

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN THE MATTER OF:)
)
FEDERICO GUEVARA III,) Chapter 13 Case No.
and HERLINDA GUEVARA,) 07-32604-hdh13
)
Debtors.)

FEDERICO GUEVARA III,)
and HERLINDA GUEVARA,)
) Adv. Proc. No.
) 08-03191-hdh
Plaintiffs,)

VS.)

WELLS FARGO BANK, N.A.,)
SUCCESSORS BY MERGER TO,)
WELLS FARGO HOME)
MORTGAGE, INC., ASSIGNS)
AND/OR SUCCESSORS IN)
INTEREST)
Defendant.)

ORAL DEPOSITION OF
ERIN HIRZEL ROESCH
APRIL 8, 2010
VOLUME 1

1 ORAL DEPOSITION OF ERIN HIRZEL ROESCH,
2 produced as a witness at the instance of the
3 Plaintiffs, and duly sworn, was taken in the
4 above-styled and numbered cause on the 8th of April,
5 2010, from 9:56 a.m. to 5:28 p.m., before Cinnamon
6 Boyle, CSR in and for the State of Texas, reported by
7 Bartholow P.C., 11300 North Central Expressway, Suite
8 301, Dallas, Texas, pursuant to the Federal Rules of
9 Civil Procedure.

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 MR. BARTHOLOW: Can we agree to the usual
3 stipulations?

4 MR. ALFIERI: Yes.

5 ERIN HIRZEL ROESCH,
6 having been first duly sworn testified as follows:

7 EXAMINATION

8 BY MR. BARTHOLOW:

9 Q. Good morning. My name is Thad Bartholow, and
10 I am the attorney for the Plaintiffs, Frederico and
11 Herlinda Guevara, in this case.

12 Could you please state your name for the
13 record?

14 A. Erin A. Hirzel Roesch.

15 Q. Roesch, okay. I've been pronouncing it
16 Roesch, so I'm glad to have that corrected.

17 A. I -- I had said earlier think "fresh" without
18 the "F."

19 Q. Got it. Okay.

20 MR. BARTHOLOW: And does the court
21 reporter have the spelling?

22 THE REPORTER: Yes --

23 MR. BARTHOLOW: I guess so, yeah.

24 Q. (BY MR. BARTHOLOW) All right. Let's start
25 off by getting a little bit of background information,

1 some of the -- the standard questions.

2 Are you on any medications today that
3 would keep you from being able to testify
4 appropriately or -- or accurately?

5 A. No.

6 Q. Okay. And is there any reason that you can
7 think of why you would be mentally unable to testify
8 appropriately today?

9 A. No.

10 Q. Okay. Ms. Roesch, if you would, please tell
11 me what the name of your -- or your current position
12 is?

13 A. Litigation specialist.

14 Q. And where are you employed?

15 A. Wells Fargo.

16 Q. Okay. And how long have you held that
17 position?

18 A. Four years.

19 Q. Four years, okay. As litigation specialist?

20 A. Yes, sir.

21 Q. Okay. And prior to that, were you working at
22 Wells Fargo?

23 A. No.

24 Q. Okay. Well, let's go back and start with
25 your educational background. What is the highest

1 educational level you've completed?

2 A. I completed high school and did a
3 certification through a business institute.

4 Q. Okay. What was that business institute
5 called?

6 A. Accutech.

7 Q. Okay. And what -- what was the certification
8 in?

9 A. Computerized business and office technology.

10 Q. Okay. And following completion of that
11 degree, what was the first job that you took?

12 A. Prudential Associates.

13 Q. Okay. What were you doing there?

14 A. I worked as an administrative assistant.

15 Q. Okay. And how long did you hold that
16 position?

17 A. To the best of my recollection, about two
18 years.

19 Q. Okay. Following that, what was your next
20 job?

21 A. I was a temp.

22 Q. Okay. And then following your temping day?

23 A. I worked for Draper & Goldberg.

24 Q. What was Draper & Goldberg?

25 A. Draper & Goldberg is a law office that

1 provides bankruptcy and foreclosure work on behalf of
2 mortgage companies.

3 Q. Okay. And where are they located?

4 A. Leesburg, Virginia.

5 Q. Okay. And how long did you work there?

6 A. A little over two years.

7 Q. And what was your position?

8 A. I went through multiple positions while
9 there.

10 Q. Okay. And so what -- what did they entail?
11 What did you do?

12 A. I did everything from being a mailing clerk,
13 ensuring that sufficient copies of motions and et
14 cetera were sent out to the appropriate parties,
15 through being a compliance officer and ensuring that
16 the processes within the department were upheld and we
17 weren't missing any steps that needed to be taken care
18 of.

19 Q. Okay. In your capacity at that law firm,
20 were you ever authorized to execute any document on
21 behalf of any entity?

22 A. No.

23 Q. Other than the law firm, okay. And after
24 that job, what did you do?

25 A. I went to Specialized, Inc., of Virginia.

1 Q. Okay. And what did you do at Specialized,
2 Inc.?

3 A. I held two positions while there, bankruptcy
4 process specialist and title review specialist.

5 Q. Do you recall the approximate time frame for
6 that job?

7 A. Not off the top of my head.

8 Q. Okay. Before or after the year 2000?

9 A. It would have been slightly after.

10 Q. Okay. And then after Specialized, what did
11 you do?

12 A. Went to Fisher Law Group.

13 Q. Okay. And what did you do at Fisher?

14 A. I started out as a post-sales specialist and
15 then proceeded to do pre-sale foreclosure work on
16 their behalf.

17 Q. Okay. What did pre-sale foreclosure work
18 entail?

19 A. That would be the initial filings of the
20 complaints, coordinating with the auctioneer and the
21 publication companies to ensure that we, you know, did
22 the appropriate publications before we went to sale.

23 Q. Okay. And while you worked at Fisher, did
24 you have authority to execute any document on behalf
25 of any entity other than Fisher?

1 A. No.

2 Q. Okay. And approximately when did you leave
3 Fisher?

4 A. 2004, I think.

5 Q. Okay. And then following Fisher, where did
6 you go?

7 A. The next job that I held would have been with
8 Offutt Horman Burdette.

9 Q. Okay. And what is that?

10 A. That is a law firm in Frederick, Maryland.

11 Q. And what were -- what were your
12 responsibilities there?

13 A. I was a paralegal.

14 Q. Okay. And what type of work were they doing?

15 A. They did real estate work, settlements and
16 probate.

17 Q. Okay. So more of a generalist type of law
18 office, it sounds like; maybe, maybe not?

19 A. I don't know how to clarify generalist.

20 Q. Fair enough.

21 And how long did you hold that position?

22 A. I want to say about a year and a half.

23 Q. Okay. And then where did you go?

24 A. Then I went to Wells Fargo.

25 Q. Okay. And in what capacity were you hired at

1 Wells Fargo?

2 A. As a litigation specialist.

3 Q. Okay. And when you were hired at Wells
4 Fargo, did you receive any training to work there as a
5 litigation specialist?

6 A. Yes.

7 Q. Okay. What did the training involve?

8 A. One-on-one work with other people that had
9 already been in that position, certain required
10 mandatory training across the board for Wells that's
11 usually done electronically, and --

12 Q. And --

13 A. -- shadowing of court procedures so that I
14 could understand how those would entail.

15 Q. Okay. And you say required electronic
16 training?

17 A. Uh-huh, general review of business practices
18 -- for example, you know, harassment issues and
19 general employment updates.

20 Q. What do you mean by employment updates?

21 A. Like I said, harassment suits, you know, what
22 you -- should you do if somebody is harassing you at
23 the workplace and -- and how Wells Fargo expects the
24 employees and -- to handle those type of issues.

25 Q. So relates to Wells Fargo's human relations

1 policies; does that sound appropriate?

2 A. Yes.

3 Q. Okay. And as a bankruptcy litigation
4 specialist, did you receive specialized
5 bankruptcy-related training?

6 A. I never said I was a bankruptcy litigation
7 specialist.

8 Q. Okay. Fair enough. You're a litigation
9 specialist, generally.

10 Have you received bankruptcy-specific
11 training?

12 A. To some degree.

13 Q. Okay. And to what degree?

14 A. There -- we did take a course that went
15 through general procedures of Wells Fargo's bankruptcy
16 department, plus I had background knowledge from my
17 prior positions of general bankruptcy court rules and
18 regulations.

19 Q. Okay. And in preparing for your deposition
20 today, did you review any documents?

21 A. Yes.

22 Q. Okay. What documents did you review?

23 A. Many documents. I reviewed all of the
24 exhibits to Ms. Savery's deposition. Our system that
25 maintains the -- the active loan data, the collateral

1 and origination files that contain the loan
2 origination documentation for this loan. Off the top
3 of my head, that's what I can remember. There may
4 have been more documentation in my review.

5 Q. Okay. Did you -- did you review the actual
6 deposition transcript itself?

7 A. Yes.

8 Q. Okay. Did you review the discovery
9 responses, the responses to the requests for
10 admissions and the responses to the interrogatories?

11 A. I believe at least the request for admissions
12 was part of the exhibits to Ms. Savery's deposition.

13 Q. I --

14 A. So it's been reviewed --

15 Q. -- I misspoke. I said requests for
16 admissions. It would be request for production. And
17 in fact, I think that it was the written
18 interrogatories that were included; is that your
19 recollection?

20 A. I think you are correct.

21 Q. Okay. Did you review any of the requests for
22 production which were not included in the deposition
23 transcript?

24 A. Without a document to look at to ensure that
25 that was something that I reviewed, I do not recall at

1 this time.

2 Q. Okay. That's fair.

3 And does -- Tamara Savery work in your
4 office?

5 A. Yes, sir.

6 Q. Okay. Is she -- is her desk physically
7 located -- where is her desk physically located in
8 relation to yours?

9 A. About four desks down the aisle.

10 Q. Okay. And have you and Tamara discussed this
11 case?

12 A. In -- in a brief sense.

13 Q. What sense?

14 A. She had said that she had already done the
15 deposition. And I said, "Okay, if I have any
16 questions in regards to what you stated, I will let
17 you know."

18 Q. Okay. And did you have any questions?

19 A. No.

20 Q. Okay. And -- and when did that conversation
21 occur?

22 A. A week or two ago.

23 Q. Okay.

24 A. I don't have an exact time frame.

25 Q. Okay. And how did you first learn about this

1 case?

2 A. In discussion with our Des Moines counsel.

3 Q. Okay. And as -- I guess let me -- let me
4 stop and ask you. Have you been deposed before?

5 A. Yes, sir.

6 Q. Okay. About how many times have you been
7 deposed before?

8 A. I don't think I could give you an accurate
9 number.

10 Q. Okay. More than 50?

11 A. Probably not.

12 Q. Okay. More than 30?

13 A. I don't think it would be quite 30.

14 Q. Okay. In the four years since you were hired
15 by Wells Fargo, what, I guess, percentage of your time
16 spent at work involved preparing for or actually being
17 deposed?

18 A. It would be hard for me to calculate a
19 specific number because depending on the scope of the
20 deposition, it would depend on how much time it
21 entailed for me to feel prepared for it.

22 Q. I -- I understand that each individual
23 deposition can represent a different amount of
24 preparation time. And I think the question is more in
25 terms of the total time that you've spent at Wells

1 Fargo. How much of that time have you spent either
2 being deposed or working on preparing for depositions?
3 Would it be more than half?

4 A. No, sir.

5 Q. Okay. Would it be more than a quarter of the
6 time?

7 A. I don't believe so.

8 Q. Would it be 10 percent of the time?

9 A. Give or take a little bit -- you know, to
10 calculate that, it would take me a little longer to
11 try to remember exactly how many depositions I've been
12 through and calculate how much time versus total time
13 they are -- they would have taken.

14 Q. Okay. One thing I would like to know,
15 actually, is how many depositions you have been
16 through. So if --

17 MR. BARTHLOW: I can make a formal
18 request for that information, Mark, or if you would be
19 able to provide it to me without it, that would be
20 great.

21 MR. ALFIERI: Okay.

22 MR. BARTHLOW: Okay. Do you want a
23 formal request?

24 MR. ALFIERI: Let's wait till the end of
25 the deposition. There may be more requests that you

1 have. And then we can do it formally --

2 MR. BARTHOLOW: Okay.

3 MR. ALFIERI: If so. You know, depending
4 upon how many you may subsequentially ask for.

5 MR. BARTHOLOW: All right.

6 MR. ALFIERI: But I'm going to note it
7 now.

8 MR. BARTHOLOW: Okay.

9 Q. (BY MR. BARTHOLOW) And in the cases where
10 you've been deposed, how many of them were bankruptcy
11 cases?

12 A. Maybe half.

13 Q. Okay. Okay. And how many of those cases
14 related to claims that Wells Fargo had charged
15 unauthorized fees?

16 MR. ALFIERI: Objection, form.

17 A. I don't know.

18 Q. (BY MR. BARTHOLOW) More than one?

19 MR. ALFIERI: Objection, form.

20 A. I do not recall all of the claims that were
21 contained in regards to the prior depositions that I
22 did, so I could not give you a -- a accurate figure of
23 how many would contain a claim as you stated it.

24 Q. (BY MR. BARTHOLOW) Okay. Have you ever been
25 deposed on that subject?

1 MR. ALFIERI: Objection, form.

2 Q. (BY MR. BARTHOLOW) Other than today?

3 A. I have been deposed in regards to payment
4 application and fee issues in the past.

5 Q. Okay. And have you been deposed with regard
6 to the disclosure of fees by Wells Fargo that are
7 charged during a bankruptcy case?

8 MR. ALFIERI: Objection, form.

9 A. Could you clarify your question for me? I'm
10 not sure I understand what you're asking --

11 Q. (BY MR. BARTHOLOW) Yeah. For example, in
12 this case, there was an objection to confirmation
13 filed, correct?

14 A. Yes, sir.

15 Q. Okay. And my review of the record indicates
16 that there was an attorney fee charged for that
17 objection to confirmation. Is that what your review
18 of the record indicates?

19 A. There is assessment of an attorney fee to the
20 account at about the time that the objection was
21 filed.

22 Q. Okay. It sounds like you're making a
23 distinction. Can you explain the distinction you're
24 making?

25 A. You had said charged. To be charged, we have

1 to ask somebody for that money. At this point in
2 time, I don't believe a -- an official request for
3 that to be paid has been made.

4 Q. Okay. So I don't know how we should -- we
5 should draw that distinction in this deposition, but I
6 would like to be able to talk about items that appear
7 on the account. And would you agree that a fee for an
8 objection to confirmation appears on the information
9 that's been produced in this case?

10 A. Yes.

11 Q. Okay. But would it be accurate to say that
12 the distinction that you're drawing is that whether it
13 appears or not, it may not have actually been
14 collected?

15 MR. ALFIERI: Objection, form.

16 A. I'm not sure I understand your use of the
17 word "collected."

18 Q. (BY MR. BARTHLOW) Okay.

19 MR. BARTHLOW: Would you be able to read
20 back her response a moment ago where she was
21 distinguishing between charging and however else we
22 wanted to characterize it?

23 (Requested portion read back)

24 Q. (BY MR. BARTHLOW) All right. So when we're
25 speaking today, can we talk about assessments as being

1 figures that appear on the account?

2 A. Yes, sir.

3 Q. Okay. And do we agree that -- that an
4 assessment means that there is some amount that is
5 included on the transaction history?

6 A. Yes.

7 Q. Okay. Now, let's talk again about the
8 distinction that you're drawing between assessing and
9 charging. What's the difference?

10 A. Well, as I stated, an assessment, it reflects
11 on the account history. A charge would be a --
12 something that has been, you know, paid for, that we
13 have made a formal request for somebody to pay those
14 funds back. And at that point, once those funds are
15 paid, they would not be able to be waived or removed
16 from the account anymore. That would be a charge.

17 Q. Okay.

18 A. In -- in the way I differentiate.

19 Q. Okay. So do you know whether, using the
20 example that we've been discussing, that assessment of
21 \$200 for the objection of confirmation has been paid
22 to the attorneys who did that?

23 MR. ALFIERI: Objection, form.

24 A. Could you restate your question?

25 Q. (BY MR. BARTHOLOW) Have the attorneys

1 received the money that's reflected on that
2 assessment?

3 MR. ALFIERI: Objection, form.

4 MR. BARTHOLOW: What's your objection?

5 MR. ALFIERI: You didn't -- what
6 attorneys are we talking about?

7 MR. BARTHOLOW: The attorneys who --

8 Q. (BY MR. BARTHOLOW) Have the attorneys who
9 performed the objection -- who filed the objection of
10 confirmation been paid?

11 A. Our -- my research of this account indicates
12 that Wells Fargo has reimbursed the attorneys for
13 those fees that were incurred in that matter.

14 Q. Okay. I'm going -- I anticipate that you're
15 going to say that reimbursement of the attorneys isn't
16 the same thing as charging my clients; is that right?

17 A. Correct.

18 Q. Okay. Are you also saying that in the event
19 that my clients obtain a discharge, my clients will
20 not be charged for the objection of confirmation?

21 A. It would be speculation on my part that the
22 discharge occurs and -- and there isn't specific
23 orders within the discharge that would state
24 otherwise, but under normal bankruptcy processes, a
25 discharge of a bankruptcy would remove any personal

1 liability of a borrower to fees on the account.

2 Q. Okay. Does the property remain liable?

3 A. Yes, sir.

4 Q. Okay. So what you're saying is upon the sale
5 or foreclosure of the property, Wells Fargo would
6 collect that amount?

7 A. If there was sufficient funds received under
8 the sale or foreclosure to cover those amounts.

9 Q. Okay. Isn't it true that the fees are paid
10 to Wells Fargo first, prior to payment of the loan
11 balance in a foreclosure situation?

12 MR. ALFIERI: Objection, form.

13 A. I'm not sure I understand your question.

14 Q. (BY MR. BARTHOLOW) If Wells Fargo is to
15 foreclose and Wells Fargo has paid this \$200 fee for
16 objection of confirmation, would Wells Fargo be able
17 to reimburse itself from the proceeds of the
18 foreclosure before paying those proceeds to the loan
19 owner?

20 A. Not in all cases.

21 Q. What about in this case?

22 A. I do not recall the exact bidding and
23 post-sale procedures for reimbursement of loans back
24 to Freddie.

25 Q. Okay. How would you find that out?

1 A. I would have to go back to the Freddie
2 website to refresh myself on their servicing
3 guidelines.

4 Q. Okay. And what guidelines are you referring
5 to?

6 A. On the Freddie Mac website, they have
7 servicing guidelines that would direct their servicers
8 on how we are to do the servicing of any loan, and
9 those guidelines usually contain information on --
10 post the foreclosure sale actions.

11 Q. Okay. So you're saying that I could go to
12 that website as well and make that determination,
13 assuming I was smart enough to figure out how to work
14 the website?

15 A. Yes, sir.

16 MR. ALFIERI: Objection, form.

17 Q. (BY MR. BARTHLOW) Okay. And in terms of
18 servicing policies and procedures applicable to this
19 loan between Wells Fargo and Freddie Mac, are they all
20 located on the Freddie Mac website?

21 A. I do --

22 MR. ALFIERI: Objection, form.

23 A. I do not know.

24 Q. (BY MR. BARTHLOW) Okay. Are you aware of
25 any policies or procedures applicable between Freddie

1 **Mac and Wells Fargo that are not located on the**
2 **website?**

3 MR. ALFIERI: Objection, form.

4 MR. BARTHOLOW: What's your objection?

5 MR. ALFIERI: It's pretty vague as to
6 what particular regulations you're referring to. It's
7 a pretty broad-based question as to what regs or --
8 she -- that may be applicable or it may not be
9 applicable.

10 Answer, if you know.

11 A. I don't know.

12 Q. (BY MR. BARTHOLOW) With regard to loans that
13 Wells Fargo services for Freddie Mac, in your
14 experience, have you ever encountered loans that
15 have -- that you have found out there was some other
16 guideline, regulation or policy that was not listed on
17 the Freddie website that governed the relationship
18 between Wells Fargo and Freddie with regard to the
19 servicing of that loan?

20 MR. ALFIERI: Objection, form.

21 A. Without a thorough review of every guideline
22 that on -- is on the website, I personally do not
23 recall anything that wasn't contained there, but it is
24 a limited scope at this point without further review
25 of the website.

1 Q. (BY MR. BARTHLOW) How would you find
2 something on the website --

3 A. Well, the --

4 Q. -- that was not on the website?

5 A. Well, the website would tell me if there was
6 a hole that -- in my knowledge, that would fill in
7 something that in my experience should have been there
8 but wasn't.

