IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008 CA 037322XXXX MB AW

INDYMAC FEDERAL BANK, FSB,
Plaintiff,

vs.

ISRAEL A. MACHADO; NEENA M. MACHADO; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; TENANT #1, TENANT #2, TENANT #3, and TENANT # 4, the names being fictitious to account for parties in possession,

Defendants.
_____/

THE DEPOSITION OF
ERICA A. JOHNSON-SECK
VOLUME I
Pages 1 - 84

July 9, 2009
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida
12:54 p.m. - 2:59 p.m.

REPORTED BY:
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THEREUPON,
(Thereupon, Defendants' Exhibits No. A through Q were marked for identification.)
THEREUPON,
ERICA A. JOHNSON-SECK,
was called as a witness herein, and after being first duly sworn, testified as follows:
THE WITNESS: Yes.
DIRECT EXAMINATION
BY MR. ICE:
Q. Could you state your full name for the record, please.
A. Erica Antoinette Johnson-Seck.
Q. And what is your business address?
A. 7700 West Parmer Lane, P-A-R-M-E-R, Building D, Austin, Texas, 78729.
Q. And who is your employer?
A. OneWest Bank.
Q. How long have you been employed by OneWest Bank?
A. Since March 19th, 2009.
Q. Prior to that you were employed by IndyMac Federal Bank, FSB?
A. Yes.
Q. And prior to that you were employed by

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IndyMac Bank, FSB?
A. Yes.
Q. Your title with OneWest Bank is what?
A. Vice president, bankruptcy and foreclosure.
Q. That hasn't changed in all the various IndyMac carnantions -- incarnations, I should say?
A. No.
Q. Now, the IndyMac Bank, FSB ceased to exist July 11th of last year, correct?
A. Yes.
Q. That was taken over by the FDIC, correct?
A. Yes.
Q. And that's when IndyMac Federal Bank, Federal Bank, FSB took over?
A. Yes.
Q. And then as of March 19th of this year, OneWest came in and purchased the assets of IndyMac Federal Bank?
A. Yes.
Q. Now, the plaintiff in this case is IndyMac Federal Bank, FSB, correct?
A. Yes.
Q. When I say this case, I know we're scheduled for two depositions. I don't know if you know we're starting with the Machado case.

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A. Okay.
Q. Would you agree with me that the plaintiff in this case, the Machado case, no longer exists?
A. Yes.
Q. Are you also an officer of Mortgage Electronic Registration Systems?
A. No.
Q. You have signing authority to sign on behalf of Mortgage Electronic Registration Systems as a vice president, correct?
A. Yes.
Q. Are you an officer of any other corporation?
A. No.
Q. Do you have signing authority for any other corporation?
A. Yes.
Q. What corporations are those?
A. IndyMac Federal Bank, IndyMac Bank, FSB, FDIC as receiver for IndyMac Bank, FDIC as conservator for IndyMac, Deutsche Bank, Bank of New York, U.S. Bank. And that's all I can think of off the top of my head.
Q. What was the one before U.S. Bank of New York?
A. Bank of New York.
Q. Bank of New York. Is that Bank of New York

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Mellon?
A. I don't know.
Q. When you say you have signing authority, is your authority to sign as an officer of those corporations?
A. Some. Deutsche Bank I have a POA to sign as attorney-in-fact. Others I sign as an officer. The FDIC I sign as attorney-in-fact. IndyMac Bank and IndyMac Federal Bank I now sign as attorney-in-fact. And now I only sign as a vice president for OneWest.
Q. As part of your job, how often do you give depositions?
A. Twice a month.
Q. So you're familiar with the deposition process and what the rules are and what the court reporter is doing and that you're under oath?
A. Yes.
Q. Okay. I don't need to explain all of those things to you?
A. No.
Q. Your job duties include supervision of three direct reports and 52 employees?
A. It did.
Q. Okay. How's that changed?
A. Let's see. Now I have two direct reports and

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47 people with 17 openings.
Q. Openings meaning you're looking for someone to fill those positions?
A. Yes.
Q. Are you in charge of the loss mit department?
A. No.
Q. Who is?
A. Karen Mastro is the senior vice president of loss mit.
Q. Can you spell the last name, please?
A. M-A-S-T-R-O. Oh, I'm sorry. She is the first vice president.
Q. Is she nevertheless in charge of the loss mit department?
A. Yes.
Q. Do you have the authority to settle any foreclosure case?
A. Up to a certain dollar amount of loss, yes.
Q. How is that dollar amount of loss determined?
A. It depends on what the settlement offer looks like. Are you asking me how -- I mean, it depends.
Q. Who sets the dollar amount?
A. The senior executive committee.
Q. Of IndyMac?
A. Of IndyMac, but it was adopted by IndyMac

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Federal and has been adopted by OneWest, yes.
Q. I'll probably be doing that all afternoon. So thank you for correcting me. If OneWest is the correct answer to that, please feel free to let me know.
As part of your job duties, you personally manage the attorney network?
A. Yes.
Q. What other job duties do you have?
A. I manage the bankruptcy and the foreclosure process. I also manage the breach process, the compliance of the breach letters as changes are made by different states and jurisdictions. And I manage a default, a forensic default group, research group that handles everything that's high loss related, compliance related, high level research.
Q. Can you give me an example of what this forensic group default would be researching?
A. We foreclose on a property where the investor won't cover the advances we've made. So one of the auditors would look to see if we got approval to make that advance, if there's some reason we wouldn't be getting approval for it, work with the investor to try to get approval or work to bill it back to our outsource vendor or one of the firms -- now, this is

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one of very many things that they do -- were at fault for a reason why we can't claim for the advances; taxes, let's say.
Q. So when you say high loss, you're referring to the losses that OneWest is experiencing versus the investor that you're doing the work for?
A. That's another facet of what's managed in that group. That example I gave you is not necessarily a high-loss example. High loss is anything with a loss between the total debt and the current value of 250 or more. So those loans, whether it is owned by the bank or owned by an investor, are scrutinized because the losses are large.
Q. And you said that's losses greater than 250,000?
A. Yes.
Q. If a property goes to foreclosure and the ultimate recovery is more than $250,000 of the debt on that property, is that something that the forensic default group would study?
A. Not from that perspective.
Q. In other words, they're not concerned about losses due to property values going down?
A. That's economic, so it's baked into the equation of what they would review, but an economic

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reason, like the property values going down in the state of California, if something statistical, it doesn't mean that they don't review it the same way they would review something that was not statistical, but we do -- we are keeping in mind that property values are decreasing everywhere. The high-loss value used to be $100,000 when I first started working at IndyMac Bank and has increased to 250,000 for that reason.
Q. Would it study a case where a voluntary dismissal was entered and the opposing counsel had to be paid fees?
A. No.
Q. No?
A. No.
Q. Any other job duties that we haven't talked about?
A. No.
Q. One of your job duties is to sign documents?
A. Yes.
Q. Do you still spend an hour a day signing documents?
A. No.
Q. Okay. How much time do you spend a day now?
A. Ten minutes, maybe.

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Q. Is that because you're signing fewer documents?
A. Actually, from the last time we spoke, there are more that have to be signed by the bank. The FDIC did not agree that our outsource vendor, who had power of authority to sign for some docs, that they didn't like that idea so all the docs came in-house. We lost a couple of VPs, which is why I, at that time, was the main signer. Now there are four VPs signing documents or that can sign foreclosure documents, and most do, and my supervisors are now approved signers.
Q. Those are among the four that you mentioned?
A. In addition to.
Q. Okay. So how many total in your department have authority to sign documents?
A. In my department, just specifically in my department for foreclosure- and bankruptcy-related documents, four of us, but my peers are alternative signers to me, and I have three peers that can sign as an alternative to my signature.
Q. And when you say peers, these are vice-presidents --
A. Yes.
Q. -- of other departments?
A. Yes.

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Q. Okay. How is the decision made as to who will sign what documents?
A. There really is not a matrix. Only so many of us can sign Lost Note Affidavits. I happen to be the only one in my department, besides my boss, that can sign a Lost Note Affidavit, so all those would come to me. Other than that, there's not a -- I think they just try to make it even.
Q. Just distribute them evenly?
A. Yes.
Q. Okay. How many documents would you say that you sign on a week on average, in a week on average?
A. I could have given you that number if you had that question in there because I would have brought the report. However, I'm going to guess, today I saw an e-mail that 1,073 docs are in the office for signing. So if we just -- and there's about that a day. So let's say 6,000 a week and I do probably -- let's see. There's eight of us signing documents, so what's the math?
Q. Six thousand divided by eight, that gives me 750.
A. That sounds, that sounds about right.
Q. Okay. That would be a reasonable estimate of how many you sign, you personally sign per week?

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A. Yes.
Q. And that would include Lost Note Affidavits, Affidavits of Debt?
A. Yes.
Q. What other kind of documents would be included in that?
A. Assignments, declarations. I can sign anything related to a bankruptcy or a foreclosure.
Q. How long do you spend executing each document?
A. I have changed my signature considerably. It's just an E now. So not more than 30 seconds.
Q. Is it true that you don't read each document before you sign it?
A. That's true.
Q. The procedure that we talked about last time, and I will go over it again to see if that's still the procedure, before you would sign an Affidavit of Debt --
A. Yes.
Q. -- it goes to your foreclosure specialist who makes sure that the information is correct?
A. The figures are correct, yes.
Q. It is fair to say that you don't personally check the accuracy of anything in the documents that you're signing?
A. Not, it's not clear that I don't check anything. The figures I don't, I do not check. We have a QC process around that used to be a 100 percent of the Affidavits of Debts and any figures for loans and bankruptcy, that have now been reduced to 10 percent because the errors were relatively low. Now I pay, what I pay most attention to is the jurat and what entity I'm signing for, which is why I said 30 seconds instead of two seconds.
Q. Right. Now, when you say 10 percent, that means that they're spot checking 10 percent of the documents to make sure that they're accurate?
A. The outsource or our outsource vendor checks the document completely. I'm QCing my outsource vendor with the 10 percent, yes.
Q. When you say outsource vendor, you're talking about LPS?
A. Yes.
Q. Does LPS put the figures in the affidavit?
A. No.
Q. Who puts the figures in the affidavit?
A. It depends on what relationship we have with our firms. Usually we download the information through process management, the system we use to communicate

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with our firms, and they will populate the document. Or sometimes we get it in blank and a foreclosure or a bankruptcy specialist would populate the document.
Q. And when you say "they" would populate the document, you're talking about the attorneys?
A. Someone in the firm, yes.
Q. Might be a paralegal, correct?
A. Maybe.
Q. Then those are sent, after they're populated or filled out by someone at the law firm, those are sent to LPS?
A. They're sent -- they're uploaded into the system, like an image copy, and then LPS prints it off, and they go through their various checks and balances, and then based on a matrix that we have provided, they will look to see if this is an entity any of us can sign for. They may reject it back to the firm and say Indy -- OneWest Bank can't sign for it, or they will ship the document to our -- because these documents get printed in Minnesota. The documents get shipped to our Austin office. Those folks again look to make sure it's something that an officer of OneWest Bank in Austin can sign for it and, I mean, that's basically how we get it.
Q. When you say "those folks" check again,

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you're talking about your own staff when the documents arrive?
A. No, we have LPS on site.
Q. In Austin?
A. Yes.
Q. Take me through the procedure for getting your actual signature on the documents once they've gone through this quality control process.
A. The documents are delivered to me for signature and I do a quick purview to make sure that I'm not signing for an entity that I cannot sign for. And I sign the document and I hand it to the Notary, who notarizes it, who then hands it back to LPS, who uploads the document so that the firms know it's available and they send an original.
Q. "They" being LPS?
A. LPS, yes.
Q. Are all the documents physically, that you were supposed to sign, are they physically on your desk?
A. Yes.
Q. In your office?
A. Yes.
Q. You don't go somewhere else to sign documents?

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A. No.
Q. When you sign them, there's no one else in your office?
A. Sometimes.
Q. Well, the Notaries are not in your office, correct?
A. They don't sit in my office, no.
Q. And the witnesses who, if you need witnesses on the document, are not sitting in your office?
A. That's right.
Q. So you take your ten minutes and you sign them and then you give them to the supervisor of the Notaries, correct?
A. I supervise the Notaries, so I just give them to a Notary.
Q. You give all, you give the whole group that you just signed to one Notary?
A. Yes.
Q. Last time we talked about that there were a group of Notaries and that you had a supervisor that manages a group of loans and passes them out to the different Notaries. Has that changed?
A. It used to go to -- well, a little bit. It used to go -- and that's with the shift of people leaving and people coming with everything that's been

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going on with the bank. All the documents went to one of my supervisors, who manages the default forensic group, and she would pass it out. That's what I was describing to you.
We don't have to have a process like that any more now because everyone's in a groove now with what the process should be. So we don't have to manage someone physically making sure everyone's notarizing. So now I just walk out of my office and hand them to one of my folks that can notarize that don't report directly to me. They still report up to their supervisor and then those direct reports report to me.
Q. And does that Notary notarize all of those documents, or does she then distribute them to various Notaries?
A. He or she would notarize all the documents I handed them.
Q. Do they still have the requirement of returning them notarized within 24 hours?
A. That got tough. That is tough. That's where we would like to be but we aren't. It takes us about a week for it to go through the process of verifying the information, getting it on my desk, me signing it, getting it to a Notary, and getting uploaded. So we have document delays.

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Q. I'm mostly interested in how long it takes for the Notary to notarize your signature.
A. I can't say categorically because the Notary, that's not the only job they do, so.
Q. In any event, it doesn't have to be the same day?
A. No.
Q. When they notarize it and they put a date that they're notarizing, is it the date that you signed or is it the date that they're notarizing?
A. I don't know.
Q. When you execute a sworn document, do you make any kind of a verbal acknowledgment or oath to anyone?
A. I don't know if I know what you're talking about. What's a sworn document?
Q. Well, an affidavit.
A. Oh. No.
Q. In any event, there's no Notary in the room for you to --
A. Right.
Q. -- take an oath with you, correct?
A. No, there is not.
Q. In fact, the Notaries can't see you sign the documents; is that correct?

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A. Not unless they made it their business to do so.
Q. To peek into your office?
A. Yes.
Q. At what point does the document get to the witnesses for signature?
A. The witnesses are, generally, are LPS on-sites, but if it's a witness, like if it has to be an authorized witness, then it would have my name and one of my peer's names or my name and my boss's name. And I would have a cover sheet on top of a stack that would say Erica and Eric. So after I signed, I would walk them over to my boss for him to sign.
Q. Okay. But you're talking about documents that have dual signatures?
A. Some that require dual signatures. If it's just a witness, it doesn't have to be an authorized signer, then other LPS on-sites will witness.
Q. And do they do that before or after the notarization?
A. I don't know. I want to say after, but I really don't know. I haven't picked apart that process.
Q. Well, it seems logically, when you get the document, there's no witness signatures on there,

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correct?
A. No.
Q. And you said that you take them and you give them to the Notary. You don't give them to the witness to sign, correct?
A. That's right.
Q. So logically it would have to go from the Notary then to the witness?
A. Well, yes. Yes, that's logical. I just really don't know.
Q. Let me jump back a moment to our discussion about the quality control that goes on at LPS. Do you have any familiarity with what they do per the quality control in Minnesota?
A. I've been told what they do, yes.
Q. And what is it that you were told that they do?
A. For each of their clients, they have a matrix of who that client can sign for. And the processors that work in Minnesota, when they print the documents off line, they're checking to see if it's a document that their client can sign for. They're checking to see if that the document is aesthetically correct, looks, you know, looks like it should look. They check to see that the document includes the number of pages

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that it's supposed to include. They check that the document has the appropriate cover letter with the loan number on it and that document does not have the loan number on it for states that have the privacy act. I went through a presentation with what they do, and I want to say there was eight or nine different checkpoints.
Q. Did that presentation, was a report included with that that you could read what they were saying?
A. Yes, and there actually is a report that the LPS folks use in Minnesota for what they reject back to the firms because the documents aren't accurate.
Q. Do you still have a copy of that report?
A. I can find one. You didn't list that in your list of things.
Q. Yeah. I didn't mean do you have it in here, but is it somewhere where you could get it for us if we needed it?
A. Yes.
Q. Okay. Did they say that they check the numbers that are in the affidavits?
A. There's no way they can check the numbers, no.
Q. Do they have access to the computer program that tracks all the debt numbers?

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A. LPS, in itself, has access to its client's system mainframe because they do screen scrapes from the systems to get data. I don't know if the individual person that does docs has that access.
Q. Okay. Do you know who over at LPS would know that information?
A. How high do you want to go? Do you want the president of, Scott Barns, president of default?
Q. Okay. I'd like to talk about the procedure for referring a loan for foreclosure. That's done in your department, correct?
A. Yes.
Q. It's done by a person with the title of foreclosure specialist?
A. Yes.
Q. And foreclosure specialists are folks that report to you?
A. They report to one of the supervisors who reports to me, yes.
Q. To one of your two direct reports?
A. Yes.
Q. The decision is made to send the case to LPS. That's that first step in the procedure, correct?
A. No. The first step is to see if the loan is ripe for referral; and, in conjunction with that, if

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that were following the investor's guidelines for its prescribed plan to refer the loan.
Q. When you say "ripe for referral," what sort of things determine whether it's ripe?
A. Is the loan delinquent. How much contact have we had with the, have we, at OneWest Bank, had with the borrower. Is there anything unresolved. Did the borrower call in and has been expecting a phone call back, in which case we're not going to refer it until the borrower received that phone call. Is there anything unresolved, like a payment plan, some discussion about a payment plan and a payment was to be expected, you know, three days from today, in which case the referral specialist won't refer it because we're expecting a payment.
So they're like, they are really the first gatekeepers to insure that nothing gets referred that shouldn't be, because then we pay attorney fees and we have to take that out, you know, that comes straight from the bottom line.
Q. When you say whether it's delinquent, is there a certain amount of time it has to be delinquent before it qualifies for referral?
A. Yes, depending on the investor. Usually 60 days, but government loans go up to 120 days.

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Q. How much for Deutsche Bank, if Deutsche Bank is the investor?
A. Deutsche Bank, we -- our PSA for Deutsche Bank is that we service their loans as we would our own. So we refer it, we try to refer it no sooner than day 60 of delinquency and no later than day 120, unless there is a reason. There has to be a reason it's fallen out.
Q. Okay. When the decision is made to refer a loan to foreclosure -- well, let me strike that.
Once the decision is made that it's ripe and all of these conditions are met, then it gets sent to LPS?
A. Yes.
Q. And LPS, in return, refers it to an attorney?
A. An attorney that we have advised them that we want the file sent to, yes.
Q. You have your own stable of preferred attorneys?
A. Yes.
Q. In fact, that's part of your job to manage that network?
A. Yes.
Q. At what point in this process does OneWest start looking for the original note?
A. For an original note in a state like Florida,

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as soon as the loan is referred to foreclosure because the foreclosure attorney can't do what they need to do without it.
Q. So on the day that it's referred to LPS, OneWest begins the process of getting a hold of the original note?
A. So what happens is it gets referred, and a state like Florida, a loan in Florida goes to a queue. It's also an LPS employee that's on site. She's on site in Pasadena, Sylvia Carballo. It goes in her queue and she begins ordering the original documents, wherever they may be. And she manages that process of receiving the original documents, preparing the bailee letters, getting then sent to the firms, and sending that all to the firms.
Q. At the point that OneWest is referring the loan to LPS for foreclosure, is any kind of representation made to LPS about whether the original note cannot be found?
A. Say that one more time.
Q. Does OneWest tell LPS, when it's referring the case for foreclosure, anything about the status of the original note?
A. No, it's the other way around. So if Sylvia learns that the original note cannot be found, that the

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doc custodian does not have record of the original note, or it might be that there was a previous foreclosure and the original note never made it back, she is informed and she logs into a database.
Q. Sylvia is that LPS on-site person?
A. Yes.
Q. And it's on site, but not on your site?
A. She's in Pasadena, right.
Q. OneWest has one main custodian, Deutsche Bank?
A. One bigger -- one of our biggest is Deutsche Bank, yes.
Q. That's where most of One --
A. Yes.
Q. -- West documents are housed?
A. Yes.
Q. And would that be the custodian for any documents where Deutsche Bank and National Trust Company is the investor?
A. Not necessarily.
Q. Is it the most probable custodian?
A. Yes.
Q. When Wells Fargo is the investor, there might be a different custodian?
A. Wells Fargo is a good example. It could be

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at Wells Fargo or it could be at Deutsche Bank.
Q. But what you're telling me, I just want to make sure I understand, what you're telling me today is that a loan where Deutsche Bank National Trust Company is the investor, the custodian may be Deutsche Bank or it may be Wells Fargo or someone else?
A. Yes.
Q. It's Sylvia with LPS who determines which custodian to ask for the document?
A. Based on information she receives from OneWest Bank's computer system, yes.
Q. When we talked last time, you said her name was Sylvia Carballo?
A. Yes.
Q. Her supervisor was Luis Tena?
A. Yes.
Q. You had not --
A. I'm sorry.
Q. That's all right. You hadn't had much contact with Luis Tena. I think he had just started then?
A. We are close friends now, yes.
Q. He works in the LPS office, but he's employed by OneWest?
A. No, he works in the LPS office employed by

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LPS, but supervises the on-sites in Pasadena.
Q. And is that in Minnesota or Florida that he does that?
A. He lives in Jacksonville. Excuse me. Florida, yes.
Q. And Sylvia is in the Pasadena office?
A. Yes.
Q. Okay. The way that Sylvia would determine who the custodian was, or what entity is functioning as the custodian, is to look at a computer screen called the MAS1 INV1?
A. That's her beginning point, yes. That process has actually changed.
Q. Okay. What's the process today?
A. What we discussed last time is still the underlying, the foundation, but there's a database now that goes out, and based on the loan numbers in her queue, it pulls the original doc, the original document custodian information and the original investor, to try to help her determine faster where the document might be, and it has eliminated some of the errors that we found in the past.
Q. So is it correct to say that that process has been automated somewhat?
A. Yes.

