, '08.  2 <b>A. Okay.</b>  3 Q. Is it fair to say that Farmers Insurance was  4 informing you that policy number such and such was in  5 place and that it was going to expire on October 15th  6 '08?  7 <b>A. The letter is dated on that date and addressed to</b>  8 <b>Homecomings Financial in Florence, South Carolina; and</b>  9 <b>it does state it's expiring on 10/15 of '08.</b>  10 Q. So Homecomings was aware of the existence of this  11 policy in July of '08, right?  12 <b>A. I don't know if we were aware in July '08.</b>  13 <b>Again, the letter is dated that date; but I can't state</b>  14 <b>that that's the date we received it and we were</b>  15 <b>notified.</b>  16 Q. Does Homecomings record receipt of correspondence  17 when it comes in?  18 <b>A. When correspondence is received we usually image</b>  19 <b>it into our imaging system, depending on what --</b>  20 Q. Would that tell you the date that it was  21 received?  22 <b>A. The date that it was imaged?</b>  23 Q. Yes.  24 <b>A. Yes.</b>  25 Q. What, if anything, did Farmers -- what, if</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Do your records reflect any communication in the  2 history of this loan with respect to that with the  3 borrower?  4 <b>A. I would have to go through all the notes. After</b>  5 <b>reviewing the two months following the date of that</b>  6 <b>letter, I don't see that there was any communication</b>  7 <b>regarding insurance.</b>  8 Q. Okay.  9 <b>A. That I can see.</b>  10 Q. Would you take a look at HF12, 13 and 14?  11 <b>A. Okay.</b>  12 Q. I also want you to take a look at HF004.  13 <b>A. Okay.</b>  14 Q. Do these cover the same time period?  15 <b>A. It looks like some of it -- yes, it does cover</b>  16 <b>some of the same time period.</b>  17 Q. The 300 -- the first interest payment, interest  18 only, 370.86, I take it that's prepaid from the closing  19 statement --  20 MR. MCLAIN: Objection. Form.  21 Q. (By Mr. Levine) -- on the original closing?  22 MR. MCLAIN: What document are you referring  23 to?  24 Q. (By Mr. Levine) 0012, the first item, interest  25 paid, interest only.</p>

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<p>1 <b>A. 0012?</b></p> <p>2 Q. 0012.</p> <p>3 <b>A. I couldn't tell you where that -- those funds</b></p> <p>4 <b>came from.</b></p> <p>5 Q. 004 shows speed pay charges of 8.99 each, two of</p> <p>6 them on '06; is that correct?</p> <p>7 <b>A. Which page?</b></p> <p>8 Q. 11/06.</p> <p>9 MR. MCLAIN: Which page number are you</p> <p>10 referring to?</p> <p>11 MR. LEVINE: 004.</p> <p>12 MR. MCLAIN: What date?</p> <p>13 MR. LEVINE: 11/06.</p> <p>14 MR. MCLAIN: That's the whole month of</p> <p>15 November. Give us a line number.</p> <p>16 MR. LEVINE: Line 32 and 33.</p> <p>17 <b>A. It shows 8.99 for speed draft fee.</b></p> <p>18 Q. (By Mr. Levine) Yes. That's 32, correct?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What's 33?</p> <p>21 <b>A. Line 33, 8.99 speed draft pay.</b></p> <p>22 Q. Now, is that two charges for the same thing?</p> <p>23 <b>A. My understanding from this system way back then,</b></p> <p>24 <b>which I don't have the coding for, there's a 1499 and a</b></p> <p>25 <b>1407 coding that -- if I'm looking at the other payment</b></p>	<p>1 Q. (By Mr. Levine) Take a look at 0195, please.</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. That letter was supposedly sent certified mail;</p> <p>4 is that correct?</p> <p>5 <b>A. It does state certified mail, yes.</b></p> <p>6 Q. Did you ever get a return receipt?</p> <p>7 <b>A. I don't know, sir.</b></p> <p>8 (Inaudible discussion between Mr. Levine</p> <p>9 and Ms. Melinder.)</p> <p>10 MR. LEVINE: Off the record.</p> <p>11 (Recess, 1:33 p.m. to 1:38 p.m.)</p> <p>12 (Exhibits Nos. 2 through 12 were marked.)</p> <p>13 Q. (By Mr. Levine) I'll show you Exhibits 2 through</p> <p>14 12. And if you could look -- before I do that, are you</p> <p>15 familiar with a company called Cal-Western Recovery?</p> <p>16 <b>A. No, sir.</b></p> <p>17 Q. Do your records reflect that you farmed out some</p> <p>18 portion of the collection activity in this case to</p> <p>19 Cal-Western on your behalf?</p> <p>20 <b>A. I would have to go through the records.</b></p> <p>21 Q. I think you'll find a reference to them. I'll</p> <p>22 show you Exhibit 11. Can you identify receipt of those</p> <p>23 funds in the account history of this loan?</p> <p>24 <b>A. There's -- I'm looking through the payment</b></p> <p>25 <b>history. I don't see 6,290.26 in our payment history.</b></p>
<p>Page 82</p> <p>1 <b>history, there's only one charge which is a little bit</b></p> <p>2 <b>more clear. But if I'm correct, those are not two</b></p> <p>3 <b>charges. It's just the way the system generates the</b></p> <p>4 <b>information. But there's two codes there, and they're</b></p> <p>5 <b>different coding with different meanings. I don't have</b></p> <p>6 <b>those codes with me.</b></p> <p>7 Q. Could it be that that's a double charge for the</p> <p>8 same payment?</p> <p>9 <b>A. I'll be honest, I really doubt it. By comparing</b></p> <p>10 <b>with Page 0012, there's one charge of 8.99, which this</b></p> <p>11 <b>new system kind of breaks it down a little easier to</b></p> <p>12 <b>understand than the old system. Again, it's the coding</b></p> <p>13 <b>that's going to explain why both numbers are there.</b></p> <p>14 (Inaudible discussion between Mr. Levine</p> <p>15 and Ms. Melinder.)</p> <p>16 MR. MCLAIN: Who is the lawyer here, by the</p> <p>17 way?</p> <p>18 MR. LEVINE: I'm sorry?</p> <p>19 MR. MCLAIN: Go ahead.</p> <p>20 THE WITNESS: Can we take a quick break?</p> <p>21 That Diet Coke got to me.</p> <p>22 MR. MCLAIN: Can we take a break?</p> <p>23 MR. LEVINE: Any time, sure. Off the</p> <p>24 record.</p> <p>25 (Recess, 1:29 p.m. to 1:32 p.m.)</p>	<p>Page 84</p> <p>1 Q. Okay. We'll get to it again in this --</p> <p>2 MR. MCLAIN: Can you ask him about the</p> <p>3 different things in the check? I mean, he's never seen</p> <p>4 it obviously, so --</p> <p>5 MR. LEVINE: It doesn't appear in the loan</p> <p>6 history.</p> <p>7 MR. MCLAIN: Yeah. Well, the reference</p> <p>8 number on there is not the loan number for this loan; so</p> <p>9 I don't know if it's even for this loan we're talking</p> <p>10 about, so --</p> <p>11 MR. LEVINE: We'll find out.</p> <p>12 Q. (By Mr. Levine) Okay. I give you 2 through 12</p> <p>13 now, sir.</p> <p>14 <b>A. All right.</b></p> <p>15 Q. Number 2 is a check for -- excuse me, an item,</p> <p>16 117.50.</p> <p>17 <b>A. Uh-huh.</b></p> <p>18 Q. Can you show where in the payment history that</p> <p>19 has been dealt with?</p> <p>20 <b>A. This is a totally different loan number we're</b></p> <p>21 <b>looking at. It's not this loan we're talking about on</b></p> <p>22 <b>this loan. There's a reference number 0305079840.</b></p> <p>23 <b>Could that have been the second mortgage? It's not on</b></p> <p>24 <b>this mortgage here.</b></p> <p>25 Q. If it's the second mortgage, why would you be</p>