9 Q. Okay. And I believe you've already testified
10 that you don't know whether there is any such hole
11 with regard to this loan; is that right?

12 A. Not to my knowledge.

13 Q. Okay. Have you looked?

14 A. I did a review and did not see in my
15 experience any missing procedures, but that is my
16 personal evaluation of the procedures on the Freddie
17 Mac website that I looked over versus the procedures
18 maintained by Wells Fargo in the handling and
19 servicing of this loan.

20 Q. About how much time have you spent preparing
21 for today's deposition?

22 A. A couple of weeks.

23 Q. Couple of weeks, okay. And has it been
24 constant in the last couple of weeks or have you been
25 preparing for longer than that?

1 A. On and off in -- in the last couple of weeks
2 because I had other matters to attend as well.

3 Q. Okay. And when did you first make
4 Mr. Alfieri's acquaintance?

5 A. Personal acquaintance was when I arrived here
6 in Dallas Tuesday afternoon.

7 Q. Okay. And when did you first speak with him?

8 A. I do not recall the -- the date of our first
9 correspondence.

10 Q. Was it six months ago?

11 A. I do not believe it was that long ago.

12 Q. Was it three months?

13 A. As I said, I do not recall the exact date.
14 So how far in the past it was, I can't tell you.

15 Q. Was it more than one month ago?

16 A. Again, since I do not recall the exact date
17 of our first correspondence, it is hard to say whether
18 it was more than one month ago, a month ago, two
19 months ago at what point that initial correspondence
20 occurred.

21 Q. Do you keep notes of contacts that you have
22 with counsel? Would there be a -- a source that you
23 could look to, to find that information?

24 A. Depending on the type of the initial contact,
25 it is possible that I may still have some document

1 that would refresh my memory on that.

2 MR. ALFIERI: Well, I'd have to interpose
3 that to the extent Ms. Hirzel Roesch and I spoke, it
4 -- spoke either through e-mail correspondence or
5 telephone correspondence, that would be protected
6 under the attorney-client privilege.

7 MR. BARTHLOW: The contents would, I
8 agree. And I'm not interested in the contents. I'm
9 more interested in the timing. And I'm going to
10 request that you provide that information to me.

11 Q. (BY MR. BARTHLOW) When did you first speak
12 to John Grissom about this case?

13 A. It would have been prior to my initial
14 contact with Mr. Alfieri, but again, I do not recall
15 the exact dates that those contacts occurred.

16 Q. I'm not interested in the exact date. I'm
17 interested in an approximation. Can you give me an
18 idea of when it was?

19 A. It would have been a matter of a few weeks
20 prior to my initial contact with Mr. Alfieri.

21 Q. Okay. At that -- is that when you first
22 learned that you would be asked to testify in this
23 case?

24 A. Yes, sir.

25 Q. Okay.

1 MR. BARTHLOW: And I'm going to ask that
2 you provide me with that information as well.

3 Q. (BY MR. BARTHLOW) And when did you first
4 speak with Ms. Savery about this case?

5 A. It would be the one and only conversation
6 that I referenced earlier --

7 Q. Okay. And I'm sorry, when was that?

8 A. Within the past few weeks.

9 Q. Okay. But your testimony, as we sit here
10 today, is that you don't remember whether it was more
11 than a month ago that you first spoke with somebody
12 about this case?

13 A. Correct.

14 Q. Okay. Now, you've reviewed Ms. Savery's
15 testimony in this case, correct?

16 A. I have reviewed the transcript of her prior
17 deposition on this matter.

18 Q. Okay. And you reviewed the documents that
19 were attached to that transcript, correct?

20 A. Yes.

21 Q. Okay. And do you recall that those documents
22 included, as we've already discussed, the responses to
23 interrogatories and amended responses to
24 interrogatories in this case?

25 A. Yes, sir.

1 Q. Okay. And are you aware that Wells Fargo
2 initially claimed to -- in those initial responses,
3 claimed to be the owner of this mortgage loan?

4 A. That is what the initial responses state.

5 Q. Okay. And would you agree that the proof of
6 claim on file in this case also identifies Wells Fargo
7 as the creditor?

8 A. I would agree that the proof of claim filed
9 in this matter shows Wells Fargo as a creditor on the
10 account.

11 Q. Okay. Is Wells Fargo the creditor?

12 MR. ALFIERI: Objection, form.

13 A. Could you clarify your use of the word
14 "creditor"?

15 Q. (BY MR. BARTHOLOW) Does Wells Fargo own this
16 loan?

17 A. No.

18 Q. And if they don't own the loan, how might
19 they be a creditor?

20 MR. ALFIERI: Objection, form.

21 A. I'm not sure I understand your question.

22 Q. (BY MR. BARTHOLOW) Let's say I file a claim
23 against the Guevaras based on this mortgage loan, and
24 I say that I'm the creditor in the claim, am I a
25 creditor?

1 MR. ALFIERI: Objection, form.

2 A. Still not sure how...

3 Q. (BY MR. BARTHLOW) I guess I don't understand
4 what's not clear about that question.

5 A. Well, if I don't understand the question, I
6 don't know how to clarify to assist you in...

7 Q. Have you received specific training in how to
8 respond at depositions?

9 A. No.

10 MR. ALFIERI: Objection, form.

11 Q. (BY MR. BARTHLOW) Has Wells Fargo ever owned
12 this mortgage?

13 A. Not to my knowledge.

14 Q. How did Wells Fargo come to be the servicer
15 of this mortgage?

16 A. Through a transfer from Crossland, which was,
17 to my knowledge, a prior servicer on this matter, and
18 continued such under Freddie Mac's guidelines --

19 Q. How did --

20 A. -- when the loan transferred to Freddie Mac.

21 Q. How did Freddie Mac acquire the loan?

22 A. I do not know. I am not Freddie Mac.

23 Q. How do you know that Freddie Mac acquired the
24 loan?

25 A. It is referenced in multiple documentation

1 that I reviewed on my preparation for this deposition.

2 Q. For example?

3 A. For example, contained within internal screen
4 documentation, contained in certain documentation that
5 was part of Ms. Savery's deposition and referenced on
6 the baseline of the originating documentation.

7 Q. When you say reference on the baseline, what
8 do you mean?

9 A. If you look at some of the originating
10 documentation, it references that they are Freddie,
11 Fannie forms that were utilized to do the initial loan
12 of this matter.

13 Q. Yeah, but Ms. Savery testified that those
14 forms are used routinely without regard to whether
15 it's a Freddie or Fannie owned loan?

16 MR. ALFIERI: Objection,
17 mischaracterizing Ms. Savery's deposition testimony.

18 Q. (BY MR. BARTHLOW) Well, okay. In your
19 experience, are those forms ever used for loans that
20 are not owned or acquired by Freddie or Fannie?

21 A. I have seen where -- cases where those forms
22 have been used for other types of loans, but for
23 majority of purposes, I've seen them used for the
24 appropriate type of loan.

25 Q. When you say the majority, about how many

1 files have you reviewed?

2 A. In my complete tenure with Wells Fargo, over
3 a thousand.

4 Q. Okay. And so you would say more than 501 of
5 those ultimately were owned by Freddie or Fannie?

6 A. I would not know the exact percentage of
7 which amount of those -- the entire amount of loans
8 that I reviewed were Freddie, Fannie loans versus
9 independent investor loans.

10 Q. But you would, nonetheless, say that it would
11 be a majority?

12 A. Well, I said the majority of the cases that I
13 reviewed that -- that contained government forms were
14 meant for government-owned loans.

15 Q. Okay. And so would it be fair to say that
16 you are extrapolating from the information in the
17 computer system that you've reviewed, the documents
18 attached to Ms. Savery's deposition transcript and
19 your experience with Freddie, Fannie mortgage notes --
20 or mortgage notes on Freddie, Fannie paper that this
21 note is owned by Freddie?

22 A. Those are the documentations that -- just
23 some of the documentation that indicates to me on this
24 file that this is a Freddie-owned note. I believe
25 Freddie Mac's website also confirms that it is the

1 note holder for this specific matter.

2 Q. Okay. And is there a difference between
3 being an owner and a holder of a mortgage note?

4 A. Could you elaborate on your meaning of
5 holder?

6 Q. Well, you just said that Freddie's website
7 says that they're a holder. Is that the same, as far
8 as you know, as being an owner?

9 A. I may have misspoken. They own the note. A
10 holder could be somebody that just physically holds a
11 piece of paper. It depends on the usage of the word
12 "holder."

13 Q. Are you aware that Wells Fargo has claimed to
14 be the holder in this case?

15 A. I am aware that a incorrect response was
16 filed indicating that, that was amended as soon as
17 that was realized.

18 Q. Other than that, are you aware of any time in
19 which Wells Fargo has claimed to be the holder in this
20 case?

21 MR. ALFIERI: Objection, form.

22 A. Again, I -- I would have to ask you to
23 clarify holder in -- in how you --

24 Q. (BY MR. BARTHLOW) I'm just speaking in terms
25 of actually using the word "holder." I'm not talking

1 about what that word means.

2 A. I believe a document that I reviewed that you
3 prepared had a listing of when certain documents said
4 certain things and -- and whether it was referenced to
5 Frannie -- sorry, Freddie, Wells Fargo or not
6 referenced at all.

7 Q. Other than that document, are you aware of
8 any instance in which Wells Fargo has made a
9 representation in this case that it is the holder?

10 A. I believe that there was a -- and I do not --
11 I do not recall.

12 Q. Have you seen Wells Fargo's response to the
13 qualified written request letter that I sent on behalf
14 of the Guevaras to Wells Fargo?

15 A. At this point, I do not recall whether that
16 was one of the many documentations that I reviewed in
17 my preparation for this matter.

18 Q. Okay.

19 MR. BARTHOLOW: We'll mark Exhibit 1.

20 (Exhibit No. 1 was marked)

21 Q. (BY MR. BARTHOLOW) Have you seen this
22 document before?

23 A. Yes.

24 Q. Does it indicate that Wells Fargo is the
25 holder?

1 A. The exact wording is: "Confirmed that Wells
2 Fargo Home Mortgage is the current holder of the
3 mortgage for this loan."

4 Q. Is that accurate?

5 A. In the fact that at the time this letter was
6 prepared we physically held the note on behalf of
7 Fannie Mae, yes.

8 Q. How do you know that --

9 A. Or sorry, I said Fannie Mae. I meant Freddie
10 Mac. Let me correct myself.

11 Q. And the date on this letter is June 20th,
12 2008, correct?

13 A. Yes, sir.

14 Q. Okay. And how do you know that Wells Fargo
15 was in physical possession of the note on June 20th,
16 2008?

17 A. Because as part of my research in preparation
18 for this matter, I contacted our document control area
19 to determine the exact date at which Wells Fargo
20 became in possession of the original note and
21 documentation on this matter.

22 Q. You contacted the document control team; is
23 that what you said?

24 A. Our document control area. It's a facility
25 that -- that maintains the originals in a secure area

1 on behalf of the mortgage company.

2 Q. And when you say you contacted that area,
3 what -- how did you contact them? What was your
4 method of contacting?

5 A. A phone call.

6 Q. A phone call. And who did you call?

7 A. I do not recall the name of the person that I
8 spoke with.

9 Q. Okay. And what did that person review to
10 provide you with that information?

11 A. Their systems.

12 Q. What systems?

13 A. What system that they use to track what
14 documentation was received and where it is within the
15 document control area.

16 Q. Do you know what that system is called?

17 A. I do not because I have never worked in that
18 area.

19 Q. So would it also be accurate to say you've
20 never seen that system?

21 A. Not personally.

22 Q. Okay. Do you know what the procedures are
23 for maintaining that system?

24 A. No, I do not.

25 Q. Do you know whether it's a paper or an

1 electronic system?

2 A. To my information and belief, it's an
3 electronic system.

4 Q. And what do you base your information and
5 belief on?

6 A. Correspondence with people from that area on
7 prior and other cases that I've had.

8 Q. Okay. But you don't personally know; is that
9 accurate?

10 A. Correct.

11 Q. Okay. Aside from the telephone call, do you
12 have any other basis for personal knowledge of Wells
13 Fargo's possession of this mortgage note on June 20th,
14 2008?

15 A. Yes.

16 Q. What?

17 A. My -- Wells Fargo maintains an imaging
18 system. Documentation, as it is imaged, gets dates
19 and copies put into the imaging system. My review of
20 that shows that the oldest entry of the note was back
21 in 2007.

22 Q. The oldest entry of the note in the system
23 was in 2007?

24 A. Into that imaging system.

25 Q. Into that imaging system. What is that

1 imaging system called?

2 A. It's just called our imaging. It's an
3 internal document viewing system.

4 Q. Is that a part of the Fidelity system?

5 A. No, sir.

6 Q. Okay. Is it a separate software program that
7 you run in order to see things?

8 A. I'm not sure I understand your question.

9 Q. Well -- maybe it's easier if you can tell me
10 how the imaging system works.

11 A. As I said, it's an internal -- from my
12 computer, it's a -- a web application that I have to
13 use internal pass codes to access, that I put in
14 loan-specific information, and it provides me with all
15 of the image documentation that references that loan
16 information that has been placed into it.

17 Q. Okay. And how does the -- how do the images
18 get into the system?

19 A. They are scanned into the system.

20 Q. Where are they scanned?

21 A. I'm not sure what you mean where.

22 Q. Well, there's a scanner somewhere that
23 they're scanned with, right?

24 A. Yes, sir.

25 Q. Do you know where that scanner is located?

1 A. To my best of -- the best --

2 Q. I just want -- if you know, I want to know if
3 you know. I don't want to know to the best of your
4 knowledge --

5 A. Okay.

6 Q. -- do you know where it's located?

7 A. Not exactly.

8 Q. Okay. When you say not exactly, does that
9 mean that you know of a couple of places where it
10 might be?

11 A. Yes.

12 Q. Okay. What are those places?

13 A. To -- as I was going to say, to my knowledge,
14 it is in our Des Moines, Iowa, site or our Milwaukee
15 site.

16 Q. One of the two, okay. Now, have you ever
17 been to either of those sites?

18 A. I have been to the Des Moines site, but did
19 not do a -- a complete review of every room and
20 intricacy of the site itself.

21 Q. Did you see documents being imaged there?

22 A. Not personally.

23 Q. Do you know what the procedures are for
24 imaging documents at that facility?

25 A. No.

1 Q. Have you been to the other site?

2 A. No.

3 Q. So you've testified that when you access the
4 note on the imaging system, you receive -- or there is
5 a date indicated as to when it was placed in the
6 imaging system, correct?

7 A. Correct.

8 Q. Okay. And do you know how that date gets
9 placed into the imaging system?

10 A. At the time that it is -- the document is
11 uploaded to the imaging system, the system itself
12 automatically date stamps the point at which that
13 document is entered.

14 Q. How do you know that?

15 A. Because I have uploaded documentation to our
16 imaging group to be placed on the system and have gone
17 back to confirm that the date that they would have
18 processed it is the date that reflects on that system.

19 Q. How do you know that it's automatically put
20 in, as opposed to hand keyed?

21 A. My understanding of their process is that it
22 is a automatically generated date. However, as I have
23 stated, I haven't actually personally done their
24 processes so my understanding might be slightly off.

25 Q. Let's talk about what your understanding of

1 their process is. What is their process?

2 A. It is, for the most part, electronically
3 provided to them, the -- the document, whether it be
4 through inner system communications or via a fax
5 system and that they are -- that document,
6 electronically, is then placed into the imaging system
7 with a tally of how many pages that document has and
8 the date in which the system received that
9 documentation.

10 Q. And where do the electronic images of the
11 documents come from?

12 A. Multiple sources.

13 Q. Do you know where it came from in this case?

14 A. Not specifically.

15 Q. So your testimony is that your understanding
16 of the process is that they receive an electronic
17 image of the document from some other source?

18 A. In some cases, it is an electronic version
19 sent over via fax or -- or inner system communication.
20 I am also -- given this is my understanding and I have
21 not actually processed that, that there are people
22 that physically scan when original documentation is
23 received.

24 Q. Do you know which happened in this case?

25 A. Both happened in this case.

1 Q. I'm sorry. I'm confused. What do you mean?

2 A. The -- the imaging system doesn't just
3 contain a copy of something. If --

4 Q. Okay. Let me clarify my question.

5 Do you know whether Wells Fargo scanned
6 this document or if it was an external source that
7 scanned the document?

8 A. Which specific document are you referring to?

9 Q. The -- the note.

10 A. The first entry of the note in the imaging
11 system?

12 Q. Yes.

13 A. I do not know.

14 Q. Is there another entry of the note in the
15 imaging system?

16 A. Yes.

17 Q. When was that?

18 A. More recently.

19 Q. When?

20 A. I believe it was part of -- I don't -- I'm
21 sorry. I don't remember the exact date that was
22 listed on the imaging system for the more recent entry
23 of -- imaged version of the note.

24 MR. ALFIERI: We have a copy of the
25 imaged page. Can she refer to that?

1 MR. BARTHOLOW: We might get to that in a
2 minute.

3 Q. (BY MR. BARTHOLOW) But you do remember the
4 exact date that the first copy appears in the system?

5 A. I -- I recall that it was in 2007, but the
6 actual date that the system placed on that, I do not
7 recall.

8 Q. Do you recall the year of the more recent?

9 A. Not without further -- something to look at.

10 Q. Why is it that you recall the date of the
11 original image but not the date of the more recent
12 image?

13 A. Because I had a question of when Wells Fargo
14 first received the note, and that was one of the many
15 steps that I took to try to determine when Wells Fargo
16 first received the note.

17 Q. When was the last time you were deposed in
18 any case?

19 A. Mid February.

20 MR. ALFIERI: Do you need a break?

21 THE WITNESS: Would you mind, sir?

22 MR. BARTHOLOW: Not at all. And -- and
23 actually, let me just say that if at any point you
24 need to use the restroom, want to get up and stretch,
25 walk around, that's fine, just let me know. I'm not

1 trying to keep you hostage here.

2 THE WITNESS: My only question would be
3 is there smoking allowed outside?

4 MR. BARTHOLOW: There is smoking allowed
5 outside. It's not California.

6 THE WITNESS: Sorry --

7 MR. ALFIERI: Can we take about ten
8 minutes, then? I have to go to the bathroom and she
9 needs a cigarette.

10 MR. BARTHOLOW: That -- that's fine --

11 THE WITNESS: It's my one remaining bad
12 habit, okay.

13 MR. BARTHOLOW: -- that's fine. We can
14 go off the record.

15 (Recess taken from 10:50 AM to 11:04 AM)

16 Q. (BY MR. BARTHOLOW) Okay. Let's shift gears a
17 little bit and talk some about the systems and
18 processes for receiving, tracking and applying
19 payments. Do you have or -- are you competent to
20 testify about those subjects?

21 A. Through my experience at Wells and -- and
22 systems, I feel I can give a general sense in regards
23 to those processes. I have not actually been
24 physically a part of some of those processes.

25 Q. Okay. Well, we'll -- we'll get into that a

1 little bit.

2 When a payment is received by Wells
3 Fargo, what happens to it?

4 A. Indications are placed on our systems that a
5 payment is received. The payment is placed on the
6 account, and -- and depending on the circumstances of
7 the account, applied appropriately.

8 Q. Okay. Are the processes different when a
9 payment is received at a branch, as opposed to when
10 it's mailed in?

11 A. Yes.

12 Q. How are they different?

13 A. Because the branch system accepts the payment
14 and then communicates with the mortgage system to
15 ensure that the mortgage system reflects the
16 application of that payment.

17 Q. Okay. And how does the branch system work?

18 A. I do not know.

19 Q. Okay. And so do you know what the method or
20 manner of communication between a branch system and
21 the -- the main system is?

22 A. No.

23 Q. Okay. So your knowledge is limited to
24 knowledge that there is a communication; is that
25 right?

1 A. Yes, sir.

2 Q. Okay. How did you come to have that
3 knowledge?

4 A. The communication is reflected on the
5 mortgage side indicating receipt of a payment, that it
6 was received at a branch location and the effective
7 date of that payment.

8 Q. Okay. And what system is it we're referring
9 to?

10 A. The Fidelity system.

11 Q. That's the Fidelity system, okay. And do you
12 know how that indication gets into the Fidelity
13 system?

14 A. To my knowledge, it would be placed in by a
15 processor working the loan at that time.

16 Q. Okay. And what is that knowledge based on?

17 A. The notes maintained in our system.

18 Q. Okay. Let's -- let's elaborate. Is there --
19 is there a document that's been produced that we could
20 refer to that would help me understand that?