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Q. That screen -- and I'm saying it right? Is it MAS1? How do you say that?
A. MAS1 INV1.
Q. INV1. Okay. It says who the investor is?
A. Yes.
Q. Sylvia, or whoever the specialist is that's doing this job, then e-mails the custodian to ask for the documents, correct?
A. Yes.
Q. And she e-mails you a copy of the list because you have to approve it before the custodian will release the records?
A. That's changed too.
Q. Okay. What happens now?
A. Now the list has to be approved by treasury. Because of other things outside of the scope of, you know, what's going on here, the doc custodians will now only release them to one person and that person is in treasury.
Q. When you say treasury, you're talking about United States Department of Treasury?
A. No, at OneWest Bank's treasury department.
Q. The what?
A. OneWest Bank's treasury department.
Q. Who is it at the treasury department they

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release it to?
A. Sandy Schneider. Well, it's not that they release it to her. She has to -- she takes over that whole approving it.
Q. Right. I'm sorry. So Sandy Schneider --
A. Schneider.
Q. -- approves the release of the original documents?
A. Yes.
Q. The custodians then will pull it from the fireproof vault that it's required to be kept in?
A. I hope so.
Q. And they package it up and mail it to OneWest?
A. They ship it Fed Ex or UPS to Sylvia's attention, and she sits outside of the office of one of the corporate compliance VPs. There is a room off to the side that has a fireproof cabinet where she stores the documents if she can't get them turned around and out with the bailee letter to the firm via UPS or Fed Ex the same day.
Q. When the custodian ships the original documents, do they ship it in a manner that can be tracked?
A. Yes.

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Q. And do you -- you, OneWest -- keep records of that tracking?
A. Yes.
Q. Do you keep the records even if it's safely made it from the custodian to OneWest?
A. Yes.
Q. How are those kept?
A. In that database I mentioned.
Q. So it's a computer record of it?
A. Yes.
Q. How does that record get into the database?
A. Sylvia entered -- well, Sylvia or one of the three people that work with her enters the information in the database.
Q. You mentioned that she gets -- wants to turn around and get it out with the bailee letter to the attorneys.
A. Yes.
Q. I imagine she also sends it in a way that it can be tracked?
A. Yes.
Q. Is it UPS?
A. UPS.
Q. Okay. The custodians can choose, use the UPS or Fed Ex; is that right?

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A. Yes.
Q. Whatever they feel like using?
A. Yes.
Q. But OneWest uses UPS?
A. Yes.
Q. And you keep the records of that tracking, correct?
A. Yes.
Q. If the note is not received from the custodian in ten days, then you, OneWest, follows up with the custodian?
A. That's been changed.
Q. Okay. What's the new rule?
A. Seven days. There are three checkpoints back to the doc custodian. So that by day 21, after the doc custodian has not returned it, Sylvia is looking for an e-mail message or something in writing that explains, you know, why can't you find it, where's the note, so that we have better tracking, of not only the follow-up attempts, but what the responses were.
Q. Then is there a second follow-up?
A. There's three follow-ups: Seven-day, 14-day, and 21-day.
Q. What happens after the 21 or 21st day?
A. Then we send a request to the firms to

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prepare a Lost Note Affidavit.
Q. Before the first follow-up, or I should say at the time of the first follow-up, does Sylvia notify anyone else that the document hasn't shown up yet?
A. No.
Q. When is the first time that the law firm would know that the original documents hadn't arrived at OneWest?
A. They would receive an issue through process management to prepare a Lost Note Affidavit. That would be their indication.
Q. So that would be on the 21st day?
A. Or thereabouts, yes.
Q. Is it still true that OneWest isn't satisfied if the custodian just says they couldn't find it; in other words, you want them to come back and tell you why they couldn't find it?
A. That's true, yes.
Q. You would hope that they would tell you that somebody checked it out and didn't return it?
A. Yes.
Q. The custodian is required to keep the original documents in a special fireproof locked vault?
A. Yes.
Q. Is it pretty unusual that the original

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document doesn't show up?
A. Unusual for whom or what? I mean, at what circumstances?
Q. Let me rephrase that. Is it unusual for the custodian to report back that they don't have it?
A. It happens. Does that answer your question? It's not that it's unusual. It's not like warning bells and whistles go off because the doc custodian couldn't find one. Because it happens with multiple foreclosure filings, with the bankruptcy filing, where an original document, and with the hand-offs and with a bank like OneWest who has several locations, an attorney might get the original document and send it to Pasadena and it should have come to Austin and it sat on someone's desk and no one opened the mail. I mean just, all the things that, you know, that managing a mail system, that happens with managing a mail system. So we try to make changes in our process to eliminate some of the getting the notes back. That's where we have found we have the issue with a lot of our lost notes, is that there was some legal action previous.
In some cases we found, after going back two and three times to the doc custodian, that the document was there. It was the doc custodian who just, for whatever reason, whoever they used to pull the document, that

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person didn't pull the right document and we ended up getting the document. So I don't think it's unusual.

One of the things, though, from the last time we spoke till now, I noticed a gap in our procedure. I think we were very aggressive at requesting a Lost Note Affidavit at day ten, seven or ten, and with the volumes happening all over the country, we probably should have taken it out to 21 days a while ago because the notes are there. It just was they hadn't found it by the time we already shot off the request to the firms.

Q. Well, when you say found it, it's not that it was lost, you just hadn't got it transferred from --

A. That's right.

Q. -- the custodian to OneWest, correct?

A. Yes.

Q. I'm still trying to get a sense of how often this happens, though. Is it something that happens every day at OneWest or --

A. No. No, but it happened more as we were going through our transition with the feds taking over and losing a significant amount of staff. Now that we are OneWest Bank, I can't even remember the last time I saw a Lost Note Affidavit, honestly.

Q. Over the last year, let's say, what

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percentage of the loans that you've been involved in started out with being unable to find the original note?

A. What do you mean by involved in?

Q. In your department.

A. I don't know.

Q. Do you have any sense? Is it 1 percent, 5 percent, 10 percent?

A. I don't know. There was a time, before we, you know, became less aggressive with our procedure to do the Lost Note Affidavit, assuming that Deutsche Bank couldn't locate it, that I signed Lost Note Affidavits more frequently than I do now. And I think changing the procedure has made a big difference, because, like I said, I can't even remember the last time I signed one. Or it could be now when I get one, I won't sign it until I see that that custodian really can't find it, which is something that I wasn't necessarily doing before unless prompted to do so.

So I don't know, out of 77,000 loans in foreclosure, well, then there was probably 60,000 loans in foreclosure, I did several a week, but now I can't even remember, I can't remember what that number is, and now I do zero.

Q. Well, you're giving me a total of the loans

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in foreclosure. How many in foreclosure, how many new ones in foreclosure each week?

A. Today?

Q. Yes.

A. It depends on the time of the month because of the investor guidelines with referrals, but I can tell you that overall, across the nation, we referred 12,000 loans into foreclosure for the month of June. California is our largest footprint, so 40 percent of those were in California.

Q. Now, some of those you wouldn't know whether they needed a Lost Note Affidavit yet?

A. That's right.

Q. But so far, what your testimony is, is that of the ones that you would know about, none have requested a Lost Note Affidavit?

A. It's been a long while.

Q. More than a month?

A. Yes, more than a month.

Q. And it's certainly safe to say that it would be untrue that a 100 percent of the loans that you have in foreclosure had any lost original note?

A. Right, that would be untrue.

Q. The custodian normally has some sort of checkout procedure that people can't just come in and

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take a note, take out a note without signing for it?

A. Yes.

Q. Is there a certain time frame that a foreclosure suit must be filed after the borrower has defaulted?

A. Are you talking about the first legal action in the foreclosure or what --

Q. The filing, the actual filing of the suit, is there a time frame required?

A. See, okay, I'm dealing with 50 states in my mind, so can you get more specific? Are you talking about the first legal action or --

Q. Let's stick with Florida for right now.

A. Okay.

Q. But really the question is directed to your investors and what their guidelines are and what you're required to do. Are you required to get a case filed by 60 days, 120 days after default --

A. I see what you're saying.

Q. -- or you aren't complying with your job?

A. Yes. That's true, yes.

Q. And is that governed by the PSA?

A. Usually, but it's Fannie and Freddie typically that have very strict guidelines about when a file should be in foreclosure and very specific

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guidelines for exceptions to that.
Q. But when you say in foreclosure, that means the actual filing of the lawsuit?
A. It has to be referred, it just has to be referred to foreclosure.
Q. Are there any that require actual filing of the lawsuit?
A. No.
Q. Does OneWest instruct its counsel to file a lost note count regardless of whether the note is actually lost?
A. No.
Q. It is true that the promissory note in this case was never lost, correct?
A. What are we doing?
Q. This is Machado.
A. No.
Q. No, that's not correct?
A. It was never lost.
Q. Were you aware that on November 21st, 2008, when this case was filed, your attorneys -- by your, I mean, OneWest -- attorneys hired by OneWest --
A. Yes.
Q. -- in the Machado case represented to the Court that the note had been lost?

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A. Yes.
Q. Let's put these out here in the middle. I had marked previous to your deposition some exhibits. I had them premarked so we could hopefully move a little faster.
MR. ICE: Counsel, if you would like to take a look at Exhibit 1 -- or A, I'm sorry.
MR. MANCILLA: Okay.
BY MR. ICE:
Q. You've been handed what's been marked as Exhibit A to your deposition. Do you recognize that as the complaint in the Machado case?
A. Yes.
Q. In Count II, in paragraph 16, do you see in the parens there, parentheses --
A. Yes.
Q. -- it says: Plaintiff does not presently have a copy of the note, but is seeking to obtain a copy, and will file a copy with the Court when obtained?
A. Yes.
Q. That is not an accurate representation, correct?
A. At the time it was. At that time it was.
Q. At the time, on November 21st, 2008, OneWest

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did not have access to the original note?
MR. MANCILLA: If you know. If you don't, say you don't.
THE WITNESS: I'm trying to separate the cases in my mind. Sorry.
MR. MANCILLA: That's all right. Is there anything that you have with you that you could look at?
THE WITNESS: No, that's what I was thinking about.
I don't, I don't know.
BY MR. ICE:
Q. Well, you just finished telling me that the note in this case was never lost at all, correct?
MR. MANCILLA: She said it wasn't lost.
THE WITNESS: It wasn't lost.
MR. MANCILLA: Right.
THE WITNESS: What I --
MR. MANCILLA: Found ultimately.
THE WITNESS: Yeah, because what I know is the original note is with the firm today, but --
BY MR. ICE:
Q. What -- let you finish. I'm sorry.
A. But this was back when our procedure was,

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when it was different. When we would have raised an issue for a lost note at day ten, I believe it was, because we hadn't had a response back from our doc custodian, we were more aggressive then and today we're not. We don't raise that issue, that request until day 21.
Q. Okay. Do you know if November 21st, 2008 was before or after the response from the custodian?
A. We made -- those changes started -- we didn't have the -- the changes weren't confirmed where they were tested and airtight until this year, February of this year. We were still testing the process: What was the right point. Should it be 14 days and then open the issue. Should it be 21 days. Twenty-one days happened to be the magic number. So we were still tweaking the process.
Q. Let's step back a little bit because I'm definitely confused. You say that ultimately the note was not lost in this case, correct?
A. Right.
Q. Did anyone at any time ever believe that the note was lost?
A. I don't know.
MR. MANCILLA: How could she testify as to anyone, what's in anyone's mind? I mean,

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I don't understand.
BY MR. ICE:
Q. Well, you're the vice president of the department of foreclosure at OneWest, correct?
A. Yes. I didn't check to see if an issue was raised because you didn't write that in your paper. So I don't know at this moment if an issue was raised for that.
Q. Are you aware of any communication to the attorney that the note had been lost?
A. No, but -- well, no, I didn't, I didn't look, I didn't look into the loss note aspect for these two files.
Q. When plaintiff says in this complaint that they didn't have a copy, that's not true because a copy is on the computer that can be printed out and attached to the complaint, correct?
A. Generally, yes. Usually, yes.
Q. Take a look at paragraph 18 of the complaint. Do you see the last sentence there, it says: After due and diligent search, plaintiff has been unable to obtain possession of the mortgage note?
A. Yes.
Q. What due and diligent search was performed in this case?

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A. Excuse me. At that time the due and diligent search would have consisted of an e-mail request to the doc custodian, a time period for which to expect a response back. And at the conclusion of that time period, ten days, I believe -- I'm not sure if it's seven or ten days anymore -- that the assumption was then made that the note could not be found.
Q. Okay. So what this is saying, then, is that because it's after the due and diligent search, that means all of that had been completed by the time the attorney filed this on November 21st, 2008?
A. Yes.
Q. And your testimony is, as of that time, the custodian was reporting that it was lost?
A. Can I just look at the time line?
Q. Sure.
A. I'm sorry. I want to check before I say I don't know. This complaint was filed on November --
Q. Twenty-first.
A. -- 21st. Well, they breached this loan on September 30th. I have to do the math. Florida is a 30-day breach state, so we wouldn't have had it in foreclosure anytime sooner then October 30th. And it's possible, as we still have 21 days of play, and we were too aggressive before with raising the issue to say

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that the note couldn't be found.
Q. When was it decided back then, under the rules back then, that the note couldn't be found?
A. Just the initial didn't get a response from Deutsche Bank within seven or ten days.
Q. You had mentioned the ten days in the last one.
A. Is it ten days? Okay. I couldn't remember. Ten days. And as soon as she didn't get response on that tenth day, Sylvia was to raise the issue with the firm. Now, the process management is real time. So if Sylvia raises the issue at 10:00 o'clock, at 11:00 o'clock in Florida -- well, she's in Pasadena at 10:00. So at 12:00 o'clock in Florida they would have been able to see that the note couldn't be found.
Q. Is there a field somewhere in the computer screen where she inputs that there's a problem finding the note?
A. The process then -- that process is true today. The process then was she just raised the issue to the firm. And what the issue says is prepare a Lost Note Affidavit. So the assumption is we need to prepare this because we can't locate it.
Q. So if I'm understanding your testimony, for this count to be in the complaint, someone would have

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asked, Sylvia would have asked for a Lost Note Affidavit?
A. Yes.
Q. Okay. Did anyone ask for a Lost Note Affidavit in this case?
A. I don't know because I didn't look at that. When I was reviewing the file, I was just looking at the Affidavit of Debt.
Q. Where would you go to look for that information?
A. In process management.
Q. That's the computer program?
A. Yes.
Q. What screen would you look at?
A. I would just pull up the loan number. This is LPS's system. I would just pull up the account by the loan number. And within it there's different modules. There's a foreclosure module. And then each action is broken down by section. So there would be an original doc process, and that's where I would go to see what happened during that process, if it was open and closed.
Q. I wasn't sure the court reporter got it. What you said was that this program that you're describing is an LPS system?

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A. Yes.
Q. And is it just a notes field or something in there that someone would type a message, or is it like a yes/no toggle in the computer program?
A. How can I -- I'm not a system person, so you have to excuse the way I'm going to describe this. It's kind of like template-based. So you know that in the state of Florida you're going to go through these particular steps, and within these steps there might be sub steps. So in order to go on to the next step, someone has to address the predecessor step. So that means that your yes/no question is accurate, but there's also the capability to put notes. So if you raise an issue you can put notes. There's a whole notes screen. You can send an e-mail from the system which copies back over to the notes, and it's the e-mail between our foreclosure counsel, the client, which would be us, and the LPS reps.
Q. I think you described the system as it was back then. What's the difference with how it is now?
A. Their system? The LPS's system?
Q. Well, the reporting that the custodian was not able to find the note to the law firm.
A. The new database, that's ours. That's OneWest Bank's system, yes.

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Q. And what's that system called?
A. It's an access database. It's not called anything. It's just an access database that one of my analysts -- it was created by someone else. One of my analysts tweaked it and -- one of the analysts that report directly to me tweaked it so that it's more meaningful and has the controls in place that we needed.
So now what it does, like I said, is it takes a lot of the manual-ness out of it. Sylvia doesn't have to go TO MAS1 INV1. The system looks at our, the mainframe -- okay, I'm not a systems person, so, you know -- where all the data is and it's scrubbing, based on the loan number, to pull in who the doc custodian is and then it creates the list. Now, Sylvia doesn't have to create a spreadsheet. It creates a list that is attached to the e-mail that Sandy approves that then goes to the doc custodian to get the documents back.
And when the documents come in, there is a, like a gun thing that they hook up to the computer, and so from the bar codes from the Fed Ex or UPS or however the doc, they can scan it and it puts the tracking number on the system. And she does the same thing when she gets ready to send the document out. So now we are keeping track of, we have much better controls over the process and better follow-up and follow-through.
Q. What does the attorney see of that to know that there's a lost note?
A. Today, nothing. What we're working on, however, we're just not quite there yet, is an overlay of the back and forths, or whatever communication Sylvia has to the firms, so that they know how many attempts we made and, you know, ultimately where the document is. And it would probably -- the idea is to upload this into process management, this document into process management.
Q. Okay. What I'm understanding from you, then, correct me if I'm wrong, the only time the attorney would know that there's a lost note, either the way the system was then or even the way it is today, is that someone requests a Lost Note Affidavit?
A. Yes.
Q. Look back at paragraph 4 of the complaint. It says: Plaintiff is now the holder of the mortgage note and mortgage and/or is entitled to enforce the mortgage note and mortgage. Do you see that?
A. Yes.
Q. Do you know which of those options it is, whether it's they're the holder and entitled to enforce the mortgage note and mortgage, or they're the holder

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or entitled to enforce the mortgage note and mortgage?
A. I'm going to read this. Okay.
In this case it is, or is entitled to enforce the mortgage note and mortgage.
Q. And why do you say that?
A. Because Deutsche is the investor and we're servicing, the servicing agent.
Q. Right. OneWest is not the holder of the mortgage note and mortgage?
A. Right.
Q. And even if it was, it couldn't be the holder of the mortgage note because the mortgage note was lost?
A. Is that a question?
Q. Would you agree with that?
MR. MANCILLA: No, the mortgage note wasn't ultimately lost. It may have been missing or it may not have been found at the time the complaint was filed, but it was ultimately found.
BY MR. ICE:
Q. My question is as of the time that the attorney penned his name onto this complaint and made these allegations to the Court, made factual representations to the Court, as an officer of the

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court, it wasn't holder of the note because it was lost. Would you agree with that?
A. Well, I don't understand that No. 4 to be that, to mean what you are saying.
Q. Okay. How do you understand it?
A. I understand No. 4 to be the holder, as in who rightfully can enforce the terms, not so much as who physically had the document. That's just my understanding.
Q. I would tend to agree with you on that. I think your attorneys might differ with you and certainly differ with me.
All right. You've kind of anticipated my next series of questions, which was, it's true that OneWest does not own the loan in this case?
A. That's true.
Q. Neither OneWest nor IndyMac Federal Bank, FSB nor IndyMac Bank, FSB, none of those entities own the loan in this case?
A. That's right.
Q. The loan has been securitized?
A. Yes.
Q. The loan is owned by a trust?
A. Yes.
Q. The trust is Deutsche Bank National Trust

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Company?
A. Yes.
Q. I should have said the trustee is Deutsche Bank National Trust Company, correct?
A. Let me just look at that real quick. Yes.
Q. In your computer systems, the owner of the note is called the investor?
A. Yes.
Q. Your computer systems show that Deutsche Bank National Trust Company is the investor?
A. Yes.
Q. Deutsche Bank National Trust Company is the creditor under the Fair Debt Collection Practices Act?
A. I don't, I don't know.
Q. As your attorney mentioned earlier, I don't want you to guess at anything. If you don't know, please just say you don't know. However, if you can estimate something for me and that's relevant, we would like for you to do that.
The trust in this case, the Machado case, is the IndyMac INDX Mortgage Trust 2006-AR4, mortgage pass-through certificates series 2006-AR4.
A. Yes.
Q. The PSA that governs the relationship between OneWest and the trustee is dated March 1st, 2006?

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A. Yes.
Q. Are there any terms of that particular PSA -- and for the benefit of the judge or a jury, whoever may end up reading this, PSA stands for the Pooling and Servicing Agreement?
A. Yes.
Q. Are there any terms of the Pooling and Servicing Agreement that restrict the manner or amount that a loan, that this loan may be modified?
A. I don't know. I don't know because I didn't read the PSA for this loan.
Q. Do you have it with you today?
A. I don't. Did you ask me to bring that?
MR. MANCILLA: No.
BY MR. ICE:
Q. Please, many times I'll ask you if you have something because I see you have things in front of you. It's not intended to suggest that you were supposed to bring anything with you. I'm just, just out of curiosity do you have it?
A. I don't.
Q. Okay.
A. And -- well --
Q. I'm sorry, do you have something to add to your answer?