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<p style="text-align: right;">Page 85</p> <p>1 debiting it?</p> <p>2 <b>A. No. I'm asking could it be the second mortgage?</b></p> <p>3 <b>I'm asking -- I mean, I don't know.</b></p> <p>4 Q. That hasn't been applied to this account, has it?</p> <p>5 <b>A. It's not on this account, not on the first</b></p> <p>6 <b>mortgage.</b></p> <p>7 MR. MCLAIN: I would object. This is</p> <p>8 October 2004. This note wasn't even in effect in 2004.</p> <p>9 This is October '04.</p> <p>10 THE WITNESS: Yeah. I'm trying to figure</p> <p>11 out where the date is -- '06 --</p> <p>12 MR. MCLAIN: I don't know what number it is.</p> <p>13 MR. LEVINE: It's 217. It says 117.</p> <p>14 MS. MELINDER: (Inaudible.)</p> <p>15 MR. LEVINE: Yeah, look at this. This says</p> <p>16 October '04.</p> <p>17 MR. MCLAIN: I think it's actually October</p> <p>18 4th. Just the date is confusing.</p> <p>19 (Inaudible discussion between Mr. Levine</p> <p>20 and Ms. Melinder.)</p> <p>21 Q. (By Mr. Levine) All right. Did I take these</p> <p>22 away from you, I'm sorry.</p> <p>23 <b>A. No problem.</b></p> <p>24 Q. December 4th, \$318.70 debited out of Compass</p> <p>25 Bank.</p>	<p style="text-align: right;">Page 87</p> <p>1 year -- '07 -- 1,028.38. There are two payments --</p> <p>2 okay, here we go. On 0012 on January 9th of '07 payment</p> <p>3 it shows for 526.76.</p> <p>4 Q. That's one payment plus the late fee?</p> <p>5 <b>A. And it shows that the late -- let me see -- then</b></p> <p>6 <b>they applied it down here on 019 also. They applied</b></p> <p>7 <b>501.65 towards another payment, towards the bottom of</b></p> <p>8 <b>that page.</b></p> <p>9 (Inaudible discussion between the witness</p> <p>10 and Mr. McLain.)</p> <p>11 Q. (By Mr. Levine) The next, 535.72?</p> <p>12 <b>A. 535.72, March 2nd, on February 28th there was a</b></p> <p>13 <b>payment and a speed pay of 8.99. If you add those</b></p> <p>14 <b>together it comes out to a total of 535.72.</b></p> <p>15 Q. Next is that \$6,290.26 check.</p> <p>16 MR. MCLAIN: Identify the exhibit when you</p> <p>17 turn to it.</p> <p>18 <b>A. That -- we looked for it earlier. I did not see</b></p> <p>19 <b>a \$6,200 payment on -- what date was that -- on 09/17</b></p> <p>20 <b>of what year -- '07 -- I don't see where that amount was</b></p> <p>21 <b>received in our system.</b></p> <p>22 Q. (By Mr. Levine) Okay. Is that the last --</p> <p>23 <b>A. No. We're just on Number 6. You gave me up to</b></p> <p>24 <b>Number 12.</b></p> <p>25 MR. MCLAIN: What date was that Number 6?</p>
<p style="text-align: right;">Page 86</p> <p>1 <b>A. For 317?</b></p> <p>2 Q. 318.70.</p> <p>3 <b>A. I'm sorry, 318.70, correct.</b></p> <p>4 Q. Where was that applied?</p> <p>5 <b>A. December 4th -- right there -- okay, let me see.</b></p> <p>6 <b>On December 4th -- if you go to November 30th of '06,</b></p> <p>7 <b>they were -- there was a payment of 309.71 plus a speed</b></p> <p>8 <b>pay of 8.99 which would have totalled -- looks like --</b></p> <p>9 <b>should have been like 318.70 if you add those two</b></p> <p>10 <b>together. That's correct.</b></p> <p>11 Q. What was the date of that?</p> <p>12 <b>A. November 30th.</b></p> <p>13 MR. MCLAIN: Is that HF0012?</p> <p>14 THE WITNESS: Oh, I'm sorry. Yes, 0012.</p> <p>15 <b>A. And if you go to HF0019, there's a note in there</b></p> <p>16 <b>regarding the payment.</b></p> <p>17 Q. (By Mr. Levine) I'm sorry, you directed us</p> <p>18 where?</p> <p>19 <b>A. I'm sorry. HF0019, there's a note --</b></p> <p>20 Q. 19 --</p> <p>21 <b>A. -- where the homeowner called to make a payment.</b></p> <p>22 Q. Okay.</p> <p>23 <b>A. And the amount was for 318.70.</b></p> <p>24 Q. Okay. The next exhibit, 1,028.38?</p> <p>25 <b>A. Oh, Exhibit 4. I'm sorry. January 10th, what</b></p>	<p style="text-align: right;">Page 88</p> <p>1 THE WITNESS: September 17th of '07.</p> <p>2 Q. (By Mr. Levine) So that's not the Cal-Western</p> <p>3 check?</p> <p>4 <b>A. That's the Cal-Western --</b></p> <p>5 Q. The one we just --</p> <p>6 <b>A. The one we just went through.</b></p> <p>7 Q. Is Cal-Western?</p> <p>8 <b>A. Yeah. It says Cal-Western Recovery.</b></p> <p>9 Q. Okay. Next is a 501.65.</p> <p>10 <b>A. 501.65?</b></p> <p>11 Q. Is that the next one?</p> <p>12 <b>A. Yes, sir. Oh, Number 7, sorry. 11/09 -- what</b></p> <p>13 <b>year -- 11/09/07. That was on 11/08 of '07, it was in</b></p> <p>14 <b>our system for 501.65.</b></p> <p>15 Q. As a credit to the account?</p> <p>16 <b>A. It shows that it wasn't applied on -- to a</b></p> <p>17 <b>payment. It looks like -- I don't see where it was</b></p> <p>18 <b>applied to a payment. I don't see the date rolling</b></p> <p>19 <b>over, but hold on. I might have -- the payments might</b></p> <p>20 <b>have went up at that time. I see that we received it.</b></p> <p>21 <b>I'm just trying to figure out where it was applied.</b></p> <p>22 Q. That's the question. Where was it applied?</p> <p>23 <b>A. That's what I'm checking. It's showing that</b></p> <p>24 <b>there was a balance in the suspense of 501.65. We got</b></p> <p>25 <b>that. Looking at the notes, I can't see where those</b></p>

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<p>1 funds were applied.</p> <p>2 Q. Okay. 509.44, the next exhibit. What exhibit is</p> <p>3 that?</p> <p>4 <b>A. Number 8. 509.44 on 11/29 -- 11/28, 509.44</b></p> <p>5 <b>received and applied.</b></p> <p>6 Q. The entirety?</p> <p>7 <b>A. It looks like -- let me see, 456.43 and 45.22,</b></p> <p>8 <b>I've got -- I can figure that out. I don't have a</b></p> <p>9 <b>calculator.</b></p> <p>10 Q. \$7.79 unaccounted for.</p> <p>11 <b>A. Looks like those funds were then moved over to</b></p> <p>12 <b>the unapplied funds. Looks like it went up from the</b></p> <p>13 <b>561.65 to the 509.44 is what it's looking like. Let me</b></p> <p>14 <b>see -- yeah, those -- that 7.79 would then put it over</b></p> <p>15 <b>to the unapplied funds. That's why it's showing 509.44</b></p> <p>16 <b>after you see the application of the principal paid and</b></p> <p>17 <b>the interest.</b></p> <p>18 Q. What's the next one?</p> <p>19 <b>A. Exhibit 9 on 01/25.</b></p> <p>20 Q. 501 --</p> <p>21 <b>A. 501.65?</b></p> <p>22 Q. Yes. That's dated --</p> <p>23 <b>A. That's on our system on 01/24, 501.65.</b></p> <p>24 Q. And the next one is February?</p> <p>25 <b>A. February 12th, which was February 11th in our</b></p>	<p>1 <b>A. -- was impacted in any of those --</b></p> <p>2 Q. Okay.</p> <p>3 <b>A. Yeah.</b></p> <p>4 Q. That's fine. What is the meaning of breach hold</p> <p>5 placed?</p> <p>6 MR. MCLAIN: Objection. Form.</p> <p>7 <b>A. I just know the word breach is when a breach is</b></p> <p>8 <b>-- meaning there's a delinquency and the letter has been</b></p> <p>9 <b>sent out because of a breach in the payment contract.</b></p> <p>10 <b>But the hold -- I have no idea if I'm correct. That's</b></p> <p>11 <b>the default department or the foreclosure department</b></p> <p>12 <b>that puts the codes in there.</b></p> <p>13 Q. (By Mr. Levine) Would you take a look at the</p> <p>14 September 15th entry in the payment history.</p> <p>15 <b>A. Which page number?</b></p> <p>16 MR. MCLAIN: Of what year?</p> <p>17 Q. (By Mr. Levine) '08. We're talking now about</p> <p>18 the Ike problems. I think September 14th Ike hit.</p> <p>19 <b>A. That was -- oh, last year, right. They hit --</b></p> <p>20 <b>we've had so many in the past few years, I forget which</b></p> <p>21 <b>one hit when. October?</b></p> <p>22 Q. September.</p> <p>23 <b>A. Oh, September.</b></p> <p>24 Q. 006.</p> <p>25 <b>A. 006, there we go.</b></p>
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<p>1 <b>system for 501.65.</b></p> <p>2 Q. And March 10th?</p> <p>3 <b>A. March 10th showing on March 7th on our system.</b></p> <p>4 MR. MCLAIN: What was the other date, March</p> <p>5 what?</p> <p>6 THE WITNESS: I'm sorry. March 10th of '07.</p> <p>7 MR. MCLAIN: What date did we receive it?</p> <p>8 THE WITNESS: On March -- in our system on</p> <p>9 March 7th.</p> <p>10 Q. (By Mr. Levine) How was that applied, principal</p> <p>11 or to interest?</p> <p>12 <b>A. Which one, sir?</b></p> <p>13 Q. The 501 payments, the last three.</p> <p>14 <b>A. Let me see, I see that the February payment was</b></p> <p>15 <b>applied to principal and interest. The January and the</b></p> <p>16 <b>March payment, looks like they were received; but I</b></p> <p>17 <b>don't know how those were -- those funds were applied by</b></p> <p>18 <b>looking at the information here, but they were received</b></p> <p>19 <b>in our office.</b></p> <p>20 Q. How was it credited?</p> <p>21 <b>A. Again, I don't know how they were applied or to</b></p> <p>22 <b>where they were applied. I go across the line, and it's</b></p> <p>23 <b>showing that we received the funds. But it -- I don't</b></p> <p>24 <b>see where a principal or an interest or escrow was --</b></p> <p>25 Q. Impacted?</p>	<p>1 Q. Transaction 09853.</p> <p>2 <b>A. 09853, breach hold placed expiration date</b></p> <p>3 <b>12/12/08?</b></p> <p>4 Q. Yeah. What does that mean?</p> <p>5 <b>A. Like I stated, that's default department,</b></p> <p>6 <b>foreclosure department. I understand what breach means.</b></p> <p>7 <b>I don't know what -- the reasoning for the hold or what</b></p> <p>8 <b>the hold is or what any of that other information means.</b></p> <p>9 Q. Do you have a record of a telephone call to</p> <p>10 Homecomings from Christina Melinder on September 18th,</p> <p>11 '08?</p> <p>12 <b>A. September 18th?</b></p> <p>13 Q. Yes.</p> <p>14 <b>A. Of '08?</b></p> <p>15 Q. Yes.</p> <p>16 <b>A. I have nothing in the note history showing any</b></p> <p>17 <b>entries on September 18th of '08.</b></p> <p>18 Q. No notations that a promise from Homecomings was</p> <p>19 made that they were not going to foreclose and it was</p> <p>20 put on hold?</p> <p>21 <b>A. On September 18th of '08?</b></p> <p>22 Q. Yes.</p> <p>23 <b>A. There is no entry here of anything of September</b></p> <p>24 <b>18th of '08.</b></p> <p>25 Q. Yet you do have an entry that says breach hold?</p>