21 A. Yes. And I believe it was referenced as an
22 exhibit to a recent filing of yours.

23 Q. Okay. Do you recall what that document would
24 be? I'm not trying to play a trick question either,
25 so if you don't know, that's okay.

1 A. I don't -- I don't recall the exact screen
2 print title to the document I was reviewing.

3 Q. Okay --

4 A. That indicated that. So if you have
5 something I can --

6 Q. I'm going -- I'm going to see whether this is
7 it. What I'm going to mark as Exhibit 2 is a screen
8 print that says "consolidated notes log" towards the
9 top. You think that might be it? I'll give you a
10 chance to look at it to be sure.

11 (Exhibit No. 2 was marked)

12 A. Thank you.

13 Q. (BY MR. BARTHOLOW) For the record, would you
14 agree that this document has a Bates stamp in the
15 lower right-hand corner that begins at WFB 00250 and
16 ends at WFB 00258?

17 A. Yes, sir.

18 Q. Okay.

19 A. I do not believe this -- although this is a
20 document I have reviewed, I do not believe this was
21 the specific one I was trying to reference.

22 Q. Okay. Well, let's -- since we've got it in
23 front of us, let's talk about what this document is.
24 What is this document?

25 A. As it said, it's a consolidated notes log.

1 It pulls notes from multiple workstations that are
2 opened on a file and -- and consolidates in to one
3 section for a general running history of the notes on
4 the account.

5 Q. Okay. Is this -- is this derived from the
6 Fidelity system?

7 A. This is a screen print directly off of the
8 Fidelity system.

9 Q. Okay. So if you were sitting in front of a
10 computer, this is effectively what you would see; is
11 that right?

12 A. Yes.

13 Q. Okay.

14 A. Usually, the -- the bottom section is -- is a
15 lot smaller. There isn't the big space in the center.

16 Q. Okay. But in terms of the information on the
17 page, this is what you would see, correct?

18 A. Yes.

19 Q. Okay. Let's sort of try to unpack all of
20 these codes here at the very top and -- and you can
21 help me to understand what exactly all of these things
22 mean. At the top of the -- the first page of this
23 exhibit, I've got page 23. And it says document name
24 untitled; is that what you see?

25 A. Yes, sir.

1 Q. Okay. Can you tell me what this would be
2 page 23 of?

3 A. The Fidelity system has the ability to print
4 multiple screens. The page and document name
5 indicators at the top would be generated at that
6 multiple screen printing ability. It would be page 23
7 of however many screens this person that generated
8 this had printed.

9 Q. Okay. So does that mean that there are 22
10 screens before this that are not included in what
11 you've got as Exhibit 2?

12 A. There would have been to -- from whoever
13 printed this. It -- they might have been screens from
14 other loans, different screens besides the
15 consolidated note log, but it would indicate that
16 there were 22 other pages of that print prior to this
17 page.

18 Q. Okay. So because this is a -- a printed
19 record, that number reflects the print job; is that an
20 accurate way of putting it --

21 A. The -- the pages of the print job.

22 Q. Okay. And so would it also be accurate to
23 say that a user could sit down and say I want to pull
24 the Guevaras' loans, and then I want to pull John
25 Doe's loan, and I want to pull Jane Doe's loan, and I

1 want to print the consolidated notes from John Doe and
2 then from Jane Doe and then from the Guevaras all in
3 one print job?

4 A. Yes.

5 Q. Is that what you're saying?

6 A. Yes.

7 Q. And so it's -- it's possible that the
8 Guevaras could have just begun on page 23?

9 A. Yes.

10 Q. Okay. Now, I guess it says document name
11 untitled. What does that mean?

12 A. Again, as part of the -- the printing part of
13 it, the -- the user that is doing the print has the
14 ability to title the print. So if they chose to set
15 the system to say, you know, consolidated loans for
16 loan A, B and C, the -- they could enter that as the
17 document name in that section. In this case, because
18 it says untitled, they just didn't put anything in
19 that section, so it just automatically untitled it.

20 Q. Okay. And when one of these things is
21 generated, is it saved in an electronic format
22 anywhere?

23 A. The electronic format is in the system
24 itself. It prints directly to a -- a printer or it
25 can be printed to a PDF and then saved, but that is up

1 to the -- the individual that was doing the print.

2 Q. Okay. And looking at this, can you tell who
3 the individual was that did the print?

4 A. Not with this specific document, no.

5 Q. Okay. So there is -- there is no information
6 on this page that could you -- would you be able to
7 tell the initials of the person?

8 A. Not -- not given just who printed it given
9 this page.

10 Q. Okay. Okay. What is the NOTS indication
11 right below where it says page 23? What does that
12 mean?

13 A. The NOTS is the code used to view this
14 screen.

15 Q. Sort of an abbreviation for notes?

16 A. Yes.

17 Q. Okay. And then what is that number right
18 next to it, 9071611?

19 A. That's the loan indicator.

20 Q. What is a loan indicator?

21 A. It is Wells Fargo's internal loan number
22 assigned to each individual loan, and it is how the --
23 the system -- one of the abilities of the system to
24 pull up a loan is by the loan indicator numbers.

25 Q. Okay. And are they generated randomly or is

1 there some kind of sequence to them? How -- do you
2 know how a loan indicator is created?

3 A. No, I do not.

4 Q. Okay. Reading across that same line, it then
5 says consolidated notes log, as we've discussed. And
6 then after that there's what appears to be a date,
7 7/17/08. Is that a date?

8 A. Yes, sir.

9 Q. Okay. And I would note that at the bottom of
10 the page it also says specifically date 7/17/08. And
11 so can you tell me what the relationship is between
12 the date at the top and the date at the bottom?

13 A. As you noted, they are the same date. The
14 date at the top is the system-maintained date. So
15 when -- every time you view it, it's going to have
16 that date on the top, the date that you're looking at
17 it, the date of that day.

18 Q. Um-hmm.

19 A. The -- the print date at the bottom is the
20 date of the print.

21 Q. Okay. Now, I'm going to look right next to
22 the date, and it appears to be a time stamp. It says
23 9:27:46. Is that what you see?

24 A. Yes, sir.

25 Q. Okay. Is that a time stamp?

1 A. Yes, sir.

2 Q. Okay. What does that time stamp mean?

3 A. It is, again, the time stamp of the time at
4 which this person was looking at this particular
5 screen. And that time stamp is -- I want to say
6 Central time.

7 Q. Okay.

8 A. So -- and I say that because if I'm on
9 Eastern time, and in this case, you can reflect by the
10 time stamp at the bottom, they're about an hour
11 difference. And that's the difference between the
12 Eastern time zone and Central time zone.

13 Q. Okay. Well, you anticipated my next
14 question. So more than likely, these -- the place
15 where this printed was a -- a time zone behind where
16 the system was, right?

17 A. By approximately an hour.

18 Q. Right. So it's probably the other way
19 around. Wherever this was printed was probably
20 Central, and then the -- the 9:27:46 was probably
21 Eastern, if that is, in fact, the relationship; is
22 that right?

23 A. Something along that lines, yes.

24 Q. Okay.

25 A. One -- one is system generated, as you're

1 looking at it off of wherever the -- the Fidelity
2 system is stored, and the other is based off the
3 location of the actual print job.

4 Q. Where is the Fidelity system stored?

5 A. I do not know.

6 Q. Is it stored -- do you know if -- are you
7 familiar with the company Fidelity? I think it's now
8 known as LPS. Have you heard of that before?

9 A. Yes, sir.

10 Q. Okay. Do you know whether Wells Fargo has
11 Fidelity, now known as LPS, store the information or
12 if Wells Fargo stores the information itself?

13 A. I do not know.

14 Q. Okay. And so do you know what type of
15 computer this information is stored on?

16 A. No, sir.

17 Q. Okay. And again, I -- I apologize for
18 belaboring the point, but you also don't know what the
19 process is for maintaining the computer where this is
20 stored, right?

21 A. No.

22 Q. Okay. Okay. Well, let's -- let's move on.
23 Let's talk about the next line. We've got F. Guevara.
24 I think I can figure that out. That means the
25 Plaintiff, right, Fred Guevara?

1 A. Well, the borrower indicated on our -- on our
2 system for this loan --

3 Q. Which happens to be the Plaintiff in this
4 case, right?

5 A. Which, in this case --

6 Q. Okay.

7 A. -- happens to be the Plaintiff.

8 Q. Okay. And then we've got some letters
9 followed by colons. You've got L colon and then F
10 colon S, B colon A, R colon, and then a due date, what
11 appears to be 1/1/08, and then type -- CONV period RES
12 period. Did I get all that correct?

13 A. Yes, sir.

14 Q. Okay. Well, let's go back to the beginning.
15 We've already gotten through the F. Guevara. What
16 does the L colon mean?

17 A. I do not know what the -- actually, I do.
18 They -- the -- the L colon, the F colon, S, the B
19 colon A, and the R colon blank refer to open and
20 active workstations on the Fidelity system.

21 Q. Okay. Help me unpack that. What do you mean
22 by -- open and active workstations on the Fidelity
23 system?

24 A. When there is a certain processes that are --
25 are going on on a loan -- for example, if there is a

1 bankruptcy, the bankruptcy, as soon as we are aware of
2 it, opens a workstation within Fidelity so that they
3 can maintain their specific information in one spot so
4 it is easier for them to reference all of the
5 bankruptcy information at one point. And the
6 contain -- the information letters after the colon
7 would represent the status of that workstation.

8 Q. Okay. And so let's -- let's first start with
9 the L. Do you know what the L stands for?

10 A. Loss mitigation.

11 Q. Okay. And what does the blank next to that
12 mean?

13 A. It means that that workstation isn't open at
14 that time.

15 Q. Okay. All right. And the next one is an F
16 and it has a colon S. What is that?

17 A. Foreclosure workstation and the S would be
18 suspended.

19 Q. Okay. Not staid? Suspended is the term that
20 y'all use?

21 A. That -- that's just the coding that is put in
22 the system. It's referenced as suspended.

23 Q. Okay. And now we've got B colon A?

24 A. Bankruptcy, active.

25 Q. All right. And then R?

1 A. To the best of my knowledge, that's the REO,
2 which would be a post-sale action. And the blank
3 after it would indicate that it's not open.

4 Q. And REO stands for?

5 A. Real estate owned, I believe, is -- is the...

6 Q. I think that's what I've heard, but I just
7 wanted to confirm it. Real estate owned. Okay. And
8 again, I don't think that's particularly important.

9 All right. Now, we've got a -- the word
10 "due," 1/1/08. What does that mean?

11 A. That's reflecting what the system is showing
12 as the contractual due date on the loan at the time
13 that this was run.

14 Q. Um-hmm. Okay. Do you recall what the
15 contractual due date was when this bankruptcy was
16 filed?

17 A. Not off the top of my head.

18 Q. Okay. So you don't know whether it was
19 January 1st, 2008, or not?

20 A. I --

21 Q. Okay --

22 A. -- like I said, not without something else to
23 reference.

24 Q. That's -- that's fine. We can probably get
25 to that. I'm not too concerned with it right now.

1 Maybe -- okay.

2 Okay. And then the next three words are
3 type and then CONV, C-O-N-V, period, and RES period.
4 I'm going to hazard a guess. Does that mean that the
5 loan type is conventional residential?

6 A. That's what those stand for. For example, if
7 it was a VA loan, it would say type VA. Or if it was
8 a special loan construction, it might show different
9 coding.

10 Q. Okay. Are Freddie loans considered
11 conventional?

12 A. Yes, sir.

13 Q. Okay. What about the next line? I'll let
14 you walk me through it.

15 A. Okay. This screen has the ability to pull
16 all or some of the notes from different departments
17 and groups that would put notes in our system. The
18 next two lines are codes for those different notes
19 that may be put in there and whether this report
20 system was asked to pull those notes into this
21 consolidated note log.

22 Q. Okay. And I think it will go a lot faster
23 after this, but can we go through? Do you know what
24 ANA means?

25 A. That would refer to an escrow analysis.

1 Q. Okay. And what about ARM?

2 A. ARM, if there was like a -- an adjustable
3 rate mortgage --

4 Q. Okay.

5 A. -- and there was an ARM change, the -- it
6 would be noted and -- and that would be the coding for
7 that note.

8 Q. Okay. But this was not an adjustable rate
9 note, right?

10 A. Not to my knowledge.

11 Q. Okay. So the Y that's next to where it says
12 ARM just means that if there were notes they would be
13 included in this; is that right?

14 A. Correct.

15 Q. Okay. What about ASM?

16 A. That one, I do not know.

17 Q. Okay. What about BLN?

18 A. Again, that one, I don't know.

19 Q. Okay. What about BNK?

20 A. That's bankruptcy.

21 Q. Okay. What about CCN?

22 A. I do not know that one.

23 Q. Okay. And COL?

24 A. That's our collections department.

25 Q. Okay. What about ELC?

1 A. I don't know that one.

2 Q. What about FOR?

3 A. Foreclosure department.

4 Q. Okay. And HAZ?

5 A. Hazard area.

6 Q. Okay. What is the hazard area?

7 A. They deal with property insurance and -- and
8 maintaining the records of the property insurance,
9 whether it be owner paid, mortgage paid or forced
10 placed.

11 Q. Okay. And then LMT?

12 A. That would be our loss mitigation.

13 Q. Okay. I assume it's continuing on the next
14 line, same basic deal?

15 A. Yes, sir.

16 Q. What about MIP?

17 A. That would be mortgage insurance.

18 Q. Okay. And PIF?

19 A. That would be if the loan had been paid in
20 full and there were notes regarding the paid in full.

21 Q. Okay. And PMT?

22 A. Payment application.

23 Q. Okay. So the Y next to that should
24 indicate --

25 A. If --

1 Q. -- any notes related to payment application;
2 is that right?

3 A. If our payment application area had
4 additional notes above and beyond some of their set
5 notes that may not have that indicator, those notes
6 would be indicated by the PMT.

7 Q. Okay. Do you know what -- can you help me
8 understand what the difference would be between the
9 set notes and above and beyond notes?

10 A. Certain areas have processes in which the
11 same process is generated over and over and over
12 again. Instead of somebody actually hand typing in
13 the note, the system has the ability to be fed a code,
14 which would automatically generate a -- a specific
15 type of note. Some of those notes can then be fed
16 pieces of information.

17 Q. Okay. And then REO, I'm guessing is real
18 estate owned?

19 A. Yes, sir.

20 Q. And SER?

21 A. That's our servicing area.

22 Q. Okay. What is the servicing area?

23 A. They run along the same lines as our
24 collections group in, you know, fielding phone calls
25 and doing general loan servicing sections. The

1 collections usually tend to deal more with defaulted
2 stuff in the servicing with more current information
3 or information that is a phone call that -- that isn't
4 in regards to, you know, a collection attempt or
5 something else and -- and needs to be directed to one
6 of the other departments that might handle that call.

7 Q. So for example, if I've got a Wells Fargo
8 loan and I'm not behind, and I made a phone call about
9 my mortgage, I'd probably talk to servicing; is that
10 what you're saying?

11 A. Correct.

12 Q. And then the record of that phone call would
13 likely be reflected in these notes?

14 A. Yes, sir.

15 Q. Okay. I bet I can figure out the next one.
16 It's TAX. Is that for taxation, taxing?

17 A. It's for our tax group that deals with the --
18 the property taxes.

19 Q. Okay. What is TSK?

20 A. That's task.

21 Q. Tasks?

22 A. Yes.

23 Q. Okay. What is that?

24 A. Besides the workstations for certain groups,
25 there are tasks that can be opened to, you know, track

1 somebody else that needs to do something. A current
2 loan that -- that has a -- a letter written on it that
3 we need to respond to, they may open a task to get
4 certain information from another group, and that group
5 would then have to complete that task.

6 Q. Okay. And then looking through all of those
7 various groups that we've now discussed, are there any
8 other groups at Wells Fargo besides those or is that
9 all of the groups that exist at Wells Fargo that could
10 possibly appear on this notes log?

11 A. Given that I don't know some of the
12 abbreviations on here, I don't know whether the other
13 departments that I am aware of fall under servicing or
14 fall under one of the indicators that I -- I don't
15 know the true meaning of yet.

16 Q. Okay. That's -- that's fair.

17 Let me ask it a little bit differently.
18 Are you aware of any department that is specifically
19 not reflected on this consolidated notes log?

20 A. No.

21 Q. Okay. And then continuing on that same line,
22 it says "date select" and it says "MMDDYY." What does
23 that mean?

24 A. The screen has the ability to search for all
25 the notes entered on a certain date. And that would

1 be where if you wanted to narrow the time frame you
2 were looking at, you would put a specific date in and
3 it would pull up all the notes for that date. Since
4 no selection was made, it will pull everything that it
5 has on its active system.

6 Q. Okay. So in theory, this document, then,
7 should include every note that's been made on this
8 loan from -- for as long as Wells Fargo has been
9 servicing it?

10 A. No. Only the stuff that's still active --
11 active on the system.

12 Q. Okay. What happens when stuff becomes
13 inactive?

14 A. It -- once it has -- is no longer active on a
15 visual screen printed, it is sent over to our
16 microfiche area and -- and stored on microfiche for
17 future retrieval.

18 Q. Okay. What would be an example of something
19 that goes inactive?

20 A. Well, after about three years, the payment
21 history no longer shows. You can see about three
22 years on the Fidelity system. After about three
23 years, the information from that is sent to
24 microfiche.

25 Q. Okay. And when you say microfiche, do you

1 mean literally it is -- it is placed on film and
2 stored as microfiche film?

3 A. (No response).

4 Q. Are you okay?

5 A. My -- you know how you can get the
6 high-pitched hum in your ear? It just did that real
7 quick.

8 To my knowledge, it is actual microfiche
9 film, but I don't know whether they have upgraded more
10 recently. I know when -- when I send a request I send
11 it to microfiche.

12 Q. So the department is called microfiche?

13 A. (Witness nods head).

14 Q. Have you ever seen the -- Wells Fargo's
15 microfiche film?

16 A. No.

17 Q. Okay. Do you know whether Wells Fargo
18 maintains it or Fidelity maintains it?

19 A. No.

20 Q. Okay. And do you know what the process is
21 for converting it to whatever, whether it's actual
22 film or some other format?

23 A. No.

24 Q. Okay. How is it that you know that that
25 happens?

1 A. Because I have requested purged information
2 off of the system and received it from our microfiche
3 group.

4 Q. So you know that you've received information
5 from the microfiche group after you've requested it,
6 right?

7 A. The exact same information that was contained
8 in the Fidelity system.

9 Q. How do you know --

10 A. Because I have had --

11 Q. -- that it was the exact same information?

12 A. Because I have had loans in my personal
13 dealing with -- that at the beginning of the loan it
14 would have been on the Fidelity system, and then a
15 year later, it's no longer there; I request the
16 microfiche, the same information is contained.

17 Q. How would you have compared it?

18 A. Because I had printed the original version at
19 the time that I had opened the case and then went back
20 to pull the microfiche for other information and that
21 information was also there.

22 Q. Okay. Have you done that in this case?

23 A. I have pulled the microfiche payment history
24 on this case and had my attorney bring it with him for
25 your reference.

1 Q. Has that been produced previously in this
2 case?

3 A. Not to my knowledge.

4 Q. Okay. I think we're going to get to that in
5 a little bit, but let's continue on with this document
6 while we're at it. And I don't think it will be
7 necessary for us to go through every single note in
8 here, but I'd like to -- I guess let's -- let's make
9 sure we understand -- well, the -- first of all, the
10 next line has a series of dashes then an asterisk.
11 Then it says "P F8 for more." Does that mean push the
12 F8 key for more?

13 A. Yes. Each page of the document you have
14 would be viewed on a single screen. To show the --
15 the older history as it goes back, you would hit the
16 F8 to show, in this case, the next page of this
17 document.

18 Q. Um-hmm. Okay. Now, let's look at the
19 left-hand column of this document. It appears that
20 each of those three letter codes correspond to one of
21 the departments that we had discussed above; is that
22 right?

23 A. Correct.

24 Q. Okay. And then it appears that the second
25 column there is a date entry; is that correct?

1 A. Correct.

2 Q. Okay. And then the third column, what is
3 that?

4 A. Those are indicators for the entity entering
5 that note.

6 Q. Okay. So let's start with the very first
7 one. What is UC 7?

8 A. I do not know every person in Wells Fargo's
9 codes. I believe UC 7 is the automatic transfer of
10 information between our Fidelity system and the
11 VendorScape system, which is an internal -- or a
12 communication forum between counsel and Wells Fargo.