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A. That question is even outside the realm of my responsibility. Like so in terms of like what's in the PSA agreement, what I'm always looking for is how I can vest and how I can do the action, where the loss mit group is more looking at sections of the PSA that govern what you're speaking to.
Q. Okay. When you go to look at the Pooling and Servicing Agreement -- well, sorry, strike that.
Do you sometimes look at the Pooling and Servicing Agreement as part of your job?
A. Yes.
Q. When you do that, do you pull it up on your system or --
A. Yes.
Q. Do you ever look at what's available on the Internet?
A. No.
Q. Are there any contractual restrictions outside the PSA that you're aware of that restrict the way that this loan may be modified?
A. You mean from a loss mit perspective when you say modify?
Q. Yes.
A. Today, yes.
Q. What contractual provisions are those?

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A. Obama's HAMP program, and also the FDIC loss mit program, but I'm not the subject matter expert on any of those. I just know that those now govern what and how loans can be modified.

Q. Do you have a general idea of what those programs do?

A. Yes.

Q. Can you take me through the Obama one?

A. This is rough, because I've already admitted that's not my area of expertise. So the HAMP program that is administered by Fannie and Freddie, and it's on those two investors that we are required to behave a certain way, but for other investors, other investors can opt in. Of course, the President wants all the loans to be looked at under his plan. And so if there is a -- let me try to get this right.

The DTI, debt to income, has to be 31 percent. I'm probably about to get into trouble because I'm trying to go somewhere that I don't know categorically. And if it is and the borrower has, you know, the reason for a default is catastrophic, or it doesn't have to be catastrophic, but, you know, loss of income, divorce, those such things, the borrower is put on a three-month payment plan. The payment may or may not be a full payment. It might be less than a full payment. If the

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borrower does that for three months, then their loan is modified to a lower interest rate. And there's a range for that lower interest rate, and I don't know exactly what that range is.

And in some cases some of the principal balance is not forgiven, but a separate loan is made out of it that the borrower doesn't have to pay unless they sell their home. I'm foggy on that. I'm foggy.

The FDIC modification plan I know less about, but it is what Sheila Bair came out with when the FDIC took over IndyMac Federal Bank. It has the same general idea. The borrower has to meet this criteria of debt to income, but the outcome is the same, without the principal reduction.

The HAMP program, I'm going back to the other one, also has an area that a borrower doesn't have to be delinquent to qualify for it as long as the borrower can show that they will become delinquent, severely delinquent in the future because they just lost their job yesterday. So they don't have to be delinquent to be approved.

Q. Did I understand you correctly to say that to your understanding the Obama program can involve principal reductions, but the FDIC program does not?

A. Yes. And you said can. You didn't say

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always. Possible.

Q. It's possible.

A. Okay.

Q. I think you told me last time Sheila Bair was very much against principal reduction?

A. And still is, yes.

Q. But she doesn't call the shots at OneWest anymore?

A. She does not.

Q. When it comes to principal reductions, or a principal reduction in this case, ultimately that would fall to Deutsche Bank to decide whether they want to do that, correct?

A. Well, since Deutsche Bank has, and the PSA told us to service this loan diligently as we would our own loans, then they are delegating that authority to OneWest Bank. Today a Deutsche Bank loan would go through an FDIC model. It would not go through a HAMP model because today it's just the Fannies and Freddies that are requiring that it is happening on. That will change. It's just they're not there yet.

Q. So it's safe to say that today OneWest is not doing any modifications that involve principal reductions?

A. I didn't say that.

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Q. Well, that's why I asked.

A. I have seen loans in the HAMP program where borrowers have received -- or they were offered. I don't know if one actually accepted, accepts the plan, but they were offered one that had the principal. And it's not really a principal forgiveness. It's there. It's kind of just the borrower is making a payment, of course, on a less, you know, their payment is much -- is greatly reduced because that piece of the principal balance, that's not necessarily forgiven. It's kind of just moved into the shadows.

Q. It's capitalized into the loan?

A. No, it's not even capitalized into the loan. It's like a second loan. And if the borrower ever pays their loan off, they have to pay back that money, but if they're just going to live in the house forever, they would always be making that lower payment. That's my understanding. That's my loose understanding.

Q. Is that an option for any loan owned by Deutsche Bank?

A. Today, no, but it could change tomorrow. I'm going into unchartered waters again. When Obama came out with this plan, the HAMP plan, it was required that any Fannie and Freddie investor loan, it had to abide by these rules. It has taken time for the other

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investors to be a part of the required.
OneWest Bank wants to help the borrowers stay in their home. Obviously, you know, OneWest Bank is not in the business of taking homes back. But we do have some investors, and I can say this because of some of the mediations I've gone where Deutsche Bank has been the investor, where the loan can't go through the HAMP plan, it has to go through the FDIC plan, which still does not approve principal reductions.
The meeting that I was in yesterday morning is that we are close to getting to a point where all the investors will be included in the HAMP plan, but I don't manage that process and I don't have any say-so. I'm just waiting.
Q. And the loss mit department is a separate department from yours?
A. Yes.
Q. However, you would become aware of a successful loss mit program or plan --
A. Yes.
Q. -- because it's no longer in foreclosure; is that right?
A. Yes.
Q. And you have personally attended mediations at which loan modifications were entered into?

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A. Well, not entered into, but discussed. You know, when we go to a mediation in Florida, the required mediation, the mediator, of course, wants to know what it is we can do. We come with everything that it is we can do. So I know that Deutsche Bank, because of one of these mediations, those loans are still going through the FDIC model.
Q. And the way you described it before, is that something that Deutsche Bank can sort of opt into and say, I want to do the Obama program?
A. Deutsche Bank could, yes, Deutsche Bank could, any investor can do that and we would follow suit. We do have some investors, for example, Lehman, we have a group of their loans that they service that they want us to treat their loans through the HAMP program.
Q. Do you know how OneWest gets paid for the service of servicing the loans for Deutsche Bank?
A. No.
Q. You don't know if it's a percentage of the pool or anything like that?
A. No.
Q. Who would know that at OneWest?
A. Someone in secondary marketing.
Q. Do you have a name?

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A. I want to say Aaron Wade, but I'm not sure if he's there anymore. It's in Pasadena. I'm too busy with all my foreclosures and bankruptcies.
MR. ICE: I don't know if you, I'm about to move to another exhibit, I don't know if anybody wants to take a break?
MR. MANCILLA: I'm all right.
THE WITNESS: I'm okay.
MR. ICE: Keep going.
BY MR. ICE:
Q. Okay. Take a look at Exhibit B to your deposition. Do you recognize that document?
A. Yes.
Q. What is it?
A. It is the Affidavit of Debt in the Machado loan, on the Machado loan.
Q. Is that your signature on the final page? When I say final, there's a service list that's attached to my copy, but the final page of the affidavit?
A. Yes.
Q. And that's the long form signature?
A. Yes.
Q. The old way you signed your name?
A. Yes.

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Q. Do you still use this old form of signature for anything?
A. No.
Q. Okay. Do you know who prepared this affidavit?
A. Someone at the firm.
Q. The law firm?
A. The law firm, yes.
Q. In this case it would be Florida Default?
A. Yes.
Q. How do you know that?
A. Because I'm sitting here with Joe and I know I didn't transfer a file in the middle of a foreclosure.
Q. Okay. And you see down at the bottom the file number --
A. Yes.
Q. -- and the doc ID number?
Are you familiar enough with these documents to recognize that as a Florida Default doc number, a file number?
A. No.
Q. You don't know one way or the other?
A. No.
Q. Do you know why the numbers are treated there

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in big, bold letters with the asterisks?
A. No.
Q. Is that some sort of computer scanning process?
A. I have no idea, because when I get it, it doesn't have that on it. Oh, yes it does. Yes, it does. I'm sorry. Sorry.
Q. In paragraph 1 -- well, before I go into the specifics, again, I know we covered some of this when we were talking about Lost Note Affidavits and things like that, but just to be clear, the process here is the firm, the law firm, perhaps the affidavit, correct?
A. Based on data that was provided to them from our system of record.
Q. Right. And they have access to the computer screens to fill in the numbers in the affidavit?
A. Well, we actually give them copies of computer screens, yes.
Q. So they don't have -- they can't just log on and see the same computer screens?
A. No, they can't.
Q. The numbers that are on the computer screen come from where?
A. Okay. So when the file -- when the attorney is about to do this part in the process, LPS will

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upload certain screen prints that we've already --
(Thereupon, there was a brief pause in the proceedings, beginning 2:26 p.m, resuming at 2:48 p.m.)
(Thereupon, the designated answer was read back by the Reporter.)
THE WITNESS: -- have told them need to go with each packet every time a firm is getting ready to do an Affidavit of Debt. And then it's from those screen prints that the firm can fill in the accurate information, the accurate information.
BY MR. ICE:
Q. So the screen prints aren't physically sent to them, they're just on another system that they can pull up the image?
A. Both. Well, I don't know. Actually, I don't know. You definitely -- they definitely can pull up the image, because when I was preparing for the case, I copied the images and -- but I'm -- that makes the most sense. I'm sure they're not printing the things off the system and mailing them.
Q. Okay. The numbers that are on those screen prints are both calculated numbers and input numbers, correct?

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A. What are we talking about?
Q. Well, I was trying to talk about all of them.
A. The numbers usually come straight off of the screen print, so they're not -- can we take one for an example?
Q. Yes.
A. Which one do you want to take?
Q. Principal.
A. So that's an easy one. That's just coming straight off from the system and there's no calculation involved.
Q. Well, that's not original principal. That's principal still owing, correct?
A. Right.
Q. So at some point the computer has to subtract whatever payments have been made?
A. Oh, see, that's what you meant. Okay. When you log onto the system and look at this loan, just at a general information screen, what you will see is the unpaid principal balance. So the user doesn't have to calculate anything, it's there.
Q. Okay. Someone originally had to put in the amount of the original principal balance, the original principal of the loan, correct?
A. When the loan boarded?

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Q. Yes.
A. Yes.
Q. And by boarded, I assume you meant it was put into the system because it became part of OneWest's servicing responsibility?
A. Yes. And I don't know that someone manually did it. I believe that happens by tape.
Q. How does the information get onto the tape?
A. I believe, this isn't my area of expertise, I believe that if we're purchasing a loan, the information is provided to us by tape from the seller and then uploaded automatically into our computer system.
Q. Okay. The original lender in this case was IndyMac, correct?
A. I think. Let me just make sure. Have to look at my papers. Because one of these we bought from Aegis. Yes, the original is IndyMac, yes.
Q. So in this case, somebody from IndyMac, who's now OneWest, would have at some point input --
A. Yes.
Q. -- the information physically into the computer?
A. Yes, that's true.
Q. And we don't know who that was now?

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A. No.
Q. Then the computer is programmed to, as payments are made and logged into the computer, to deduct principal --
A. Yes.
Q. -- from the original principal?
A. Yes.
Q. Which requires someone else to physically type in when a payment is made, correct?
A. Yes.
Q. Are there any, like if it's an electronic payment or something, does it go automatically into the computer from the bank where the borrower is paying from?
A. I believe so.
Q. The interest rate, again the -- or the interest per diem that's calculated, the number here of $16,088.21, is computed from the original terms of the loan, correct?
A. Well, the interest would be, in that equation, it would be the unpaid principal balance, not the original principal balance.
Q. Right. But at some point, someone had to put in what the rate was going to be?
A. Yes.

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Q. And then the computer does the rest --
A. Yes.
Q. -- and calculates what that represents?
A. Initially, or are we talking about if we were to look at this today?
Q. Right now I'm just asking about how these numbers got onto this affidavit.
A. So we have a workstation within our system of record that generates payoff statements. That's the information that we provide to the firms because we can put in an as-of date, and then the system, yes, based on the interest rates that are already cataloged in the system for prior months and future months will do the calculations.
Q. Because there's a time lag to get these into the affidavit and for you to sign it, the computer system is actually projecting ahead a little bit as to how much interest is going to be due and owing on a date in the future?
A. It depends. Let's see. On this one, the interest is, as of 2/9, 2009, so, yes, it was projected out. And as long as the interest rate is available, meaning it's not an adjustable, a monthly adjustable interest rate, then it will do that accurately. There are times when the system can be off if the interest

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rate is not available, depending on when this request is made, and then what the system is going to do is use the interest rate it has available to calculate.
Q. And that's because the adjustables are sometimes tied to rates that you can't possibly project into the future?
A. Right. Right, once the U.S. Treasury publishes them, then --
Q. Okay. So based on the screen print, someone at the firm puts these numbers in and then they transfer this to LPS or back to OneWest, or, pardon me, I think you said it's uploaded to the computer?
A. It's uploaded back, because the document has to be signed, it now goes through its -- and I don't know what kind of QC process it goes through on the firm side, so just speaking from what I know, the firm would upload it back through LPS's system for the document to get signed.
Q. And it gets printed out in Austin for you to sign?
A. It gets printed in Minnesota --
Q. Okay. You said that.
A. -- and gets shipped to Austin.
Q. And at that point you sign this without any kind of your personal verification that any of these

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numbers are correct?
A. There will be a sticky on it, on this. And what I have is okay to sign by the foreclosure specialist that owns this digit. And based on that, I won't double check the numbers.
Q. Do you ever double check any of the numbers?
A. No, because our QC process that used to be a 100 percent that's now 10 percent, it has really zero level of error because the numbers are really coming right off of -- no one's manually doing this. So I just look for that sticky so that I know that the person I charged with checking it is doing what I'm expecting them to do.
Q. So when the firm prepares this, is this somehow drawing from the bank's computer system to put these numbers in here or is there a paralegal somewhere and typing these in?
A. I don't know. I don't know, which is why I have a specialist double check to make sure. I mean, they're to look at this and say, if I was doing this all from the beginning, would I come up with the same number. That's why we have that double check.
But I don't want to represent that errors aren't made and errors aren't caught and we don't take losses because of errors.

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Q. Do you know whether this was prepared during the 100 percent QC phase or the 10 percent QC phase?
A. This would have -- the 100 percent QC phase.
Q. So someone at OneWest would have checked these numbers before giving them to you?
A. Yes. Let me backtrack, make sure that I was clear. A 100 percent of the time someone has to double check these numbers before I sign.
Q. Right.
A. We have a QC process on top of that, that they were QCing how many times we had to reject the document because the numbers were incorrect. That process has gone from a 100 percent to 10 percent, but a 100 percent of the time a specialist looks at these numbers before I sign.
Q. Okay. But both back then and today, the numbers, OneWest checks every single number every single time?
A. Back then and, yes, today.
Q. However, you're not the one doing that?
A. No. As the vice president of the department, no, I don't. I have employees that report to me that do that.
Q. Right. And do you have any way of knowing who did it on this document?

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A. I don't.
Q. In the first line you say: This affidavit is submitted in support of Plaintiff's Motion for Final Judgment for the purpose of showing: That there is no genuine issue as to any material fact, that plaintiff is entitled to enforce the note and mortgage and plaintiff is entitled to a judgment as a matter of law. Do you see that?
A. Yes.
Q. Is there anywhere in the affidavit where you actually declare that OneWest -- the basis for OneWest being entitled to enforce the note and mortgage?
A. I'm sorry, what now?
Q. In other words, the way I read it, that's sort of an introductory paragraph as to why this is being filed.
A. Okay.
Q. So my question is, do you say anywhere in here as to what the basis is for plaintiff, which is IndyMac Federal Bank, FSB, being entitled to enforce the note and mortgage?
A. Being entitled to enforce. I'm looking for the sentence that says -- if you say No. 1 is an introductory paragraph, then I don't see a statement that categorically refers back to the fact that OneWest

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can enforce the note, but I'm not reading it like an introductory paragraph because it's numbered.
Q. Okay. Yeah, you don't have to adopt my interpretation of it.
A. So, no.
Q. The question is, regardless, viewing the document as a whole, any paragraph, where do you give the basis that the plaintiff is entitled to enforce the note and mortgage?
A. It's not given in this particular affidavit.
Q. Even though it says that that's the reason that this is being given?
A. It's in support of our motion, the motion, yes.
Q. Right. At the time this was signed, IndyMac Bank was the servicer -- IndyMac -- strike that.
Who -- what company was -- the plaintiff is IndyMac Federal Bank, FSB, correct?
A. Yes.
Q. But your affidavit is talking about IndyMac Bank as servicer of the loan. Would that be incorrect, in paragraph 2?
A. I don't know that that -- I think that's an interpretation of whether that is necessarily incorrect because it doesn't -- the plaintiff says IndyMac

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Federal Bank. I signed in the capacity as IndyMac Federal Bank in No. 5, so I think paragraph 2 doesn't go to the validity of the document. I think it's an error. What do you call those? Scribner error.
Q. Right. It should be IndyMac Federal Bank, correct?
A. I would like to have seen it be IndyMac Federal Bank, yes.
Q. Because when we started this whole deposition, you agreed with me that IndyMac Bank ceased to exist in July of last year.
A. Yes, but the plaintiff is IndyMac Federal Bank on the document.
Q. Right. So as of December 15th, 2008, when you signed it, IndyMac Bank wasn't the servicer of the loan. They didn't even exist; is that correct?
A. That's right.
Q. Is that something that your QC people look for?
A. It is my understanding that it is a QC point for Fidelity -- LPS, yes.
Q. Going on in paragraph 2, it says that you are familiar with the books of account. What are books of account?
A. The system records.

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Q. So what you're talking about is the computer programs that we have been discussing?
A. Yes.
Q. It says that you have examined all the books, records, and documents kept at IndyMac Bank, FSB concerning the transactions alleged in the complaint, correct?
A. Yes.
Q. Again, IndyMac Bank didn't have any books, records, or documents at that time, correct?
A. Correct.
Q. Secondly, you didn't examine anything? It was somewhere else?
A. Someone that reports to me, yes.
Q. When you say, all the transactions alleged in the complaint, when you signed this, did you know what transactions were alleged in the complaint?
A. I know when I sign an Affidavit to Amounts Due and Owing what I'm signing, so. And I'm signing that as of the date that this is referring to, that is what the borrower owed.
Q. Did you have a copy of the complaint there to review to know what transactions were being alleged in the complaint?
A. I don't need to have -- no, I didn't.

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Q. Do you know whether or not it had a lost note count in it at the time you signed this?
A. No.
Q. Continuing on in paragraph 2: All of these books, records, and documents are kept by IndyMac Bank, FSB in the regular course of its business as servicer of the loan transaction and are made at or near the time by, and from information transmitted by, persons with personal knowledge of the facts such as your affiant.
What personal knowledge do you have that the books and records and documents that are kept by, should be IndyMac Federal Bank at that time, are in the regular course of its business?
A. Because as a servicer and as a bank, the records are customary. The financial records are customary. Did I get that -- maybe I didn't understand the question. Let me read it.
Yes, as a bank and as a servicer, it is customary to keep financial records and customer logs and copies of documents.
Q. How did you confirm that the records that you were looking at were made at or near the time by, and from information transmitted by, persons with personal knowledge?

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A. My staff, when they check the figures, they're going to do it based on the effective dates shown here as a check and balance that as of that time, as of, in this case, February 9th, 2009, that's what the principal balance was and that's what the interest rate was.
Q. Well, I'm focused on the idea that the entries into this computer system you say are made by, or from information transmitted by, persons with personal knowledge of the facts. You know, we've already talked about some of the entries, some of the data comes from tape. Do you know in this particular case, did this come from tape or somebody who typed it into the computer?
A. I don't know.
Q. You don't know -- because you don't know that, you don't know whether it was made at or near the time that the records came to be, right?
A. I do know that working for a bank we are strongly regulated and that this is the normal course of business, and because of reg A and B and other regs, we wouldn't, as a business, OneWest Bank wouldn't represent that we're doing these things if it weren't happening in the normal course of business.
Q. Well, IndyMac was the original lender,

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correct?
A. Yes.
Q. But it was probably done through some sort of a mortgage broker?
A. Yes.
Q. Do you have any way of knowing today who that was?
A. I looked at that. I don't know if I brought it with me. I can't remember. It wasn't a name that's standing out for me, either. I didn't print it. I don't know for sure.
Q. So sitting here today, you don't know who that was that sat down with my client and signed the loan?
A. Well, let me just double check. I don't know.
Q. I presume there would have been an underwriter at IndyMac who would have approved what the mortgage broker was doing?
A. That's not my area of expertise. I'm not sure what the requirements are when they -- I don't know. I don't know.
Q. Okay. Among the folks I've talked about so far, the mortgage broker, whoever at IndyMac was overseeing that process, did any of them, were any of

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them the people who put the information into the computer?
A. It's possible. Probably not the mortgage broker. My best guess is it would have been an IndyMac Bank employee.
Q. And would that have been based on the documents that were physically signed and physically delivered to IndyMac?
A. That would be my understanding, but, again, that's -- I don't know the front end.
Q. And when that was done, whether it was close to the time of the loan or a long time from the time of the loan, you would have no personal knowledge of, correct?
A. No. I mean, personal knowledge in this case of when, how, or when the documents were uploaded?
Q. Right.
A. No, I don't.
Q. You have no personal knowledge of that?
A. I have no personal knowledge.
Q. In paragraph 4 you say: Plaintiff, IndyMac Federal Bank, FSB, is owed the following sums of money.
A. Um-um. Yes.
Q. The truth is, is that that money was owed to Deutsche Bank, correct?