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<p style="text-align: right;">Page 93</p> <p>1 <b>A. There's an entry that states breach hold, starts</b>  2 <b>with that, yes. And that was on September 15th.</b>  3 Q. Who secured the property in September of '08?  4 <b>A. I do not know the company who secured that.</b>  5 Q. What instructions were given to the company that  6 secured the property?  7 <b>A. If there are documents you want me to look at to</b>  8 <b>see if there's any documentation on that, but I don't</b>  9 <b>know what instructions would have been given to that</b>  10 <b>company.</b>  11 Q. There's nothing in the file with respect to that?  12 <b>A. If there's a document I can look at it; but I</b>  13 <b>don't know what date you're -- I mean, exact date you</b>  14 <b>want me to look at unless there's a document that you</b>  15 <b>have that I can look at.</b>  16 Q. Your history shows that the property was secured  17 in September, right?  18 <b>A. September -- do you have an exact date, or would</b>  19 <b>you like me to --</b>  20 Q. Well, the hurricane was the 14th.  21 <b>A. I don't see anything in the notes of September</b>  22 <b>'08 stating that instructions to secure the property.</b>  23 Q. October? 007, are you looking there?  24 <b>A. I just passed 007. Which line? That -- 28371,</b>  25 <b>that just says vacant, occupancy stat received. My</b></p>	<p style="text-align: right;">Page 95</p> <p>1 <b>was given to me by someone in the office.</b>  2 MR. MCLAIN: It hasn't been produced. It  3 was some interoffice discussion that happened within the  4 last week or so, so --  5 Q. (By Mr. Levine) Nothing at the time?  6 <b>A. Not at the time.</b>  7 Q. You didn't have an e-mail at the time telling you  8 what was done, meaning in '08 --  9 <b>A. Well, I didn't have -- I wasn't dealing with this</b>  10 <b>case back in '08, so I didn't know.</b>  11 Q. So you didn't get an e-mail then concerning the  12 posting of a notice?  13 <b>A. No, I didn't get the e-mail then, no.</b>  14 Q. 0034.  15 <b>A. 0034?</b>  16 Q. Yeah.  17 <b>A. Okay. August of '07. Which date of August '07?</b>  18 Q. The 20th.  19 <b>A. And which entry on the 20th?</b>  20 Q. Well, let's take a look at all of them, beginning  21 with the 10th. Foreclosure had been started, correct?  22 <b>A. On the 10th, yes, it does state foreclosure</b>  23 <b>started.</b>  24 Q. And a property inspection that said utilities  25 were turned off; is that correct?</p>
<p style="text-align: right;">Page 94</p> <p>1 <b>understanding, that's when we received a report from the</b>  2 <b>property inspection stating that the property is vacant</b>  3 <b>and the stats were received. The occupancy statistics</b>  4 <b>were received, and it was vacant.</b>  5 Q. That was immediately after the hurricane. There  6 was an evacuation; isn't that correct?  7 <b>A. I don't know. I didn't live there, so I don't</b>  8 <b>know what happened there.</b>  9 Q. The utilities were still turned on; weren't they?  10 <b>A. I don't know, sir. I don't have the report in</b>  11 <b>front of me.</b>  12 Q. When I say turned on, I don't mean they were  13 running because of the hurricane; but I'm saying as far  14 as the utility company was concerned, it was still an  15 open account?  16 MR. MCLAIN: Objection. Form.  17 <b>A. I have no idea. I have nothing in front of me to</b>  18 <b>tell me any different.</b>  19 Q. (By Mr. Levine) You have no -- okay. Do you  20 know anything about the posting of a notice on the  21 property?  22 <b>A. I received an e-mail stating that there was a</b>  23 <b>notice on the property.</b>  24 Q. Where is that e-mail?  25 <b>A. I don't have it with me. It's not part of -- it</b></p>	<p style="text-align: right;">Page 96</p> <p>1 <b>A. I don't see where you're reading utilities were</b>  2 <b>turned off.</b>  3 Q. 21, 08/10.  4 <b>A. Oh, all the way down, okay. Utilities off, yes,</b>  5 <b>it does state that.</b>  6 Q. We'd talked before about this was originally  7 supposed to be a -- according to your loan documents, a  8 primary residence. And we also saw contradictory  9 paperwork which reflected -- which would reflect it was  10 an investment property.  11 MR. MCLAIN: Objection. Form.  12 Q. (By Mr. Levine) Do you recall that?  13 <b>A. I remember you showing me the document.</b>  14 Q. And I think at this time period there was removal  15 of the tenant, and the owner Christina Melinder moved  16 into the property. I think those events were  17 transpiring at this time. Do you have any information  18 about the changing of locks or the securing of the  19 property from this history?  20 <b>A. Yes. On 08/20 there's a note that says vacant,</b>  21 <b>and there was an order to secure and start</b>  22 <b>winterization, start grass cut.</b>  23 Q. Okay. Going down to August 21, we come across  24 that name again, Cal-Western. Do you know what that's  25 about?</p>

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<p style="text-align: right;">Page 97</p> <p>1 <b>A. The foreclosure department entered the note. It</b>  2 <b>says Cal-Western estimated fees and costs, payoff quote</b>  3 <b>good through. As I said before, I don't know who</b>  4 <b>Cal-Western is.</b>  5 Q. Well, wouldn't this indicate to you that  6 Cal-Western was somebody hired by you?  7 <b>A. By reading the notes it states that Cal-Western's</b>  8 <b>estimated fees and costs and a payoff quote were</b>  9 <b>provided -- or please provide a -- they're asking for</b>  10 <b>something to be provided. I don't know how these notes</b>  11 <b>are -- it looks like the foreclosure department had some</b>  12 <b>sort of communication with Cal-Western.</b>  13 Q. With regard to reinstating the loan?  14 <b>A. I have no idea if it was regarding reinstating</b>  15 <b>the loan.</b>  16 Q. Take a look at 0037.  17 <b>A. 0037?</b>  18 Q. Yes.  19 <b>A. Okay. Which date, sir?</b>  20 Q. Top of the page. Do you see where it says  21 reinstatement, quote?  22 <b>A. It says reinstatement quote, process level issued</b>  23 <b>for this event.</b>  24 Q. Was the loan reinstated?  25 <b>A. I would have to go read down the notes to see if</b></p>	<p style="text-align: right;">Page 99</p> <p>1 <b>October of '07.</b>  2 Q. Was it ever not in default after '07?  3 <b>A. On December 10th of '07 it looks like she made</b>  4 <b>her payment for December 1, '07.</b>  5 Q. So everything was cured as of that date?  6 <b>A. As of that date the loan was current.</b>  7 Q. Okay. And that is without regard to the payment  8 listed in Exhibits 11 and 1?  9 <b>A. That -- I didn't see that payment in here, so I</b>  10 <b>would -- I couldn't tell you if that was included in</b>  11 <b>there; but I didn't see the payment in our system.</b>  12 Q. Is it fair to say then that if the loan was  13 cured, all defaults were cured as of that date; and if  14 the payments exhibited by Exhibit 1 and Exhibit 11 were  15 in fact payments made on this account, then she had  16 overpaid the account by those amounts?  17 MR. MCLAIN: Objection. Form.  18 <b>A. If those payments were received and put into the</b>  19 <b>loan, yeah, it would have shown a positive on her</b>  20 <b>account.</b>  21 Q. (By Mr. Levine) And so the payoff statements  22 that you sent her -- I'll be getting into those payoff  23 statements -- would have overstated the payoff necessary  24 by those amounts if they had in fact been received?  25 <b>A. If those payments were received, it would have</b></p>
<p style="text-align: right;">Page 98</p> <p>1 <b>it was or not.</b>  2 Q. Please do. Please read through Page 0039 -- 37  3 through 39.  4 <b>A. 0039?</b>  5 Q. 37 through 39, yes.  6 MR. LEVINE: Why don't you go ahead and make  7 it all the way through 40.  8 <b>A. Okay.</b>  9 Q. (By Mr. Levine) Do you understand from that that  10 the loan was reinstated?  11 <b>A. I understand that reinstatement was requested. I</b>  12 <b>do see that the keys were returned to Ms. Melinder,</b>  13 <b>as -- now residing in property. And I don't see that it</b>  14 <b>actually states that it was reinstated. I just see that</b>  15 <b>reinstatement quotes were requested and approved, and I</b>  16 <b>don't -- but I don't read the exact words loan</b>  17 <b>reinstated.</b>  18 Q. Was the loan in default in September of '07?  19 <b>A. In September of '07?</b>  20 Q. Yes.  21 <b>A. According to the notes, it was.</b>  22 Q. Was it in default in October?  23 <b>A. Of '07?</b>  24 Q. Yes.  25 <b>A. Yes, it's showing that it was in default in</b></p>	<p style="text-align: right;">Page 100</p> <p>1 <b>shown a -- subtracted from the payoff; and it would have</b>  2 <b>given you the payoff totally different, correct.</b>  3 Q. Okay. I'd like to talk about various payoff  4 statements. Would you agree that a payoff statement is  5 an important document to determine numbers that have to  6 be used in a refinance of a property?  7 <b>A. I don't know what it has to do with a refinance</b>  8 <b>of a property. The payoffs that we provide is to show</b>  9 <b>what the amount owed to our company is. Regarding a</b>  10 <b>refinance -- I don't know what other companies require</b>  11 <b>for refinancing.</b>  12 Q. Is it important in your opinion that the  13 information on your pay off statement be correct?  14 <b>A. Yes.</b>  15 Q. It's a material term, the amount; isn't it?  16 <b>A. Yes.</b>  17 Q. Take a look at 0082.  18 <b>A. Okay.</b>  19 Q. Do you see the amount being charged for other  20 fees and costs?  21 <b>A. Yes, I do.</b>  22 Q. \$2,164.25?  23 <b>A. Yes.</b>  24 Q. And what is the date of that payoff statement?  25 <b>A. September 13th, 2007.</b></p>