13 Q. Okay. So -- and then the next -- the rest of
14 this line and the next line appear to be all part of
15 one note. Would that be accurate?

16 A. Correct.

17 Q. Okay. Can you -- can you explain what that
18 note is?

19 A. It appears to be a partial note indicating
20 that somebody had requested a payoff for this
21 particular case. It says "N. Wilson," which there
22 might have been an attorney's office name, somebody
23 and Wilson.

24 Q. Barrett, Daffin, Castle, Wilson & Frappier,
25 perhaps?

1 A. Possible.

2 Q. Okay.

3 A. And then the parentheses of FCL means that it
4 was a foreclosure request.

5 Q. Okay. And that a payoff was requested by the
6 attorneys; is that right?

7 A. That would be my understanding of that end.

8 Q. Okay. And do you know what the payoff for
9 case colon 1 and then it says 531178?

10 A. I do not know that case reference, but --

11 Q. Okay.

12 A. -- it proceeds to reference the loan number.

13 Q. All right. And then the -- the loan number
14 is -- is this loan, right?

15 A. Yes.

16 Q. Okay. And then the next line, do you know
17 what E 90 is?

18 A. E 90 would be somebody within Wells' personal
19 assigned code, a processor -- processor that -- that
20 has access to edit the Fidelity -- or I shouldn't say
21 edit. Enter information into the Fidelity system is
22 assigned a three-digit code, and the system, when you
23 log in, you're assigned under your code so any
24 information that you put into the system assigns that
25 code to that information.

1 Q. Okay. And it looks like this references
2 pulling the foreclosure or preventing the foreclosure
3 from going through on June 5th of 2007. Is that the
4 way you read that?

5 A. No, sir.

6 Q. Okay.

7 A. Bid pulled, which means they're pulling the
8 information in order to -- to prepare a bidding amount
9 for a possible future sale date.

10 Q. Okay. And then the next line says "bid
11 amount of," and then a dollar sign. Do you know what
12 that is?

13 A. It would be that they had, you know -- if
14 they had completed their research and provided a bid
15 amount back to the foreclosure counsel, it would have
16 said what that bid amount would be. It appears that
17 this note is -- is incomplete, as they did not
18 complete the full amount of the bid that they were
19 referring to in this case.

20 Q. Okay. Is that one of those automatic codes?

21 A. I do not know whether that's an automated
22 system because I haven't worked for the foreclosure
23 department, whether it's an automated code or a -- a
24 human-entered coding.

25 Q. Okay. The next line from the collections

1 department has three asterisks in the third column.

2 A. To my knowledge, the asterisks are just
3 computer-automated processes, sort of internal
4 statuses of -- of loans.

5 Q. Okay. And then that line, it says
6 "non-owner," and then there's a large blank, and then
7 it says "condition on 5/17/07." Do you know what that
8 is about?

9 A. Not really.

10 Q. Do you have any -- any understanding of that?

11 A. I believe that it refers to property
12 ownership as -- I shouldn't say owner. As occupancy
13 and -- and when that occupancy was determined, but I
14 -- I could be incorrect because I don't enter that
15 note or have a whole lot of dealings with those types
16 of notes.

17 Q. Okay. The last four letters of that line are
18 FNFS. Is that Fidelity National Financial Services or
19 something like that?

20 A. I do not know what those ones mean.

21 Q. Okay. You don't know whether it references
22 Fidelity?

23 A. I have no idea.

24 Q. Okay. Okay. Let's see. All right. Well,
25 let's -- let's do this. Let's start at the top

1 left-hand -- the top date on this document is May
2 29th, 2007, correct? Is that what you see, the -- of
3 the notes?

4 A. Of the notes, yes.

5 Q. Okay. Now, let's go to the last page of this
6 document. It looks like the last date is April 2nd of
7 2007.

8 A. Correct.

9 Q. Okay. And if you would, flip through for me
10 between where the notes started and where they end,
11 and tell me if you see any notes in here from any
12 other time period, other than between May 29th of '07
13 and April 2nd of '07.

14 A. Not contained within this documentation.

15 Q. Okay. Can you represent to me today that as
16 of when Wells Fargo produced this these were all of
17 the notes contained in Wells Fargo's system?

18 A. I do not know.

19 Q. Okay.

20 A. Because I was not the one that -- that pulled
21 this information at that time.

22 Q. Okay. Have you looked at the notes in Wells
23 Fargo's system?

24 A. Yes.

25 Q. Okay. Are there notes other than this in

1 Wells Fargo's system?

2 A. Yes.

3 Q. And are there notes from after May 29th of
4 2007, up until July 17th of 2008?

5 A. Without looking at the -- the system itself,
6 I do not recall whether there were notes contained
7 within that time frame, but in my review, I know there
8 have been notes since that time frame.

9 Q. Okay. Would you agree that this bankruptcy
10 was filed in June of 2007?

11 A. Again, with -- I'm not very good at dates, so
12 without something to look at as to when the bankruptcy
13 was actually filed, I --

14 Q. Okay.

15 A. -- I don't know.

16 Q. That's -- that's fair.

17 I will represent to you that it was June
18 of 2007. And assuming that's the case, would it be
19 typical for there to be bankruptcy-related notes
20 entered, such as filing an objection to confirmation?

21 A. It would depend on the date that Wells Fargo
22 received notification of the bankruptcy.

23 Q. Okay. Assuming Wells Fargo received
24 notification of the bankruptcy?

25 A. Then -- then the bankruptcy workstation would

1 have been open, so there would be an indication of the
2 initial processes of the bankruptcy workstation.

3 Q. Okay. And what do those initial processes
4 typically include?

5 A. Loan review to determine -- well, bankruptcy
6 review to determine case type, whether it be 713, 11,
7 12, et cetera, and determination of pre and post
8 cutoffs, based on 7, 13, 11, et cetera.

9 Q. What are pre and post cutoffs?

10 A. The dates in which -- say on a Chapter 13,
11 the pre-petition cutoff date and the post-petition
12 cutoff date would be the filing of the bankruptcy.
13 Anything prior to the bankruptcy would be considered
14 pre-petition, and anything post the filing of the
15 bankruptcy would be considered post-petition.

16 Q. Okay. And have you seen post-petition notes
17 in this case?

18 A. I think in my review that I have seen entries
19 in the system that would reflect post-petition
20 information.

21 Q. Okay. Have you seen them contained in
22 anything that was produced by Wells Fargo in this
23 case?

24 A. I do not recall whether it was part of my
25 independent review or information provided to me as

1 something that had already been provided --

2 Q. That's fair enough. That's fair enough.
3 That's -- it's a lot of information, and I -- I do
4 appreciate that you've been gathering it rapidly.

5 Okay. Can you tell me what the code PUY
6 means?

7 A. Can you --

8 Q. I'm looking at the last page. In the third
9 column, there are several entries for PUY.

10 A. Again, that would be a specific code that
11 would reference the person entering that information.

12 Q. It would be an individual, okay. How would
13 you figure out who PUI was?

14 A. PUY?

15 Q. Yeah, this person that -- that's listed as
16 PUY in that third code --

17 A. The --

18 Q. -- how would one figure that out?

19 A. There is a separate screen contained within
20 the Fidelity system that you can enter the code and it
21 will provide you with the processor assigned to that
22 code's name.

23 Q. Okay. And are all of these processors
24 located or -- or working in-house with Wells Fargo or
25 are any of them either attorneys or some other

1 outsource provider?

2 A. As I had indicated earlier that some of them
3 are generated as --

4 Q. Automated codes, right?

5 A. Automated codes of -- of talking in between
6 two different systems, like the -- the UC 7 at the
7 beginning is a automated code for a communication that
8 was transferred from one system to another system.

9 Q. Okay. Other than the automated codes, are
10 there any non-Wells Fargo employees whose code might
11 appear here?

12 A. I do not know.

13 Q. Okay. To the extent that you do -- do you
14 know of -- so you don't know of any non-Wells Fargo
15 employees whose codes would appear here. Do you know
16 that of any Wells Fargo's employees who would appear
17 here or you just simply don't know who it is?

18 MR. ALFIERI: Objection, form.

19 A. I'm not really sure I understand what you're
20 asking.

21 Q. (BY MR. BARTHOLOW) Okay. I'm sorry. I'm not
22 -- I'm really not trying to be confusing about this.
23 I just -- I guess question one, do you know of anybody
24 who is not a Wells Fargo employee whose code might
25 appear in that column?

1 A. Not to my knowledge.

2 Q. Okay. Do you know of anybody who is a Wells
3 Fargo employee whose code might appear in that column?

4 A. Myself.

5 Q. Okay. And do you know of any others?

6 A. Almost all of -- of the Wells Fargo employees
7 that I deal with have codes. What their codes are, I
8 don't always know.

9 Q. Fair enough.

10 A. But almost everybody that I know that has
11 access and the ability to enter information into the
12 Fidelity system has one of those three-digit codes.

13 Q. Okay. Do you know whether attorney -- your
14 outside attorneys have one of those codes?

15 A. I do not know.

16 Q. Okay.

17 A. I --

18 Q. Fair enough.

19 I think rather than -- well, just give me
20 a second, please.

21 Do you know whether foreclosure counsel
22 in this case was Barrett, Burke & Wilson?

23 A. I believe that they were the foreclosure
24 counsel on this matter.

25 Q. Okay. Do you know whether Barrett, Burke &

1 Wilson was provided with information to indicate that
2 Freddie has an interest in this loan?

3 A. I do not know.

4 Q. Okay. Yeah, you can set that aside for now.
5 Let's see.

6 MR. BARTHOLOW: Mark Exhibit 3, please.

7 (Exhibit No. 3 was marked)

8 Q. (BY MR. BARTHOLOW) And Ms. Roesch, did I say
9 it right? Kind of?

10 A. Close enough.

11 Q. Okay. Do you recognize the document that
12 I've just handed you marked Exhibit 3?

13 A. Yes, sir.

14 Q. Okay. Have you seen this before?

15 A. Yes, sir.

16 Q. What is it?

17 A. It's the proof of claim filed in Bankruptcy
18 Case No. 0732604.

19 Q. Now, I'm going to tell you that when this
20 claim was filed there was a deed of trust attached to
21 it and what I've provided you is just the claim form.
22 Is that your recollection as well?

23 A. Yes, sir.

24 Q. Okay. So just for the record's sake, we're
25 only looking at the claim form and the arrearage

1 detail page that was attached to it. Is that what you
2 see also?

3 A. Yes, sir.

4 Q. Okay. Who is described as the creditor on
5 this document?

6 A. Wells Fargo Bank, N.A.

7 Q. Okay. Is that accurate?

8 MR. ALFIERI: Objection, form.

9 A. I do not recall at this time the bankruptcy
10 court's exact definition of creditor, so I'm not sure
11 I can appropriately answer the question as it was
12 asked.

13 Q. (BY MR. BARTHLOW) Okay. So in -- in your
14 view, it depends on the definition of creditor as to
15 whether or not that's accurate; is that what you're
16 saying?

17 A. Correct.

18 Q. Okay. What parts of Ms. Savery's testimony
19 do you disagree with?

20 MR. ALFIERI: Objection, form.

21 A. I never said that I disagreed with any of
22 what she stated.

23 Q. (BY MR. BARTHLOW) Do you agree with all of
24 what she stated?

25 MR. ALFIERI: Objection, form.

1 A. What she stated is what she stated. Whether
2 I disagree or not disagree has no relevance to the
3 information that's contained therein.

4 Q. (BY MR. BARTHOLOW) Okay. Were all of the
5 facts that she stated accurate?

6 MR. ALFIERI: Objection, form.

7 A. I --

8 MR. ALFIERI: Please, I'd ask if there's
9 a specific fact that you're asking about, I'd ask you
10 to show Ms. Hirzel Roesch the specific, you know,
11 citation and she will be glad to clarify and provide
12 testimony with respect to that particular item. I
13 mean, Ms. Savery's depo, I believe, expanded over to a
14 sum over a hundred pages. And Ms. -- Ms. Hirzel
15 Roesch is intelligent, but I don't think she has total
16 recall of -- of all of Ms. Savery's statements.

17 MR. BARTHOLOW: Well, I think that's
18 fair.

19 Q. (BY MR. BARTHOLOW) Were there any statements
20 in particular that stood out to you as being either
21 not complete or not -- as particularly inaccurate?

22 MR. ALFIERI: Objection, form.

23 A. If you have something that -- that I could
24 reference, a specific statement that you're referring
25 to, I will be glad to look at it, but as my attorney

1 stated, it's a hundred and some odd pages. I don't
2 recall every exact word and sentence and exactly how
3 she phrased certain responses.

4 Q. (BY MR. BARTHLOW) Okay. And -- and for the
5 record, I'm going to object to any words being put in
6 your mouth in terms of how to respond. And -- and I
7 do appreciate that. I'm asking -- you've read the
8 transcript, right?

9 A. Uh-huh, and --

10 Q. And did anything stand out to you as being
11 not accurate?

12 A. Not to my recollection right this second do I
13 recall every exact thing that was said and whether the
14 accuracy was questioned by me at the time that I was
15 reading it or not.

16 Q. So that's a no?

17 MR. ALFIERI: Objection, form.

18 A. That's not what I said. I said I do not
19 recall in my review every single response that was
20 stated and whether at that time that I initially read
21 it I questioned it and did additional research or if I
22 took it as face value.

23 Q. (BY MR. BARTHLOW) Were there any statements
24 that you questioned and did additional research?

25 A. I -- I did a lot of additional research, not

1 just on things that I questioned, but on things that I
2 knew were right --

3 MR. BARTHOLOW: Objection, nonresponsive.

4 Q. (BY MR. BARTHOLOW) Were there any things that
5 you questioned in the deposition transcript that
6 caused you to do additional research?

7 MR. ALFIERI: Objection, form.

8 A. I do not recall a specific thing that I --

9 Q. (BY MR. BARTHOLOW) It's a yes or no question.
10 I need a yes or no answer, please.

11 A. And I'm trying to answer you to the best of
12 my ability. I do not recall specific things. I
13 researched a lot of different points of her
14 deposition.

15 Q. So there were points of her deposition that
16 caused you to do research?

17 A. Yes.

18 Q. That's all I was asking.

19 Do you -- but you don't recall what they
20 were in particular, is what you're telling me?

21 A. Correct.

22 Q. Okay.

23 MR. BARTHOLOW: What are we on, Exhibit 4
24 now?

25 THE REPORTER: Yes.

1 MR. BARTHOLOW: Okay. I'd like to mark
2 Exhibit 4, please.

3 (Exhibit No. 4 was marked)

4 Q. (BY MR. BARTHOLOW) Okay. Ms. Roesch --
5 Roesch (pronunciation), the -- what I've handed to you
6 is a transcript from the hearing that we recently had
7 right when the Court directed us to conduct this
8 deposition. Have you read this transcript before?

9 A. No, sir.

10 Q. You haven't, okay. I'd like you to turn to
11 page 10 of it.

12 A. (Witness complies).

13 Q. Okay. And if you'll look at the bottom of
14 the page where -- at lines 24 and 25, this is part of
15 what your counsel was telling the Court at that
16 hearing. And can you -- can you read the sentence
17 beginning with the bottom line, the words "the bottom
18 line"?

19 A. "The bottom line is that the schedule that
20 Ms. Savery testified to reflected charges as we
21 subsequently determined were not actually billed to
22 the debtor's account. Okay" --

23 Q. Go ahead and finish the paragraph, please,
24 yeah.

25 A. "And so that issue goes. And of course,

1 there's the issue does Wells Fargo have the right to
2 do that, question mark. And again, that's a issue
3 that is currently -- that has been addressed in
4 Southern District, and I don't know what the
5 deposition of that issue is right now."

6 MR. ALFIERI: Disposition.

7 A. I'm sorry, disposition.

8 Q. (BY MR. BARTHOLOW) I'll allow counsel to
9 correct on that -- in that case. If you'll go --

10 A. Sorry --

11 Q. -- ahead and continue down to -- to line 17,
12 please.

13 A. Okay. "The bottom line is she testified to
14 and wrongly that those charges actually were billed to
15 the debtor's account. And of course, this goes to the
16 issue of Plaintiff's complaint that we are billing
17 unauthorized charges and holding the debtor
18 responsible, okay. Ms. Savery did not know that. She
19 actually testified -- you know, she was there for six
20 hours. She testified beyond her knowledge, quite
21 frankly. And so we need to provide a witness to
22 testify to the -- to actually what fees, inspection
23 fees, late fees, attorney's fees, were actually billed
24 to the account."

25 Q. Okay. Does that refresh your memory of any

1 of the issues with Ms. Savery's testimony?

2 A. I recall that there were issues regarding
3 clarification of fees and -- and application of that
4 to the account versus billing of that to the borrower.

5 Q. Okay. In talking to Ms. Savery, did she ever
6 tell you that she testified about things she didn't
7 know about?

8 A. I have already stated our sole conversation
9 was in regards to that she had done a deposition on
10 this, which, at that point, I had already had her
11 deposition transcript. And I told her I would review
12 it, and if I had any specific questions for her, I
13 would address those with her.

14 Q. So the answer no, she didn't tell you that
15 she testified wrongly about anything?

16 A. Those specific words never came out of her
17 mouth.

18 Q. Did anything akin to "I got this wrong" come
19 out of her mouth?

20 A. That was never discussed.

21 Q. Okay. Do you know what Ms. Savery knew and
22 didn't know about the mortgage loan history that was
23 produced in this case?

24 A. Given her transcript, yeah, I can make an
25 assumption of some of the things that she knew, but

1 her actual knowledge, since I am not her, I do not.

2 Q. Okay. At the beginning of her deposition,
3 Ms. Savery testified that she had 15 years of mortgage
4 experience in the mortgage servicing world; is that
5 your understanding of -- of the deposition?

6 A. She has been in the mortgage banking industry
7 for quite some time. I don't recall the exact years.

8 Q. Okay. Would you say that you are more or
9 less experienced than her with regard to mortgage
10 servicing?

11 A. Depends on the area of mortgage servicing
12 that you are reflecting -- there are expertises that I
13 feel that I have that Tamara may not have due to my
14 prior experiences, and there are expertises that I
15 know she has that I do not have.

16 Q. Okay. Let's talk about those. What are the
17 expertises that you feel that you have that she does
18 not?

19 A. I've actually worked for the counsel that
20 files, you know, proof of claims motion for reliefs,
21 foreclosures, so I have knowledge of those processes
22 on the counsel side that Ms. Savery never having
23 worked those positions would have, and she has
24 knowledge of servicing acquisitions -- I'm using the
25 wrong word. Client communications between servicers

1 and investors and the -- some of the interworkings of
2 those relationships on the ASC side of Wells Fargo
3 that I would not have.

4 Q. Okay. And so who is better versed in payment
5 application?

6 A. I -- I do not know that I can answer that.

7 Q. Do you have an opinion?

8 A. Everybody has an opinion.

9 Q. What is your opinion?

10 A. I think that at the time of Ms. Savery's
11 original deposition that she was not as well versed in
12 that as I am at this point.

13 Q. And why is that?

14 A. Because I have been doing the position that I
15 am in now, litigation specialist, at this point longer
16 and, therefore, have had more opportunities for
17 knowledge and growth in that area than Ms. Savery had
18 for her time frame in the position she was in at the
19 point of her deposition.

20 Q. Are you saying that you specifically have
21 more -- had more experience or have more experience as
22 we sit here today than she did then with dealing with
23 payment application issues? Is that what you're
24 saying?

25 A. Dealing with payment application processes.

1 Q. Fair enough.

2 And in terms of more experience, how many
3 cases have you had in which you've dealt with payment
4 application processes?

5 A. I -- I do not think that I could give you an
6 accurate figure of -- of the thousand plus cases that
7 I've dealt with while my tenure at Wells that had a
8 portion or something that dealt with payment
9 application.

10 Q. Can you give me a ballpark estimate of what
11 percentage of those cases dealt with that?

12 A. I don't think I could give you an accurate
13 number; however, payment application and -- and review
14 of payment history is part of my general research on
15 every case that I have.

16 Q. Okay. And do you know what Ms. Savery's
17 general research involves on the cases that she has?

18 A. Not her particular in-depth process.

19 Q. Okay. Would you say that -- going back to
20 your comparison of your relative strengths or -- or
21 basis of knowledge, you were talking about Ms. Savery
22 having more knowledge regarding the relationship with
23 the investors; is that right?

24 A. Correct.

25 Q. Okay.

1 A. In regards to ASC -- American Servicing
2 Company's relationship with their investors.

3 Q. Okay. Are you saying that she would not have
4 more knowledge with regard to Wells Fargo's
5 relationship with its investors?