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A. I guess it depends on how you interpret that word "owed." As the servicing agent for Deutsche Bank, OneWest Bank would be collecting the funds.
Q. For Deutsche Bank?
A. To pass through to Deutsche Bank.
Q. And it's really the same for this foreclosure action, too. IndyMac is the plaintiff, but if you win this lawsuit, it's Deutsche Bank that collects the proceeds or the house at the end of the day, correct?
A. Yes.
Q. Okay. Let's just see what's been marked as Exhibit C to your deposition, ask you if you recognize that document?
A. Yes.
Q. What is it?
A. The responses to the interrogatories.
Q. Do you recognize the signature on that document?
A. That's my new signature.
Q. The new and improved?
MR. MANCILLA: The new and shortened, anyway.
BY MR. ICE:
Q. Are those the only two signatures that you use?

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A. Yes.
Q. And this is the one you use from now on on everything?
A. Yes, except for my checkbook.
Q. And on these interrogatories you signed as attorney-in-fact. Do you see that?
A. Yes.
Q. Who are you the attorney-in-fact for?
A. IndyMac Federal Bank.
Q. Why did you not sign as the vice president of IndyMac Federal Bank?
A. At the time that I signed this -- does that say May 29th, 2009?
Q. I think so.
A. As of March 19th, I could only do attorney-in-fact for IndyMac, IndyMac Federal, and FDIC as receiver, and FDIC as conservator.
Q. But at that time it had already become OneWest, correct?
A. Yes, but since the action -- yes. But since the action, the plaintiff in the action was IndyMac Federal, I can still sign for IndyMac Federal as attorney-in-fact until 2010.
Q. Who granted you the power of attorney to sign for a nonexistent entity?

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A. FDIC.
Q. Do you have that power of attorney with you?
A. I do. I brought it just for you.
Q. Thank you.
A. Hold on. I'm trying to make sure I give you the right one. Hold on. I'm sorry.
THE WITNESS: Are we going to break right now?
MR. MANCILLA: Yes.
MR. ICE: Okay.
(Thereupon, there was a brief pause in the proceedings, beginning at 2:59 p.m., resuming at 3:14 p.m.)
(Continued at Volume II)

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008 CA 037322XXXX MB AW

INDYMAC FEDERAL BANK, FSB,
Plaintiff,

vs.

ISRAEL A. MACHADO; NEENA M. MACHADO; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; TENANT #1, TENANT #2, TENANT #3, and TENANT # 4, the names being fictitious to account for parties in possession,

Defendants.
_____/

THE DEPOSITION OF
ERICA A. JOHNSON-SECK
VOLUME II
Pages 85 - 219

July 9, 2009
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida
3:14 p.m. - 6:45 p.m.

REPORTED BY:
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THEREUPON,

(Witness hands document.)

MR. ICE: Thank you. Could I get a copy of this so we can attach it as an exhibit?

THE WITNESS: That's yours.

BY MR. ICE:

Q. Oh, you brought this for me, just for me?

A. Just for you.

MR. ICE: Let's go ahead and mark this, I guess we're going to have to mark it at the end since these are all premarked, R, Exhibit R.

(Thereupon, Defendants' Exhibit No. R was marked for identification.)

BY MR. ICE:

Q. I'm going to hand you what's been marked as Exhibit R to your deposition and ask you if you can identify that document for me, please.

A. This is the LPOA giving me and a few others signing authority to sign on behalf of the FDIC.

Q. Is it -- well, giving you authority to sign on behalf of, as an attorney-in-fact, for IndyMac Federal Bank?

A. Yes, and IndyMac Bank.

Q. Is it your testimony that that provides you

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the authority to sign a set of interrogatories as the attorney-in-fact for IndyMac Federal Bank, FSB?
A. It is.
Q. Can you point to the provision in there that grants you the power to sign interrogatory answers on behalf of Indymac Federal Bank, FSB?
A. It is my understanding this document allows me to sign for IndyMac Federal Bank and IndyMac Bank. And as it was prepared by the FDIC, I did not critique it.
MR. MANCILLA: She did not know what's in it.
THE WITNESS: But reading paragraph 2 -- I mean paragraph 1 it talks about transferring property. Paragraph 2 is the closest I can come to, for the purposes of your question, to get to my permission to do so.
BY MR. ICE:
Q. Paragraph 1 actually says that it allows you to execute documents that evidence the sale and transfer of any asset pursuant to the Servicing Business Asset Purchase Agreement of OneWest; in other words, the purchase agreement where OneWest bought IndyMac Federal Bank, FSB, correct?

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A. Yes.
Q. And all two says is you can sign any other documents that needed --
MR. MANCILLA: Needed to be signed, including the interrogatories.
BY MR. ICE:
Q. -- to effect the powers granted by the Limited Power of Attorney.
MR. MANCILLA: That's my interpretation of it.
MR. ICE: Well, it's --
MR. MANCILLA: But we didn't write it, so we don't know.
MR. ICE: Right. I guess that's going to have to be a legal question for the judge.
BY MR. ICE:
Q. But your understanding, this is the document you're relying on?
A. Yes.
Q. Let's put this on the bottom, then.
Okay. Well, let's look at No. 1. First question was: What's the name and the address of the person answering these interrogatories. The answer was: The undersigned counsel for the plaintiff, who is James Spanolios, and the undersigned affiant, which would be

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you, correct?
A. Yes.
Q. Other than signing this document, did you participate in the answering of these interrogatories?
A. Not personally, because an interrogatory is something else that I'm going to give to the foreclosure specialist that's handling the case to answer specific questions that are usually about the file itself.
Q. You personally did not provide any of the answers in this document; is that correct?
A. Not me personally.
Q. And is this true, as with the Affidavits of Indebtedness, that you do not read the questions and answers before you sign your name to this document?
A. Not if I have a seal of approval from one of my specialists that they have read each question and answer before I sign it.
Q. Is that a process that's different than your Affidavit of Indebtedness?
A. No.
Q. What is this seal of approval? Is it a sticky or something?
A. Yes, it's a sticky with their okay to sign.
Q. Every document you sign has some sort of

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Post-it that says it's okay to sign?
A. Not every one. There are some substitutions of trustees that no one is -- anything that requires -- anything that has a figure in it or anything that requires a response from the bank.
Q. So the procedure would be, because this is the answers to interrogatories, there would be a sticky saying that someone had reviewed these answers?
A. Yes.
Q. As you're sitting here today, can you say whether or not there was in fact a sticky on this particular document?
A. I can't, no.
Q. Can you say who it was that would have approved this for signature?
A. No.
Q. And that's because you don't know who it was?
A. I could guess, but I don't want to guess.
Q. I don't want you to guess. Is it one of several people?
A. Yes.
Q. In No. 3, your answer -- there's this question and answer: Please identify all the persons and/or entities who are current legal owners of, or who have a legal interest in, the promissory note and

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mortgage. Answer: IndyMac Federal Bank, FSB.
From everything you have said so far in this deposition, that is incorrect, correct?
A. No, it's not incorrect. It's just not the complete answer. It should say Indymac Federal Bank and Deutsche Bank.
Q. Well, IndyMac Federal Bank is not, when this was signed, was not the current legal owner of the promissory note?
A. No.
Q. Deutsche Bank was the current legal owner of the promissory note?
A. Yes.
Q. And still is today?
A. Yes.
Q. IndyMac Bank, as opposed to IndyMac Federal Bank, was the mortgagee at the time this document was filed -- was signed?
A. OneWest Bank?
Q. I'm sorry?
A. What was your question? What did you say? IndyMac Bank was the mortgagee?
Q. Yes.
A. At the time the document was --
Q. Yes.

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A. Indymac Federal Bank.
Q. Right. IndyMac Federal Bank was the mortgagee as of the time that this was executed by virtue of an assignment that you yourself signed, correct?
A. I don't know.
THE WITNESS: Did I sign an assignment?
MR. MANCILLA: I don't know. If you didn't, if you don't remember signing one, say so.
THE WITNESS: I don't think -- I think the action started with IndyMac Federal Bank. So I wouldn't have completed an assignment from IndyMac Bank. I don't know.
BY MR. ICE:
Q. Well, I corrected my question. I want to make sure that we're on the same page here.
My question is that at the time that this was signed, IndyMac Federal Bank, FSB was the mortgagee by virtue of an assignment that you yourself signed?
MR. MANCILLA: She says she doesn't remember.
MR. ICE: Well, I just want to make sure.
THE WITNESS: I don't remember.

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BY MR. ICE:
Q. We will get to that.
A. Okay.
Q. In answer to -- question No. 2. I'm sorry. Please identify all the persons and/or entities who are the current beneficial owners of, or who have a beneficial or equitable interest in the promissory note and mortgage. Answer: Indymac Federal, FSB.
Do you agree with that answer?
A. Yes, but it's an incomplete answer. It should also include Deutsche Bank.
Q. Does IndyMac Federal Bank, FSB have any beneficial or equitable interest in the promissory note and mortgage?
A. Yes, yes.
Q. What is their beneficial and equitable interest?
A. Well, as the servicing agent, IndyMac Federal Bank does get a servicing fee for this loan, although it's owned by Deutsche Bank.
Q. Okay. I want to hand you what's been marked as Exhibit D to your deposition.
A. Okay.
Q. Do you recognize that document?
A. Yes.

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Q. Have you ever seen it before?
A. I don't know.
Q. So when you say you recognize it, you just mean it's a kind of a document that you see all the time?
A. Yes.
MR. MANCILLA: It's not signed, by the way.
MR. ICE: It's not signed because it's not -- there are no answers.
BY MR. ICE:
Q. Those are, I'll represent to you, those are the questions from which we've been reading in Exhibit -- what's the exhibit? C? Exhibit C.
As you can see from that document, there were some definitions and instructions that went with those interrogatories.
Have you ever seen those instructions and definitions before?
A. D is for this case?
Q. IndyMac Federal Bank versus Machado.
A. No.
Q. Do you see the definition in No. 8?
A. Yes.
Q. Definition for these answers to

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interrogatories of a "beneficial or equitable interest" means that ownership interest in the promissory note which entitles the holder of that interest, be it an investor, lender, or other person and/or entity, to keep the proceeds of the promissory note or any recovery in this case, without any requirement to forward such proceeds to another person or entity. It excludes any agent or other entity that is acting on behalf of another person or entity which is ultimately entitled to the proceeds.

Were you aware of that, that when this question was asked, that's what that question meant?

A. No.

Q. Now knowing that that's what the question meant, would you still agree with the answer?

A. I'm just going to read it again.

Q. Okay.

A. For any recovery in this case? My answer stays the same.

Q. It's your testimony that IndyMac Federal Bank would get to keep all the proceeds from this foreclosure action?

A. No. The or any recovery in this case.

Q. Right. What would they get to keep from the recovery in this case?

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A. Well, I mean, I don't know because we're talking -- we haven't gotten to that point, but my understanding of this definition and of that question is that we wouldn't keep the proceeds of the promissory note, but we may be entitled to recovery in this case, whatever that may be, that's outside of the proceeds from the promissory note.

Q. Well, let's talk about that, because when you transferred this case to your attorneys, you specifically instruct them that the title of the property, when judgment is issued eventually at the end of the case where you're successful, the title of the property is put in the name of Deutsche Bank National Trust Company; isn't that right?

A. At the conclusion of the foreclosure?

Q. Yes.

A. Yes.

Q. Yes. So from the very beginning, before this case ever starts, you know, the attorneys know, everyone knows that the entity that's going to get the house at the end of the day is Deutsche Bank National Trust Company, not OneWest, right?

A. The house or the proceeds from the sale of the REO.

Q. The house, title of the house is going into

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the name of Deutsche Bank?

A. That's correct.

Q. In fact, one of the things that's commonly done is there's a transfer of bid after the judgment --

A. Yes.

Q. -- over to the real owner of the note, correct?

A. Yes.

Q. So when the attorney filled this out, drafted this for you, he knew that at the end of the day the proceeds of the note, whether that be money or house, is going to go to Deutsche Bank; isn't that right?

A. Yes.

Q. Let's look at No. 4. If you contend that you are the current legal and/or beneficial owner of the promissory note, please identify with sufficient specificity for a Request for Production, the current accounting statements or other documents that list the promissory note debt as an asset on the books of the company.

Your attorney objected to that question, but the truth of the matter is, the promissory note is not a debt on the assets of the books -- on the asset books of IndyMac Federal Bank, FSB?

A. I don't know that to categorically be true.

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Q. Is the note an asset of Deutsche Bank National Trust Company or of OneWest?

A. But I'm not sure of what the terms of the Pooling and Servicing Agreement is for this loan or even if the loan was reconstituted into another deal or I don't know without researching it that that's true. In theory, that's correct, but I don't know specifically that that's true in this case.

Q. Are you saying that as you're sitting here today, after having signed these interrogatories and signing the Affidavit of Debt, you don't know who really owns this loan?

A. I know who owns this loan.

Q. And that's Deutsche Bank?

A. That's Deutsche Bank.

Q. Not OneWest?

A. Not OneWest.

Q. If it's an asset on the books of any company, it's going to be Deutsche Bank National Trust Company?

MR. MANCILLA: Well, that isn't what she said. She doesn't know, you know, who has it on the books.

THE WITNESS: I don't, yeah, that part I just don't know a 100 percent.

BY MR. ICE:

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Q. No. 5 asks: Please identify the current investor or investors with an interest in the mortgage loan. Again, your attorney objected, but you know the answer to that question, don't you?
A. Yes.
Q. And the answer is?
A. Deutsche Bank.
Q. No. 6 identifies you as one of the persons with full authority to settle, including authority to write down the principal of the promissory note. Do you see that?
A. Yes.
Q. And that's not true, either?
MR. MANCILLA: I'm not sure she understands it.
THE WITNESS: I have full settlement authority. I do.
MR. MANCILLA: And she already testified that there may be a reduction of the principal, sometime there was, but this never got to this stage yet. She's doesn't know.
MR. ICE: Well, my understanding of her testimony is that Deutsche Bank does not allow principal reductions right now.
BY MR. ICE:

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Q. And in any event, you would have to get permission from them to get any kind of a principal write-down; isn't that right?
A. Well, what I said or meant to say is that, you know, from a loss mitigation perspective, this loan would go under the FDIC model, which does not allow principal reductions. But that's a loss mit perspective. When we start talking about a legal perspective, then my settlement authority is different than what it would be for loss mit. I don't manage loss mit, so I don't have the authority to settle from a loss mit perspective, but I do from a legal perspective.
Q. And you have the authority to write down principal of a loan?
A. In effect, because if I make a settlement for less than the total amount due, then in effect I'm doing that.
Q. Have you ever done that?
A. Yes.
Q. What were the circumstances that you did that?
A. I think that might be client, attorney-client privilege in the times that I've had to do that.
MR. MANCILLA: It may be, I mean.

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THE WITNESS: The file would have been litigated. I mean, there are some times when the file is not litigated and I am presented with a settlement offer that I do a net present value calculation and make a determination about whether or not to settle.
BY MR. ICE:
Q. And sometimes that's -- and you have done that on occasion where the amount that you've settled for is less than the full value of the loan?
A. Less than the total debt? Normally it's, normally --
THE WITNESS: If I do this on a litigated case, am I free to share, I mean --
MR. MANCILLA: Well, you know, there's two types of litigated cases, one of which just has the people representing themselves, which I think you could talk about, but the other kind I don't know.
THE WITNESS: If I do a net -- if I am approached with a settlement agreement -- and of course it has to be a bona fide settlement agreement, not something because the borrower just wants something because we all want something -- what I go through is a net

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present value calculation to determine what the losses look like. If I go through the entire process -- of course I'm weighing this for the reason for the settlement. If I go through the entire foreclosure process of how REO -- what REO would have to spend to market the property, and if, at the end of that analysis, it makes better sense to accept the settlement than to take it through the process, I will --
MR. MANCILLA: Can you explain what REO is for the record?
THE WITNESS: Real estate owned. -- so in order to keep from having to take the property back at foreclosure sale.
BY MR. ICE:
Q. How many cases have you done that in?
A. Maybe -- not that often, but then I'm not the only person with settlement authority so I don't see them all.
Q. How many is that?
A. I think, since I've been at IndyMac Bank, I probably -- well, I used to manage the litigation department, so just give me a second to -- probably, in two and a half years, probably one a month. Maybe

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around 20.
Q. Were there confidentiality agreements associated with any of those settlements?
A. Yes.
Q. Are there con --
A. The litigated ones, yes.
Q. Out of those 20, how many would you say had confidentiality agreements?
A. More than not probably 90 percent of them.
Q. Were any of those in Florida?
A. Not that I can recall.
Q. Was the reason for your settlement in any of these cases was because of fraud committed by the bank?
A. I don't think I can, I don't think I can talk to that.
Q. Did any of these cases that you've settled, have there been an allegation of fraud committed by the bank?
A. I don't think I can talk about that, either.
Q. In any of the cases that you settled, had there been an allegation of a TILA violation, T-I-L-A?
A. I feel like all of that, all those questions I can't respond to. Not because I am not -- you know, I always answer your questions. I just, I'm concerned about the attorney-client privilege.

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Q. These litigated cases, the allegations would have been filed in the public records of wherever they were filed, right?
A. If it got that far.
Q. Some of these were not filed?
A. Maybe.
MR. MANCILLA: Well, she's just doing her best, I mean.
THE WITNESS: I mean, if we can just talk in general, the case doesn't have to -- it doesn't have to be that the borrower actually filed something in court for us to take, for us not to take something seriously. So if a borrower has a concern or a claim or whatever, we're going to take it seriously and approach it the same way we would a case that was actually filed in court. So it would not necessarily -- they would not have had to necessarily file an answer to any of our actions or record a lawsuit in court.
BY MR. ICE:
Q. Did any of these cases involve cases where you had already filed foreclosure?
A. Yes.
Q. Getting back to my question, in the cases

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where either you had filed the case or they had filed a case against IndyMac, OneWest, whoever the entity was at the time, those would be in the public record of that state or county or wherever it was filed, correct?
MR. MANCILLA: Well, they may or may not be. She said she --
THE WITNESS: May or may not be.
BY MR. ICE:
Q. Well, my question is intended, it wasn't the most artful, question, I'll admit that, but it was intended to restrict itself just to those cases that had actually been filed. Not the ones that was negotiated outside of court, but there was a pleading filed in the case. Those would be on file and those would be public record, correct?
A. Right.
Q. I'm just trying to understand where the idea that there's an attorney-client privilege comes from?
A. Whatever the terms of the settlement agreement are.
Q. Okay. But that would be a confidentiality agreement as opposed to some sort of an attorney-client communication, right?
A. Well, the settlement agreements -- okay. Sure.

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Q. Because presumably, the settlement terms are known by the other side, correct?
A. Yes. Correct.
MR. MANCILLA: Yeah.
BY MR. ICE:
Q. So I just want to make it clear, because we may have to go to the Court to compel production of documents related to this, so I want to make clear that what you're refusing to answer on, declining to answer, let's put it that way, is confidentiality agreements with respect to those settlements?
A. The ones that I was involved in that may or may not have had the eyeball of our internal counsel, which would then make it attorney-client privileged?
Q. Like I said, I don't know see how the terms of an agreement that are known by the other side can be --
MR. MANCILLA: It would be confidentiality.
THE WITNESS: Okay. Confidentiality.
BY MR. ICE:
Q. So that's what you're going to stand on --
A. That's what I'm going to stand on.
Q. -- today?
MR. ICE: That's what you're going to

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stand on today?
MR. MANCILLA: Maybe.
MR. ICE: He's sitting, I'm not standing. Okay. Then we cleared that up.
BY MR. ICE:
Q. Where were we? I'm having so much fun.
A. We were on six.
Q. Yeah. No. 7: Please identify the trust in which the subject loan has been securitized, as well as the trustee, and the applicable Pooling and Servicing Agreement. Answer: The mortgage is not securitized.
That is flatout wrong, correct?
A. Yes.
Q. No. 8: Please state whether there are any terms of the applicable Pooling and Servicing Agreement that restrict or limit your authority to modify the subject loan. I'm going to skip down to the answer because the answer is: There is no applicable Pooling and Servicing Agreement.
Once again, that answer is flatout wrong?
A. That's right.
Q. So to the extent that someone looked at this for you to determine its accuracy, apparently they failed at getting the correct answers in there?
A. I have a training issue that I will be

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addressing, yes.
Q. But beyond that, the attorney's the one who drafted this for you; isn't that right?
A. Yes.
Q. And he certainly knew that the mortgage was securitized, correct?
MR. MANCILLA: Maybe he didn't; maybe he did. She doesn't know. Maybe he thought he was telling the truth.
BY MR. ICE:
Q. Well, we're going to get into your transmittal letter in a second, but you know that your transmittal letter tells your counsel who owns the loan. And in fact, in this case it says Deutsche Bank National Trust Company, right?
A. Yes.
Q. They knew from day one that the loan was securitized, they knew who the trustee was, they knew who the Pooling and Servicing -- what Pooling and Servicing Agreement governed the trust; isn't that right?
A. Yes.
Q. Let's go to Exhibit D. Oh, I'm sorry, we already covered D.
Let's move on to E. Do you recognize what has

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been marked as Exhibit E to your deposition?
A. Yes.
Q. What is that document?
A. The assignment from MERS to IndyMac Federal Bank.
Q. Does this refresh your recollection that you in fact signed the mortgage from MERS to your own company in this case?
A. Yes.
Q. Okay. And in doing so, you signed it as the vice president, not of OneWest, not of IndyMac, not of IndyMac Federal, but of Mortgage Electronic Registrations Systems, Inc., right?
A. Right.
Q. As you said earlier, you are not an officer of MERS, correct?
A. No.
Q. You have what you call signing authority to sign as an officer of MERS?
A. I have signing authority as an officer of OneWest Bank to sign for MERS.
Q. But when you signed this, you signed vice president, and in doing so, you represented to the world that you were the vice president of Mortgage Electronic Registration Systems, Inc., correct?