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<p style="text-align: right;">Page 101</p> <p>1 Q. Okay. Take a look at 0085.  2 <b>A. Okay.</b>  3 Q. That's a payoff statement one day before?  4 <b>A. Correct.</b>  5 Q. Can you explain the difference in the payoff  6 amounts?  7 <b>A. On the payoff, the total amount or --</b>  8 Q. Yes, the total amount.  9 <b>A. Looks like what -- I'm trying to figure out where</b>  10 <b>the difference -- I see the difference in the other</b>  11 <b>fees, about \$11.25 difference there.</b>  12 Q. Yes.  13 <b>A. That's -- the only thing I can think of of 11.25</b>  14 <b>would be a property inspection fee.</b>  15 Q. Why would you have done a property inspection fee  16 that day?  17 <b>A. I have no idea. I don't work in that department,</b>  18 <b>sir.</b>  19 Q. Okay. Take a look at 0088.  20 <b>A. 0088, okay.</b>  21 Q. Do you see the interest calculation?  22 <b>A. 3,483.72.</b>  23 Q. And that's a per diem of \$15.08 a day, correct?  24 <b>A. 15.0864 per day.</b>  25 Q. And calculated from what date?</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. (By Mr. Levine) -- at the per diem interest  2 rate?  3 <b>A. Well, that per diem amount is after the due date.</b>  4 <b>I mean --</b>  5 Q. (By Mr. Levine) I mean, the calculation that I  6 have is that it should have been \$3,063; and yet you've  7 got \$3,400-some-odd. I'll offer you --  8 <b>A. I don't -- I don't do calculations --</b>  9 MR. MCLAIN: Yeah. We're not going to do  10 that.  11 <b>A. I can't calculate that. I don't work for the</b>  12 <b>payoff department. I don't calculate payoff quotes.</b>  13 Q. (By Mr. Levine) If the payoff is miscalculated,  14 that would be a bad thing; wouldn't it?  15 MR. MCLAIN: Objection. Form.  16 <b>A. If it was miscalculated, correct.</b>  17 Q. (By Mr. Levine) Okay. Between July -- June of  18 '08 and October of '08 I see property inspection fees  19 charged on June 2nd, July 1st, July 30th, August 28th  20 and October 2nd. Can you tell me why you would have  21 done inspections each month like that?  22 <b>A. My understanding is when a loan is in default or</b>  23 <b>in the foreclosure process or maybe abandoned, we do</b>  24 <b>inspections on a monthly basis. That is my</b>  25 <b>understanding.</b></p>
<p style="text-align: right;">Page 102</p> <p>1 <b>A. If you read -- continue reading interest</b>  2 <b>calculated but not including 09/19/07. So it is</b>  3 <b>basically good through 09/18 of '07.</b>  4 Q. From what date?  5 <b>A. From the date that this is generated. So this</b>  6 <b>report was generated on 08/27, but the interest that's</b>  7 <b>calculated there is good through September 18th.</b>  8 Q. But the interest should have been calculated from  9 March, right? Because the last payment had been made in  10 February.  11 <b>A. Oh, I thought you meant the date it</b>  12 <b>was calculated. They calculated that amount on that</b>  13 <b>date; but no -- but it's calculated from the due date</b>  14 <b>that they owe us, so I thought you meant the date it was</b>  15 <b>calc -- they generate this on the 8th -- on 08/27 is</b>  16 <b>what I'm trying to say.</b>  17 Q. Can we agree that the date the calculation stems  18 from is March 1?  19 <b>A. Correct, because that was the next payment that</b>  20 <b>was due.</b>  21 Q. Okay. Would you please calculate the interest  22 that should have been charged from March 1 through the  23 September date --  24 MR. MCLAIN: Do you have a calculator for  25 him?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. October 9th you had expense advances for a number  2 of items. You've got the dollar amounts. Can you tell  3 me what those expenses were for?  4 <b>A. Not by just looking at the amounts I cannot tell</b>  5 <b>you what they were for.</b>  6 Q. What information would you need in order to  7 determine what those expenses were for?  8 <b>A. I would actually probably have to go into the</b>  9 <b>computer system or ask someone in the cashiering</b>  10 <b>department or in those departments and see what those</b>  11 <b>were for, if it was regarding foreclosure, whether</b>  12 <b>regarding -- I don't know what it could be regarding.</b>  13 <b>But I would need to ask around and see what those --</b>  14 Q. Cashier's department?  15 <b>A. Cashiering department, they might have some</b>  16 <b>coding and reasoning why those were added to the loan.</b>  17 Q. The same would hold true, I suppose, for the  18 November 10th expenses?  19 <b>A. Correct.</b>  20 Q. What is the \$65 payee expense on October 13th and  21 another on November 10th?  22 <b>A. That was a payment made to some company or --</b>  23 <b>E23, I can't exactly tell you what the E23 -- it's --</b>  24 <b>it's either taxes -- it's E for escrow -- 23, I don't</b>  25 <b>know what the code 23 means. It could be for taxes. It</b></p>

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<p style="text-align: right;">Page 105</p> <p>1 <b>could be for insurance purposes. And payee is the</b>  2 <b>entity that it was paid to, and I wouldn't know what</b>  3 <b>that -- who that entity would be by just looking at the</b>  4 <b>numbers, the coding.</b>  5 Q. We've got a property inspection fee June 6th,  6 '07, another June 25.  7 <b>A. What page?</b>  8 Q. 0013. Why two inspections the same month?  9 <b>A. June 6th -- I couldn't tell you why two were done</b>  10 <b>during the same month.</b>  11 Q. Okay. And you don't know who the payees were for  12 the three expenses listed July 12th?  13 <b>A. No. The letters like M and E are basically like</b>  14 <b>escrow payments that went out either for insurance or</b>  15 <b>taxes.</b>  16 Q. You don't know?  17 <b>A. But I don't know the code.</b>  18 Q. Okay. And on August 2nd and August 16th we have  19 two more property inspection fees.  20 <b>A. Uh-huh.</b>  21 Q. Can you explain why that would be?  22 <b>A. No, sir, I can't explain that.</b>  23 Q. Does it seem excessive to you?  24 MR. MCLAIN: Objection. Form.  25 <b>A. I don't work in that department. I don't know</b></p>	<p style="text-align: right;">Page 107</p> <p>1 to the account?  2 <b>A. Was that -- what I'm looking at, a Cal-Western</b>  3 <b>amount came in wired from Cal-Western in the amount</b>  4 <b>of -- whatever that was, 53 -- 5,355.20; and it was then</b>  5 <b>applied to the loan.</b>  6 Q. Will you look at 0005, please.  7 <b>A. 0005, okay.</b>  8 Q. The last item on the page, 10/31/06, contact.  9 <b>A. Contact, no promise to pay.</b>  10 Q. Yeah. Could you explain how this communication  11 comes about?  12 <b>A. When a -- this is the old system. And what I</b>  13 <b>remember, the old system when they used to put a code --</b>  14 <b>if the borrower called in not for a payment, just</b>  15 <b>inquiring regarding the loan or what was going on, it</b>  16 <b>would code it as a certain code and say contact, no</b>  17 <b>promise to pay, meaning they weren't calling to make a</b>  18 <b>payment.</b>  19 <b>And it was an inbound call; and that's when it</b>  20 <b>states that B1, borrower one, informed that she had two</b>  21 <b>accounts, and she didn't understand what was going on</b>  22 <b>with them. Advised that we only had one loan, took the</b>  23 <b>loan number of second and advised that loan was</b>  24 <b>immediately sold. Advised that we accepted one payment</b>  25 <b>on account.</b></p>
<p style="text-align: right;">Page 106</p> <p>1 <b>what excessive would be.</b>  2 Q. (By Mr. Levine) On that same Page 0013, in  3 October unapplied funds \$5,355. Do you see that?  4 <b>A. I do see that.</b>  5 Q. Can you explain that?  6 <b>A. I can't explain just by looking at that. I can</b>  7 <b>look and see if there's any notes regarding that.</b>  8 Q. Please.  9 <b>A. I'm reading here that there was a bank wire from</b>  10 <b>Cal-Western for 5,355.20, short 386.99, please advise</b>  11 <b>how to post. That's all I see on that date.</b>  12 Q. And then we see all these late charge payments,  13 right?  14 <b>A. What page are you looking at?</b>  15 Q. 0013.  16 <b>A. 0013, I see late charge payments. I see payments</b>  17 <b>towards principal and interest and another principal and</b>  18 <b>interest. And I see the due date rolling, so I do see</b>  19 <b>where payments are being applied towards the loan.</b>  20 Q. But first the late charges?  21 <b>A. Let me see. No, we applied 42.77 to principal,</b>  22 <b>458.88 to interest; and then a late charge was paid.</b>  23 <b>And then it shows where another principal and interest</b>  24 <b>was applied, then a late charge was paid, so --</b>  25 Q. Now, was that Cal-Western payment to you credited</p>	<p style="text-align: right;">Page 108</p> <p>1 <b>Borrower 1, B1, said that she intended for</b>  2 <b>principal payments on this account to go towards another</b>  3 <b>payment on first and second on second. Advised handled</b>  4 <b>by the computer, and no way for person to admin that. I</b>  5 <b>don't know what that means.</b>  6 <b>But B1 upset the whole time. Advised will apply</b>  7 <b>trans -- trans -- and that's all I get there, unless I</b>  8 <b>go over here to the next page -- transferred to October</b>  9 <b>in suspense. B1 said okay. Complained about</b>  10 <b>Homecomings and our policies. Advised that any other</b>  11 <b>payments on account will always go to principal. B1</b>  12 <b>said okay.</b>  13 Q. Does that make any sense to you?  14 <b>A. I -- what I got out of it is that the borrower I</b>  15 <b>guess still thought that both loans were with</b>  16 <b>Homecomings Financial, and she was advised that one of</b>  17 <b>them was sold and that one payment that she had made</b>  18 <b>towards the second was applied, the first payment. But</b>  19 <b>then it was sold I guess to another company.</b>  20 Q. Doesn't it also tell you she had sent money to  21 you for both the first and the second?  22 <b>A. It does say -- let me see. Said that she</b>  23 <b>intended for the principal payment on account to go</b>  24 <b>towards another payment on the first and the second.</b>  25 <b>But I do also see that she was informed that the loan</b></p>