6 A. As some of the investors are the same, she
7 would have some knowledge that would transcend between
8 the differences; however, ASC deals more with private
9 investors and pools. And Wells Fargo tends to have
10 more government-owned, Wells Fargo-owned loans.

11 Q. And how do you know that?

12 A. Experience.

13 Q. Okay. What percentage of the thousand plus
14 cases you've had involve ASC versus Wells Fargo?

15 A. I want to guesstimate at 45 ASC to 60 percent
16 Wells, but that is a -- a guesstimation.

17 Q. Fair enough.

18 And so does ASC deal with Freddie Mac at
19 all?

20 A. Not to my knowledge, but there could be a few
21 in there that I'm not aware of.

22 Q. Do you know what percentage of the cases
23 Ms. Savery deal -- has dealt with have involved ASC
24 versus Wells Fargo?

25 A. I do not.

1 Q. What do you base your understanding that she
2 has more experience with ASC on?

3 A. Her prior position with Wells Fargo.

4 Q. Okay. Do you know whether she's had any
5 experience with Freddie Mac?

6 A. I do not.

7 Q. Okay. Have you had any experience dealing
8 with Freddie Mac?

9 A. On and off through my entire career, I have
10 had dealings with loans that were Freddie Mac loans,
11 and in some cases, dealing with representatives from
12 Freddie Mac themselves.

13 Q. Do you have an opinion on whether the loan at
14 issue in this case is part of a Freddie Mac pool
15 versus a whole loan owned by Freddie Mac?

16 A. I believe that documentation that I reviewed
17 from Ms. Savery's deposition shows that -- that it was
18 a pooled Freddie Mac loan versus a -- a whole owned,
19 if I'm rephrasing you correctly, Freddie Mac loan.

20 Q. Okay. Is that -- is that how you would --
21 does Freddie Mac own some loans outright, just owns
22 the loans, as opposed to having them in a pool?

23 A. I don't know. I'm not Freddie Mac.

24 Q. That's fine. But you've testified that you
25 know some things about Freddie Mac, so I'm -- you

1 know --

2 A. No.

3 Q. -- trying to understand what you do and don't
4 know.

5 Do you know whether the pool of loans
6 that Wells Fargo contends that this loan is a part of
7 was securitized?

8 A. I do not.

9 Q. Have you contacted Freddie about this matter?

10 A. As I said, I researched their website, and
11 their website showed that they were the owner of -- of
12 this note. And I did not research that any further.

13 Q. So have you made a phone call to Freddie?

14 A. Not in this particular matter.

15 Q. Have you sent an e-mail to Freddie in this
16 case?

17 A. Not in this particular matter.

18 Q. Have you had any other direct communication,
19 not just going to their website, but actually
20 communicating with somebody at Freddie about this
21 case?

22 A. No.

23 Q. Do you know if anybody at Wells Fargo has had
24 any direct communication with Freddie about this case?

25 A. I do not know.

1 Q. How does Wells Fargo know that it's the
2 servicer for this loan?

3 MR. ALFIERI: Objection, form.

4 A. I'm not sure what you're asking --

5 Q. (BY MR. BARTHOLOW) Is there a servicing
6 agreement that covers Wells Fargo's relationship with
7 Freddie Mac?

8 A. There are those servicer guidelines on
9 Freddie Mac's website, as I previously mentioned.

10 Q. Okay. Other than the guidelines on the
11 website, is there some agreement that says this loan,
12 Freddie Mac and Wells Fargo are all together, Wells
13 Fargo is the servicer for Freddie Mac?

14 A. Not to my knowledge.

15 Q. So what is the basis for Wells Fargo's
16 assertion that it's the loan servicer in this case?

17 A. We wouldn't have custody of the original
18 documentation and the loan information if we weren't
19 servicing the loan. It would have been removed from
20 our systems, also -- I'm sorry. Could you repeat your
21 question?

22 Q. What is the basis for Wells Fargo's assertion
23 that it's the loan servicer for this loan?

24 A. My answer stands.

25 Q. You don't know, other than --

1 A. No, I said it would not be contained within
2 our systems. We would not have some of the
3 documentation that we have in this matter if we
4 weren't servicing it.

5 Q. So because it's on our system, would be a
6 summary of your response; is that right?

7 A. Well, no. As I said, we also have
8 documentation, custodial hold of -- of origination
9 documentation and the -- the other documentation, the
10 pooling information, as you referenced, in
11 Ms. Savery's deposition.

12 Q. Does Wells Fargo have custody of any notes
13 for which it is not the servicer?

14 A. I do not know.

15 MR. ALFIERI: We're getting kind of late
16 along here. You want to go to lunch?

17 MR. BARTHLOW: Do you want lunch? It's
18 okay if we break.

19 MR. ALFIERI: How long do you think -- I
20 mean, if we're going to be here for another three or
21 four hours, we probably need to break for lunch.

22 MR. BARTHLOW: I think it's probably
23 another couple hours, probably make sense to go ahead
24 and break --

25 MR. ALFIERI: Okay.

1 MR. BARTHOLOW: -- there's a lot of food
2 in the area. There's dirty McDonald's, if you want to
3 do that. There's also --

4 MR. ALFIERI: What did you say?

5 MR. BARTHOLOW: Dirty McDonald's. It's
6 my -- it's my guilty pleasure. It's way to easy to go
7 there --

8 THE REPORTER: Do you want to go off the
9 record?

10 MR. BARTHOLOW: Let's go ahead and go off
11 the record, yeah. Sorry.

12 (Recess taken from 12:16 PM to 1:22 PM)

13 MR. BARTHOLOW: All right. I'd like to
14 mark this as -- are we Exhibit 5 now?

15 THE REPORTER: Yes.

16 MR. BARTHOLOW: Exhibit 5, please.

17 (Exhibit No. 5 was marked)

18 Q. (BY MR. BARTHOLOW) Okay. Ms. Roesch?

19 A. Yes.

20 Q. Do you recognize the document that I've just
21 handed to you?

22 A. Yes.

23 Q. What is it?

24 A. It's a print screen from the Fidelity system
25 containing the mortgage loan history.

1 Q. Okay. And if you'll look at the lower
2 right-hand corner of the first page, that's WFB 00259,
3 correct?

4 A. Correct.

5 Q. And if you'll look at the lower right-hand
6 corner of the very last page, it's WFB 00284; is that
7 correct?

8 A. Correct.

9 Q. Okay. I'm -- we're going to need to do a
10 little bit of the same type of unpacking of this form,
11 as -- as what we did before. And so what I'd like to
12 do is, again, go through each line of the codes at the
13 -- at the top of the page, and then we won't
14 necessarily need to go through every entry on here,
15 but I probably will want to talk about a few of them.
16 But most importantly, I want to be sure that I know
17 how to read this.

18 So the first line, page 42, document name
19 untitled, when we were discussing the consolidated
20 notes log, you had indicated that although that began
21 on page 23, I believe, that didn't necessarily mean
22 that there were 22 previous related pages. That would
23 be your testimony as to this document as well?

24 A. Correct.

25 Q. Okay. So we don't know what pages 1 through

1 41 of this particular print job would necessarily be;
2 is that right?

3 A. Whether they would be more of this particular
4 loan history or, say, the 23 pages were in front of
5 this one on that print or another loan that was in
6 front of this print, correct.

7 Q. Okay. Looking down at the lower left-hand
8 portion of the page, we see that it's got a date of
9 7/17/08, and a time of 8:29:56. Is that what you see?

10 A. Yes.

11 Q. Okay. And I'm going to ask you to take a
12 look back at the consolidated notes log that we were
13 just looking at.

14 A. Um-hmm.

15 Q. Looks like the date and time are identical;
16 is that right?

17 A. Yes, sir.

18 Q. Okay. And the last page of the consolidated
19 notes log that was printed out appears to be page 31;
20 is that correct?

21 A. Correct.

22 Q. Okay. Is there any way to tell whether the
23 consolidated notes log was a part of this same print
24 process? The time is exactly the same.

25 A. Given that the time is to the second the

1 same, the indication would be that it was part of the
2 same print job, but without being the person that
3 actually did the printing of this, it could have been
4 two print jobs sent at the exact same time by two
5 different people.

6 Q. Okay. Is there a way to figure that out?

7 A. Not given the documentation in front of me.

8 Q. If you were -- what I mean is if you were to
9 go back to your office, would there be a way for you
10 to find out what the contents of this print job and if
11 it's different, the other print job or --

12 A. I would have to speak with the individual
13 that actually created the print jobs.

14 Q. And could you figure out who that was?

15 A. Not given this documentation in front of me.

16 Q. Okay. Is there any way to tell where this
17 was printed?

18 A. No.

19 Q. No, okay. And as we sit here today, you do
20 not know who it was that printed this out, right?

21 A. No, sir.

22 Q. Okay. Returning to the meat of this Exhibit
23 5, the first line underneath the -- the line with the
24 page number on it says P 309. What is P 309?

25 A. It is the four-digit indicator of this screen

1 within the Fidelity system. As with the consolidated
2 notes log, it was the NOTS, this is the P 309 screen.

3 Q. Okay. Is there any other screen in the
4 Fidelity system that provides a mortgage loan history
5 that would show payments received and applied and that
6 sort of thing?

7 A. Not in this format.

8 Q. Not the question. The question was: Is
9 there another format that would show payments received
10 and applied, et cetera?

11 A. There are other screens that would reflect
12 receivable of payments but not application of
13 payments.

14 Q. Are there other screens that would reflect
15 application of payments?

16 A. Not to my knowledge.

17 Q. Okay. So to your knowledge, this is the only
18 screen that reflects payment application in the
19 system?

20 A. Correct.

21 Q. Okay. Pretty good at beating the dead horse,
22 I think, but...

23 All right. And so we've got the same
24 loan number, it appears, as the one that we discussed
25 before. Is that the same loan number?

1 A. Correct.

2 Q. Okay. And then we've got another date on the
3 far right-hand side of that -- that line that says
4 7/16/08. Do you know what that date means?

5 A. Again, it is the date that the system looked
6 at this screen.

7 Q. Okay. Can you help me reconcile, looking at
8 the screen on the 16th, but printing it on the 17th,
9 how does that work?

10 A. It could -- and maybe I -- I misstated in
11 "looking at." As far as payment applications, the
12 system itself runs a -- a overnight delay. It applies
13 on the backside of the system, but would not be shown
14 on the -- the screen print until the next morning in
15 case of -- like NSF information that comes through,
16 wires that don't get crossed right, things of that
17 nature. It's an internal overnight delay. So if it's
18 posted to the system at 6 o'clock p.m. of the 14th,
19 I'm not going to see that on this screen until the
20 morning of the 17th.

21 Q. On the 14th it's --

22 A. Or 15th -- 14th to 15th, 15th to 16th --

23 Q. Okay. Good --

24 A. Sorry. Using fake dates, I messed myself up.
25 But there is an overnight --

1 Q. Okay.

2 A. -- process for it to --

3 Q. It's just sort of to double check?

4 A. -- to put it in -- in the system this way, to
5 look at it. You can -- it will be applied and it will
6 show as being applied the date that it was put in, so
7 if we put it in on the 16th, when it shows on the
8 history, it'll show as being applied on the 16th, but
9 I'm not going to see it on the history until the 17th.

10 Q. Okay. So here we are on the 8th, we're not
11 going to see the 7th until the 9th; is that right? Or
12 we're not going to see the 8th until the 9th?

13 A. We're not going to see the 8th until the 9th.

14 Q. Okay. Got you.

15 All right. Second line, we've got the
16 name, and that's the -- that's my client, Fred
17 Guevara, right?

18 A. Correct.

19 Q. And then we've got INV dash LN. What is
20 that?

21 A. Investor loan indicator.

22 Q. Okay. And do you know what those numbers
23 following that mean?

24 A. Just that's what we have indicated as the
25 investor loan indicator.

1 Q. Okay. And do those numbers tend to
2 correspond to any particular investor? For example,
3 it appears that the number here is -- begins with the
4 690. Is there one investor that's always going to --
5 begin with 690, as far as you know?

6 A. I don't know.

7 Q. Okay. Do you know of any other significance
8 of these actual numbers that follow the 690?

9 A. No.

10 Q. Okay. We see that this is showing the loan
11 is due for January 1st, '08; is that right?

12 A. Correct.

13 Q. And then the last is type 13. Does that
14 refer to the Chapter 13 bankruptcy?

15 A. I do not know what that refers to.

16 Q. Okay. Next line, can you just sort of start
17 me off with what those initials mean?

18 A. As for the BR and the DN, I do not know --

19 Q. Is that a DM or an N?

20 A. M, I believe.

21 Q. Okay.

22 A. The MAN B is referring to a MAN code, which
23 is a code that's entered into the system reflecting
24 certain internal processes. In this case, a MAN code
25 B is bankruptcy.

1 Q. Is -- what is -- does MAN stand for manual?

2 A. I don't really know what the -- the
3 shortening is, whether it's a manual code or -- or
4 what. It's --

5 Q. Okay.

6 A. -- just referred to as the MAN code.

7 Q. Okay. There's not a woman code, is there?

8 A. Not that I'm aware of.

9 Q. Okay. And the B stands for bankruptcy?

10 A. Correct.

11 Q. All right. And the next?

12 A. INT --

13 Q. Wait, wait. What's the P type?

14 A. Oh, that one, I don't know.

15 Q. Okay.

16 A. INT is interest rate. First PB is the
17 principal balance reflecting on the account of the
18 first lien position. Second PB would be if there was
19 a second lien position or a piggyback loan. That
20 might reflect there as well.

21 Q. Now, would that have to apply only to a loan
22 that was being serviced by Wells?

23 A. To my knowledge, it does only apply to
24 another loan serviced by Wells. And we have to have
25 knowledge of that second loan being the same in

1 conjunction with this loan.

2 Q. Okay --

3 A. In some cases -- and I'm elaborating, but in
4 some cases, it's a case of we got servicing rates on
5 one loan in 2007, and we didn't get servicing rates
6 for the second until maybe 2009, so we're not
7 automatically --

8 Q. Tracking both?

9 A. Tracking both as being a first and second.

10 Q. Okay. Now, I just want to back you up. I
11 think you probably already told me this, but the first
12 PB is what the principal balance was when it came on
13 the Wells Fargo system; is that right? Or was that
14 the origination loan amount?

15 A. It's actually what the outstanding principal
16 balance was at the time that this was generated.

17 Q. Okay. And how do you know that?

18 A. Knowledge, experience, knowledge of our
19 systems.

20 Q. Okay. And is there a guide or something that
21 -- that would allow somebody like me without knowledge
22 of the system to verify that?

23 A. Well, usually, if you have complete mortgage
24 history, the outstanding principal balance as shown in
25 that first PB section would also be reflected in the

1 last transaction shown on the history.

2 Q. Okay. And what -- I'd like you to take a
3 look through all the pages of this and let's just
4 double check on -- on this. Because when I look
5 through each one of the pages of this document, it
6 appears that that number is the same in the header of
7 each one of these; is that --

8 A. Yes.

9 Q. Okay --

10 A. It would be because they would have been
11 generated at the same time.

12 Q. Okay. And then when I look at the number in
13 the line -- we're sort of skipping ahead, but there's
14 a line below that that says -- PRIN BAL, which I
15 assume means principal balance?

16 A. Correct.

17 Q. And that figure appears to fluctuate when I
18 flip from page to page?

19 A. Depending on application because that figure
20 would reflect at the time of that transaction what the
21 principal balance was.

22 Q. Wouldn't it also follow, though, that
23 somewhere on here I would see a transaction that would
24 cause the number to be the same as that first PB?

25 A. Except given the information on the first

1 page of this exhibit, you're missing two prior pages
2 of this mortgage loan history.

3 Q. Okay. Tell me how you can tell that.

4 A. If you look on the left-hand side about
5 halfway down the page, it says page 3 of 25.

6 Q. Oh, okay.

7 A. There would have been a page 1 and a page 2.
8 And page 1's initial transaction going from the left
9 would reflect the same ending principal balance of
10 that transaction as the first PB at the top of the
11 page.

12 Q. And you know what, you're right. Because if
13 you turn to the next page, looks like the pages just
14 got out of order a little bit. Because the next page
15 appears to be page 1 of 25; is that right?

16 A. Yes, sir.

17 Q. And that's Bates stamped WFB 00260?

18 A. Yes, sir.

19 Q. Okay. So the one that's WFB 00259 really
20 should follow the one that's WFB 00261; is that right?

21 A. Correct.

22 Q. Okay. And we do get -- when you look at that
23 next page, the 260, what you have predicted has come
24 true. So, okay.

25 All right. So let's continue on. What

1 does HUD dot 00 mean?

2 A. Those are funds if there was a -- like a HUD
3 forbearance on the loan where funds were put to like
4 the end of the loan or something like that, and
5 there's a bracket needed for that, that would show
6 what the balance is at that point.

7 Q. Okay. And then the next item says "NET," and
8 it has 1423.71. Do you know what that is?

9 A. I don't recall just looking at this.

10 Q. Okay. And I'm not trying to trick you
11 either. I think that 1423.71 is the payment amount.
12 Does that sound right --

13 A. That -- that sounds correct, but I would want
14 to look at a few other things, just to ensure that
15 that really was that amount.

16 Q. What else would you want to look at?

17 A. There are a couple of other screens contained
18 within Fidelity that would be -- also looking at -- at
19 like the microfiche history to know when payment
20 changes were and what the last full payment amount
21 was. And -- and like I said, it appears that you're
22 correct, that -- that the last expected payment amount
23 on this account, just flipping a few pages back, was
24 1423.71, so...

25 Q. And I -- I'll acknowledge --

1 A. To the --

2 Q. -- for the sake of the record that the --
3 that depending on what the tax rate is, what the value
4 of the property is and what insurance costs, that
5 payment can vary some, generally not a ton, right?

6 A. Correct.

7 Q. Okay. So -- but in terms of the notation of
8 NET, or N-E-T, you don't know exactly what that means
9 or what that's for?

10 A. The abbreviation N-E-T, I'm not a hundred
11 percent sure that that's what the -- the exigent of
12 that abbreviation is.

13 Q. Okay. That's fine. Let's see. The next one
14 is SF, and that's dot 00491000. Do you know what that
15 is?

16 A. No.

17 Q. Okay. I bet you know what the next one is.
18 It's SUSP. Is that suspense?

19 A. Yes.

20 Q. Okay. And what's the figure there?

21 A. 956.50.

22 Q. Okay. And what is suspense?

23 A. It is a non-interest bearing holding account
24 for funds received that we've put on the loan but
25 aren't sufficient to make a full payment or -- or

1 determination needs to be made in pre- or
2 post-petition application of those payments.

3 Q. Okay. And when you say put on the loan, what
4 does that mean?

5 A. Well, when funds are received, we have a
6 required time frame in which to reflect the receipt of
7 those funds in the actual loan history. When
8 additional determinations need to be made in regards
9 to those funds, in the examples I've already given,
10 that can take more time than -- than our required time
11 to put it onto the loan histories. So we will put it
12 in the suspense accounts so that it reflects on the
13 history and gives the borrower the credit for those
14 funds until they can be actually applied to principal,
15 interest, escrow, fees, costs, et cetera.

16 Q. Okay. And you said it's a non-interest
17 bearing account?

18 A. Correct.

19 Q. Okay. And how does Wells Fargo -- you know,
20 what -- is there a -- is there a set of procedures
21 that Wells Fargo uses in order to determine whether to
22 place funds into suspense?

23 A. Well, it depends on the status of the loan
24 itself.

25 Q. And in what sense does it depend on that?

1 A. If the loan is in foreclosure and the funds
2 aren't sufficient to reinstate the loan, they may be
3 placed in suspense. If the loan is in bankruptcy and
4 a determination needs to be made of whether those
5 funds were received from the trustee or from the
6 borrower and, therefore, need to be applied to pre or
7 post petition, those funds will be placed in suspense
8 so that the loan account still gets the credit for the
9 funds received until we can make that determination.

10 Q. Does Wells Fargo invest suspense funds in
11 overnight treasuries?

12 A. No.

13 Q. And how do you know that?

14 A. Because they -- they are put to the loan
15 account as soon as they're received. It -- they don't
16 invest anywhere. They --

17 Q. Okay.

18 A. -- they are on the loan and -- and it is --
19 it is just a -- a subaccount of the loan itself so
20 that we have the ability to -- to make sure that we
21 are properly applying those fees.