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A. When I signed this document, my understanding was that I will sign as the vice president of IndyMac Federal Bank and not, I was not representing myself as a vice president of MERS.
Q. Well, is that your signature there where it says by?
A. Yes.
Q. Okay. And directly above that it says Mortgage Electronic Registration Systems, Inc., for IndyMac Bank, FSB, a Federally Chartered Savings Bank?
A. Yes.
Q. It doesn't say OneWest there or IndyMac or IndyMac Federal, right?
A. No, for IndyMac Bank.
Q. So isn't your representation there that you are the vice president of that company?
A. IndyMac Bank.
Q. It's your testimony that that signature under Mortgage Electronic Registration Systems, Inc. is not a representation that you are the vice president of MERS?
A. That is my understanding when I signed this document.
Q. Okay. Do you have the signing authority for MERS?
A. I do. And that is your copy.

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Q. Thank you.
MR. ICE: Before we get to that, I'm going to have this marked as Exhibit S.
(Thereupon, Defendants' Exhibit No. S was marked for identification.)
BY MR. ICE:
Q. I'm going to hand you what's been marked as Exhibit S to your deposition in the Machado case. Do you recognize that document?
A. Yes.
Q. What is it?
A. It's an Assignment of Mortgage from MERS to IndyMac Federal Bank.
Q. And who signed that?
A. I did.
Q. That's your long signature again?
A. Yes.
Q. Once again, you, under your name, it says vice president, correct?
A. Yes.
Q. And above your name, it says Mortgage Electronic Registration Systems, Inc., as nominee for Aegis Wholesale Corporation, correct?
A. Yes.
Q. So in this particular case, and I'll

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represent to you that this is the assignment in the DeBenedetti case that we will be deposing you on next, the name IndyMac doesn't appear anywhere near your name; isn't that right?
A. That's right.
Q. So again, you're representing to the world that you are the vice president of Mortgage Electronic Registration Systems, correct?
A. My understanding, when I signed this document, is that I'm saying I'm the vice president of IndyMac Federal Bank and -- that's my understanding.
Q. Is this a copy for me?
A. That's for you.
MR. ICE: Mark that as Exhibit T.
(Thereupon, Defendants' Exhibit No. T was marked for identification.)
BY MR. ICE:
Q. Just for identification purposes, can you tell me what has been marked as Exhibit T to your deposition?
A. This is the Corporate Resolution that shows I have signing authority for MERS.
Q. And that Corporate Resolution is made out to Indymac Federal Bank, FSB, not OneWest, correct?
A. I have the OneWest one, but because of the

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dates, I pulled the one for Indymac Federal.
Q. Would you read into the record the first line of that document?
A. What is the first word? There's a hole punch.
MR. MANCILLA: Be it resolved.
THE WITNESS: Be it resolved that the attached list of candidates are employees of IndyMac Federal Bank, FSB, a member of Mortgage Electronic Registration Systems, Inc., MERS, and are hereby appointed as assistant secretaries and vice-presidents of MERS, and, as such, are authorized to.
BY MR. ICE:
Q. Okay. Does that refresh your recollection that what your signing authority does is give you the right to sign as a vice president or assistant secretary of MERS?
A. Yes.
Q. And in fact, that's what you're doing when you signed Exhibit E, you signed as the vice president of MERS?
A. Yes.
Q. I guess while we're on this exhibit, so we don't have to come back to it, its a two-page exhibit.

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On the second page your name is one of the certifying officers, correct?
A. Yes.
Q. Now, given our last exchange, I'm sure you will agree that you are not a vice president of MERS in any sense of the word other than being authorized to sign as one?
A. Yes.
Q. You are not --
A. Sorry.
Q. That's all right. You are not paid by MERS?
A. No.
Q. You have no job duties as a vice president of MERS?
A. No.
Q. You don't attend any board meetings of MERS?
A. No.
Q. You don't attend any meetings at all of MERS?
A. No.
Q. You don't report to the president of MERS?
A. No.
Q. Who is the president of MERS?
A. I have no idea.
Q. You're not involved in any governance of MERS?

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A. No.
Q. The authority you have also says that you can be an assistant secretary, right?
A. Yes.
Q. And yet you don't report to the secretary --
A. No.
Q. -- of MERS?
You don't have any MERS' employees who report to you?
A. No.
Q. You don't have any vote or say in any corporate decisions of MERS?
A. No.
Q. Do you know where the MERS' offices are located?
A. No.
Q. Do you know how many offices they have?
A. No.
Q. Do you know where they're headquartered?
A. No.
Q. I take it then you've never been to their headquarters?
A. No.
Q. Do you know how many employees they have?
A. No.

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Q. But you do know that you have counterparts all over the country signing as MERS' vice-presidents and assistant secretaries?
A. Yes.
Q. Some of them are employees of third-party foreclosure service companies, like LPS?
A. Yes.
Q. Why does MERS appoint you as a vice president or assistant secretary as opposed to a manager or an authorized agent to sign in that capacity?
A. I don't know.
Q. Why does MERS give you any kind of a title?
A. I don't know.
Q. Take me through the procedure for drafting and -- the drafting and execution of this Assignment of Mortgage, which is Exhibit E.
A. It is drafted by our firms, uploaded into process management, downloaded by LPS staff in Minnesota, shipped to Austin where we sign and notarize it, and hand it back to an LPS employee, who then ships it back to Minnesota, who uploads a copy and mails the original to the firm.
Q. Very similar to all the other document, preparation of all the other documents?
A. (Nods head.)

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Q. Was that a yes? You were shaking your head.
A. Yes.
Q. As with the other documents, you personally don't review any of the information that's on here --
A. No.
Q. -- other than to make sure that you are authorized to sign as the person you're signing for?
A. Yes.
Q. Okay. And as with the other documents, you signed these and took them out to be notarized just to a Notary that's outside your office?
A. Yes.
Q. And they will get it notarized as soon as they can. It may or may not be the same day that you executed it?
A. That's true.
Q. In fact, up at the top where it says -- well, sort of in the middle: In witness whereof, assignor has executed and delivered this instrument on 12/2, 2008. Do you see that?
A. 11/20? November 20th?
Q. I think you may be looking at the DeBenedetti one.
A. 12/2, yes.
Q. That's not your handwriting, correct?

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A. No.
Q. That's filled in by the Notary, correct?
A. I don't know who filled that in. The printing looks similar to the Notaries.
Q. So what that means is we don't know whether you actually executed this on December 2nd of 2008?
A. That's right.
Q. In this case, the firm that prepared this document is listed at the bottom. It's Florida Default Law Group?
A. Yes.
Q. Did you take any steps to assure yourself in executing this assignment that the assignee was the correct recipient for this mortgage?
A. No.
Q. Do you know what steps, if any, that your law firm, Florida Default, took to ensure that this was being drafted such that the proper assignee was on the assignment?
A. I don't know.
Q. Do you know if anyone in the chain, whether it's you, your department, your attorneys, LPS, checks the records that MERS keeps as to who should be the proper owner of this mortgage?
A. I don't know, but I believe that with MERS'

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documents, they're a little bit different because the data comes directly from MERS, but I can't be certain.
Q. How is the assignee determined?
A. If it's a MERS' document, it has -- MERS has to recognize the entity. That much I know, because when OneWest acquired IndyMac Federal, paperwork had to be filed with MERS so that when these documents came out it was in the MERS' system that OneWest Bank now acquired the loans.
So I don't really know who -- I don't know how a MERS' document is prepared. I don't know if they go into the MERS' system and pull it out. I don't know that, but I do know that you could look up this loan in MERS and know that on that date that's who it would say who the property was assigned to, the assignee.
Q. You think the MERS' records would show that this was assigned to IndyMac Federal Bank, FSB on December 12th, 2008 (sic)?
A. I think that on that date it would say that IndyMac Federal Bank was the assignee.
Q. Well, we have the records with us and we'll be looking at those later.
A. Okay.
Q. But before we get there, do you know how the assignee for this document is determined?

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A. I don't know, other than to say that for MERS' documents, that the information -- I mean, that's the whole purpose for MERS is to keep track of all of this. So the information, for MERS' documents, the information is in MERS and that's what should be replicated here.
Q. Should the assignee be the owner of the note?
A. The owner on record, yes. Well, I don't know. I think -- I don't know. I don't know enough about MERS to -- I'd be dangerous with that.
Q. That's fair enough. Isn't the answer to my question simply that your attorneys are going to put your name, meaning OneWest, IndyMac, whoever the plaintiff is, in there as the assignee so they can foreclose and take my client's property?
A. I don't know what the attorneys are going to do.
MR. MANCILLA: Good answer.
THE WITNESS: I know that we don't want to take your client's property.
MR. MANCILLA: Just want to get paid for it.
MR. ICE: Let me restate the question.
BY MR. ICE:
Q. Isn't the purpose of this document to make it

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so that IndyMac, in this case, IndyMac Federal Bank, FSB, can foreclose in its own name, regardless of who the real owner of the note is?
A. The purpose of this document is everything you said, but I will add to that, that we cannot foreclose in the name of MERS, which is why we have to assign it out of MERS for the legal action.
Q. Nor can you foreclose in the name of Deutsche Bank National Trust Company; isn't that true?
A. It used to be. Recently, we have been given approval to action in the name of Deutsche Bank and foreclosing in the name of Deutsche Bank, but up until, I can't remember the exact date, early June, we had to action in our name and vest in Deutsche's name.
Q. Do you have that new document with you?
A. No.
Q. So isn't that the purpose of this whole charade is that you can't foreclose in the name of the real owner of the note, you can't foreclose in the name of the real owner of the mortgage, so IndyMac goes in pretending to be the real owner of the note and the mortgage?
MR. MANCILLA: Objection to the form of the question. Go ahead and answer it, if you can.

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THE WITNESS: I don't know how to answer that question.
MR. MANCILLA: Thank you. Ask him to rephrase it or ask it again. Don't try to guess if you don't understand it. I didn't understand it either, anyway.
THE WITNESS: Most investors dictate that we do the foreclosure action in our name and not in the investor's name. It's in the PSA or the regs. That's with Fannie and Freddie. So we go through the action as a servicing agent for the investor.
BY MR. ICE:
Q. And yet you never tell the Court, in any of the documents that we've seen, never told the Court, and even sworn documents, sworn things like these answers to interrogatories, that the real owner of the loan, real owner of the note is Deutsche Bank; isn't that right?
A. In everything that you've shown me, that is correct.
Q. Is there anything you can point to, any of the pleadings in this case anywhere, where IndyMac, now OneWest, has been up front with the Court in saying we're just the servicer, the real owner is Deutsche

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Bank?
A. No.
Q. You don't have the authority to see the information that's in the MERS' tracking records, right?
A. Not me personally.
Q. Did you ask anyone else to take a look at that information for you?
A. In this case?
Q. Yes.
A. No.
Q. In any case?
A. Yes.
Q. You've asked for that in other cases?
A. I've had to, yes. Well, not because it was contested, just because someone had a question about it so I had someone pull information for me.
Q. I want you to look at the date that's now up at the top in the first line where it says, For value received on or before November 14th, 2008.
A. Where am I?
Q. You're on Exhibit E.
A. On the top line. Yes.
Q. For value received.
A. Yes.

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Q. And there's a date there, November 14th, 2008. Who put that date in there?
MR. MANCILLA: If you know.
THE WITNESS: I don't know.
BY MR. ICE:
Q. If you know.
A. I don't know.
Q. Is it most likely the Florida Default Law Group that prepared this?
A. I don't know. That sounds reasonable.
Q. What happened on November 14th, 2008?
A. I don't know.
Q. Do you know how that date was determined?
A. I don't.
Q. Did any physical transfer of the mortgage take place on that date?
A. Physical transfer of the mortgage. The actual mortgage document?
Q. Yes.
A. No.
Q. What value did MERS receive for transferring the mortgage to IndyMac Federal Bank, FSB on November 14th, 2008?
MR. MANCILLA: If you know.
THE WITNESS: I don't know.

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BY MR. ICE:
Q. Are you aware of any transfer in value to MERS for the transfer of this mortgage at any time?
A. No, I don't know.
Q. I'm sure you'll agree with me that this assignment is not an affidavit?
A. Yes.
Q. Okay. You did not swear to its contents?
A. That's true.
Q. The Notary, when she notarizes this, doesn't take an oath from you?
A. No.
Q. All that you're acknowledging is that you're signing this instrument as an officer of MERS?
A. Yes.
Q. Okay. You're not swearing that anything happened on November 14th of 2008?
A. What does swearing mean again?
Q. It's under oath. Not the other kind of swearing which may take place later.
A. I didn't swear.
Q. And you have no personal knowledge that anything happened on November 14th, 2008?
A. That's right.
Q. Isn't it true that this case was filed on

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November 21st, 2008?
A. Hold on. Hold on. When did you say?
Q. November 21st, 2008. If this is of any help, you can now look at this very --
A. Thank you.
Q. -- damp Exhibit A to your deposition.
A. Okay. Yes, that's true.
Q. So the effective date -- scratch that.
So the date that's on the top, where it says, on or before, at the top of the Assignment of Mortgage, the date of November 14th, 2008, is one week before this case was filed?
A. Yes.
Q. And isn't it true that the plaintiff, IndyMac Federal Bank, needed to be the mortgagee on that date in order to bring this action?
A. No.
Q. Isn't it true that the date of November 14th, 2008 was chosen in order to retroactively create a cause of action for plaintiff?
A. No, I don't believe so.
Q. But you have no explanation for that date?
A. I don't have an explanation for that.
Q. Further on down, right after the legal description, do you see where it says that the mortgage

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was transferred together with the note?
A. Yes.
Q. Would you agree that it's not true that the note was transferred on November 14th, 2008?
MR. MANCILLA: If you know.
THE WITNESS: Okay. Where it says may have been amended from time to time; together with the note and indebtedness secured thereby?
MR. ICE: Yes.
MR. MANCILLA: It doesn't really say it's transferred, does it?
THE WITNESS: I don't understand that to mean it was transferred.
BY MR. ICE:
Q. Well, it's a very long run-on sentence, but I think if you read it, it says that MERS assigned, transferred and conveyed to IndyMac Federal Bank all title and interest in a certain mortgage encumbering real property, with this legal address, together with the note and indebtedness secured thereby. Isn't that what it says?
MR. MANCILLA: But it doesn't say it was done simultaneously with the execution of this document.

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MR. ICE: Well, the whole sentence starts, on or before November 14th, 2008.
MR. MANCILLA: Um-um.
BY MR. ICE:
Q. So would you agree with me that the plain English, although it might not be so plain because it's quite a long sentence, but the meaning of it is, is that on or before November 14th, 2008, the note and indebtedness was transferred along with the mortgage?
MR. MANCILLA: I don't know if it means that or not. I didn't write it.
MR. ICE: Okay.
MR. MANCILLA: I think it's ambiguous.
BY MR. ICE:
Q. Well, you're the witness.
A. What he said. No, I don't understand it to mean that. And I thought a little bit about your question about the date on here.
Q. Okay.
A. That may be the date we referred the file to the firm, but I'd have to confirm that, which could be a week or more before the actual complaint was filed.
Q. Okay. Getting back to the question about the note, regardless of when, regardless of your interpretation of when the note was transferred, would

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you agree with me that it's saying the note was transferred?
A. Let me just read it. Yes.
Q. We know that that's false because why?
A. Is this a test?
Q. See if I need to lead you on this one.
A. Because MERS didn't have the note.
Q. Exactly.
MR. MANCILLA: But that doesn't mean it's false because it doesn't say that MERS is transferring anything here in terms of the note.
MR. ICE: Yeah. Well, I don't know how else you could read it, but that's up to the judge, I guess.
BY MR. ICE:
Q. MERS was never the owner or holder of the note, never had anything to transfer with respect to the note, correct?
A. Correct.
Q. Let's move on to Exhibit F. I'm going to hand you now what's been marked as Exhibit F to your deposition, ask you if you recognize that document?
A. No.
Q. Okay. Have you ever seen it before?

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A. No.
Q. But you've seen documents like this?
A. Yes.
Q. Who's Roger Stotts?
A. One of my peers. He is --
Q. I'm sorry. Go ahead.
A. He is the CAO, chief administration officer.
Q. He's also a vice president of IndyMac Federal Bank, FSB?
A. At the time that he signed, yes, he's vice president of IndyMac Federal Bank.
Q. Do you see that these interrogatory questions are aimed at getting additional information about the Assignment of Mortgage that you signed?
A. Yes.
Q. Okay. Do you know why Roger Stotts ended up signing this instead of you?
A. Well, if I go back to the system that LPS has to pass all the documents for signature, it most likely just ended up in a stack of items to sign.
Q. So there's no effort to try to, since these have something to do with what you have signed, to get you to sign this?
A. That would make sense, but I don't believe that the LPS, since my name isn't on the document, I

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don't believe that LPS would have made the connection. To them, it's just a document. It's just a document that they're trying to prep for signature.

Q. I'd like you to take a look at Exhibit G to your deposition, ask you if you have ever seen those before?

A. They look like the other document we saw earlier.

Q. I will represent to you that those are the interrogatories that Exhibit -- which was, the last one was -- Exhibit F were intended to respond to.

A. Okay.

Q. I give you that because if you look at question 3 on Exhibit F and question 3 on Exhibit G, you'll see there's a slight difference.

MR. MANCILLA: She said she never saw this before so she can't answer that.

BY MR. ICE:

Q. Do you see what the difference is?

A. Yes.

Q. The date has been left out of the answer, right?

A. Yes.

Q. And the date that was left out is the November 14th of 2008, which is the date on the

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assignment that we've been talking about, correct?

A. Yes.

Q. So this was my effort to get some information about the assignment that we're getting today but didn't get with those answers to interrogatories.

I'd like for you to read the -- well, I'll read the question and answer. Question was: Please describe the reason the date, should say November 14th, 2008, appears in the Assignment of Mortgage attached to the Amended Complaint in this case, including but not limited to, all events that occurred on that date with respect to the transfer of the subject promissory note and mortgage. Some of the same questions I asked you earlier.

Answer: Plaintiff is without knowledge as to this interrogatory as the Assignment of Mortgage was not executed by the plaintiff.

Are you comfortable with that answer?

A. No.

Q. Because the Assignment of Mortgage was executed by you?

A. Right.

Q. And you are the vice president of the plaintiff?

A. Yes.

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Q. The answer that was just read was prepared by Florida Default Law Group, correct?

A. I don't know. I'm assuming so. I don't know.

Q. Well, it has their very recognizable file number and doc ID number at the bottom, correct?

A. Oh, okay. So what was your question again?

Q. Well, this document, it's called Plaintiff's Response to Defendants' Request for Interrogatories, it's marked as Exhibit F to your deposition, has at the bottom the traditional file number and doc ID number of Florida Default.

A. Yes.

Q. And if you look on the last page, it was served on me -- well, actually it doesn't say it's served on anyone. It just says it was furnished by mail to blank dated May 12th, 2009 and signed by James Spanolios, correct?

A. Yes.

Q. And James Spanolios is with Florida Default Law Group?

A. Correct.

Q. So it's also true that Florida Default Law Group not only prepared the assignment that you signed, which is Exhibit E to this deposition, they also

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prepared the responses to the interrogatories, which is Exhibit F to your deposition?