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<p style="text-align: right;">Page 109</p> <p>1 <b>was sold -- immediately sold.</b></p> <p>2 Q. If that's the first she would have heard about</p> <p>3 that, do you think she would have understood that?</p> <p>4 MR. MCLAIN: Objection. Form.</p> <p>5 <b>A. I don't know what she would understand or not</b></p> <p>6 <b>understand.</b></p> <p>7 Q. (By Mr. Levine) Would you have understood it?</p> <p>8 MR. MCLAIN: Objection. Form.</p> <p>9 <b>A. If someone was talking to me on the phone,</b></p> <p>10 <b>working in the mortgage industry I probably would</b></p> <p>11 <b>understand it.</b></p> <p>12 MR. MCLAIN: Can we take a short break.</p> <p>13 MR. LEVINE: Anytime.</p> <p>14 (Recess, 2:56 p.m. to 2:58 p.m.)</p> <p>15 Q. (By Mr. Levine) To your knowledge, Homecomings</p> <p>16 was strictly in the business of servicing this mortgage;</p> <p>17 is that correct?</p> <p>18 <b>A. What I understand is from the note and the deed</b></p> <p>19 <b>of trust, Homecomings is -- states in here the lender is</b></p> <p>20 <b>Homecomings Financial, and we were the subservicer; and</b></p> <p>21 <b>the master servicer was RFC.</b></p> <p>22 Q. How does Homecomings handle the collection in the</p> <p>23 servicing of its loans?</p> <p>24 <b>A. Handle the collection? We have a collections</b></p> <p>25 <b>department that does that. I don't know what their</b></p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Do you know anything about how the decision to go</p> <p>2 into foreclosure is made?</p> <p>3 <b>A. Decision to go into foreclosure, when a borrower</b></p> <p>4 <b>is in default a certain amount of time, at that point it</b></p> <p>5 <b>gets referred over to our foreclosure department who</b></p> <p>6 <b>then refers it out to an attorney to start the</b></p> <p>7 <b>foreclosure proceedings.</b></p> <p>8 Q. Do you know anything about financial incentives</p> <p>9 based on collections or improving the percentage of</p> <p>10 recoveries?</p> <p>11 <b>A. It's against our company policy to discuss any</b></p> <p>12 <b>type of salaries or money that anybody else makes. If I</b></p> <p>13 <b>were to even know anything like that it would be cause</b></p> <p>14 <b>for termination for me, so I do not know anything of</b></p> <p>15 <b>that.</b></p> <p>16 Q. Do you know anything about the negotiations with</p> <p>17 Farmers that resulted in the settlement of the Ike</p> <p>18 claim?</p> <p>19 MR. MCLAIN: Objection. Form.</p> <p>20 <b>A. No, sir, I don't know anything about that.</b></p> <p>21 Q. (By Mr. Levine) And you know nothing about the</p> <p>22 transfer of the loan -- the second, to JP -- to WAMU?</p> <p>23 <b>A. All I know is I was going over this file, I know</b></p> <p>24 <b>that the second is with Washington Mutual.</b></p> <p>25 Q. You don't know how it got there?</p>
<p style="text-align: right;">Page 110</p> <p>1 <b>procedures are.</b></p> <p>2 Q. How do they get involved?</p> <p>3 <b>A. When a loan is in default, my understanding is</b></p> <p>4 <b>there's reports that we have that generate loans that</b></p> <p>5 <b>are in default that go to the collections department;</b></p> <p>6 <b>and at that point letters get sent out that you're --</b></p> <p>7 <b>you know, telling the borrower they're delinquent.</b></p> <p>8 <b>If I'm correct, even some phone calls are made</b></p> <p>9 <b>trying to get ahold of the borrower to see what the</b></p> <p>10 <b>reasoning is, if there's something we can do to work the</b></p> <p>11 <b>delinquency out.</b></p> <p>12 Q. Did that happen in this loan?</p> <p>13 <b>A. If I'm correct, I saw some letters that did go</b></p> <p>14 <b>out to Ms. Melinder regarding her default and if she</b></p> <p>15 <b>wanted to contact our loss mitigation department to do</b></p> <p>16 <b>some sort of work out.</b></p> <p>17 Q. With respect to the loss mitigation department,</p> <p>18 there's -- does Homecomings pay incentives to the</p> <p>19 collectors?</p> <p>20 <b>A. That, I don't know. I don't work in that</b></p> <p>21 <b>department. I don't know what their salaries and their</b></p> <p>22 <b>moneys are in those departments.</b></p> <p>23 Q. You don't know how the compensation works?</p> <p>24 <b>A. Not for that department. I know how mine works.</b></p> <p>25 <b>It's not my responsibility to know anybody else's.</b></p>	<p style="text-align: right;">Page 112</p> <p>1 <b>A. I don't deal with transferring of loans and any</b></p> <p>2 <b>of that. That's not my job.</b></p> <p>3 Q. And looking at the transfer of funds, you saw no</p> <p>4 funds transferred from Homecomings to Washington Mutual?</p> <p>5 <b>A. Did we see where funds were transferred?</b></p> <p>6 Q. Yes.</p> <p>7 <b>A. On -- I don't remember -- recall that. I mean,</b></p> <p>8 <b>is there somewhere --</b></p> <p>9 Q. I don't know. I know that we paid -- meaning my</p> <p>10 client paid you moneys thinking that moneys were going</p> <p>11 to be paid on the first and the second.</p> <p>12 <b>A. Oh, you're talking about the note that was in</b></p> <p>13 <b>there that we read where she said a payment goes to the</b></p> <p>14 <b>first and second and then she was informed that it was</b></p> <p>15 <b>sold? That's all I know.</b></p> <p>16 Q. And you saw some checks, and you don't know</p> <p>17 whether they were put into Homecomings' accounts or</p> <p>18 Washington Mutual's account; you don't know that, right?</p> <p>19 <b>A. I don't know whose accounts they were put in in</b></p> <p>20 <b>some of those, exactly.</b></p> <p>21 Q. And you don't know if anybody from Homecomings</p> <p>22 told Christina Melinder that you are not going to</p> <p>23 foreclose in October, that that was going to be held --</p> <p>24 held up so she could process the insurance claim and pay</p> <p>25 off the loan?</p>

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<p style="text-align: right;">Page 113</p> <p>1 <b>A. There's nothing in our notes stating that anyone</b>  2 <b>discussed any of that with Ms. Melinder.</b>  3 Q. Except for the breach hold notation?  4 <b>A. There's a notation that says breach hold. Like I</b>  5 <b>said, I know what breach means; but I don't know what</b>  6 <b>anything else on that line means.</b>  7 Q. And you don't know who it was that entered that  8 notation?  9 <b>A. No, I do not know who entered that notation.</b>  10 Q. Who is Garth Fennegan?  11 MR. LEVINE: Is that a lawyer in this firm?  12 MR. MCLAIN: Yes.  13 Q. (By Mr. Levine) Does the fact that you received  14 evidence from Farmers of the existence of that flood  15 policy tell you that she paid premiums for the flood  16 policy?  17 <b>A. All I know is that checks were received from the</b>  18 <b>insurance company. I don't know if she paid premiums or</b>  19 <b>who paid premiums. I just know that funds were</b>  20 <b>received.</b>  21 Q. Well, you do know what funds Homecomings paid,  22 right?  23 <b>A. I know that some funds were paid, I mean, because</b>  24 <b>I mentioned that the Es and the Ms mean escrow. I don't</b>  25 <b>know who they were paid to. I did say that.</b></p>	<p style="text-align: right;">Page 115</p> <p>1 <b>the trustee. That whole transferring of trustees and</b>  2 <b>nominees, it's -- I just know very basic, very minimal</b>  3 <b>understanding, limited understanding of what that whole</b>  4 <b>thing is.</b>  5 Q. Do you claim that Christina Melinder owes you any  6 money?  7 MR. MCLAIN: Objection. Form.  8 <b>A. I know that she had a loan with us. I know that</b>  9 <b>they foreclosed on the loan. I don't know if -- how</b>  10 <b>much -- if she does owe anything to Homecomings. I</b>  11 <b>couldn't tell you.</b>  12 Q. (By Mr. Levine) Who would know?  13 <b>A. I can ask in the office somewhere. I couldn't</b>  14 <b>give you a person's name. I can ask around who I can</b>  15 <b>ask. I mean, our office here has over 800 employees.</b>  16 Q. Are you claiming -- are you, Homecomings'  17 corporate representative, claiming that there is a  18 deficiency owed to you?  19 <b>A. I personally cannot answer that. I would have to</b>  20 <b>ask in the office.</b>  21 Q. Have you given any depositions in cases in Texas  22 where it was alleged that Homecomings engaged in  23 predatory lending practices, TILA violations or wrongful  24 foreclosures?  25 MR. MCLAIN: Objection. Form.</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. You don't know that Homecomings ever paid  2 anything to Farmers, do you?  3 <b>A. No, I don't know if they paid Farmers. I mean,</b>  4 <b>like I said, I don't know the coding in here, who they</b>  5 <b>went to. I did state that.</b>  6 Q. You saw Balboa's name in there, right?  7 <b>A. I didn't see Balboa's name in the documents that</b>  8 <b>we have here.</b>  9 Q. Yes, you did.  10 <b>A. In the notes?</b>  11 Q. In the notes.  12 <b>A. At the beginning? I'm going back -- yes, I did</b>  13 <b>see Balboa's name in there, correct.</b>  14 Q. You didn't see Farmers' name in there with  15 respect to anything other than receipt of money, right?  16 MR. MCLAIN: Objection. Form.  17 <b>A. Not in the notes, I don't recall seeing Farmers.</b>  18 Q. (By Mr. Levine) To your knowledge, was the loan  19 ever -- the first loan ever transferred from  20 Homecomings?  21 <b>A. My understanding is the loan is still in our</b>  22 <b>system, because I was able to pull it up when I went</b>  23 <b>through it.</b>  24 Q. It was never transferred to Deutsche Bank?  25 <b>A. According to what I understand, Deutsche Bank is</b></p>	<p style="text-align: right;">Page 116</p> <p>1 <b>A. I've given -- I don't think in Texas. I've --</b>  2 <b>I'm trying to think. I've given depositions where</b>  3 <b>people felt there was wrongful foreclosures done.</b>  4 Q. In Texas?  5 <b>A. I don't think in Texas. In other states, yes,</b>  6 <b>because I travel all around the country. So -- I don't</b>  7 <b>recall Texas -- a deposition in Texas. I would have to</b>  8 <b>go back through a couple of years of all my hearings and</b>  9 <b>trials and depositions and mediations that I've done.</b>  10 Q. Is there one in Brazoria County that you gave  11 testimony in?  12 <b>A. I know which one you're talking about.</b>  13 Q. Which one is that?  14 <b>A. I don't know if I should disclose another</b>  15 <b>individual's name.</b>  16 Q. It's public record.  17 <b>A. Okay. Amelia Clovin.</b>  18 Q. Spell the last name.  19 <b>A. C-l-o-v-i-n. But I was not deposed on that one.</b>  20 Q. You weren't?  21 <b>A. No, sir. I went to a hearing, and we did a</b>  22 <b>mediation. I don't remember being deposed on that.</b>  23 Q. Is that a pending case?  24 <b>A. Yes. There's a hearing scheduled I think for</b>  25 <b>sometime this month back in Angleton, I think it --</b></p>