22 Q. Okay. And who makes the determination about
23 the -- the proper way to apply fees? And since we're
24 talking about a case that's in bankruptcy, let's --
25 let's just limit the discussion to when a case is in

1 bankruptcy and funds come in, what happens?

2 A. Depending on how we receive the funds depends
3 on which department would be reviewing those. And
4 cash application would be if the check said it was
5 from the trustee and so much was to go to interest and
6 so much was to go towards proof of claim payment, that
7 determination is made at the point of receivable of
8 those funds, but they may be placed in suspense
9 because the funds that were meant to apply to the
10 proof of claim were insufficient to make a full
11 payment on the loan as of yet. So they'll be placed
12 in suspense until enough funds are received to make a
13 full payment on the loan.

14 If it's the borrower's funds, if they go
15 to a branch and make their payment, we have to wait
16 for the branch's system to talk to our system, but
17 we'll show them in suspense and then apply them
18 usually about a day later to the payment received to
19 show the application of that payment.

20 Q. Okay. I want to sort of back you up to the
21 -- one of the things you said at the beginning of that
22 answer, which is receipt and application of trustee
23 funds. You said that once the funds are received from
24 the trustee, and -- and correct me if I'm not saying
25 this right, that a determination needs to be made as

1 to how much should be applied to the claim and how
2 much to be applied to interest; is that correct?

3 A. Usually, at least in my experience, the
4 trustee will usually indicate on his checks to us the
5 amount of that check that is interest and the amount
6 of that check that is meant for application for the
7 proof of claim.

8 Q. Okay.

9 A. So we utilize the information provided by
10 them. Otherwise, we -- our bankruptcy department
11 would look at it and make a determination given plans
12 and other things filed within the bankruptcy whether
13 interest was even allowed to be taken out of the
14 trustee funds --

15 Q. Okay. In this case, was interest taken out
16 of the trustee funds?

17 MR. ALFIERI: Objection, form.

18 Q. (BY MR. BARTHOLOW) Do you know whether
19 interest was taken out of trustee funds in this case?

20 A. I believe our payment history reflects that
21 -- that there was interest portions of the trustee
22 payments to Wells Fargo.

23 Q. Okay. And what does it mean that the
24 interest was paid to Wells Fargo? Did Wells Fargo
25 pocket that money?

1 MR. ALFIERI: Objection, form.

2 A. I'm not sure --

3 Q. (BY MR. BARTHLOW) What happened to the
4 money -- the interest portion of the trustee payment
5 after Wells Fargo received it?

6 A. It goes into an interest account held for the
7 trustee.

8 Q. Held for the trustee? Which trustee, the
9 Chapter 13 trustee?

10 A. As we receive interest payments from the
11 trustee, they are placed into a trustee interest
12 account.

13 Q. Okay. And is that a -- an account from which
14 all trustee interests from all cases goes?

15 A. I do not know.

16 Q. Do you know whether it's an account that's
17 specific to each individual's case?

18 A. Like I said, I do not know. I know it is
19 reflected on each individual case on how much interest
20 goes into that account per that bankruptcy case, but I
21 do not know whether those funds are pooled together
22 under the full account.

23 Q. Are those funds -- does Wells Fargo apply
24 interest to the loan in any way -- to the debtor's
25 mortgage loan?

1 A. That -- we apply the interest as we receive
2 payments for those interests.

3 Q. Okay. Well, let's take a hypothetical. A
4 debtor makes payments and completes a five-year
5 Chapter 13 plan, and the plan provides for payment of
6 interest to Wells Fargo or interest on the arrears.
7 At the end of the plan, Wells Fargo has received,
8 let's just say, \$5,000 in interest. Is that \$5,000 --
9 been credited to or had any impact on interest due or
10 principal due of the loan?

11 A. The -- my understanding of trustee interest
12 is delinquency interest on -- on proof of paying
13 arrearages, which would not affect the actual interest
14 or principal balance of the originating loan.

15 Q. Okay. So then does the interest ever leave
16 this interest account that you've described to me or
17 does that account just grow indefinitely or sit
18 indefinitely?

19 A. I do not know.

20 Q. Okay. So again, I apologize for beating a
21 dead horse here, but you don't know whether Wells
22 Fargo takes that money or pays it to the investor?

23 A. I do not know.

24 Q. Okay. But it doesn't get applied to the
25 loan?

1 A. No, sir.

2 Q. Okay. Let's continue with decoding here.

3 After the suspense line, there's a -- the word "stop."

4 Do you know what that means?

5 A. Yes.

6 Q. What is that?

7 A. There are certain processing codes called
8 process stops that are placed on a loan depending on
9 the status of the loan to assist in complying with
10 processing of that loan.

11 Q. Okay. And what do those include?

12 A. If we -- and I'm going to elaborate for a
13 minute, just so that we can get an understanding. If
14 it's in bankruptcy, there would be a bankruptcy stop
15 placed on the loan to notify our cash department that
16 funds received on the loan need to be looked at in a
17 pre and post division instead of just applied
18 contractually without looking at the pre or post
19 division of the loan. If we had received a no
20 communications notification advising us that -- that
21 we were to stop all calls and -- and notices sent out
22 to the borrowers, a stop could be put on the loan to
23 indicate to anybody that's processing the loan not to
24 make a call or send a letter. As I said, it's -- it's
25 a tool that we utilize to -- to better effectually

1 process the loans.

2 Q. Okay. So does that mean that each of the
3 letters that follow the word "stop" here constitute a
4 code -- a stop code that's been applied to this loan?

5 A. Or stop codes that are available to be
6 applied. And -- and the row of numbers slash letters
7 below that indicate the -- the stops that were on the
8 loan at this particular time.

9 Q. Okay. So let's start with D. What is D?

10 A. I -- just looking at this screen, I do not
11 know for sure what each of these single letters --
12 which stops they -- they equal or what those specific
13 numbers equal for that stop.

14 Q. Okay. In reviewing the production in this
15 case, did you see anything that would help me to
16 understand those stops? Was there anything that you
17 came across that would explain that?

18 A. I -- I do not recall.

19 Q. Okay. Is there a document that would explain
20 those things for me?

21 A. There -- there is an additional Fidelity
22 screen print that would show a more detailing of these
23 stops on all.

24 Q. Okay. I want to go ahead and add that to the
25 running list of things we'd like to -- to know about.

1 So rather than asking you about each of
2 these individually, when you look at these stop codes
3 and the letters and numbers beneath them, can you tell
4 me what any of them means?

5 A. Not right off the top of my head.

6 Q. Okay. But if you had that additional screen
7 print from Fidelity, you would be able to?

8 A. I would be able to give you at least a better
9 indication of that information.

10 Q. Okay. Have you ever heard the term "a
11 restricted corporate advance" or "a restricted fee
12 code"?

13 A. I don't believe I have.

14 Q. Okay. Are you aware of any way of inputting
15 a fee onto a transaction history and then having it
16 not appear when the transaction history is printed?

17 A. Not that I'm aware of.

18 Q. Okay. So to the extent that this transaction
19 history includes, well, a continuous period of time --
20 I mean, it was produced some time ago, so clearly,
21 it's not current through today, but to the extent it
22 -- it includes a continuous period of time, it would
23 include every fee -- I think the word that we agreed
24 to was "applied" to the account? Is that -- is that
25 an okay way of expressing it?

1 A. I think that's an okay way of expressing it.

2 Q. Okay. So there should be no fee that is not
3 listed on here that was applied to the account for
4 this time period?

5 A. If you give me a second --

6 Q. Sure, sure, take your time.

7 A. -- I just want to look through and make sure
8 I'm not missing anything.

9 (Witness reviews).

10 This loan history would reflect when a
11 fee would be charged to the account.

12 Q. Okay. You've used the term "charged" now?

13 A. Oh, I'm sorry. I didn't -- that was -- my
14 slip. I mean applied or --

15 Q. Applied?

16 A. -- assessed --

17 Q. Okay.

18 A. -- to the account reflected -- something that
19 -- that occurred that, you know, was in regards to
20 this loan.

21 Q. Okay. And can you distinguish for me
22 between -- well, do the terms "recoverable" and
23 "non-recoverable" have a meaning to you in terms of
24 fees?

25 A. Yes, sir.

1 Q. Okay. Can you explain to me what the
2 difference is between a recoverable and a
3 non-recoverable fee is?

4 A. It is an initial determination at the -- the
5 receipt of -- of that fee of whether at that time it
6 was deemed to be something that may be recoverable
7 from a third party or the borrower or something that
8 is automatically deemed as an expense of Wells Fargo
9 and, therefore, deemed non-recoverable from any other
10 party.

11 Q. Okay. So based on that, there are different
12 classifications of recoverable fees; is that right?

13 A. Correct.

14 Q. Okay. So there would be some that are
15 recoverable from the debtor, right?

16 A. As I said, it's an initial classification.
17 It can be changed at a later evaluation. But yes,
18 some that -- that would be borrower deemed recoverable
19 and some that may be investor or other third party
20 deemed recoverable.

21 Q. Okay. You -- you seem to be emphasizing the
22 -- the initial aspect of that determination. And
23 you've indicated that it can be changed. Under what
24 circumstances would an initial determination be
25 changed?

1 A. Just for an example, a late fee, if the
2 borrower called us and made a payment on the 17th and
3 asked, you know -- you know, can I -- can I get that
4 late fee taken off the account, the initial
5 determination of that late fee would have been that it
6 would have been recoverable, but then by waiving it,
7 it would have been a non-recoverable expense.

8 Q. Okay. And is there a point at which a
9 determination of whether a fee is recoverable becomes
10 cemented or is a fee that is deemed recoverable always
11 capable of being waived?

12 A. Waived or -- or transferred to a third party
13 are non-recoverable balances up until the date that it
14 has been paid.

15 Q. Until pay off, is what you're saying?

16 A. Well, not necessarily pay off, but that
17 individual fee being paid. In some cases, maybe the
18 borrower has -- and this is just an example and -- and
19 nothing to -- specific to this case, but if the
20 borrower has ten late fees and he's paid five of them,
21 those five are no longer able to change because he's
22 paid them. But we would have the ability to waive or
23 remove those other five late fees.

24 Q. Okay. Now --

25 MR. BARTHLOW: And, actually, I'm sorry

1 guys, can we take a little -- a little break --

2 MR. ALFIERI: Sure.

3 MR. BARTHOLOW: -- right now? Is that
4 all right --

5 THE WITNESS: Sure, sure.

6 MR. BARTHOLOW: Okay. I'll be back in
7 just a second.

8 (Recess taken from 2:00 PM to 2:07 PM)

9 Q. (BY MR. BARTHOLOW) Back on the record?

10 A. Sure.

11 Q. Okay. So --

12 MR. BARTHOLOW: Can you read back the
13 last question?

14 (Last question was read back)

15 Q. (BY MR. BARTHOLOW) And the answer to the
16 question about whether or not a fee becomes, you know,
17 forever -- forever recoverable is that once it's paid
18 that cannot be reversed; is that right?

19 A. Well, it could be reversed, but it would
20 still show as recoverable because it was recovered.
21 Then it's a whole another process to reversing the
22 payment to -- to unpay something.

23 Q. Okay. And so part of what I'm trying to
24 understand is there's, on the one hand, Wells Fargo
25 making an outlay to a vendor, for example, for a

1 property inspection or an attorney in a bankruptcy
2 case, and then there's the other aspect of it, which
3 is actually -- I think now we can use the term
4 "charging" it to an account and collecting it from
5 that account, right? Those are two kind of different
6 parts of the same process, right?

7 MR. ALFIERI: Objection, form.

8 A. I wouldn't say part of a same process, part
9 of the overall loan transactions.

10 Q. (BY MR. BARTHOLOW) Okay. So let's take the
11 example of a -- I think the uncontroversial example of
12 a disclosed and allowed proof of claim fee, right? I
13 believe in this case it was 250 bucks; is that your
14 recollection? Let's just take the example of a
15 250-dollar proof of claim fee, okay?

16 Assuming that that proof of claim fee is
17 allowed as part of the bankruptcy claim and trustee
18 funds are received sufficient to pay the bankruptcy
19 claim, then Wells Fargo would charge the account for
20 that fee and pay the vendor, correct?

21 A. We pay the vendor before we charge the
22 account. We pay the vendor when we get the invoice
23 from the vendor requesting those fees --

24 Q. Okay. Stop, stop right there. Because that
25 -- I may be misunderstanding something, but once a --

1 and again, we're saying that that is a recoverable
2 fee, right?

3 A. On the assumption that we're talking about
4 this, say, 250 proof of claim --

5 Q. Allowed proof of claim fee --

6 A. -- allowed proof of claim fee. In -- in most
7 cases that I have dealt with, that would have been
8 initially put out as a recoverable fee.

9 Q. Okay. And it would have been paid as soon as
10 you received the invoice or shortly after receiving
11 the invoice, right?

12 A. Yes, sir.

13 Q. Okay. So are there any bankruptcy-related
14 attorney fees that are not paid shortly after
15 receiving the invoice?

16 A. Not to my knowledge. That's an invoicing
17 process, if there -- there wasn't -- if there was a
18 dispute of the payment between us and the bankruptcy
19 attorney that submitted the invoice there might be
20 fees that were delayed in payment or not paid due to
21 that dispute, but for the most part, invoices as they
22 come in get paid to the person sending the invoice.

23 Q. Okay. So in the absence of a dispute, it
24 would likely be paid?

25 A. To the attorney that submitted the invoice.

1 Q. Okay. And am I understanding your testimony,
2 is that once paid to the attorney, that becomes a
3 forever recoverable fee?

4 A. No. It's not until Wells Fargo gets
5 reimbursed for our expense to the attorney that it
6 becomes a forever --

7 Q. Recovered?

8 A. -- deemed recoverable charge.

9 Q. Okay. Does Wells Fargo have in place a
10 procedure for reviewing and waiving claims or fees
11 post discharge?

12 A. Yes.

13 Q. How long has it had that procedure in place?

14 A. At least, in the four years that I have
15 worked there at the completion of the bankruptcy,
16 there is a bankruptcy audit done to ensure that the
17 account reflects appropriately what occurred under
18 that bankruptcy.

19 Q. Okay. And is that done in your department?

20 A. No, sir.

21 Q. Do you know what the bankruptcy audit process
22 involves?

23 A. In a general sense, but I personally have not
24 worked that process.

25 Q. Okay. What is your general knowledge of that

1 process?

2 A. In general, once we receive indication that
3 the bankruptcy has been completed, whether it be a
4 discharge, a completion of a payment -- a chapter
5 plan, dismissed, that information is sent to our
6 bankruptcy processing area, and certain specialists
7 down in that area have a report that they pull of
8 loans that they need to review. They go back through
9 the bankruptcy docket and other information from the
10 trustee, trustee ledgers, things of that nature and
11 compare them to the information contained in our
12 system and the rules and regulations of the Court and
13 -- and state requirements. And if anything is
14 determined at that time that needs to be removed from
15 the account, it would be removed at that time.

16 Q. Okay. Have you ever seen the guidelines or
17 procedures for how that process works?

18 A. I may have at one point or another during my
19 four-year tenure with Wells Fargo, but as for any
20 specifics of that, I do not recall at this time.

21 Q. Do they exist in written format?

22 A. To the best of my knowledge, at least parts
23 of that procedure exist in written format.

24 Q. Okay. And what is the -- what is the group
25 or team or -- or section that handles that again?

1 A. Our bankruptcy department.

2 Q. Okay. And that's not your department; you're
3 the litigation department, right?

4 A. I'm the default operations support
5 department.

6 Q. Okay. But you are a litigation specialist,
7 right?

8 A. Yes, sir.

9 Q. Okay. I knew there was litigation in there
10 somewhere.

11 Okay. And so you can't tell me for
12 certain that there are written policies about that?

13 A. To -- to the best of my knowledge, there are,
14 and like I said, I'm confident in the fact that at one
15 point in time during my experience with Wells Fargo
16 that I have reviewed those; however, to be specific on
17 the interworkings of those procedures, I cannot.

18 Q. Okay. You mentioned that there was some
19 consideration given to the venue where the particular
20 bankruptcy case was. So the Northern District of
21 Texas might have different rules than the Southern
22 District of Texas about that; would that be accurate?

23 A. Correct.

24 Q. Okay. And so do you know whether there would
25 be specific written guidelines applicable only to the

1 Northern District?

2 A. I think our -- to the best of my knowledge,
3 the guidelines are general but do refer to contact,
4 say, the attorney that -- that would have specific
5 knowledge of -- of Northern District procedure and
6 what would be allowable versus not allowable in
7 comparison to contacting another attorney that would
8 be allowable or disallowable in, say, the bankruptcy
9 court of Georgia.

10 Q. Okay. I hate it when I lose my train of
11 thought.

12 In reviewing the materials that were
13 produced in this case, did you see any of those
14 guidelines that we were discussing?

15 A. Not that I recall.

16 MR. BARTHLOW: Okay. And that's going
17 to be another item that we will be requesting.

18 Q. (BY MR. BARTHLOW) Okay. So let's do talk
19 about this case now. Do -- do you recall that there
20 was an objection to confirmation filed in this case?

21 A. I believe I recall that, yes.

22 Q. Okay. And let's see. Let's take a look
23 through this Exhibit 5 pay history and see if any of
24 the dates for this pay history include bankruptcy
25 dates. And see if you can help me spot a charge for

1 the objection to confirmation.

2 A. If you could please refresh my memory at what
3 point the bankruptcy --

4 Q. It was June of '08, that the bankruptcy was
5 filed. And I believe the objection to confirmation
6 was filed in July or August of '08, fairly early on in
7 the case.

8 MR. ALFIERI: I'm going to have to object
9 here. What are we reviewing for? Are we reviewing
10 for an assessment or reviewing for a date?

11 MR. BARTHOLOW: I -- I'm asking her if
12 she can find the -- yeah, I think "assessment" is the
13 term we're using, a place in this payment history or
14 transaction history where the fee for the objection to
15 confirmation would appear.

16 MR. ALFIERI: Do we know, is there
17 testimony as to what the amount of the fee was?

18 MR. BARTHOLOW: There -- I believe it was
19 \$200 and --

20 MR. ALFIERI: Because by my recollection,
21 the fee was \$150 for an objection to confirmation.

22 MR. BARTHOLOW: Well, let's -- let's just
23 ask.

24 Q. (BY MR. BARTHOLOW) Do you know what the
25 standard fee is for an objection to confirmation is

1 for the Northern District of Texas with Barrett Burke
2 or Barrett Daffin, as they're now known?

3 A. Not without reviewing additional information.
4 And given Exhibit 5 only appears to run through about
5 7/14 of 2008, if the assessment of that fee was post
6 that date, this document would not reflect the
7 assessment of that.

8 Q. Okay. Let's go ahead and mark Exhibit 6 now.
9 And if you'll keep that Exhibit 5 --

10 (Exhibit No. 6 was marked)

11 A. Okay.

12 Q. (BY MR. BARTHOLOW) -- handy, that would be
13 great because we want to be able to compare.

14 MR. BARTHOLOW: And, Mark, you can have a
15 copy of this one.

16 A. Actually, sir?

17 Q. (BY MR. BARTHOLOW) Uh-huh.

18 A. If it is okay, I -- I have with us a
19 up-to-date version of this spreadsheet that you
20 just --

21 Q. We can get to that, but I want to work from
22 the one --

23 A. Okay.

24 Q. -- that's been produced in the case so far
25 for right now, okay? And if there are any things that

1 are different, we can talk about what's different
2 later.

3 But I think I spotted it on page...

4 A. It would have been --

5 Q. 7 of 10?

6 A. Yeah, 7 of 10 --

7 MR. ALFIERI: 150.

8 MR. BARTHOLOW: Yep, like a steel trap,
9 Mark.

10 A. 8/28 of 2007, is the -- the date of the --
11 the line on the bankruptcy payment history, Exhibit 6.

12 Q. (BY MR. BARTHOLOW) Okay. So --

13 A. Reflects that.

14 Q. -- can we take Exhibit 5 and find that in
15 Exhibit 5?

16 A. No, because it is post the effective date of
17 Exhibit 5. Exhibit 5 would have only been good
18 through the date that it was generated. And in this
19 case, because we're talking about the one day lag, it
20 would have only been good through 7/16 of 2008. And
21 since that --

22 Q. It's '07.

23 A. Oh, I'm sorry.

24 Q. The -- this one --

25 A. Then -- then --

1 Q. -- the -- confirmation --

2 A. -- it should be in here somewhere --

3 Q. Yeah.

4 A. -- let me find. I'm getting my years mixed
5 up. I do that all the time.

6 Q. It's a long day, I understand.

7 A. No, I do that even like -- two weeks ago, I
8 went to write a check and I was still trying to think
9 it was 2009.

10 Okay. Can I go by the -- the Bates stamp
11 at the bottom?

12 Q. Yes, please.

13 A. 00268.

14 Q. Okay.

15 A. Second number column over the APP line, says
16 0828, and at the very bottom of that column, it says
17 "ATYTXBAR."