A. Yes.

Q. So certainly they knew or should have known that you signed the Assignment of Mortgage?

A. Yes.

Q. Let's take a look at Exhibit H. Have you ever seen that document before?

A. No.

Q. Have you seen documents like it?

A. Yes.

Q. Do you recognize it to be a pleading or a response to discovery filed by your attorney in this case?

A. Yes.

Q. And that by your attorneys, I'm referring to Florida Default Law Group?

A. Yes.

Q. Have you ever seen documents like those that are attached to this --

A. Yes, I have.

Q. -- response?

A. Yes.

Q. And what are those?

A. It shows the transfer of a file from MERS.

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Q. When you say a file, you mean a mortgage loan?
A. Yes.
Q. Have you seen these particular documents before?
A. No.
Q. I want to take you back to the first page about midway through the No. 2 response.
A. Okay.
Q. Do you see the line that says: A "transfers of beneficial ownership" means that the promissory note was endorsed and delivered by one member to another?
A. Yes.
Q. Now, that's something that was executed by your attorneys on behalf of IndyMac Federal Bank, correct?
A. Yes.
Q. Do you agree with that statement?
A. Theoretically.
Q. It's not a trick question. I want you to agree with it. Do you know what it means when they say one member, what does a member mean?
A. My understanding of that is could be anybody, fill in the blank. So because we're talking about MERS, I'm thinking one entity, servicing entity or

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lender to another.
Q. Do you have an understanding that MERS is a membership organization?
A. Yes, yes.
Q. And the members are --
A. Yes.
Q. -- banking entities such as OneWest?
A. Yes.
Q. In fact, OneWest is a member of MERS?
A. Yes.
Q. Is Deutsche Bank National Trust Company a member of MERS?
A. I don't know.
Q. Most of the major banking institutions in the United States, at least, are members of MERS, correct?
A. That sounds right.
Q. It's owned and operated by banking institutions?
A. I'm not a big -- I don't, I don't know that much about the ins and outs of MERS. I'm sorry. I understand what it's for, but I don't know, I don't understand the nitty-gritty.
Q. What is it for?
A. To track the transfer of doc -- of interest from one entity to another. I know that it was

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initially created so that a servicer did not have to record the assignments, or if they didn't, there was still a system to keep track of the transfer of the property.
Q. Does it also have a function to hold the mortgage separate and apart from the note so the note can be transferred from entity to entity to entity, bank to bank to bank --
A. That sounds right.
Q. -- without ever having to rerecord the mortgage?
A. That sounds right.
Q. So it's a savings device. It makes it more efficient to transfer notes?
A. Yes.
Q. And cheaper?
A. Yes.
Q. Let's just take a look at the milestones page. And I don't think that you're disputing any of the information on here, but I do want to run through it real quick to get your take on it. Take a look at the transfer for beneficial rights, one from the bottom.
A. Okay.
Q. The bottom one is registration, and then as

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you go up in time, the next one is transfer of beneficial rights on March 18th of 2006. Do you see that?
A. Yes.
Q. If you look in the right column, it says that the new investor is Lehman Brothers Holdings, Inc., correct?
A. Yes.
Q. The old investor was FDIC as receiver for IndyMac Federal Bank, FSB? It's part of that same block.
A. Yes.
Q. Would you agree with me that what that's recording, documenting, again, using the definition that's in part 2 of your attorney's response, what a transfer of beneficial ownership is, that that's showing a transfer of the original note from IndyMac, who was the original lender, to Lehman Brothers on March 18th, 2006?
A. Yes.
Q. Going up one line to April 1st, a couple weeks later, you will see that the new investor is Deutsche Bank National Trust Company as trustee?
A. Yes.
Q. And not surprisingly, the old investor is

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Lehman Brothers Holdings, Inc.?
A. Yes.
Q. So that records another transfer two weeks later, or approximately two weeks later, to Deutsche Bank National Trust Company?
A. Yes.
Q. Do you see any other transfers of the note recorded there in the MERS tracking information?
A. I see the servicing rights, beneficial rights.
THE WITNESS: Is this a trick question?
MR. MANCILLA: No.
MR. ICE: No, I want you to say no.
THE WITNESS: No, I don't see anything.
BY MR. ICE:
Q. The only other interesting thing on there is that on March 29th, the FDIC registered OneWest Bank as the new servicer on this loan?
A. Yes.
Q. Which makes perfect sense, correct?
A. Yes.
Q. So would you agree with me that this accurately reflects what your understanding is of what happened to the loan? It went from IndyMac as original lender, passed through Lehman Brothers, over to

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Deutsche Bank National Trust Company, and IndyMac continued to serve as the servicer throughout its different incarnations?
A. Yes.
Q. Okay. Take a look at Exhibit I. Have you ever seen that document before?
A. No.
Q. But you have seen documents like it?
A. Yes.
Q. Once again, do you recognize the file number and doc ID number of your attorneys, Florida Default Law Group, upon this document?
A. It looks like the others, yes.
Q. And you see where it contains the signature of your attorney, James Spanolios, of Florida Default Law Group?
A. Yes.
Q. Let's take a look at Exhibit J, which, to speed things up, I'll just represent to you that those are the Request for Admissions to which Exhibit I is intended to respond to.
A. Okay.
Q. So you will see that there's 12 requests for admissions in our original request and there's 12 responses.

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A. Yes.
Q. The title indicates that you're responding to the defendants' Assignment of Mortgage Requests for Admissions, which is the title of this document. Do you see all that?
A. Yes.
Q. Okay. No. 6, and I'm sorry you've got to jump between the two documents, but they didn't put them together. So you've got to look at six to see what the request was.
Admit that MERS did not physically transfer the subject note or mortgage to plaintiff on or before November 14th, 2008. Do you see that the response on behalf of your company was denied?
A. Yes.
Q. So that would mean, the interpretation, the only interpretation I can come up with is that MERS did physically transfer the subject note or mortgage to plaintiff on or before November 14th, 2008. Would you agree that that's what it means?
A. Either that or they denied to answer the question. I don't know.
MR. MANCILLA: Yeah, this is a Request for Admissions. She's not really familiar with what it means.

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BY MR. ICE:
Q. Well, I think your attorney would tell you if you're denying it, you're refusing to admit that MERS did not physically transfer the subject note or mortgage to plaintiff on or before November 14th, 2008.
A. Okay.
Q. Do you agree with that? Do you agree that that should be denied?
THE WITNESS: Referring to this one?
MR. MANCILLA: No.
(Reporter requests clarification.)
MR. ICE: I don't care. They can mumble.
MR. MANCILLA: I don't know if this refers to MERS or not. I can't tell. The only assignment of the note was referred to in one assignment, but --
MR. ICE: I think he's just advising his client. It doesn't have to be on the record.
THE WITNESS: Okay. I think I'm getting lost in the legalese.
BY MR. ICE:
Q. Let me take you through a few questions and maybe that one will be easier to answer.
A. Okay.

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Q. Because I think you'll agree, MERS never physically transferred anything to anybody?
A. That's true.
Q. MERS never had the note, so it didn't physically transfer the note?
A. True.
Q. And as the signing officer of MERS, you know that the only thing that happened with respect to that mortgage is that you executed an assignment?
A. Assignment, yes.
Q. You didn't physically transfer the mortgage to anyone?
A. No.
Q. The MERS records that we just went through, they don't show the mortgage being physically transferred to anyone?
A. No.
Q. Can you come up with a reason why your company would deny that MERS did not physically transfer the subject note or mortgage?
A. But this wasn't prepared by -- these are not -- okay. Wait.
MR. MANCILLA: Maybe the lawyer didn't understand it. I don't understand it, so maybe he didn't.

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THE WITNESS: I -- I don't know. I wasn't there.
MR. MANCILLA: Yeah. Well, if you don't know, you don't know.
BY MR. ICE:
Q. Okay. Well, you know, we can speculate that the lawyer misunderstood, but as you're sitting here today, can you provide a reason yourself why that should be denied?
A. No.
Q. No. 9 says: Admit that plaintiff is not the entity identified as the investor in the MERS' system. That was denied.
MR. MANCILLA: Without knowledge.
THE WITNESS: Without knowledge and therefore denied.
BY MR. ICE:
Q. Now, we just went over the MERS' records. That response is absolutely false, isn't it?
A. Admit that plaintiff is not identified -- we are identified as the servicer.
MR. MANCILLA: That's the investor.
THE WITNESS: But not as the investor.
MR. MANCILLA: Yeah, so that's correct.
BY MR. ICE:

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Q. And yet it was denied?
MR. MANCILLA: No, but it says here that, Admit that the plaintiff is not the entity identified as the investor in the MERS' system, and she's saying, and I agree that we're identified as the servicer. That's not the investor, so that's correct.
MR. ICE: It's correct that it should have been admitted.
MR. MANCILLA: No.
MR. ICE: The plaintiff is not the entity, admit that plaintiff is not the entity.
MR. MANCILLA: Okay, yeah. That's right, yeah.
BY MR. ICE:
Q. Okay. Would you agree that that should have been admitted?
A. Normal language, please.
MR. MANCILLA: These things are very confusing the way they're written. I would object to them all the way they're written, but --
BY MR. ICE:
Q. Let me ask the question this way, and let's

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just say I'm asking this question in my deposition today --
A. Okay.
Q. -- Admit that plaintiff is not the entity identified as the investor in the MERS system. Do you admit or deny that?
A. Mr. Ice, then I would say, can you please rephrase that question?
Q. Is the plaintiff identified as the investor in the MERS' system records?
A. No.
Q. So you admit that plaintiff is not identified?
A. Yes.
Q. And you also admit that it should never have been denied?
A. I don't see why it was denied.
MR. MANCILLA: Except he maybe didn't understand it.
THE WITNESS: Confusing question, yes.
BY MR. ICE:
Q. No. 10, admit that plaintiff did not acquire an interest in the mortgage prior to the filing of the complaint. Answer: Denied.
A. Okay. I got it this time.

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Q. Do you see that answer and response?
A. Yes.
Q. This response is also incorrect, isn't it?
A. Yes.
Q. Okay.
A. Now that I understand the tone of the questions, I got it.
Q. Okay. Let's look at Exhibits K and L together because, like the others, one is the answer and one is the response.
For the record, Exhibit L is Defendants Israel Machado and Neena Machado's Request for Production Regarding the Assignment of Mortgage. K is Plaintiff's Response to Defendants' Request for Production regarding Assignment of Mortgage.
Have you ever seen either of these documents before?
A. I don't think so.
Q. Did you participate in any way in providing the responses?
A. I don't remember.
Q. Do you think that you would remember if you had been asked?
A. No.
Q. Are you asked to help provide discovery in a

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lot of cases?
A. Yes.
Q. Where you have to go get documents?
A. Yes.
Q. Okay. I'd like you to look at No. 2, which asks for, Any and all documents that evidence an equitable transfer of the mortgage from the original mortgagee, MERS, to plaintiff on or before November 14th, 2008.
A. Are we supposed to be on L and K?
Q. Yes.
A. L and K.
MR. MANCILLA: Yeah, these are the questions, these are the answers.
THE WITNESS: Okay. Yes. Okay.
BY MR. ICE:
Q. Okay. The response was: All requested documents in the plaintiff's possession, custody or control will be produced, except those documents which are privileged, confidential or work product. Do you see that answer?
A. Yes.
Q. Do you have any documents to be produced?
A. Yes.
Q. In response to that question?

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A. Yes.
Q. Did you bring any of them with you today?
A. It was all -- we -- Christy got everything, but you have something.
MR. MANCILLA: Well, we have the MERS tracking thing. The MERS' tracking report?
MR. ICE: No. I can represent to you that the only thing that was produced with this is attached, is your Assignment of Mortgage, which we already had.
THE WITNESS: Oh, okay. The intention was to, would have been to get you the tracking report from MERS.
MR. MANCILLA: Which you got from somewhere. I don't know where you got it from.
MR. ICE: Well, it was a separate request. That was a separate request.
BY MR. ICE:
Q. But you've already looked at those and you've already told me that there's no evidence of any equitable transfer on those documents on or before November 14th, 2008?
A. That's right.
Q. So that wouldn't be responsive to No. 2?

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A. That's right.
Q. As you're sitting here now, do you know of any documents that will be produced in response to this question?
MR. MANCILLA: If you know.
THE WITNESS: The assignment.
BY MR. ICE:
Q. Well, that's already been produced.
A. Oh, no. I don't, I don't think so. I can't think of anything.
Q. Okay. Do you know of any documents that are being withheld based on privilege, confidentiality, or work product?
A. No.
Q. No. 3 is, Any and all documents that evidence a physical transfer of the mortgage from MERS to the plaintiff on or before November 14th, 2008. The response was: All requested documents in plaintiff's possession, custody or control will be produced, except those documents which are privileged, confidential or work product.
Correct me if I'm wrong, I think your testimony already today was there was never a physical transfer of the mortgage from MERS?
A. That's right.

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Q. So you would have no documents responsive to that?
A. That's right.
Q. Do you know of any documents that Mr. Spanolios has that he will be producing?
A. No.
Q. Do you know of any documents in your possession or Mr. Spanolios' position that are being withheld due to privilege, confidentiality, or work product objections?
A. I can't answer for Mr. Spanolios, but I don't.
Q. And you're not aware of any?
A. And I'm not aware of anything.
Q. Exhibit M is a document that you saw before in your last deposition, correct?
A. Yes.
Q. It's an opinion from Judge Schack up in New York --
A. Yes.
Q. -- correct?
You're familiar with that?
A. Yes.
Q. In it, he says that you signed an Assignment of Mortgage as the vice president of MERS, correct --

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A. Yes.
Q. -- just as you did in this case?
Judge Schack also says that you executed an affidavit as an officer of Deutsche Bank National Trust Company, correct?
A. Yes.
Q. And is that true, you executed an affidavit for Deutsche Bank in that case?
A. That is not true.
Q. You never executed a document as an officer of Deutsche Bank National Trust Company in that case, Judge Schack's case?
A. Let me just read it so I can -- I have to refresh my memory completely.
Q. Okay.
A. I don't remember. Most likely.
Q. That you did?
A. It sounds reasonable that I may have. I don't remember, and since it's not attached, I can't say.
Q. And as a result, Judge Schack wanted to know if you were engaged in self-dealing by wearing two corporate hats?
A. Yes.
Q. And the court was concerned that there may be

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fraud on the part of the bank?
A. I guess.
Q. I mean, he said that, right?
A. Oh, okay. I didn't read the whole thing. Okay.
Q. Okay. The court ordered Deutsche Bank to produce an affidavit from you describing your employment history for the past three years, correct?
A. That's what this says.
Q. Did you do that?
A. No, because we were never -- no affidavit ever existed and no request ever came to produce such a document. The last time we spoke, I told you that in-house counsel was reviewing the whole issue and that's kind of where -- and we still haven't received any communication to produce an affidavit.
Q. From your counsel?
A. From anywhere.
Q. Well, you're reading Judge Schack's opinion. He seems to want one. Isn't that pretty clear on its face?
A. We didn't get -- we never even got a copy of this.
Q. Okay. But now you have it --
A. And --

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Q. -- and you had it when we met at our deposition back in February 5th.
A. And our in-house counsel's response to this is we were never -- this was never requested of me and it was his recommendation not to comply.
Q. What has become of that case?
A. I don't know.
Q. Was it settled?
A. I don't know.
Q. You've testified in court before?
A. Yes.
Q. Has a Federal Bankruptcy Court written an opinion saying that it disbelieves your testimony?
A. Not quite like that. It's as it relates to me being an officer of Freddie Mac.
Q. Okay. But the Court actually wrote an opinion that's now in the public record that says he disbelieves your testimony, right?
A. Not the entire testimony. It was as it related to me being able to come into the court when Freddie Mac was the investor for the loan.
Q. I'd like you to take a look at Exhibit N to your deposition. Do you recognize that opinion?
A. You showed it to me the last time. I didn't read it in full then and I still haven't. I can Google

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my name and see all these comments.
Q. Right. You didn't get along too well with this judge; is that right?
A. I got along fine with him. Yeah, this is Bufford. I got along fine with him.
Q. Okay. And on page 5, just above the III, Discussion, do you see that paragraph?
A. Um-um.
Q. That's where it says Ms. Johnson-Sect --
A. Yes.
Q. -- C-T, but that's you, right?
A. Yes.
Q. -- also testified that IndyMac has brought this motion as the duly authorized servicing agent for the new owner of the note. The Court disbelieves this testimony.
And that would be your testimony, right?
A. Because Freddie Mac was the owner of the note.
Q. Right. He said, particularly in view of her testimony that she does not know who owns the note at the present time.
A. If you read the court docket, which is public knowledge, then you'd see that we, of course we knew. Freddie Mac made me go to the hearing. So, I mean,

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these things, you can take them anyway you want.
Q. Okay. Well, and the judge in this case will, but my question was simply did a bankruptcy federal court judge write an opinion saying he disbelieved your testimony?
A. Yes, he did.
MR. ICE: This is a good place for a break because I'm going to get into the documents that were provided to me in advance and so it's kind of a shift. So quick break?
MR. MANCILLA: All right.
(Thereupon, there was a brief pause in the proceedings beginning at 4:01 p.m., resuming at 4:15 p.m.)
MR. ICE: So are we ready?
THE WITNESS: Okay.
BY MR. ICE:
Q. I'm going to hand you what's been marked as Exhibit O to your deposition and ask you if you recognize that document?
A. Yes.
Q. What is it?
A. That is the order telling me to come for the deposition and what the questions would be.
Q. Okay. And attached to it is Exhibit A which

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lists the documents that we asked for you to bring today?
A. Yes.
Q. Okay. What I'm going to do is ask you to kind of keep that list open, because I was provided a stack of documents that weren't clearly delineated as to what corresponded to what. All of the documents that we're going to talk about that were previously provided by your counsel I've marked as Exhibit P. And I've taken a stab at connecting them to the item request based on a number that was jotted down on the top left-hand corner by someone.
A. Okay.
Q. And I'm going to start with the assumption that that was intended to comply with whatever number is in the corner. If it's not and these are not correlating, please let me know as we go along.
A. Okay.
Q. So let's start with the duces tecum part of your notice, which is the list of documents. No. 1 was: The affidavit of the last three years of deponent's employment provided to Judge Schack in response to the order dated January 31st, 2008 in the case of Deutsche Bank National Trust Company vs. Maraj, Case No. 25981-07, Supreme Court of New York.

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We talked about that earlier. There is no such affidavit, correct?
A. Correct.
Q. By the way, why was IndyMac permitted to bring the case in Deutsche Bank's name in that case?
A. I don't -- I don't know. Now, errors have been made.
Q. No. 2: The affidavit of the deponent provided to Judge Schack in response to the order dated February 6th, 2009 in the case of IndyMac Bank, FSB vs. Bethley, 2009 New York Slip Opinion 50186, New York Supreme Court 2/6/09, "explaining," and this is in quotes, "her employment history for the past three years; and, why a conflict of interest does not exist in how she acted as vice president of assignee Indymac Bank, FSB in the instant action, and vice president of both Mortgage Electronic Registration Systems, Inc. and Deutsche Bank in Deutsche Bank vs. Maraj," and it gives the citation and that's the case that was referred to in item 1 of our request.
Do you have that affidavit with you here today?
A. No.
Q. Were you aware of that second opinion where Judge Schack asks for a second affidavit?
A. Nope. Where is Judge Schack sending these?

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Q. Presumably to your counsel.
A. I wonder if he has the right address. Maybe that's what we should do, send Judge Schack the most recent, and I will gladly show up in his court and provide him everything he wants.
Q. Okay. Well, I sent you this back in March. Have you or your counsel or in-house counsel at IndyMac pursued that?
A. No.
Q. No. 3 asks for, The deponent's most recent curriculum vitae. And if you look at -- this should say P3.
I hand you what's been marked as Exhibit P sub 3 to your deposition and ask you if that is a copy of your most recent curriculum vitae?
A. Yes.
Q. And that's what was provided in response to No. 3 on our Exhibit A to your subpoena duces tecum?
A. Yes.
Q. I see that it still has you working at Indymac Bank, so you haven't updated it to reflect --
A. I haven't.
Q. Does that mean you're not looking for a job?
A. (No response.)
Q. No. 4 was: All documents authorizing

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deponent to sign as vice president of, and it lists three companies: Deutsche Bank National Trust Company, Bank United, FSB, and Mortgage Electronic Registration Systems, which is MERS.
Exhibit No. 4, P4, sorry, would you take a look at that and tell me whether that's intended to be responsive to No. 4?
A. Well, this is the MERS' one. Looks like we're missing the Deutsche Bank. Can I give that to you now?
Q. Sure.
A. And I don't believe one exists for Bank United.
Q. Okay.
A. Okay. There's three different ones: There's the Deutsche Bank when we were IndyMac Federal, there's the most current Deutsche Bank, and then there's the Deutsche Bank when we were IndyMac Bank.
MR. ICE: Let's just mark this as Composite Exhibit U.
(Thereupon, Defendants' Exhibit No. U was marked for identification.)
BY MR. ICE:
Q. Okay. I'm going to hand you what's been marked as Exhibit U to your deposition and ask you to

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identify three documents that are collected together in that exhibit.
A. It's the LPOA for Deutsche Bank dated April 22nd, 2008, the LPOA for IndyMac Federal Bank dated October 9th, 2008, and then the Deutsche Bank LPOA for OneWest Bank dated April 6th, 2009.
Q. And this is the Limited Power of Attorney that we were discussing earlier that actually prohibits OneWest or IndyMac from suing in the name of Deutsche Bank National Trust Company, correct?
A. It's in the PSA that they prohibit, that LPOA -- I'm not sure that it's actually in that LPOA.
Q. Did you look to see if the trust that's involved in this litigation is in the list of trusts?
A. I did.
Q. And it is?
A. It is.
Q. I have my own copy that we'll get to later where we can talk specifically about what powers it provides you --
A. Okay.
Q. -- so we'll just put that aside.
No. 5 was: The specific "books, records, and documents kept by IndyMac Bank, FSB concerning the transactions alleged in the complaint" which you

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personally examined according to the Affidavit as to Amounts Due and Owing, paragraph 2.
Did you bring any documents with you --
A. I did.
Q. -- today that are responsive to that?
A. Well, I'm assuming you were sent documents, but I have some too that are probably a copy of what you have.
Q. I wasn't able to identify anything correlating with that, so maybe if you could show me or you can also look at -- also these are the exhibits here, if you see them there.
A. So this is the Affidavit of Amounts Due and Owing and these are the corresponding screen prints of where the data came from.
Q. Okay. I think why there was these -- these are later in Exhibit P, but I think the reason these were not produced with respect to No. 5 is because you didn't personally review these when you signed the affidavit?
A. That's right.
Q. So why don't you just hold on to those and we'll get to that.
Just to make sure we're clear, do you have any books or records and documents kept by IndyMac Bank,

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FSB concerning the transactions alleged in the complaint which you personally examined in the preparation of the Affidavit as to Amounts Due and Owing?

A. No.

Q. No. 6 is, All documents, computer entries, digital images, electronic correspondence or other written materials you personally reviewed in preparation for making the statement -- again, this is the statement in that affidavit -- "have personal knowledge of the facts regarding the sums of money which are due and owing to IndyMac Federal Bank." That's your affidavit in paragraph 3.

A. I don't have personal knowledge, but the person who checked the figures did that works for me.

Q. Okay. The only document that had the No. 6 on here was the adjustable rate note.

A. No, that's not right. Can I look through here to see if --

Q. Yes.

A. It would have been all this.

Q. Those are the same screen prints that we were just talking about?

A. Yes.

Q. Okay. We'll get to that, but just for the

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record, you were referring to Exhibits P8 -- turn this so you can see -- P8, P9, P10, and that's it, right?