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<p style="text-align: right;">Page 117</p> <p>1 little town of Angleton. It's south of Houston.  2 Q. No depositions though?  3 <b>A. Not that I recall. Like I said, I've been doing</b>  4 <b>this, and I do a lot of them. I would have to go</b>  5 <b>through my calendar at the office.</b>  6 Q. Is that the only one?  7 <b>A. That I dealt with in Texas?</b>  8 Q. Yes.  9 <b>A. I've done mediations here in Texas.</b>  10 Q. Well, that means there was a case.  11 <b>A. Sometimes mediations doesn't mean that there's --</b>  12 <b>sometimes during foreclosure we'll maybe mediate. I</b>  13 <b>don't know if there were actual cases. Sometimes before</b>  14 <b>a case is filed we might mediate so that it doesn't get</b>  15 <b>to that point, but sometimes it gets to that point and</b>  16 <b>we mediate; and everything else happens from that point</b>  17 <b>forward.</b>  18 Q. And you're not aware of any others in Texas?  19 <b>A. I said I would have to go through my calendar. I</b>  20 <b>do so many things. I'm always on the road. I can go</b>  21 <b>back -- if you want an answer, I can get you an answer</b>  22 <b>on the amounts of cases that I've dealt with in Texas.</b>  23 <b>Because I know I've gone to Rowlett and done a mediation</b>  24 <b>up there. I've done a mediation --</b>  25 Q. Do you have transcripts of your testimony in any</p>	<p style="text-align: right;">Page 119</p> <p>1 <b>A. Yeah, different states, different --</b>  2 Q. Not somebody in your company?  3 <b>A. Oh, not somebody in my company, no. These are</b>  4 <b>our outside counsel.</b>  5 Q. Do you know the basis for your decision --  6 your -- Homecomings' decision to approve this loan? Was  7 it asset based or credit based?  8 <b>A. Again, I don't do originations. I don't know the</b>  9 <b>reasoning why this loan was given to Ms. Melinder.</b>  10 Q. And you know nothing of its underwriting?  11 <b>A. No. I don't deal with underwriting.</b>  12 Q. What is the current status of the property?  13 <b>A. My understanding, it's in REO. It's been boarded</b>  14 <b>up. Last time I heard there was a tree on top of it.</b>  15 Q. Has it been torn down?  16 <b>A. I have no idea if it's been torn down or not.</b>  17 Q. Have you paid any fees for its demolition?  18 <b>A. Like I said, I don't know if it's been torn down</b>  19 <b>or not. I don't have no idea. That's something the REO</b>  20 <b>department handles at this point.</b>  21 Q. Do you have any information on how the Farmers --  22 MR. LEVINE: Well, let me mark this.  23 (Exhibit No. 13 was marked.)  24 Q. (By Mr. Levine) I'll show you Exhibit 13, which  25 is the original Farmers check made payable to Melinder</p>
<p style="text-align: right;">Page 118</p> <p>1 of those cases?  2 <b>A. I have been given copies of some of the stuff</b>  3 <b>that I've done, but most of the stuff is with counsel or</b>  4 <b>with the legal manager that's handling the case in the</b>  5 <b>office. They have whatever settlement agreements are</b>  6 <b>generated and information.</b>  7 Q. I'm not asking about settlement agreements. I'm  8 asking about transcripts of your testimony, hearings  9 under oath.  10 <b>A. I've -- on other ones -- are you talking just</b>  11 <b>Texas? Because again, I'd have to go see how many, if I</b>  12 <b>did --</b>  13 Q. First Texas, and you say you're not aware of any?  14 <b>A. I don't remember doing any other depositions in</b>  15 <b>Texas.</b>  16 Q. Okay. Outside of Texas?  17 <b>A. Yes. I don't have copies of them. I get to</b>  18 <b>review them. Then I have to basically sign off on them;</b>  19 <b>and then I ship it right back to counsel, which then</b>  20 <b>counsel provides a copy to the legal manager who's</b>  21 <b>handling the case at that point.</b>  22 Q. Who is the counsel you're referring to?  23 MR. MCLAIN: Objection. Form.  24 <b>A. Counsels.</b>  25 Q. (By Mr. Levine) Different --</p>	<p style="text-align: right;">Page 120</p> <p>1 and to Homecomings for the loss. Do you know the  2 circumstances by which that check was voided and --  3 MR. LEVINE: Make these Exhibits 14 and 15.  4 (Exhibits Nos. 14 and 15 were marked.)  5 Q. (By Mr. Levine) -- reissued?  6 <b>A. Can you just repeat the question over again? You</b>  7 <b>had too many pauses there.</b>  8 Q. Okay. We had the first check, the first exhibit.  9 <b>A. Uh-huh.</b>  10 Q. Who was it payable to?  11 <b>A. Melinder, Christina and Homecomings Financial and</b>  12 <b>Washington Mutual.</b>  13 Q. Okay. That check was not honored, was not used.  14 It was replaced by the checks that you have as Exhibits  15 14 and 15. Do you have any knowledge of the  16 circumstances whereby those checks issued without Ms.  17 Melinder's name?  18 <b>A. I have no idea.</b>  19 Q. Who would know that?  20 <b>A. I don't know who would know that.</b>  21 Q. Would you take a look at HF30, please.  22 <b>A. Okay.</b>  23 Q. Transaction 20901. We haven't talked about real  24 estate taxes yet.  25 <b>A. Okay.</b></p>

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<p align="right">Page 121</p> <p>1 Q. Can you explain what this is about?</p> <p>2 <b>A. The way I'm -- you have to read those notes, you</b></p> <p>3 <b>kind of go from the bottom up. So it says paid and</b></p> <p>4 <b>converted loan to escrow. Payable -- it says payable to</b></p> <p>5 <b>Galveston County, WCID 12, 2006, WCID base 1,072.87,</b></p> <p>6 <b>penalty of 383.02, total disbursement 1,455.89 payable</b></p> <p>7 <b>to Clear Creek ISD, 2006, ISD base 12/31/06, 586.07 with</b></p> <p>8 <b>a penalty of 219.57 for total disbursement of 805.64</b></p> <p>9 <b>payable to Galveston County, 2006, county base.</b></p> <p>10 Q. What is that? Does that have to do with real</p> <p>11 estate taxes on the property for the year 2006?</p> <p>12 <b>A. What I'm reading, it shows that we received some</b></p> <p>13 <b>sort of bill from these -- from Galveston County and it</b></p> <p>14 <b>looks like also from Clear Creek ISD for 2006 and the</b></p> <p>15 <b>amounts and the amounts that were disbursed.</b></p> <p>16 Q. And yet the closing statement when the loan was</p> <p>17 disbursed included the prorations for the 2006 taxes;</p> <p>18 did it not?</p> <p>19 <b>A. I would need to look at that. If I'm looking at</b></p> <p>20 <b>this correct, it looks like it was prorated from 01/01</b></p> <p>21 <b>of '06 to 07-something of '06.</b></p> <p>22 Q. That was the amount deducted from the seller's</p> <p>23 portion used by the title company to pay the seller's</p> <p>24 share. And then you have the amount deducted from the</p> <p>25 loan proceeds to pay the purchaser's share for 2006</p>	<p align="right">Page 123</p> <p>1 <b>A. The ones from 1 -- 0140 -- I'm sorry, 44, 45 and</b></p> <p>2 <b>46 all have 2000 -- tax year 2005 on them, yes. 2005,</b></p> <p>3 <b>2005, 2005, 2005, yes. And on here, 2005 all the way</b></p> <p>4 <b>down.</b></p> <p>5 Q. And the tax proration was for 2006?</p> <p>6 <b>A. Only through 07 of '06. If you look at Page</b></p> <p>7 <b>0138 --</b></p> <p>8 (Inaudible discussion between Mr. Levine</p> <p>9 and Ms. Melinder.)</p> <p>10 Q. (By Mr. Levine) 138 --</p> <p>11 <b>A. 0138?</b></p> <p>12 Q. Yeah. Shows -- yeah, proration is only through</p> <p>13 July of '06.</p> <p>14 <b>A. '06, correct.</b></p> <p>15 MS. MELINDER: They split it in half, Allan.</p> <p>16 I paid half, sellers paid half.</p> <p>17 MR. LEVINE: Through this date.</p> <p>18 MS. MELINDER: If you add it all up, it</p> <p>19 gives you the amount of the tax.</p> <p>20 MR. LEVINE: Through July.</p> <p>21 MS. MELINDER: No, the whole year.</p> <p>22 MR. LEVINE: I think I'm going to take a</p> <p>23 break now just to go through my stuff.</p> <p>24 MR. MCLAIN: Okay. Let's go off the record.</p> <p>25 (Recess, 3:27 p.m. to 3:35 p.m.)</p>
<p align="right">Page 122</p> <p>1 taxes.</p> <p>2 MR. MCLAIN: Can you show us where that is?</p> <p>3 MR. LEVINE: I'm sorry?</p> <p>4 THE WITNESS: Is that --</p> <p>5 MR. MCLAIN: I mean, where are you referring</p> <p>6 to?</p> <p>7 Q. (By Mr. Levine) I show you -- or ask you to take</p> <p>8 a look at your documents, 0144, 5, 6 and 7.</p> <p>9 <b>A. Oh, I'm looking at the wrong one.</b></p> <p>10 Q. Settlement statement, 138 and 139. Look at these</p> <p>11 tax certificates, 0146 and 0147 as well.</p> <p>12 <b>A. You said 1046?</b></p> <p>13 Q. Yeah. 1 -- I'm sorry. 0146.</p> <p>14 <b>A. 0146, if I'm looking at that correctly it says</b></p> <p>15 <b>tax year 2005 on there.</b></p> <p>16 Q. Okay. Let me see --</p> <p>17 <b>A. And we're talking about 2006, so --</b></p> <p>18 Q. Yeah. I'm reading it 2006. Amount was due --</p> <p>19 the tax year was 2005.</p> <p>20 <b>A. 2005.</b></p> <p>21 Q. That's correct.</p> <p>22 <b>A. Correct.</b></p> <p>23 (Inaudible discussion between Mr. Levine</p> <p>24 and Ms. Melinder.)</p> <p>25 Q. (By Mr. Levine) Those are all for '05?</p>	<p align="right">Page 124</p> <p>1 Q. (By Mr. Levine) We were talking about the item</p> <p>2 of the payment by Homecomings to Galveston for the 2006</p> <p>3 taxes.</p> <p>4 <b>A. Okay.</b></p> <p>5 Q. And you have your transaction note there for</p> <p>6 communication between Homecomings and Galveston,</p> <p>7 correct?</p> <p>8 <b>A. Let me get to that note real quick.</b></p> <p>9 MR. MCLAIN: Sorry, I didn't write it down.</p> <p>10 Do you have that page number off the top of your head?</p> <p>11 <b>A. If I can just look at it real quick. I remember</b></p> <p>12 <b>seeing it.</b></p> <p>13 MR. MCLAIN: It's 30.</p> <p>14 THE WITNESS: 30?</p> <p>15 MR. MCLAIN: Yeah.</p> <p>16 <b>A. Okay. Yes, there it is.</b></p> <p>17 Q. (By Mr. Levine) That entry is the result of a</p> <p>18 contact that occurred between Galveston and Homecomings,</p> <p>19 not between Galv -- not between Homecomings and the</p> <p>20 borrower, right?</p> <p>21 <b>A. Correct. This is a payment that we made to the</b></p> <p>22 <b>county and to Clear Creek ISD it looks like for --</b></p> <p>23 Q. Why would you have done that?</p> <p>24 <b>A. When we receive a bill from any taxes or county</b></p> <p>25 <b>taxes or school taxes and they haven't been paid by the</b></p>