18 Q. I'm sorry -- oh, okay. And there's a star
19 next to it. What does that mean?

20 A. That -- that means that it -- that it was a
21 recoverable fee and not one of the listed lines on
22 that matter.

23 Q. Okay. Can you tell me what the difference is
24 between a recoverable fee and a listed line?

25 A. Well, to go into the meat and bones of the P

1 309, and if you'll bear with me. On the left-hand
2 side, starting about four lines down from the top?

3 Q. Um-hmm.

4 A. There's a code that says APP?

5 Q. Um-hmm.

6 A. That's the application date.

7 Q. Okay.

8 A. The date that that transaction line occurred.

9 Next line says --

10 Q. Wait, wait, wait, wait. When I look across
11 that, I see two numbers. It looks like 911, 828, 813.
12 How do I connect that to a year?

13 A. And that's -- gets a little more complicated
14 with this type of history. If you refer to the very
15 bottom line, on the right-hand side, it says "oldest
16 TRAN of 7/8 of 2005"?

17 Q. Um-hmm.

18 A. You sort of have to go back to that date and
19 work your way forward. So if you go back to the very
20 last page, Bates stamped 0028, that first transaction
21 is 7/8 of 2005. So rolling through the history, it
22 follows in -- in chronological order forward.

23 Q. Okay. So we're looking at the -- the very
24 last page of this Exhibit 5, WFB 00284, and on the far
25 right-hand side, it says, on the APP line, 7/8. And

1 reading from right to left, it proceeds, again, 7/8,
2 then 7/11, then 7/18 and 7/19. And assuming that I
3 was to read this backwards, I would be counting up to
4 the most current date in this particular printed
5 history, correct?

6 A. Correct.

7 Q. Okay. So sorry to stop you, but that helps a
8 lot.

9 A. Not a problem.

10 Q. Next line is DUE?

11 A. That would be the -- the due date or
12 effective date of what's due for that transaction.

13 Q. Okay. And for this entry that we're talking
14 about, we've got a 00 line --

15 A. Because it isn't a payment that would
16 effectuate a -- a application or rolling of a
17 contractual due date, and it isn't tax or hazard
18 related where it would be something that was effective
19 for a particular year. So there is no due date for
20 that particular type of transaction.

21 Q. Okay. In your experience, when does Wells
22 Fargo actually recover transactions that don't have a
23 due date listed?

24 A. To -- it completely depends on the -- the
25 loan itself.

1 Q. Okay. And when you say it depends on the
2 loan itself, what about the -- the loan itself that
3 can make a difference?

4 A. Whether the fees were determined
5 non-recoverable by a Court, whether the loan went into
6 foreclosure and -- and were deemed recoverable under a
7 foreclosure sale or not, whether we contested it with
8 the attorney that charged us and charged it back to
9 them. It depends on what occurs on each individual
10 account whether those ultimately get paid back to
11 Wells Fargo.

12 Q. Okay. In this case, my understanding is that
13 the -- my clients are current post petition. Is that
14 your understanding or have you checked?

15 A. As I said, I -- I have other information that
16 would be able to refresh my memory on that.

17 Q. Okay. We -- again, we can get to that in a
18 minute, but for right now, let's assume that the
19 borrower is current post bankruptcy in their payments
20 and that they complete their bankruptcy. What -- at
21 what point would Wells Fargo, assuming an objection of
22 confirmation, collect that amount or would they?

23 A. That would be determined at the bankruptcy
24 audit at the completion of the bankruptcy.

25 Q. Okay.

1 A. Depending on what occurred during the
2 bankruptcy case.

3 Q. Okay. Is a pre-confirmation objection to
4 discharge fee recoverable -- or I'm sorry. Start
5 over.

6 Does Wells Fargo disclose to the Court
7 pre-confirmation objections -- fees for
8 pre-confirmation objections to discharge?

9 A. To my knowledge, we more recently do.

10 Q. More recently, can you tell me what -- I
11 understand about dates and -- and how things can be
12 fuzzy for you, but do you have a general idea of when
13 that started happening?

14 A. I want to say it was in -- within the past
15 year -- it might be shorter than a year, give or take.
16 There was new procedures put into place to send
17 written notification to borrowers and bankruptcy
18 courts regarding any fees assessed to the loan each
19 certain section of the bankruptcy, whether it be
20 yearly or monthly or depending on the requirements of
21 the actual bankruptcy court itself.

22 Q. But on some kind of periodic basis?

23 A. Yes.

24 Q. Okay. Are you aware of any disclosure by
25 Wells Fargo of any fees, other than the proof of claim

1 fee in this case to the Court?

2 A. Not to my knowledge in -- in this particular
3 instance to date.

4 Q. Does Wells Fargo have a policy or procedure
5 for retroactively disclosing fees or is this procedure
6 you've described just prospective going forward?

7 A. I do not know.

8 Q. Okay. Is it a written procedure?

9 A. I do not know.

10 Q. Okay. How did you come to know about this
11 procedure?

12 A. Through verbal communication from the
13 bankruptcy department as a general knowledge
14 information that would have been provided during
15 certain telephone conferences that we have with them
16 to ensure that we are up to speed on the -- general
17 processes going on within Wells.

18 Q. Okay.

19 MR. BARTHOLOW: Are you okay?

20 THE REPORTER: Oh, I'm fine. I just --

21 MR. BARTHOLOW: Okay. I -- I saw you
22 tapping your foot or something -- I didn't know if you
23 needed a break.

24 THE REPORTER: Thank you.

25 Q. (BY MR. BARTHOLOW) Okay. So you don't know,

1 but -- whether it's written or not; you've heard about
2 it in a telephone -- in a conference call?

3 A. Yes, sir.

4 Q. Okay. So can you tell me -- I guess you --
5 you've also told me that you don't know exactly what
6 that evaluation procedure entails; is that right?

7 MR. ALFIERI: Objection to form.

8 A. I'm not sure --

9 Q. (BY MR. BARTHLOW) The -- okay.

10 A. -- what you're asking, I'm sorry.

11 Q. Yeah. The post discharge evaluation
12 procedure where somebody at Wells Fargo determines how
13 to treat claims, can you tell me in detail what that
14 involves?

15 A. No.

16 Q. Okay. Can you tell me whether this objection
17 to confirmation fee would or would not be recoverable
18 post discharge in this case?

19 A. At this point in time, I can't because the
20 case hasn't been concluded. There may yet be rulings
21 by the Court that would affect whether or not, and
22 whether it's discharged, dismissed, paid off through
23 the bankruptcy, all affect that final outcome.

24 Q. Okay. Assuming discharge based on the
25 procedures as you understand them today, would that

1 fee be recovered?

2 A. It would not be personally recoverable from
3 the borrower.

4 Q. Okay. And that's what we discussed before,
5 is that it would remain recoverable against the
6 realty, right?

7 A. With the exception of -- of other things that
8 might occur that -- just assuming that it is -- it's
9 basic discharge and there's no other rulings from the
10 Court addressing otherwise and no state regulations
11 addressing otherwise, to my knowledge, yes, that would
12 remain recoverable against the property but not
13 individually against the borrowers.

14 Q. Okay. So as we sit here today, are you aware
15 of any Texas state regulation that would require
16 otherwise?

17 A. I am not a Texas regulation expert, so I have
18 no idea what Texas regulations require or don't
19 require.

20 Q. Which is a no, right?

21 A. Basically. I don't know the rules, so I
22 don't know whether there's something out there that
23 would cover that.

24 Q. Yeah, and the question was whether you were
25 aware of it, not whether there was one, to be clear.

1 And so I'm not asking you to -- to promise that there
2 isn't --

3 A. Start citing case law.

4 Q. Right. Although I bet you could.

5 A. No, I'm really not good at those numbers that
6 they put in there. General senses of it, maybe. But
7 you know, when you start tacking, you know, the -- for
8 example, you know, 03 hyphen blah, blah, blah,
9 subsection whatever, yeah, forget it.

10 Q. Okay. Let's -- let's return quickly to the
11 -- the page that we were looking at on the P 309
12 transaction history --

13 A. Sure.

14 Q. -- which was WFB 00268. We were looking at
15 the entry for 8/28, which is the second column of
16 numbers from the left. And as I look at this, I do
17 not see a -- the number 150 in that column, do you?

18 A. That's correct, it's not in that column --

19 Q. Okay. So again, using the -- the applied
20 language, not the charged language, are there any
21 other types of fees that could be applied to a -- an
22 account that would not have the number appear on this
23 P 309 transaction history?

24 A. The actual numbers would not. Other
25 indications that they -- there are fees being applied

1 would show.

2 Q. Okay. Is there another indication for this
3 particular fee that we could find on this, somewhere
4 in this document?

5 A. Well, for this -- for -- and if you let me --
6 if you -- we went through APP and DUE. The next thing
7 on -- on the left-hand side going down says "TYPE
8 slash TRAN"?

9 Q. Um-hmm.

10 A. Those are individual codes that tell us what
11 is occurring. 173 is a payment application. 633 is a
12 code that says that it is an attorney fee.

13 Q. Okay. And I -- and I do believe that part of
14 what was produced in this case were those -- those
15 codes. So that -- that much, I've been able to figure
16 out. But you're helping me very much because I was
17 not able to find the dollar amount to correspond to
18 that code. Are you telling me then that any time I
19 see 633 on here there is a dollar amount, but it will
20 not appear on this P 309 transaction history?

21 A. Not on -- on the specific screen prints that
22 you have here.

23 Q. Okay. What -- and I guess I'm assuming that
24 this is as close to raw data as -- as I can get, where
25 -- and I say "raw data" by comparison to the

1 spreadsheet, which it's my understanding is -- is
2 manually compiled; is that right?

3 A. Yes, sir.

4 Q. Okay. And -- and this is actually what --
5 whether we agree that the system is right or not, it's
6 what the system is saying?

7 A. Correct.

8 Q. Okay. Is there somewhere else in the system
9 where I could find those attorney's fees?

10 A. Yes.

11 Q. Okay. Do you know if that's been produced in
12 this case?

13 A. I do not know, sir.

14 Q. Okay. So to rephrase the question, in your
15 review of the documents attached to Ms. Savery's
16 transcript and the other documents you reviewed in
17 preparation for today, do you recall seeing anything
18 that would provide a listing of fees charged to the
19 account?

20 A. I do not recall every single document and
21 whether it was produced by attorney or in Miss
22 Savery's or something that I looked at independently,
23 so I'm --

24 Q. I don't expect you to --

25 A. -- unsure of whether I -- whether it was one

1 or the other, whether it was produced or not.

2 Q. And again, I'm not asking you to commit as to
3 whether it was produced. I'm just asking whether you
4 remember seeing it?

5 A. Okay --

6 Q. And do you?

7 A. Yes. I -- I've seen other documentation that
8 provides me with that information of that fee amount,
9 but like I said, I --

10 Q. You don't know whether it --

11 A. -- do not recall whether it was in -- in my
12 independent reviews or something that I received from
13 other sources.

14 Q. Okay.

15 MR. BARTHOLOW: Can we go off the record
16 for just a second?

17 MR. ALFIERI: Sure.

18 (Recess taken from 2:41 PM to 2:49 PM)

19 Q. (BY MR. BARTHOLOW) So we were just discussing
20 that there is a screen, I believe it's a -- it's a
21 screen, in the Fidelity system that would show fees
22 charged to an account; is that right?

23 A. Well, there -- there's other places in the
24 Fidelity system that would show me fees.

25 Q. Okay. What are those places?

1 A. There -- there are other types of loan
2 history that can be generated that show that, plus the
3 P 309 has back screens. This is -- is just slash;
4 there's a slash S 1, slash S 2, slash S 3 that show
5 different information --

6 Q. Okay. Let me -- let me unpack that. You say
7 this is "just slash." What do you mean by that?

8 A. If you look at the bottom right-hand corner.

9 Q. Um-hmm.

10 A. After oldest TRAN and a date, it says "slash
11 P."

12 Q. Okay. Uh-huh.

13 A. There are other codes except the P code,
14 which is the page code shown here, that can be entered
15 to see if there are, say, restricted escrow funds in
16 the account.

17 Q. What is restricted escrow funds?

18 A. If there was property damage and a claim was
19 made to the hazard insurance, and we receive funds
20 from the insurance company and haven't received the
21 backup documentation needed from the borrower in order
22 to disburse those funds to them to pay for the
23 damages, say, you know, an invoice from the repair
24 people, it goes into a restricted escrow account.
25 Those funds are not allowed to be used for anything

1 else, and that is shown in -- in a back screen of
2 this.

3 Q. Okay.

4 A. P 309.

5 Q. Okay. So then this is a partial P 309, then;
6 would that be accurate --

7 A. Well, this is what most people refer to as
8 the P 309 and they just -- like I said, there are back
9 screens to it that -- that other people utilize for
10 other purposes, but this contains majority of the
11 information needed to -- to do a loan review.

12 Q. Okay. Excuse me.

13 A. And like I said, there are other places --
14 other system-generated histories that provide the
15 exact same raw data as you had said earlier in other
16 formats that sometimes are easier to understand.

17 Q. Okay. If -- if I was to ask you to give me
18 the P 309 and include all of the back screens that
19 you're talking about, what would be the best way to
20 say that?

21 A. And -- and I'm not sure there is a best way
22 because the -- the back screens to the P 309 would be
23 hard -- it would be difficult to -- to take this
24 screen and give you the back screens and then the next
25 screen and all the back screens for -- for the next

1 page and -- and make it understandable to anybody
2 outside of the -- the mortgage industry, so it
3 would -- it would convolute the matter more than
4 provide, you know, just P 309 and all the back
5 screens.

6 Q. Okay. But if -- if somebody made a request
7 of you, provide the P 309 and all the back screens,
8 you'd know what they meant?

9 A. I would speculate that it was to provide, as
10 I called them, the back screens to this history.

11 Q. Do those screens have separate names?

12 A. No. They're still just P 309.

13 Q. Okay. Do they have separate titles, like
14 this is the screen that shows "X" and this is the
15 screen that shows "Y"?

16 A. When I hear you say "title," I'm looking at
17 the screen and I consider this mortgage loan history
18 to be the title of the screen.

19 Q. Um-hmm.

20 A. And no, each screen does not say mortgage
21 loan history subsection A, subsection B, whatever.
22 It's just the mortgage loan history.

23 Q. Okay. And -- and so you said maybe the --
24 the better way is you've got this slash P --

25 A. Um-hmm.

1 Q. -- in the bottom right-hand of the printed
2 area on here, and the slash P means the front screen,
3 right?

4 A. Correct.

5 Q. Okay. And do you know what the codes are for
6 the back screens?

7 A. I only know the code for one other back
8 screen and that's slash S 1.

9 Q. Slash S 1, and what does that stand for?

10 A. I don't know.

11 Q. You just know that it's one of the other --

12 A. That's -- I just know --

13 Q. Okay.

14 A. -- it's one of the other ones.

15 Q. Okay. And how many back screens are there?

16 A. I do not know.

17 Q. Okay. But one of the back screens would show
18 the \$150 for the objection to confirmation; is that
19 right?

20 A. To my knowledge or to my recollection, and
21 it's been awhile since I've looked at those type of
22 back screens, it would be shown on the -- S 1 back
23 screen.

24 Q. Okay. What else, to the extent you can
25 recall, is shown on that S 1 back screen?

1 A. I think the only one that -- just off the top
2 of my memory -- and I think it was the slash S 1,
3 would be that the restricted escrow, if there was any
4 restricted escrow on the account, would reflect there.

5 Q. Okay. Now, you said there were other types
6 of transaction histories?

7 A. Other types of histories that can be
8 generated off the same raw data straight out of the
9 system.

10 Q. Okay. And how do you do that?

11 A. Different -- instead of a P 309 code, there
12 are other codes that you can put in for different type
13 of history.

14 Q. Okay. And I guess I'm still focused on the
15 fees?

16 A. Um-hmm.

17 Q. Particularly, attorney's fees, inspection
18 fees, BPOs, whatever other kinds of -- you know, kind
19 of add-on fees that -- that you might think of. I'm
20 not sure whether late fees fall under that same class
21 or not. They might be kind of different --

22 A. The late fees would reflect on the P 309
23 because if you allow me to elaborate it.

24 Q. Sure.

25 A. On down, we had done the TRAN code, the

1 amount, that's the amount of the code, principal paid,
2 if it was a payment application of a principal, that's
3 how much if the principal got paid, principal balance,
4 interest amount paid, escrow amounts paid, escrow
5 balances. A&H insurance would be like if they had an
6 additional insurance for accidents in the -- the house
7 above and beyond your regular homeowner's insurance.

8 Q. Um-hmm.

9 A. That line would show. Life insurance, the
10 same, if they had an additional insurance to cover
11 death. And then payment of the loan, that would
12 reflect there. The next fee is LC, late fees, late
13 charges, and -- and fees that would be pre-default
14 inspection fees.

15 Q. Are going to be under the MISC?

16 A. No, they would be under the -- the LC slash
17 fees --

18 Q. Oh, slash fees, I got you. Okay.

19 A. I've never actually seen, to my recollection,
20 anything falling under the MISC slash PAID section.

21 Q. For any account or -- or for this one?

22 A. Like I said, just -- just in my recollection,
23 and I'm pretty sure not on this account, and I'm going
24 from memory, but not in any other account that I can
25 recall off of the top of my head at this particular

1 point in time.

2 Q. Okay. So you don't know what that line is
3 for; is that what you're saying?

4 A. Pretty much. No, because I've never seen it
5 utilized or had to research --

6 Q. Okay.

7 A. -- its reason for being.

8 The -- the next line, ADV hyphen balance,
9 is an advance balance.

10 Q. And what -- what is an advance?

11 A. It's -- it's escrow that has been paid out
12 where there isn't sufficient funds in the escrow
13 balance side to transfer -- to wash that amount -- am
14 I -- am I explaining that --

15 Q. So if the escrow account doesn't have enough
16 money in it, then funds are advanced by Wells Fargo;
17 is that right?

18 A. Yes, sir.

19 Q. For example, to pay taxes?

20 A. Yes, sir.

21 Q. Okay. That, I think I follow. Does the
22 advance balance ever include anything other than
23 escrow?

24 A. Not to my knowledge.

25 Q. Okay. And to the extent you've reviewed this

1 loan, you've never seen anything other than escrow
2 amounts added to the advanced balance; is that right?

3 A. Correct.

4 Q. Okay. All right. And then --

5 A. And then the next line is suspense, SUSP,
6 which would reflect any funds going into that holding
7 account or funds coming out of that holding subsection
8 of the mortgage loan, so the ins and outs of that.
9 And then the final line, SC slash PAYEE, is, as
10 reflected in the one that we've been referring to,
11 8/28 of '08, it gives the coding in which we're
12 showing who we paid that disbursement to.

13 Q. Okay. Do you know what the initials SC mean?

14 A. Not off the top of my head.

15 Q. Okay. Will you turn to page WFB 00266?

16 A. 66?

17 Q. Yes. I'm looking at that SC/PAYEE line and
18 it appears to have 42,439 in it. Do you see what I'm
19 talking about it?

20 A. Yes, sir.

21 Q. Can you tell me what that's about?

22 A. Again, it's a code so that -- that references
23 who we paid that amount to, in this case, of 130 -- or
24 312 is -- and without the actual listing, I'm -- I
25 believe, and I could be wrong that it -- that's how --

1 taxes, but I could be wrong.

2 Q. Okay. That's fine.

3 A. And -- and that coding would be whichever tax
4 department or hazard department or hazard insurance
5 carrier, et cetera, got paid those funds.

6 Q. Okay. All right. Well, then, let's go to
7 00269.

8 A. (Witness complies).

9 Q. Looks like we've got two different things on
10 the SC slash PAYEE line?

11 A. Yes, sir.

12 Q. The -- from left to right, the first one is
13 on 7/9 and it says "SC dash FNFS." It's 631. Do you
14 know what 631 is?

15 A. It is a fee code, but exactly which fee code,
16 I'm not sure.

17 Q. Okay --

18 A. I don't.

19 Q. -- well, we don't need to play games with it.
20 Let's see what we can get on -- well, I've got the --
21 the code thing. If -- yeah, maybe you can find it
22 from the pay history.