A. Yes. There might be a few missing, though.

Q. P12, as well?

A. Yes.

Q. And --

A. P14.

Q. -- P14?

A. That should be everything, but I have to go through them all.

Q. No. 7 had to do with your statement that the foreclosure case was uncontested.

A. Um-um.

Q. I didn't see any documents produced with respect to that.

A. Because it wasn't -- because we don't consider a case contested unless there are answers filed to our motion. And in this case, at the time that the -- as we're going through -- at the time that I signed the affidavit, it was uncontested.

Q. Yeah, I think your affidavit predated our appearance at all, much less an answer.

No. 8 was, All documents, computer entries, digital images, electronic correspondence or other written materials you personally reviewed in

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preparation for making the statement that the principal balance of the note is $399,095.97.

A. Again, I didn't personally review it, but my staff did.

Q. And the computer screen that your staff would have looked at to verify the numbers that were already in the affidavit, right?

A. (Hands document.)

MR. ICE: Okay. Let's go ahead and mark this as the next exhibit.

(Thereupon, Defendants' Exhibit No. V was marked for identification.)

BY MR. ICE:

Q. I hand you what's been marked as Exhibit V to your deposition and ask you to identify that.

A. It is a screen shot on the Machado loan that shows the records on the account affecting the way the account looks since the last payment was made.

Q. When is that screen shot made?

A. I made this copy for myself this week. No, this is the one that I pulled that was given to the firms. I made a screen shot for myself, but then I thought you would ask me that question, so I used the same screen shots that were uploaded for the firms. So probably 8/13/08. Yes, that's the date.

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Q. Okay. So this is the same image that would have been provided to your counsel when the case was transmitted for foreclosure?

A. Yes.

Q. Can you take me quickly through what these numbers mean and how to read this document?

A. So at the top, on all the green screens, there will be the borrower's name, Social Security number. This says what kind of loan it is and what the interest rate is.

Q. That stands for the conventional residential?

A. Um-um. ARM. MAN code F. F means that the loan is in foreclosure. These are the numbers we have on the system.

Q. Phone numbers?

A. Phone numbers to call the borrower, property address. And then you get into these blocks of time. This is what the loan is due for, the August 1st, 2008 payment. This is payment. The P's for taxes, insurance. There's a shortage for taxes. That's the total payment. This shows the last few transactions that were recorded on the account. So a check was paid for hazard -- there's forced placed hazard insurance on the account, and the last installment of taxes that were paid.

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This section right here are the late charges that were due at the time this was pulled.
Q. So for the record, LC stands for late charge?
A. Yes. And then other fees would include a bounced check fee if there was one. We try not to use things like other and miscellaneous, so that you'll rarely see anything there because we try not to use buttons like that. The pending payment, that's the new -- the payment change. They're due for the next interest rate change, and the February of 2009 payment would be this.
Q. Okay.
A. That's the principal balance at the time that this was pulled. That's the negative escrow account balance at the time this was pulled. If the borrower had a credit on their account it would be in suspense. If there was any damage to the property, the funds would go in restricted escrow to be used specifically for the damage to the property.
Q. So restrict -- RES, space, ESC stands for restricted escrow?
A. Yes. And then the analyzed section right here says that this loan is analyzed for taxes and insurance once every 12 months. That was the last time it was analyzed.

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Q. What does COUP stand for?
A. I don't know.
Q. And MO is month?
A. Month. Um-um. And then this is kind of a snapshot of the last monthly statement that they received. Well, not -- yeah, not really a statement but bill, more like their coupon. And then how much they paid on principal year-to-date, taxes year-to-date and interest year-to-date.
This down here is just, again, it tells the viewer that the loan is active in foreclosure. The loan has a foreclosure stop 1. The foreclosure process has a foreclosure -- a foreclosure stop 1 tells me that the only thing that's happened on this account is that we filed the first legal action and we haven't done anything else. A foreclosure stop 3 means it's scheduled for foreclosure sale. So we haven't gotten past first legal action.
The no notice stop says the loan is in MAN code F. It's delinquent, don't send any more notices, don't send any more statements because they're going to be incorrect because they won't include attorney's fees or things like such as that. Process stop F tells the world that the loan is in foreclosure, so don't apply funds to the account without someone in the foreclosure

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department making sure it's not going to invalidate the foreclosure or making sure we have the correct stipulations in place to allow accepting funds and apply them to the loan. And it's saying that at this time the loan was past due four months.
Q. Okay. So does LN stand for loan in foreclosure?
A. Yes.
Q. And the point of that is that OneWest can't accept any payments during the foreclosure process because that would invalidate the foreclosure process?
A. Well, we can accept payments if the borrower were on a stipulated repay plan, meaning you recognize that you are delinquent, we're going to accept a payment for the next ten months, but if at any time you default on this payment plan, we'll pick up where we left on the foreclosure action so we, you know, so we don't have to restart the action. And while the loan is in foreclosure, it's just the way to warn collections, customer service, loss mit that there's someone else to check. It's in a legal action. Something's happened with this loan, so don't just treat the loan like you would a current borrower because there are, you know, other things going on.
Q. So when you make these kind of deals where

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you're accepting payments sort of on a temporary basis, the foreclosure is put on hold?
A. It depends. Yes, in effect, yes, but if the borrower makes -- their first payment on their payment plan happens after the first legal action -- we're talking about Florida, but, you know, in my mind I'm going with several different states at the same time.
There are some processes where as soon you file the first legal action other things have to happen. Those have-to-happens will happen because the fees and costs would have included that action because it's all happening at the same time, so, but then at that point it would be on hold.
So we're talking about Florida. In this case, if the borrower were on a payment plan, we just put the file on hold wherever we were. And if we had a hearing date scheduled, we would postpone it based on the outcome of the payment plan, payment arrangement.
Q. If a borrower just sends in a payment without getting this kind of a payment plan in place, what happens to it?
A. The payment goes back to the borrower.
Q. Okay. Anything else responsive to No. 8, which is basically what you reviewed or what someone reviewed to determine the principal balance?

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A. No.
Q. Okay. Take a look at what's been marked as P8 to your deposition and ask if you can identify what that is?
A. This is the first page of a payoff statement.
Q. This is printed out in November, on November 13th of 2008?
A. The whole -- it actually comes with several pages, but it looks like this is also a part of what was provided to the firm at the time of the referral, yes.
Q. And I see there that there is a principal balance figure that matches the figure in your affidavit?
A. Yes.
Q. No. 9 was asking for whatever materials you reviewed to make this statement of what interest was due and owing.
A. Same idea. I didn't personally look, but my staff did. It would be the screen that says -- hold on, let's see. Just in case you don't have it there, it's going to be one of the payoff screens. There it is, right here. Pay 4, if you have one that says pay 4 at the top, like this says pay 1? If you don't, if you don't, here's one.

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Q. That doesn't look familiar.
MR. ICE: Let's go ahead and mark that as the next exhibit.
(Thereupon, Defendants' Exhibit No. W was marked for identification.)
BY MR. ICE:
Q. I'm going to hand you what's been marked as Exhibit W to your deposition and ask if you can identify that document?
A. This shows what the interest was due and owing as of the date that the affidavit was supposed to calculate the indebtedness.
Q. Okay. This was as of February 9th, 2009?
A. Yes.
Q. And your affidavit said that those figures were --
A. Yes.
Q. -- valid as of February 9th, 2009?
A. Yes.
Q. I'm going to hand you what's been marked as P9 to your deposition and ask you what that is?
A. This is also a pay 4 screen. And the difference between both of these is this is interest as of March 18th, 2009, so -- and this one, this is like someone just pulled it this day. This one was pulled

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on April 8th, 2009, where this came from the data that was downloaded for the firms.
Q. Okay. Just for the record, P9 was what was provided to us, among the documents that were provided us before the deposition as responsive to our duces tecum request.
I see a notice on here that says multiple IR change periods crossed, calculations are suspect. What does that mean?
A. Okay. So I kind of alluded to this. The April -- this was printed on April 8th, so the system is working real time, even if you put a back date here. So what the system is saying is, now because that number matches that number, it means that the person who pulled this for you didn't change it, because if they had, that's hard coded. You can't do anything there. That's green, so. That's green and the date's green. And then that comment will come up that says that it's suspect and you match it here to see if someone fooled, tried to trick the system.
But if -- I mean, because sometimes you do. You might quote a reinstatement quote or payoff in the future for a borrower because they know they're going to pay off the home 60 days from now, so this happens. There's no interest rate for April, so the system

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doesn't know how to calculate it. So what it's doing is it's just taking the data it has and trying to forecast.
Q. When you say, was the term you used green?
A. Green screen, yes. There are areas on the system that can be manipulated. In the pay screens -- you'd have to -- I mean, you'd have to kind of take my word for it, I guess. This date is green, meaning the user can change the date.
Q. Change it?
A. What's also green -- but this is a different screen. See how these screens don't look exactly the same, although they both say pay 4?
Q. Right.
A. This is when you're actually trying to create a payoff. This is like a dummy workstation to this for if you're trying to quote something on the phone. Not that you're actually going to print a payoff. On this screen, you can -- this is green, the 16,228.30. So if I know that the interest rate is really 16,088, I could type over that.
But here is where you -- that's not green. So that's how, as a manager, if I'm researching something, I can tell if the system was manipulated with whatever data the borrower was given. If the borrower sends me

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information, I can tell if it's been manipulated because I know the screens and I've been working in the same system for 18 years.

Q. This one says that it's printed by, it has a code number at the bottom. Do you know who that code belongs to?

A. Not off the top of my head, but it's one of my staff.

Q. Okay. Do you know, what is the name of the program that this, all this data is kept in?

A. MSP Fidelity. I think they may have just changed their name again to LPS, different from LPS Default Solutions, which is our outsource vendor.

Q. A mere coincidence that the names are the same?

A. No, no, they used to be the same. It was all the same company under MSP Fidelity, and the outsource vendor was Fidelity and the system was Fidelity, but we would refer to the system as MSP to differentiate. So I just get in the habit of not saying the full LPS Default Solutions is the outsource vendor and Lender Processing Services is our system of record.

Q. Is this program owned by LPS, a third-party vendor?

A. I think at one time it was the other way

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around, the system owned Default Solutions.

Q. The software company --

A. Yes.

Q. -- that developed the program --

A. Yes.

Q. -- owned the third-party vendor foreclosure services provider?

A. At some point in the past but they're separate now.

Q. And is that the company that wrote the program?

A. I assume so.

Q. Does IndyMac buy the program or they just license it --

A. We're a licensed user.

Q. -- to use it?

A. OneWest Bank is a licensed user.

Q. No. 10 was whatever you personally reviewed just to make the statement that the late charges due and owing were $253.44.

A. That's that same, the same printout. And you see that as of the date that was put in here, because the late charge -- if you -- in the affidavit it said that the late charges were as of November 14th, 2008, so that's how that number gets calculated.

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Q. So because the principal and interest are projected forward and the late fees are not, you have to do two different type screens; is that right?

A. Yes, but it's because of the way the affidavit reads. It reads that these are as of such and such date, but then it kind of says late charges are just as of.

MR. ICE: Let's go ahead and mark this as the next exhibit.

(Thereupon, Defendants' Exhibit No. X was marked for identification.)

BY MR. ICE:

Q. I'm going to hand you what's been marked as Exhibit X to your deposition and ask you to identify that document.

A. This is another screen in the pay 4 workstation that was used to get what the true late charge was as of November 14th, 2008.

Q. I'm going to hand you what's been marked as Exhibit P10 to your deposition and ask you if that's -- ask you to identify that document.

A. This is a system -- I mean, a screen on the system that you can use to calculate late charges that have been assessed to the loan. The problem with using this for an Affidavit of Indebtedness is the system

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only goes back so far and when there are other -- there's only so much room on the screen. One of the issues with still using green screen, instead of a web-based type application. So you can't correctly depict to the penny what's due.

The other thing is the borrower can make a payment and pay some to late charge. So if you're just going to pick up the raw, this is what was assessed to the loan, you would miss any credits that were paid to late charges, where this is a better representation of going back in history through a date.

Q. How are the late charges computed?

A. Did I print that? I think I have it on my desk. There's actually a screen that says what the percentage is for this loan and how it's computed. And I didn't, I didn't bring it with me, but I can -- I didn't bring it with me. I can show you that, though. We have it. It's another green screen. You put in the loan number and it says for this particular loan this is the calculation that's used, this is the percentage that's used for that payment to get this late charge.

Q. And that information ultimately came from the original note and --

A. Yes.

Q. -- mortgage?

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A. Yes, yes, yes.
Q. What screen would you ask for to show you what the algorithm is being used to compute the late charge?
A. MAS1, LTE1. Similar to MAS1. MAS1 means master file, and then there's the second code that gets you to certain specific areas you want to see.
Q. You don't have a printout of that with you today, do you?
A. I don't, but I can get you that.
Q. No. 11 was materials that you personally reviewed in preparation for making the statement that inspections conducted on the property cost $33.
A. I think I saw it in something that you already have, but I have a copy here too.
Q. Would this be --
A. That's the actual bill. The system shows the bill that was, when the bill was assessed, when it was ordered and when the charge was assessed to what account.
MR. ICE: Let's mark this as the next exhibit.
(Thereupon, Defendants' Exhibit No. Y was marked for identification.)
BY MR. ICE:

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Q. Hand you what's now been marked as Exhibit Y to your deposition and ask you to identify that document, please.
A. This is, this workstation is called DDCH and it shows all of the fees that have been applied to the borrower's corporate advance account.
Q. What does DDCH stand for?
A. I don't know. Somebody in 1962 came up with that.
Q. Can you tell me what these codes here, starting with L, stand for?
A. I have to think about that for a second. No, I can get that information for you, though, because I don't work in these screens all the time. I know how to get to them. I know what they do, but I own the foreclosure and the bankruptcy workstations and another business owner owns the accounting ones.
Q. Down here, the C/A payee, what does that stand for?
A. I think, I believe that the person who pays the bill, who would have paid this bill for this BPO, would put a code in here so that there's a running balance of what was paid and how.
Q. And TRAN?
A. I think those are just the, maybe the batch

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numbers, the trans, the transaction codes.
Q. Are there supposed to be numbers or figures --
A. No.
Q. -- in there?
Why are these all sort of blank lines?
A. Because it's a green screen, very old. So if you're entering in data, and everyone doesn't have access to do that, if you're entering in data, those would be green so you can do that. For a normal user that's just viewing, you wouldn't be able to manipulate any data here. It would be just for informational purposes. All you could really do is print the screen.
Q. In the, where the columns of information actually begin, you have TRN, that stands for transaction?
A. Transaction.
Q. They have numbers but some of the numbers are repeated?
A. The user, what it's saying is how -- who -- that field is being used to say who the bill is paid or how the bill was being paid. NIV stands for new invoice which is the invoicing system that LPS created that we use to pay for services that they render. We order our BPOs from LPS Default Solutions so that's why

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it says new invoice. Our property inspections used to go through First American, but now go through Field Services and that's what that acronym means, FS -- FFS.
Q. So even though the title is USR, which sounds like user, those aren't initials of any particular person?
A. No.
Q. And the transaction 631 just means that that's an inspection?
A. I believe so. I don't know. They might use that as the batch code, so if anyone had to ever go look at the work, the actual line item, the backup for this, I think that's how -- what they do with these. It's to see what type of batch of work on that day you would find the backup.
Q. What does FBIF inspection fee stand for?
A. This is just a description of what was paid.
Q. What is FBIF?
A. I don't know.
Q. COIF?
A. I don't know what that means.
Q. PCIP?
A. I don't know. I know that there are some -- let's see, what did I do with -- let's see if I have something that I can show you. It might tell the type

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of inspection that was ordered. Let me see if I can just pick up that. No, I don't know. That could be the person that actually did the transaction. I don't know.

Q. Let's take a look at P11 and ask if you can identify that document.

A. That is the actual bill for the property inspection.

Q. And that bill is from LPS Field Services?

A. Yes.

Q. According to this, there was a property inspection on March 18th of 2009?

A. Yes.

Q. The report was that it was occupied by name unknown, right?

A. Yes.

Q. And the description was property inspection, no contact inspection invoiced, right?

A. Right.

Q. What are they doing there?

A. We have some -- the type of property inspections we order on loans and foreclosure and bankruptcy are the general no contact property inspection, meaning go to the house, make sure it's not burnt down, make sure the grass is not ten feet high,

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and bring us that information if it is, or if the property is for sale or if it's occupied and how you knew it was occupied, but don't knock on the door and contact the borrower.

We have some campaigns where we do want the borrower contacted, some loss mit campaigns where they'll leave door knockers so that the borrower knows that we're trying to reach out to you some kind of loss mit. But a normal foreclosure or bankruptcy property inspection outside of the campaigns is just a don't knock on the door and, you know, get anyone upset, just inspect the property, make sure it's still there.

Q. Does LPS have a local office where they have somebody that does this?

A. I believe they contract out to, because it's Maintenance Nationwide, so I believe they have contractors. I don't, I don't manage the property preservation.

Q. So from this, we don't know who actually drove by the property?

A. No, there is something that tells -- oh, you see how this one on here says door hanger? That's what I was referring to. It's not on here, but there is something in the system because the folks in the credit prop pres department can always tell who did what.

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Q. In the what department?

A. Prop pres, property preservation.

Q. How often are these ordered?

A. We want a property inspection completed one every 30 days, but I believe the order cycle is sooner than that. It like orders -- I can't be for sure because I don't manage this process. I want to say the order goes out, it might, it can even be every 20 days. It's less than the 30-day threshold, to be sure that every month the property gets inspected. If the inspector sees that the property was just inspected, like if the orders overlapped for some strange reason, a short month or something like a February happened, then the property inspector won't inspect the property. The idea is to get one once a month.

Q. Okay. No. 12 was the materials you reviewed in preparation for making the statement that the BPO cost $145.

A. That's here.

Q. And "here," you're referring to an entry on Exhibit Y to your deposition?

A. Yes.

Q. I'm going to hand you what's been marked as Exhibit P12 to your deposition and ask you if you can identify that?

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A. This is the DDCH again. It's a cover, it's a cover to the difference between the one I provided you, and this one is that this was generated when the affidavit was done, and this was generated after lots of things happened. So we're paying attorneys fees and other things. Attached to it is the actual broker's price opinion, BPO.

Q. Do you order a broker's price opinion in every foreclosure case?

A. Yes. Well, we order a reconciled value on every foreclosure case. I'm trying to, I'm trying to say this simply. There are times when the broker comes back with a value where the variance here, where it says 24 percent? Okay. Can you read it?

What actually was ordered on here was the reconciled value is this first grade, the second grade line, right?

Q. Okay.

A. And what that reconciled value is this desktop value, which is a desk appraiser value, and the BPO. So what we actually order is this reconciled value on every property and so it gives us a better indication of that market. It's not just one independent broker's opinion.

Q. Well, the document that we have here with the

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pictures and the graphs in it, is that the BPO itself or the reconciled value?
A. It's everything. It's everything, but it's highlighting, the BPO is 250, but the reconciled value is 190. And down where it says reconciliation comments, it will explain why that appraiser valued it the way that it was.
Q. Does this tell you who did the appraisal?
A. Somewhere it should. Again, I don't manage this group, so I can't get to it -- I mean, I can't flip to it quick or anything. And this is hard on my eyes. They would know, someone in this group would know how to get down to who actually completed the value.
Q. Does someone physically go out to the house to do this?
A. Yes.
Q. That's how they get these pictures?
A. Yes.
Q. I still didn't understand your answer. Do you order a broker's price opinion in every case or not?
A. We order a reconciled value in every case. A reconciled value includes a broker's price opinion.
Q. If we wanted to see this in other cases, what

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would we ask for?
A. You want me to -- are you going to pay me to tell you how to do your work? Just any -- you could just ask for how -- what our current value is, the backup for our current value, and we'll pull whatever we have. If you said BPO, you might get just a BPO. You could say reconciled value.
Q. Do you have other means for determining value?
A. None, none that we like to do. I mean, I mean, there are AVMs are available. We just don't like to use those. They're not as reliable.
Q. What's an AVM?
A. Those are, big companies do them, like if you go to Realtor.com and you put your property address, it will give you a value. It's kind of databased on recent sales, but the property --
Q. Talking like GoZilla?
A. Like that, yes. So we don't like to depend on -- we get them as a service with our prop pres company -- I mean, our evaluation company, but we don't use them. We don't make business decisions on it.
Q. And you call that AVM?
A. Yes.
Q. Do you know what that stands for?

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A. No.
Q. No. 13 was asking for whatever you reviewed for making the statement that plaintiff has employed the services of Florida Default Law Group.
A. The referral transmittal.
Q. Okay. And that is Exhibit P13, correct?
A. Yes.
Q. The top of this form says FIS Desktop. That is referring to your outsource vendor?
A. Yes, at that time. See, I pulled that in November. Now they are LPS. At this time they were FIS.
Q. This is a document that's issued by FIS, now LPS, to the attorney?
A. Yes.
Q. An attorney in your approved network?
A. Yes.
Q. And this is what transmits the beginning of the case?
A. Yes.
Q. Okay. It tells them, your counsel, whose name to sue in, correct?
A. Yes.
Q. In this case, it instructed Florida Default Law Group to sue in the name of IndyMac Federal Bank,

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FSB, correct?
A. Yes.
Q. And then it tells them to vest title in Deutsche Bank National Trust Company --
A. Yes.
Q. -- as trustee, et cetera, et cetera, correct?
A. Yes.
Q. What does that mean, to vest title in them?
A. At the conclusion of the foreclosure action, to put the final deed in the name of Deutsche Bank National Trust.
Q. The instruction, mortgage currently held by and foreclosure should be in the name of, is not correct because as of the date of this transfer, or transmittal package, the mortgage was still in the name of MERS, correct?
A. But we can't, we can't do the action in the name of MERS, which is why a default's to IndyMac Federal Bank.
Q. But the idea that the mortgage currently held by IndyMac is incorrect?
A. Right, that shouldn't say "and." It probably should say "and/or."
Q. Is there anything on this document that tells your counsel that the note is lost?