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<p style="text-align: right;">Page 125</p> <p>1 <b>borrower, we will pay those taxes to make sure that</b>  2 <b>those taxes are covered. We don't want some sort of tax</b>  3 <b>lien coming against the property because they weren't</b>  4 <b>paid.</b>  5 Q. And did you ask the borrower about it?  6 <b>A. Per the notes, there was nothing -- I don't see</b>  7 <b>anything within this time frame that there was any</b>  8 <b>communications asking her about it.</b>  9 Q. So you didn't mail her copies of the bills? You  10 didn't call her with respect to it? You just paid the  11 bill; is that correct?  12 <b>A. What I see -- when we get a bill and what I</b>  13 <b>understand is when we get a bill, that means it hasn't</b>  14 <b>been paid; so we will make that payment to cover that --</b>  15 <b>those taxes.</b>  16 Q. So if I sent you a bill, you'd pay me?  17 MR. MCLAIN: Objection. Form.  18 <b>A. If you were the tax individual, the tax -- if you</b>  19 <b>were the county and you were stating that this</b>  20 <b>individual hadn't paid the taxes, it would be paid, yes,</b>  21 <b>to protect the taxes, to cover those taxes that need to</b>  22 <b>be paid.</b>  23 Q. (By Mr. Levine) You wouldn't ask the borrower if  24 indeed she had paid or if she was -- would be protesting  25 the payment?</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. 0048?  2 <b>A. 0048.</b>  3 Q. Transaction 20302?  4 <b>A. On the force placed flood insurance?</b>  5 Q. This is after the escrow for taxes occurred,  6 correct?  7 <b>A. On -- yeah, it was about four months afterwards</b>  8 <b>looks like.</b>  9 Q. And it says proof of coverage to remove escrow,  10 decrease payment. Who is Miller? Who is Garrett?  11 <b>A. I have no idea.</b>  12 Q. Transaction 20302.  13 <b>A. 20302, okay.</b>  14 Q. Could you interpret that?  15 <b>A. Which one? There's three of them -- four of</b>  16 <b>them.</b>  17 Q. Well, I'm looking at action result, CD changed  18 from LMDC to LMDC, D. Baker.  19 <b>A. I cannot translate that for you. I have no idea</b>  20 <b>what the DMC to DMCD change on this is. And I don't</b>  21 <b>know who D. Baker is either.</b>  22 Q. Going up to the top of that 302, change from BRUN  23 to LMDC?  24 <b>A. I'm a little lost on -- on -- oh, there, okay.</b>  25 <b>Where it says action, result, change -- I don't know</b></p>
<p style="text-align: right;">Page 126</p> <p>1 <b>A. I don't see that there was communication. I</b>  2 <b>don't work in that department. That is my understanding</b>  3 <b>is what I'm informing you. If she had any protest</b>  4 <b>regarding that, she could have contacted us and then --</b>  5 Q. How would she have even known about it?  6 <b>A. I'm sure she got a statement herself on taxes. I</b>  7 <b>mean, we get a statement. Borrowers get -- I mean, I</b>  8 <b>get my tax statement even though it's escrowed. You</b>  9 <b>know, borrowers get copies of taxes that are due on</b>  10 <b>their properties.</b>  11 Q. Well, your testimony is that Homecomings never  12 communicated anything with respect to the 2006 taxes  13 with its borrower?  14 <b>A. What I stated was that in the notes I don't see</b>  15 <b>any communication regarding communication with the</b>  16 <b>borrower regarding her taxes.</b>  17 Q. Did you send her a bill for it?  18 <b>A. The notes state that the loan was converted to</b>  19 <b>escrow. That means that it was escrowed onto the</b>  20 <b>account, which means it would have stated on her next</b>  21 <b>payment -- what do you call them, tickets or payment</b>  22 <b>stubs?</b>  23 Q. Coupon?  24 <b>A. -- coupon, that, informing her that her escrow is</b>  25 <b>now this much on her payments.</b></p>	<p style="text-align: right;">Page 128</p> <p>1 <b>what that means either.</b>  2 Q. Going up, 01661. What is an 00011 closing CIT  3 832?  4 <b>A. CITs are kind of like alerts that are put on the</b>  5 <b>loan. We have hundreds of CITs. I don't know what CIT</b>  6 <b>832 is. But what the note states is that that CIT or</b>  7 <b>that little flag or alert that was put on the account</b>  8 <b>was closed, and it looks like some funds were posted.</b>  9 <b>That's all I get out of that note.</b>  10 Q. And the reinstatement refers to what?  11 <b>A. I don't know what that reinstatement refers to.</b>  12 <b>It just says that task type 832 reinstatement S. I</b>  13 <b>guess that's what's there. I wouldn't know what that</b>  14 <b>is.</b>  15 Q. What's a high cost loan?  16 MR. MCLAIN: Objection. Form.  17 <b>A. I don't do originations. I don't know what high</b>  18 <b>cost loans are or any of that.</b>  19 MR. LEVINE: I'll pass the witness.  20 MR. OPITZ: I'll reserve my questions for  21 trial.  22 EXAMINATION  23 BY MR. MCLAIN (3:44 p.m.):  24 Q. All right. Juan, I've got a couple of things I  25 want to go over with you real quick.</p>

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<p style="text-align: right;">Page 129</p> <p>1 <b>A. Okay.</b>  2 Q. Let's look back at Exhibit 1A. Can you just  3 identify that for me, please?  4 <b>A. It is a check from Christina Melinder and Alicia</b>  5 <b>Pendleton to Homecomings Financial for \$1,220.32.</b>  6 Q. Okay. And can you read the notations on here?  7 <b>A. First two months 501.65, 2cd two months, 105.51.</b>  8 Q. Okay. What does it say on the memo line?  9 <b>A. On the "for" line?</b>  10 Q. Yes.  11 <b>A. 70 West 5th street -- is it Kemah?</b>  12 Q. Kemah.  13 <b>A. Kemah.</b>  14 Q. Do you see any loan number on there at all?  15 <b>A. No, I don't see a loan number.</b>  16 Q. Okay. Do you see -- so there's no reference to  17 what loan number these payments go to, is there?  18 <b>A. Not to which loan number, no.</b>  19 Q. Okay. Let's take a look at HF0012, Page 12.  20 <b>A. 12?</b>  21 Q. Yeah.  22 <b>A. Oh, 12, I thought you said 112.</b>  23 Q. Sorry.  24 <b>A. No problem. Okay.</b>  25 Q. Let me look on here.</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. Okay. Is that the same amount as the amount of  2 the check here in Exhibit 1A?  3 <b>A. Yes, it is.</b>  4 Q. Okay. Now, looking at those entries for those  5 amounts on HF0012, can you explain how Homecomings  6 accounted for that check?  7 <b>A. I see that they applied 501.65 to a mortgage</b>  8 <b>payment towards principal and interest.</b>  9 Q. Okay. Hold on one second. Is that the amount of  10 her monthly payment under this loan?  11 <b>A. If I'm correct, yes, it was 501.65.</b>  12 Q. Okay, all right. Continue.  13 <b>A. The second entry went -- looks like they posted</b>  14 <b>it towards principal for 718.67.</b>  15 Q. All right. Now, if you look there, what's the  16 next entry date after that September 5th, '06 entry  17 date?  18 <b>A. 11/13 of '06.</b>  19 Q. All right. What happened there?  20 <b>A. It looks like the 718.67 were reversed.</b>  21 Q. Okay. And what was the next entry that occurred?  22 <b>A. November 13th of '06, they -- looks like they</b>  23 <b>applied a payment of 501.65 to the loan.</b>  24 Q. Okay. And then you -- for that -- the line that  25 says unapplied funds, how much -- what is the amount</p>
<p style="text-align: right;">Page 130</p> <p>1 <b>A. Oh, I'm sorry.</b>  2 Q. Now, is this the first page in the account  3 history?  4 <b>A. Yes, it's Page 1.</b>  5 Q. Okay. And what's the first entry date?  6 <b>A. That's July 10th of '06.</b>  7 Q. Okay. And what's the next entry date after that?  8 <b>A. September 5th of '06.</b>  9 Q. Okay. And how many September 5th of '06 entry  10 dates are there?  11 <b>A. Two.</b>  12 Q. Okay. And what are --  13 MR. LEVINE: September 5th, did you say?  14 MR. MCLAIN: September 5th of '06.  15 Q. (By Mr. McLain) And you see two amounts there  16 for the September 5th, '06 entry dates, correct?  17 <b>A. Yes.</b>  18 Q. And what are those two amounts?  19 <b>A. The first one is for \$501.65, and the second one</b>  20 <b>is for \$718.67.</b>  21 Q. Okay. If you add those two amounts together,  22 what amount do you get?  23 <b>A. \$1,220.33.</b>  24 Q. Is it 32 cents?  25 <b>A. 32, I'm sorry.</b></p>	<p style="text-align: right;">Page 132</p> <p>1 there for the unapplied funds?  2 <b>A. For November 13th of '06, 217.02.</b>  3 Q. Okay. And if you take that 217.02 and add it to  4 the 501.65, what's the amount?  5 <b>A. 718.67.</b>  6 Q. Okay. Is that -- so that's the same amount as  7 the excess for her -- that check, correct, the 718.67  8 after you apply the first payment?  9 <b>A. It looks -- yes. That's -- the 7 -- the 217.02,</b>  10 <b>the difference between that payment we applied, so the</b>  11 <b>718.67, correct.</b>  12 Q. So there's not an October payment showing up  13 here, but is it your understanding then that that  14 718.67, 501.65 of it was applied to the second payment;  15 and the rest of it was put in unapplied funds account?  16 <b>A. By looking at this, it looks like the 718.67</b>  17 <b>were reversed; and then a payment on that same date was</b>  18 <b>made towards the October payment. And then there was a</b>  19 <b>balance of 217.02 remaining on that.</b>  20 Q. Okay. So we've accounted for this check,  21 correct?  22 <b>A. Yes. Now we have, yes.</b>  23 Q. Okay. Is it typical -- and help us understand  24 this. The typical way these loans are serviced, if I  25 was making payments to Homecomings and my loan was</p>