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A. No, we wouldn't, no one would know that at the time this is generated.
Q. Do you have any involvement in negotiating the contracts for the attorneys that are in your network?
A. No, we don't have a contract with our attorneys. It's a business relationship. LPS does have contracts with the firms for use of the technology and the bank is not party to that contract.
Q. So you select them, but you don't have any direct contract with the attorneys? And when I say you, I'm talking about OneWest, of course.
A. That's right.
Q. Their contracts are with FIS or LPS?
A. Right, for the technology, yes. Use of their proprietary system, yes.
Q. But I'm interested in the contracts to represent IndyMac or OneWest as their attorney.
A. We don't have contracts for that.
Q. The legal service contracts are with LPS?
A. Those aren't with LPS, either.
Q. Who are those with?
A. There are no contracts between OneWest Bank and Florida Default Law. It's all built on relationships and scorecards and -- and -- I'm looking

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for a word. It escaped me. So there's no contract. Our expectation is -- now, we do have expectations, but there's no contract.
Q. Well, how do they know what to bill you?
A. They always -- the firms have to bill according to Fannie or Freddie guideline, even if the loan is not Fannie or Freddie. Usually we adopt Fannie Mae's billing maximum bid. Fannie Mae have already gone out and said for a file in California you can't charge more than X dollars and the firms cannot charge us more than that, and it doesn't matter who the investor is.
Q. You mentioned scorecards. What information is used for the scorecards?
A. Data like our -- it's -- I don't know. I don't know. It's data --
THE WITNESS: Are you putting that in there?
(Thereupon, there was an off-the-record discussion held.)
MR. ICE: You can take it out. That's okay.
THE WITNESS: Data like, it's hard data. We referred ten files to the firm. We have expectations that the first legal action,

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once they get the referral, if there's no reason, if it's a normal foreclosure process, an uncontested foreclosure, our expectation is that the first legal action be filed within ten days. If it's filed within ten days, and for that particular line item they would have 100 percent that month.
But if something fell outside of that, we have states where if all the assignments aren't recorded prior to the first legal action, then we can't proceed, like in New York. So there will be a delay to get those first, to get those intervening assignments recorded. And then that delay, of course, would affect their score. It's not really their fault, but that's the way it works. So it kind of grades different areas in the process.
BY MR. ICE:
Q. But essentially you're scoring how quickly your counsel can get through the foreclosure process?
A. No. Fannie Mae has and Freddie Mac, they have a per -- like the fee schedule. They also say the foreclosure in California -- and this is based on that state's laws, too -- should not take longer than 120

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days. There's no reason for it to take longer than 120 days because the state dictates that this is filed at this point and this is filed at this point and this is filed.
So the idea isn't to get through the process as quickly as you can, unless if the property or the borrower has abandoned it, the borrower has told us they don't want the property; otherwise, IndyMac Bank, IndyMac Federal Bank, OneWest Bank's perspective is how do we keep the borrower in their home. So we don't look at time lines. They're there, they're a guide and it's the industry standard, but no one's being graded on time lines.
Even the servicer isn't even being graded on time lines like we were in the past. Fannie Mae would say, Erica, what's going on in California because you're 20 percent outside of time, time lines. So we don't have that same kind of oversight today.
Q. Well, let's try to narrow it down to your Florida attorneys and how things run today.
A. Okay.
Q. Are the attorneys for the banks, for OneWest, scored on how quickly they get the foreclosure through the process?
A. It's too broad of a question. No. Generally

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no, because there are controllable delays and noncontrollable delays. So, of course, a noncontrollable delay is bankruptcy, a noncontrollable delay is a payment plan, review for loan modification, deed in lieu, DIL review, because in a deed in lieu the investor requires that the property is marketed for six months, so noncontrollable delay. So those are carved out of the time line, so.

And the firms are not incented on getting them through the process as fast as they can. In a state like Florida, specifically since this is a judicial state, there are always court delays, there are the mediations. Those are all uncontrollable delays. Nothing in Florida is happening like a foreclosure might happen two years ago. Now it's like what, plus nine months.

So no one, there is not this mindset of getting through the process as fast as you can. As a matter of fact, it's quite the opposite. We know we're not going to -- you know, the courts are backlogged, the mediators are backlogged. Let's try to work this out now before the mediator calls us to the table.

Q. I just want to be very, very clear because what you just said is very counterintuitive to everything that we have experienced on our side of the

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table. You're telling us that as far as your attorneys are concerned, there's absolutely no incentive to file the cases as quickly as possible and get them through the system?

A. No, we don't incent the attorneys. No, we don't incent the attorneys to get it through the system as fast as they can.

Q. How about file as quickly as they can?

A. We have an expectation that the first legal is filed within ten days of referral. And so with every state, once you file the first legal, the state law takes over. As soon as that happens, you know, the next step happens as a result of the first legal action. And I'm not just speaking of Indymac. Only OneWest Bank, right?

Q. Right.

A. Just not all servicers, just OneWest.

Q. Well, I don't mind telling you on the record, the reason why I'm asking that question, I think a lot of the things that are problematic in this case for you, like the assignment, could have been avoided had they just done the assignment first, got you to sign it and then filed the case. I don't understand. Maybe you can explain it to me, why there's this rush to get it filed and then assign the mortgage after the case is

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filed, which in Florida is a big problem. Do you have any explanation for that? And this isn't --

A. Are we going back to the MERS?

Q. Yeah, the MERS' Assignment of Mortgage.

A. Okay. The reason, the idea is that MERS, sometimes Deutsche in the past Fannie and Freddie, would like for us to do the action in our name. That doesn't mean that we cannot do the action in any of those four entities names. The result, however, of doing an action in their name, when their guide, the investor guideline is that we not, is that if there's any loss, we may be responsible for that loss.

If any lawsuit happens, like in this case, your lawsuit is not against Deutsche, your lawsuit is against IndyMac Federal. It's for that reason that investors usually don't want you to do the action in their name. It's there, it's for their protection, but it doesn't mean that we don't, we categorically cannot. It happens because it happens in error. It happens because someone didn't realize this was a Fannie Mae loan and thought it was an IndyMac Bank loan and -- I mean, I'm sorry, vice versa -- and actually filed the action in Fannie Mae's name.

So there's nothing -- we don't -- there are guides, but the guides are loose and they're gray. So

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the guide says, don't start this action in the name of MERS, but it doesn't say what's going to happen if you do.

Q. Okay. That's kind of addressing a different question, but before I get back to my original question I want to make sure. I didn't understand why the Deutsche Bank, for example, in this case would object to having the case brought in its own name?

A. Well, I can't speak for Deutsche, so what I'm repeating to you is my understanding. And I did work for Fannie Mae before, eight and a half years at -- what did you call my resume, duces tecum? So I can tell you from my previous experience and being in this industry for 18 years, that generally the investor does not want their name tied, they don't want to be pulled into the lawsuit. Their expectation of the servicer is that they service the loan, which includes the good and the bad, and that if for any reason there's ever a lawsuit, then the bank would handle it.

So I'm going to go back to using Fannie Mae because I worked there before. If this were a Fannie Mae loan and we were paying excessive attorney fees and costs because of the contested litigation, Fannie Mae is not going to reimburse OneWest Bank for those fees. OneWest Bank would eat the fees in that case because

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Fannie Mae's expectation is, you're the servicer and, you know, if it's contested, then, you know, you got to fix it. That's part of the agreement, so.

Q. Those cases that you mentioned before that you had settled, the difference that you settled it for, did OneWest end up, as you say, eating the difference?

A. Yes.

Q. Now, going back to my original question, which is about, not about whose name to bring it in, but the timing. Do you have an explanation why this case would get filed before the Assignment of Mortgage was in place such that IndyMac Federal Bank would be the mortgagee at the time of filing?

A. I need to go look at the dates again. When was it filed, the first legal action?

Q. The case was filed November 21st --

A. IndyMac Federal Bank.

Q. -- 2008 in the name of IndyMac Federal Bank.

A. And the MERS assignment?

Q. The MERS assignment was dated December 2nd, 2008. By waiting one week, this could have been in place by the time the lawsuit was filed.

A. I mean, I can -- again, this is based on my experience. I can come up with reasons why that's

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possible. It's not ideal. Is it against the law in Florida to start the action in the name, you know, one way or the other, I don't know. I think that's arguable, but in this case, in this particular case --

MR. ICE: Joe's got the argument.

MR. MANCILLA: It will be argued.

THE WITNESS: In this particular case, a lot of these actions happen simultaneously. The loan is referred, someone's trying to order the original docs, someone's trying to prep the assignments, well, it's going down three different paths. The documents, the last time we spoke, I was the only one signing them. I could have gotten that document, but I can't tell you now. But I can tell you when that document was originally sent to OneWest Bank for signature. It could have been sent to OneWest Bank on November 15th and it just took me that long and the process that long to get it back and it just, the items crossed.

BY MR. ICE:

Q. But I want you to assume for the purposes of my question, and Joe's free to argue it later, that you

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need, you need to be the mortgagee when you file your complaint, which, as an attorney, if I was working for the bank, I would just make sure I had this document in my hand before I went down -- and by this document, I mean the Assignment of Mortgage -- before I went down to file my complaint. I mean, it's not that difficult to say I need A before I do B.

Do you have any explanation why that doesn't happen in 99 percent of the cases?

A. No, if I did, this is off the record, I would have won the lottery if I had those kind of answers. No, I don't know. I mean, the only thing I can offer is that I think some of these processes are happening simultaneously and things are getting crossed and maybe someone -- maybe there's -- I don't know. I don't know. I can't really say.

Q. And the same question with the lost note counts, I think we have about 50 or so cases with Florida Default Law Group, and I can tell you that in certainly much more than 50 percent there's a lost note count. And from everything you've said today, that's not true, that there's not 50 percent of the notes getting lost out there.

A. Are you talking -- are all these OneWest Bank?

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MR. MANCILLA: No.

BY MR. ICE:

Q. No, they're not all OneWest Bank. But would you agree that by holding off on filing the complaint for a few days might reduce the number of lost note counts because the note would show up at OneWest, or whoever the servicer is?

A. Yes, I agree.

Q. So No. 14: Printout of the MAS INV1 for the subject loan from the MSP Fidelity program.

A. Did you get that? I should have highlighted it. And that's MAS1 INV1.

(Thereupon, Defendants' Exhibit No. Z was marked for identification.)

BY MR. ICE:

Q. I'm handing you what's been marked as Exhibit Z to your deposition and ask you to identify that document.

A. This is a screen print of the master file that shows who the investor is for this loan, the Machado loan.

Q. I'm going to hand you what has been marked as P14 to your deposition and ask you is that the same document?

A. It is, yes.

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Q. And the investor indicated on there is Deutsche Bank?
A. Yes.
Q. What does HDR INDX stand for?
A. I think that HDR means holder. And index is part of that full name. The system can't hold the full name, all of that.
Q. And you say it's the full name of the trust.
A. The trust. So that INDX is a piece of the full name.
Q. Right. And so it's 2006-AR4?
A. Yes.
Q. What is the address that's underneath that?
A. I believe that is when this PSA, at the time of the PSA of the loan that's under this agreement, that's the address in the PSA document for the bank, for Deutsche Bank.
Q. Up at the top has MSP Loan Master Maintenance & Display. That's the name of this document or this print, this screen?
A. Yes.
Q. Below that, type 13, what does that stand for?
A. It means that the first -- it kind of tells you right there. It's a first mortgage. A one means

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first mortgage, three means conventional.
Q. And W/O INS is without insurance?
A. Yes.
Q. Meaning it's not being escrowed for insurance?
A. No, I think that means no MI.
Q. Mortgage insurance?
A. Yes.
Q. ARM, meaning it's an adjustable rate mortgage?
A. Yes.
Q. What does group stand for?
A. I don't know. I don't think it's something that we use, either.
Q. What is INV1 on the next line?
A. That is the sub-screen in the master workstation.
Q. INV and then the line below that?
A. That's the investor code. Right next to it is the category code. That is how, within the system, that is how the sales are tagged.
Q. Does 753 stand for Deutsche Bank?
A. Probably.
Q. And do you know what 665 in the category stands for?

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A. I don't know, but any loan that came up with this would always come up with this as the investor.
Q. Let me show you what's been marked as Exhibit P15 to your deposition and ask you if recognize that?
A. Yes, I do.
Q. What is that?
A. The Affidavit as to Amounts Due and Owing.
Q. This appears to be the same one as you signed, only the name is blank, correct?
A. Yes.
Q. Who fills in your name on the affidavit?
A. The firm.
Q. Okay. So you would never have seen something that looks like this with your name still blank?
A. I know for sure I would never see any -- no, I wouldn't ever see anything blank.
Q. How does the attorney who is preparing this know to fill it out for your name?
A. Generally, because of the relationship, they know that I'm the vice president of bankruptcy and foreclosure and I would be the one answering rogs from a bankruptcy or foreclosure contested matter.
Q. Okay. But that is the Affidavit of Amounts Due and Owing.
A. Sorry. Same thing. Because I am the vice

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president of bankruptcy and foreclosure, they know to put my name down.
Q. Didn't you tell us earlier that there's several people in your department now who sign?
A. Yes, there are now.
Q. So how do they know to choose you over them when they put their name in it?
A. Well, they're always going to put my name, and because my name is here, this would be one of the documents I would always get, kind of like with the Lost Note Affidavit, because they're going to put that in before it gets to me. So that's won't go to Roger because it has my name in it.
Q. So all the Affidavits as to Amounts Due and Owing come to you?
A. If my name is there, it's going to come to me, yes.
Q. Well, now back to how do they know to put your name there?
A. Because of the relationship we have.
Q. So are you saying that all the Affidavits as to Amounts Due and Owing prepared by Florida Default would have your name on it?
A. Most likely, except for -- there's an exception. If I'm on vacation, which I haven't had one

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of those in two years -- that was off the record -- and they know Roger's going to sign, then it will get to the LPS folks with my name. They're going to reject it and tell the firm they need to put a different name in because I'm out of the office.

Q. If you turn further back in the pages that are marked as Exhibit P15, do you see another copy of Exhibit A to your notice of deposition duces tecum?

A. Yes.

Q. Have you seen that version before?

A. I don't know.

Q. By version, I mean do you see that somebody made some markings on there?

A. Okay. I don't think I've seen anything with markings on it before.

Q. You didn't make those marks, correct?

A. No.

Q. And you don't know who did?

A. No.

Q. Do you know what NOD stands for?

A. Notice of default.

Q. Do you know why that's written next to No. 5?

A. Whoever wrote it was probably thinking a complaint was a notice of default, and that terminology isn't true in the foreclosures in Florida, but in the

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foreclosures in California.

Q. Take a look at P16, please.

A. Yes.

Q. That was produced along with all the other documents?

A. Yes.

Q. Do you know what that is?

A. Yes, this is the procedure, that I'm sure you've read it, like where it says, do a total payoff on pay 4, it's like the procedure of how to get the figures for the Affidavit of Indebtedness or judgment figures.

Q. Is this instructions to your counsel?

A. Oh, no, no, no. This is instructions to -- it's not instructions to anyone. It's the procedure. It's saying, LPS, when we are ready for the firm to do a judgment, pull down these screen prints for the firm. I'm sorry. Not even pull them down because it's automatic.

As soon as we refer it, these screens that I've given you automatically upload to LPS's system. So when is this dated? This is probably a long time ago before we automated that process. So at one point they may have been, maybe before my time, they may have been actually going in and printing the screens. That

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doesn't happen today.

Q. Do you know why this was included in the materials that were --

A. No.

Q. -- produced for your deposition?

A. I don't know, unless it was some reference to how the figures, how we come up with the figures. That's the only thing I can think of.

Q. No. Q, please.

A. Okay.

Q. This should be very similar to the Limited Power of Attorney that you produced earlier --

A. Yes.

Q. -- giving IndyMac the right to sign on behalf of Deutsche Bank, correct?

A. Okay.

Q. This particular one was recorded by Kahane & Associates, not by Florida Default.

A. Okay.

Q. Can I see your version? Yeah. This one has the highlighting.

I wanted to call your attention to the top of page 4, and I've highlighted the words, Nothing contained herein shall, then it's a couple of things that jump to No. 2, be construed to grant the servicer the power to

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initiate or defend any suit, litigation or proceeding in the name of Deutsche Bank National Trust Company except as specifically provided for herein.

A. Okay. Yes.

Q. Going back to my earlier question, does this refresh your recollection as to where the restriction is that keeps IndyMac from filing in the name of Deutsche Bank?

A. Yes.

Q. And that would be in the Limited Power of Attorney that Deutsche Bank gives to IndyMac, correct?

A. Yes.

Q. And then when I turn back to page 8, I've highlighted INDX 2006-AR4.

A. Yeah, you see that category code, 665? Right here.

Q. Right. So this trust that you've identified in your documents as being the owner, as being aware that a note is securitized, is among those trusts for which Deutsche Bank has given IndyMac Limited Power of Attorney?

A. Yes.

Q. And that's all shown in Exhibit Q, correct?

A. Yes.

MR. ICE: All right. May I confer with

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my associate?
MR. MANCILLA: Sure.
MR. ICE: I think that's about it.
MR. MANCILLA: I want her to read and sign. Do you want to enter into a stipulation for the record?
MR. ICE: We have agreed, because of the late hour today, that there was a second deposition scheduled in the IndyMac Federal Bank, FSB vs. Monica DeBenedetti and others, a second deposition of our deponent here in this case, we have agreed that the questions and answers in this deposition can be used in the DeBenedetti case, and for the specific purpose of shortening the deposition, that we will now agree to take by phone at a later date.
MR. MANCILLA: Fine.
MR. ICE: We're not waiving the right to take the deposition. We have some documents that are specific to the DeBenedetti case, but we will not ask all of the general questions that were asked in this deposition based on the stipulation that we'll be able to use those in the DeBenendetti case.

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MR. MANCILLA: That's fine.
(Transcript order taken by Reporter.)
MR. ICE: No, we want this. Heck, she came all the way down here, I want to see every word.
MR. MANCILLA: Copy, no extra.
MR. ICE: All electronic. No, no extra exhibits.
MR. MANCILLA: Yes, copy of exhibits.
(Thereupon, the foregoing proceedings concluded at 6:45 p.m.)

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CERTIFICATE OF OATH
STATE OF FLORIDA)
) ss
COUNTY OF PALM BEACH)
I, the undersigned authority, certify that ERICA A. JOHNSON-SECK personally appeared before me on the 9th day of July, 2009 and was duly sworn.

WITNESS my hand and official seal this 16th day of July, 2009.

DEBORAH H. RODGERS, CSR
Notary Public, State of Florida
My Commission DD496368 Expires 1/22/10

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CERTIFICATE
STATE OF FLORIDA)
) ss
COUNTY OF PALM BEACH)
I, Deborah H. Rodgers, Certified Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the deposition of ERICA A. JOHNSON-SECK; that a review of the transcript was requested; and that the foregoing pages numbered 1 through 220 inclusive are a true and correct transcription of my stenographic notes of said deposition.
I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.
I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.
DATED this 16th day of July, 2009.

DEBORAH H. RODGERS, CSR
Notary Public, State of Florida
My Commission DD496368 Expires 1/22/10

ERRATA SHEET

Re: IndyMac Federal Bank, FSB vs.
Israel A. Machado, et al., etc.

Witness: Erica A. Johnson-Seck

Date: July 9, 2009

Reporter: Deborah H. Rodgers, CSR

PAGE LINE REMARKS

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Erica A. Johnson-Seck

C E R T I F I C A T E

- - - - - -

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

DATED this ____ day of_____, _____.

_____

Erica A. Johnson-Seck

July 16, 2009
Ms. Erica A. Johnson-Seck
c/o Joseph Mancilla,Jr., Esq.
Florida Default Law Group, P.L.
9119 Corporate Lake Drive, Suite 300
Tampa, Florida 33634
Re: IndyMac Federal Bank, FSB vs.
Israel A. Machado, et al., etc.

Dear Ms. Johnson-Seck:

Please take notice that on July 9th, 2009, you gave your deposition in the above-referred matter. At that time, you did not waive signature. It is now necessary that you sign your deposition.

Please call our office at the below-listed number to schedule an appointment between the hours of 9 a.m. and 4:30 p.m., Monday through Friday.

If you do not read and sign the deposition within a reasonable time, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court. If you wish to waive your signature, sign your name in the blank at the bottom of this letter and return it to us.

Very truly yours,

_____
Deborah H. Rodgers, CSR
Consor & Associates
1655 Palm Beach Lakes Boulevard
Suite 500
West Palm Beach, Florida 33401
561.682.0905

I do hereby waive my signature

_____
Erica A. Johnson-Seck
cc via transcript: Thomas E. Ice, Esq.
File copy

www.ForeclosureFraud.org

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