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<p style="text-align: right;">Page 133</p> <p>1 current and I made a payment in excess of my principal 2 amount, what would be done with that excess amount? 3 <b>A. Unless specified by the borrower to apply those</b> 4 <b>to, say, principal, we put it in a suspense account; and</b> 5 <b>it sits there until there's enough for another full</b> 6 <b>payment, and then we apply a payment to the loan.</b> 7 Q. Okay. Does that change the amount of your 8 monthly payments going forward if you pay extra and you 9 don't specify it's applied to principal? 10 <b>A. No, it doesn't make -- change the payment. The</b> 11 <b>payments are 501. When there's a balance it sits in</b> 12 <b>suspense unless otherwise informed by the borrower to</b> 13 <b>apply it to principal or wherever they want it applied.</b> 14 Q. So despite the fact I pay an extra amount, my 15 next month's payment still comes due regardless if I 16 paid more the previous month, correct? 17 <b>A. Correct.</b> 18 Q. Okay. Let's turn to the note, which I think is 19 HF0128. I'm not positive about that, but -- 20 <b>A. Okay.</b> 21 Q. Where on this -- on the first page of the note 22 here does it talk about the borrower's ability to 23 prepay? What paragraph number is that? 24 <b>A. Paragraph 4.</b> 25 Q. Okay. Would you read that for me, please.</p>	<p style="text-align: right;">Page 135</p> <p>1 going to principal? 2 <b>A. No.</b> 3 Q. So despite the fact she paid more than her first 4 month's payment, her second month's payment came due on, 5 what, October 1st of 2006 in the amount of 501.65? 6 <b>A. Correct. Per the note, yes.</b> 7 MR. MCLAIN: Pass the witness. 8 FURTHER EXAMINATION 9 BY MR. LEVINE (3:54 p.m.): 10 Q. Mr. Aguirre, we've got to go back through this 11 one more once. 12 <b>A. All righty.</b> 13 Q. Tell me, what late charges do you see applied in 14 the first months of the loan? 15 <b>A. On the first months of the loan? Looks like</b> 16 <b>there's a late charge on -- I see a late charge on</b> 17 <b>November 30th, '06. It looks like there's a late charge</b> 18 <b>of 25.08.</b> 19 Q. Take a look at October 16th. 20 <b>A. October 16th?</b> 21 MR. MCLAIN: Since we have two different 22 printouts, can you refer him to what page you're 23 referring to? 24 (Inaudible discussion between Mr. Levine 25 and Ms. Melinder.)</p>
<p style="text-align: right;">Page 134</p> <p>1 <b>A. I have the right to make payments of principal</b> 2 <b>and -- at any time before they are due. A payment of</b> 3 <b>principal only is known as a prepayment when I make a</b> 4 <b>payment. I will tell the note holder in writing that I</b> 5 <b>am doing so. I may not designate a payment as a</b> 6 <b>prepayment if I have not made all the monthly payments</b> 7 <b>due under the note.</b> 8 I may make a full payment or partial payment 9 without paying a payment charge. The note holder will 10 use my prepayment to reduce the amount of principal that 11 I owe under the note. However, the note holder may 12 apply my prepayments to the accrued and unpaid interest 13 on the prepayment amount before applying my prepayment 14 to reduce the principal amount on the note. 15 If I make a partial prepayment, there will be no 16 change in the due date or in the amount of my monthly 17 payment unless the note holder agrees in writing to 18 those changes. 19 Q. So according to this paragraph in the note then, 20 your monthly payment doesn't change despite the fact you 21 pay more unless the lender agrees in writing to change 22 that monthly payment? 23 <b>A. That is my understanding per the note, yes.</b> 24 Q. Okay. Now, do you see anywhere on this check 25 where Ms. Melinder indicated that this excess amount was</p>	<p style="text-align: right;">Page 136</p> <p>1 <b>A. All right. This is 0003, okay. October 16th, a</b> 2 <b>late charge, and then October 31st looks like there's</b> 3 <b>been some sort of reversal because it's a negative 25.08</b> 4 <b>on there. And then on November 13th it looks like there</b> 5 <b>was another late charge assessed. And on November 13th,</b> 6 <b>looks like another negative reversal.</b> 7 Q. (By Mr. Levine) How do those figures correlate 8 with the explanation you just gave of the treatment of 9 the funds that you have received in Exhibit -- 1, was 10 it? 11 <b>A. What's your --</b> 12 Q. The checks that you received for the initial 13 payment that called for the first and second payments on 14 the first and the first and second payments on the 15 second, you testified as to how that was treated, 16 different numbers, different dates as applied. 17 <b>A. Oh, where it showed that on September 5th a</b> 18 <b>payment was applied?</b> 19 Q. Yes. 20 <b>A. And then there was 718 applied to principal but</b> 21 <b>then reversed, and then it was applied to a mortgage</b> 22 <b>payment. And then 217.02 was the unapplied funds</b> 23 <b>balance.</b> 24 Q. And where are the late charges computed in the 25 treatment of these funds?</p>

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1 **A. There was no late charge. I'm looking --**  
2 **actually I was looking at this other printout, because**  
3 **this was from our old system. And as I stated, it looks**  
4 **like the funds -- the late charges were reversed here.**  
5 **They were reversed, so --**  
6 Q. And then put back?  
7 **A. And then reversed again. If you keep going down,**  
8 **there's 25.08, then there's the negative 25.08. Then**  
9 **25.08 put in, and then it -- on that same day of**  
10 **November 13th, negative 25.08. So -- and I can look**  
11 **through this one.**  
12 Q. And November 16th, another one?  
13 **A. And then on November 16th, that one was not -- it**  
14 **doesn't look like it was reversed. It looks like one**  
15 **was applied on November 16th, correct.**  
16 Q. If I understand your testimony, you applied all  
17 of the funds that were deposited in your Homecomings  
18 account from Exhibit 1 into Homecomings accounts, and  
19 you never gave any of that money to Washington Mutual?  
20 **A. After reading this, it shows the full amount of**  
21 **\$1,220.32 were applied to this first loan. And it looks**  
22 **like two payments were made, and a balance of 217.02**  
23 **was unapplied funds remaining.**  
24 Q. And late charges assessed November 16th?  
25 **A. On November 16th there was a late charge**

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1 **assessed, correct.**  
2 Q. And you still had the unapplied \$216, right?  
3 **A. What I'm seeing here, yes, there's a balance of**  
4 **216, yes.**  
5 MR. LEVINE: Okay. Pass the witness.  
6 MR. MCLAIN: Save my questions for trial.  
7 (Deposition concluded, 4:01 p.m.)  
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1 CORRIGENDA AND SIGNATURE  
2 WITNESS: JUAN AGUIRRE DATE: AUGUST 6, 2009  
3 PAGE/LINE CORRECTION REASON  
4 \_\_\_\_\_  
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1 I, JUAN AGUIRRE, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.  
4  
5 \_\_\_\_\_  
6 JUAN AGUIRRE  
7  
8 STATE OF \_\_\_\_\_ )  
9 COUNTY OF \_\_\_\_\_ )  
10 BEFORE ME, \_\_\_\_\_, on this day  
11 personally appeared JUAN AGUIRRE, known to me (or proved  
12 to me under oath or through \_\_\_\_\_ )  
13 (description of identity card or other document) to be  
14 the person whose name is subscribed to the foregoing  
15 instrument and acknowledged to me that they executed the  
16 same for the purposes and consideration therein  
17 expressed.  
18 GIVEN UNDER my hand and seal of office this  
19 \_\_\_\_\_ day of \_\_\_\_\_, 2009.  
20  
21  
22 \_\_\_\_\_  
23 NOTARY PUBLIC IN AND FOR  
24 THE STATE OF \_\_\_\_\_  
25 MY COMMISSION EXPIRES ON: \_\_\_\_\_

**JUAN AGUIRRE - August 06, 2009**

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1 NO. 08-CV-1255  
 2 CHRISTINA MELINDER ) IN THE DISTRICT COURT  
 3 VS. ) OF GALVESTON COUNTY, TEXAS  
 4 HOMECOMINGS FINANCIAL )  
 5 LLC, and JPMORGAN CHASE )  
 6 BANK, N.A., as assignee of )  
 7 certain assets and )  
 8 liabilities of WASHINGTON )  
 9 MUTUAL BANK by the Federal )  
 10 Deposit Insurance )  
 11 Corporation ) 10TH JUDICIAL DISTRICT  
 12  
 13 -----  
 14 REPORTER'S CERTIFICATION  
 15 ORAL DEPOSITION OF  
 16 JUAN AGUIRRE  
 17 AUGUST 6, 2009  
 18 -----  
 19  
 20 I, Sherry Patterson, Certified Shorthand Reporter in  
 21 and for the State of Texas, hereby certify to the  
 22 following:  
 23 That the witness, JUAN AGUIRRE, was duly sworn by the  
 24 officer and that the transcript of the oral deposition  
 25 is a true record of the testimony given by the witness;  
 That the deposition transcript was submitted on the  
 \_\_\_\_\_ day of \_\_\_\_\_, 2009, to the witness or to the  
 \_\_\_\_\_ attorney for the witness for examination, signature, and  
 return to me by the \_\_\_\_\_ day of \_\_\_\_\_, 2009;  
 That the amount of time used by each party at the  
 deposition is as follows:  
 Mr. Allan G. Levine - 4:26  
 Mr. Bradley E. McLain - 0:10

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1 Mr. Justin R. Opitz - 0:00  
 2 That pursuant to information given to the deposition  
 3 officer at the time said testimony was taken, the  
 4 following includes counsel for all parties of record:  
 5 Mr. Allan G. Levine, Attorney for Plaintiff  
 6 Mr. Bradley E. McLain, Attorney for Defendant  
 7 Homecomings Financial, LLC  
 8 Mr. Justin R. Opitz, Attorney for Defendant  
 9 Washington Mutual Bank  
 10 I further certify that I am neither counsel for,  
 11 related to, nor employed by any of the parties or  
 12 attorneys in the action in which this proceeding was  
 13 taken, and further that I am not financially or  
 14 otherwise interested in the outcome of the action.  
 15 Further certification requirements pursuant to Rule  
 16 203 of the T.R.C.P. will be certified to after they have  
 17 occurred.  
 18 CERTIFIED to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
 19 2009.  
 20  
 21 -----  
 22 SHERRY PATTERSON  
 23 Texas CSR No. 7607  
 24 Date of Expiration: 12/31/10  
 25 Firm Registration No. 581  
 2929 Carlisle Street, Suite 150  
 Dallas, Texas 75204  
 (214) 954-0352

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1 FURTHER CERTIFICATION UNDER RULE 203 T.R.C.P.  
 2 The original deposition was/was not returned to the  
 3 deposition officer on the \_\_\_\_\_ day of \_\_\_\_\_,  
 4 2009;  
 5 If returned, the attached Corrigenda and Signature  
 6 page contains any changes and the reasons therefor;  
 7 If returned, the original deposition was delivered to  
 8 MR. ALLAN G. LEVINE, Custodial Attorney;  
 9 That \$\_\_\_\_\_ is the deposition officer's charges to  
 10 the Plaintiff for preparing the original deposition  
 11 transcript and any copies of exhibits;  
 12 That the deposition was delivered in accordance with  
 13 Rule 203.3, and that a copy of this certificate was  
 14 served on all parties shown herein and filed with the  
 15 Clerk.  
 16 CERTIFIED to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
 17 2009.  
 18  
 19  
 20 -----  
 21 SHERRY PATTERSON  
 22 Texas CSR No. 7607  
 23 Date of Expiration: 12/31/10  
 24 Firm Registration No. 581  
 25 2929 Carlisle Street, Suite 150  
 Dallas, Texas 75204  
 (214) 954-0352