23 A. No, because the bankruptcy payment history
24 only reflects those fees that -- that were initially
25 deem recovered -- recoverable. So if that

1 transaction, that 631 transaction, was immediately
2 deemed non-recoverable or third-party recoverable, not
3 borrower recoverable, it would not necessarily reflect
4 on the bankruptcy payment history.

5 Q. Okay. I'm looking at page 7 of the
6 bankruptcy pay -- pay history. Is that where you are?
7 And -- and I'm looking at the date of July 9th, '07.

8 A. Um-hmm.

9 Q. And it looks like there's an unapplied funds
10 to MMP?

11 A. That would be shown on the --

12 Q. The one to the left?

13 A. Yeah. That was actually -- we're three
14 transactions over. That unapplied funds to MMP is the
15 second column with figures in it, not the third
16 column.

17 Q. Okay. So there was something else that
18 happened?

19 A. That --

20 Q. That's not on this either?

21 A. Like I said, that -- that wasn't deemed
22 recoverable --

23 Q. Okay.

24 A. -- to the borrower. At its initiation, it
25 was third party or non-recoverable, so it wouldn't

1 have been reflected on the bankruptcy history --

2 Q. Okay. And when I look at the bankruptcy
3 history, still on page 7, and that's Exhibit 6, just
4 for the record.

5 A. Um-hmm.

6 Q. And I compare that with this page 269 of
7 Exhibit 5, looks like the 633 code on the far right is
8 for the proof of claim; is that what you see?

9 A. Yes.

10 Q. Okay.

11 MR. ALFIERI: Show me that.

12 THE WITNESS: 629 here, and if you go to
13 629 on here, then come across, it's the -- listed on
14 the bankruptcy payment history --

15 MR. ALFIERI: Um-hmm.

16 THE WITNESS: -- as the attorney fee and
17 bankruptcy proof of claim for the 250. 629
18 transaction. 633 tells it's attorney fee of some sort
19 and that coding --

20 MR. ALFIERI: Okay. And how do we know?

21 THE WITNESS: Just because I know that
22 particular coding --

23 MR. ALFIERI: How do we know that this is
24 '07?

25 THE WITNESS: And that goes back to --

1 MR. BARTHLOW: Counting back from the
2 last page --

3 THE WITNESS: -- going backwards from --
4 forward.

5 MR. ALFIERI: Okay. Okay. Okay.

6 THE WITNESS: That, and if you wanted to
7 be -- too particular, you could go to the second
8 transaction on that line.

9 MR. ALFIERI: Right.

10 THE WITNESS: And the application of the
11 payment.

12 MR. ALFIERI: Um-hmm.

13 THE WITNESS: In the amount of principal
14 --

15 MR. ALFIERI: Okay. You're right.

16 THE WITNESS: -- and the amount interest
17 --

18 MR. ALFIERI: Yeah, yeah.

19 THE WITNESS: -- applied should --

20 MR. BARTHLOW: Correspond.

21 THE WITNESS: -- correspond to the
22 application of a payment for that time frame per, you
23 know, your initial amortization schedule and -- and
24 other information.

25 Q. (BY MR. BARTHLOW) Okay. Okay. So it looks

1 like, starting with page 270, WFB 00270, of Exhibit 5,
2 you see the attorney's fees related to the foreclosure
3 appearing; is that --

4 A. Correct.

5 Q. Is that what you see? Okay. And then prior
6 to that, we're talking about pre-petition charges,
7 right, like for the rest of this Exhibit 5 --

8 A. Well, even the attorney's fees for the
9 foreclosure are technically pre-petitioned because
10 they would have been incurred by the attorney
11 pre-petition. But they, as far as the mortgage
12 history and a pre-petition cutoff date, we received
13 the close of their foreclosure at the determination of
14 the bankruptcy and they couldn't have billed us for
15 what they did up until the point that they suspended
16 their foreclosure; and therefore, we would have gotten
17 the bill post that cutoff date, even though it was
18 incurred pre the cutoff date.

19 Q. And I don't think we're arguing about that in
20 this case, but --

21 A. Well --

22 Q. -- yeah, I follow you on that.

23 So -- but I guess the point being that
24 starting with 00270 to the end of Exhibit 5, we're
25 talking about --

1 A. Well --

2 Q. -- pre-petition?

3 A. Yes, correct.

4 Q. Whether -- whether they were incurred or
5 charged, it's all -- should be pre-petition, right?

6 A. Correct.

7 Q. Okay. And so 00259 the first page -- oh,
8 that's not actually the first page, though. It's
9 00260, is the real first page and -- that's 7 --
10 that's July. And I guess we have to go count to
11 figure out of what year it is?

12 A. Well, as of, what, 260 -- 268 we were in
13 2007, August of 2007. So let me go through -- and
14 that starts 2008. So it would have been July 14th of
15 2008, which --

16 Q. Which makes sense --

17 A. -- is also reflected on the top of the
18 history as the date.

19 Q. Okay.

20 A. That it was through.

21 Q. Okay.

22 MR. BARTHOLOW: How's everybody doing?
23 Good? Okay.

24 Q. (BY MR. BARTHOLOW) Now, let's focus on the
25 bankruptcy payment history. And that would be the

1 Exhibit 6?

2 A. Yes, sir.

3 Q. And my understanding is that you have brought
4 another payment history with you today?

5 A. An updated one that brings the information
6 current with the microfiche history and a different
7 version of the current active Fidelity history as
8 backup for that information.

9 Q. Okay. Are there differences in the
10 information contained in this new spreadsheet that
11 you've brought today and the information contained in
12 Exhibit 6?

13 A. There -- as I said, there's -- there's some
14 new things that have occurred. And I think the only
15 major noted difference was a misstatement of the
16 application of a payment and whether it was paid to a
17 pre-petition date or a post-petition date.

18 Q. Okay. And do you know what caused that
19 misstatement?

20 A. The person who prepared it may have just, you
21 know, misread what they were reading on the actual raw
22 data --

23 Q. Okay.

24 A. -- provided.

25 Q. Did you prepare the bankruptcy payment

1 history that we've got as Exhibit 6?

2 A. No, sir.

3 Q. Okay. Did -- did Tamara Savery prepare
4 Exhibit 6?

5 A. Not to my knowledge.

6 Q. Okay. Do you know who did prepare Exhibit 6?

7 A. And I'm not sure whether Exhibit 6 was the
8 one also included in the QWR or the one prepared as --
9 as part of the initial complaints --

10 Q. Well --

11 A. -- filed in this matter.

12 Q. -- for purposes of our conversation right
13 now, Exhibit 6 is what was produced by Wells Fargo in
14 discovery in this case.

15 A. Okay.

16 Q. And so do you know who -- who prepared it?

17 A. I believe in conversation with somebody it
18 was advised that -- that it was prepared by a Carol
19 Davis out of our Des Moines label, but that is
20 hearsay.

21 Q. We'll be the judge of that.

22 Okay. Have you spoken with Carol Davis
23 about this case?

24 A. No, I have not.

25 Q. Have you spoken with -- you have spoken with

1 John Grissom about the case, though, right?

2 A. Yes, sir.

3 Q. Okay. And I believe that the -- well,
4 actually, I -- I don't recall what Tamara testified
5 about who provided this. Okay. Do you know whether
6 it is Carol Davis' normal responsibilities to prepare
7 these?

8 A. I do not.

9 Q. Okay. Do you know what Carol Davis' normal
10 responsibilities are?

11 A. I know some of -- of what she is responsible
12 for, but I do not know everything that she is
13 responsible for.

14 Q. And so what is it that you do know?

15 A. Well, I do know that she is responsible for
16 assisting John Grissom in the handling of -- of legal
17 matters to assist with production of documentation to
18 our attorneys upon their requests. Some of her job
19 responsibilities and some of my job responsibilities
20 parallel.

21 Q. Okay. And so to the extent they parallel,
22 does that mean that generally somebody would be
23 working with either you or her, but typically not
24 both?

25 A. Correct.

1 Q. Okay. And -- okay. But as -- as you said,
2 it's hearsay as to whether or not Carol actually
3 prepared this. You don't know for sure?

4 A. I do not know for sure.

5 Q. Okay. Do you know who prepared the one that
6 you brought with you today?

7 A. Yes, I do.

8 Q. Who was that?

9 A. I requested it be prepared by our executive
10 written correspondence team.

11 Q. Okay. And is that the same team that would
12 have prepared the response to my qualified written
13 requests?

14 A. I believe so, yes.

15 Q. Okay. And was there a particular person that
16 you made the request of?

17 A. I -- I sent it to an e-mail box that that
18 group handles and --

19 Q. Okay. And --

20 A. -- they assign it to somebody in their group
21 and then provide me with a response from that box.

22 Q. Okay. And how did -- and so the response
23 came from that e-mail box as well?

24 A. Yes, sir.

25 Q. Okay. So then you don't know which

1 individual prepared this; is that right?

2 A. I -- I actually do know the actual individual
3 that prepared it.

4 Q. Okay. And who was that?

5 A. Gabe Shipley.

6 Q. Gabe Shipley?

7 A. Yes, sir.

8 Q. Okay. And how is it that you know that Gabe
9 Shipley prepared it?

10 A. Because I went back and asked the box because
11 I -- I know that department -- that department works
12 in -- out of default operations support, as well as
13 me, so I wanted to know which processor had actually
14 prepared the history so that I had a comfort level
15 with the preparation of that history and, you know,
16 could go back and review the same information that
17 that processor reviewed to ensure that the information
18 was as accurate as possible.

19 Q. Okay. And did Gabe communicate to you what
20 information was reviewed?

21 A. Yes, sir.

22 Q. Okay. And was that -- what was the form of
23 that communication?

24 A. I walked up to his desk and talked to him.

25 Q. Okay. And did he show you what he reviewed?

1 A. I have copies of what was reviewed.

2 Q. So he gave you copies of what he said he
3 reviewed?

4 A. Yes, sir.

5 Q. Okay. Did you see him review it?

6 A. Not personally.

7 Q. Okay. And do you know what the process is
8 for preparing one of these things?

9 A. Yes, sir.

10 Q. What is the process for preparing one of
11 these?

12 A. When a request is received, the processor
13 pulls information off of the Fidelity system, out of
14 the microfiche system. If it's a bankruptcy history,
15 they go into PACER and will pull trustee reports and
16 PACER information so that all that information, as
17 well as any information relevant to the preparation of
18 this contained in the Fidelity system can be
19 correlated and placed into the -- the payment history
20 spreadsheets.

21 Q. Okay. So and I think you answered my next
22 question. Gabe prepared this using the information
23 that is contained in the Fidelity system?

24 A. Correct.

25 Q. Okay. And my recollection is that you've

1 testified that you have a general sense for how
2 information gets into the Fidelity system, that you do
3 not know technically how that happens; is that right?

4 A. Correct.

5 Q. Okay. Do you know whether Gabe knows?

6 A. I do not believe that would be within his
7 realm of knowledge, but I do not know since I do not
8 know everything that he knows.

9 Q. Okay. Well, for the sake of -- of
10 discussion, we'll -- we'll look at these documents,
11 but I'm not sure that I'm comfortable that it -- that
12 it can be authenticated.

13 A. They were created at my request and secondary
14 reviewed by me for accuracy.

15 Q. I understand that. It's the data that you
16 reviewed that we can't authenticate because you --

17 A. Well, they are -- the data that I reviewed is
18 our business records, as maintained by Wells Fargo for
19 business purposes, generated on a basis of as at the
20 point of entry.

21 Q. You can tell me that, but you've just told me
22 that you don't personally know how all of that
23 happens. And so --

24 A. Well --

25 Q. -- rather than argue about it, let's take a

1 look at what you've got.

2 A. Okay.

3 MR. BARTHLOW: I guess we'll mark this
4 as Exhibit 7.

5 (Discussion off the record)

6 (Exhibit No. 7 was marked)

7 A. Well, this would have been a good portion of
8 the documentation directly from our -- our Fidelity
9 system and from our microfiche that reflects the
10 information contained in the bankruptcy history.

11 Q. (BY MR. BARTHLOW) I -- I think I understand
12 that. What I don't understand is why I haven't seen
13 it before today.

14 A. I wasn't part of the production, so I don't
15 know.

16 Q. I understand that.

17 So what I would like to do is I'd like to
18 look at the spreadsheet that you provided to me.

19 A. Don't you need a copy?

20 Q. Oh, this is the exhibit. Why don't you hang
21 on to the marked exhibit?

22 A. Okay.

23 Q. And I'll take another copy because you've got
24 the -- these are the marked exhibits here, right?

25 A. Yes.

1 **Q. Okay.**

2 MR. ALFIERI: Now, with respect -- before
3 we go on, with respect to what was produced and what
4 was --

5 MR. BARTHLOW: Shall we -- shall we go
6 off the record?

7 MR. ALFIERI: No, let's stay on the
8 record. With respect to what was produced and what
9 was not produced, you know, there were certain
10 documents -- and again, I -- I don't have the
11 production requests in front of me, but documents that
12 -- you know, there were some documents that were
13 objected to in our production responses, and there
14 were certain documents that were produced. There were
15 certain documents that were asked for in our -- in the
16 -- in your production requests, and of course, certain
17 documents, perhaps, that were not requested. So with
18 respect to the documents that appear today that Tamara
19 is testifying to --

20 THE WITNESS: Erin.

21 MR. ALFIERI: I'm sorry. Erin is
22 testifying to, I apologize, the fact that the
23 documents here may not have been produced earlier does
24 not necessarily -- does -- may be a reflection that
25 they were not produced or that they were not requested

1 in the past, but we can determine that later.

2 MR. BARTHOLOW: Okay. Are they
3 identified on your exhibit list?

4 MR. ALFIERI: The one that was filed?

5 MR. BARTHOLOW: Uh-huh.

6 MR. ALFIERI: They are identified as all
7 documents that will -- that are into -- all documents
8 attached to Ms. Hirzel Roesch's deposition.

9 MR. BARTHOLOW: Well, that could make it
10 easy.

11 MR. ALFIERI: I mean, of course, we
12 didn't know what you were going to produce either
13 because the deposition hadn't taken place yet.

14 MR. BARTHOLOW: Right. And I think --
15 yeah, I haven't produced anything new. And you know,
16 -- and since we're making statements on the record, I
17 would also note that many of the discovery responses
18 stated that Wells Fargo was continuing to search its
19 records and would supplement --

20 MR. ALFIERI: Supplement, correct.
21 Correct.

22 MR. BARTHOLOW: And based on what I'm
23 understanding from Ms. Roesch's testimony, these
24 documents have been at all times available and in
25 Wells Fargo's possession and accessible. So you know,

1 again, there is some concern if they're being produced
2 now and they've been available at all times.

3 MR. ALFIERI: Well, recall, the issues
4 that were at issue during the production are different
5 than the issues that are at issue now.

6 MR. BARTHOLOW: I don't really agree with
7 that, but I understand that's your position.

8 MR. ALFIERI: Right. I understand you
9 don't agree with it. And so as those issues become
10 fleshed out, those new issues, certainly, Wells Fargo
11 can't give you an information dump of everything
12 that's on its computers and everything that could
13 possibly be printed. I think a good indication of
14 that are the P 309 print screens that we went into
15 today. I know that -- I believe that P 309s were
16 requested. I remember that as a line item, but there
17 were no subscreens requested within the P 309
18 production -- document production requests. So you
19 know, notwithstanding, as we flesh out some of these
20 issues, the microfiche is being produced as well as an
21 updated, you know, bankruptcy payment schedule --
22 payment history. Okay. That's all I have for now.

23 Q. (BY MR. BARTHOLOW) Okay. So Ms. Roesch, can
24 you tell me what this Exhibit 7 is?

25 A. It is the updated bankruptcy payment history

1 spreadsheet that I specifically requested to bring the
2 -- the information contained in the account to a
3 current status specifically for my review and ease at
4 this deposition.

5 Q. Okay. And so in looking at Exhibits 6 and 7,
6 other than new information, are there differences?
7 And I think you indicated there was at least one
8 difference, so if you could direct me to it.

9 A. And if I could -- there are a few
10 differences. The first, and probably most notable,
11 would be the -- the amount of columns provided with
12 reference information. On the original bankruptcy
13 payment history, there was no tracking of debtor and
14 trustee suspense and what funds were going into which,
15 except for reviewing the column section -- or the
16 comment section, if you refer to the -- the one --

17 Q. If -- if you could just hang on for one
18 second?

19 A. Sure.

20 Q. Looking at Exhibit 7, if you count from the
21 left -- 1, 2, 3, 4 -- 11 columns over?

22 A. Yes, sir.

23 Q. That's the debtor suspense column. And right
24 next to it is the trustee suspense column. Are those
25 the columns you're referring to?

1 A. Yes, sir.

2 Q. So if we were numbering them, they'd be
3 columns 11 and 12?

4 A. Yes, it would be -- to show the -- the in and
5 out flows of -- of those two types of suspense -- and
6 an ease to -- to better understand what occurred
7 during this.

8 Let's see. Is there any other -- just
9 trying to see if there were any other columns that
10 were -- the debtor suspense balances and trustee
11 suspense balances columns -- columns 6 and 7, if
12 you're counting from right to left.

13 Q. From right to left?

14 A. One, two, three, four, five, six -- debtor --
15 trustee suspense column is 6 and debtor suspense
16 column is 7, if you're counting right to left.

17 Q. Or left to right, we've got 16 and 17, okay.

18 And those are new also?

19 A. They -- they don't appear to have been
20 reflected on the original one.

21 Q. Okay. Why not?

22 A. Personal preference by the person preparing
23 the -- the spreadsheet on what information they --
24 they felt needed to be relayed and procedural changes
25 over a course of time in regards to what information

1 gets prepared in the manual spreadsheets.

2 Q. Okay. So the -- Exhibit 7 that we've got, do
3 the manual spreadsheets always look like Exhibit 7
4 now?

5 A. All the ones prepared by our written
6 executive group out of default operations support, to
7 my knowledge, prepared within the past few months and
8 forward appeared this way.

9 Q. Okay. So what impact on this case did those
10 two new columns -- or those four new columns have?

11 A. Not much because the information has still
12 been contained within other information provided. It
13 just gives an ease of reference for me and, hopefully,
14 for you.

15 Q. Okay. Aside from the inclusion of these new
16 columns, are there -- and the new information, are
17 there any other differences? I think you mentioned
18 the reversal of a payment was changed or something
19 like that?

20 A. Not reversal. I believe -- and if you'll
21 just give me a minute.

22 Q. Take your time.

23 A. Have a better time of being able to reference
24 the exact spot.

25 It would be the -- the 2/20/2009 payment.

1 Q. What about it?

2 A. In the original history --

3 Q. Exhibit 6?

4 A. Exhibit 6, it reflects that as a pre-petition
5 payment, and in this history, it actually shows that
6 it was meant to be a post petition application of the
7 payment.

8 MR. ALFIERI: Which -- which line item is
9 that? 2/20/09?

10 THE WITNESS: (Witness indicates).

11 MR. ALFIERI: Okay.

12 Q. (BY MR. BARTHLOW) Okay. And the P 309
13 transaction history only goes through July of '08?

14 A. Correct.

15 Q. So you are relying on other information?

16 A. More current and -- and additional raw data.

17 Q. Okay. And what -- when you say raw data, how
18 do -- what does that mean?

19 A. It was a term that I borrowed off of you as
20 pretty much the end all, be all that -- what is
21 entered in our systems, what is kept as our business
22 records, the information that -- that we derive our --
23 our case analysis -- analyses off of, you know, the
24 actual stuff that is entered at the time that it's
25 created in our systems and --

1 Q. Or so you hear --

2 A. -- maintained during -- as part of the course
3 of Wells Fargo's business.

4 Q. Or so you hear.

5 A. No, I know it's maintained as part of our
6 business because we still have access to it and
7 maintain these records --

8 Q. And -- and how is it maintained?

9 A. On our computer systems.

10 Q. And where are the computer systems located?

11 A. I do not know the exact location.

12 Q. And what type of software do the computer
13 systems run?

14 MR. ALFIERI: Objection to form.

15 A. I believe that we've already gone through all
16 of that, sir.

17 Q. (BY MR. BARTHLOW) Okay. Let me see. You
18 said you reviewed the responses -- the amended
19 responses to interrogatories in this case that were
20 attached to Ms. Savery's deposition?

21 A. Yes, sir.

22 Q. Okay. And I can put them in front of you, if
23 you'd like, but the -- the question is: Would you
24 have signed a verification of the amended responses?

25 A. If you would, please.

1 Q. I don't mind at all.

2 MR. BARTHOLOW: Okay. We'll mark this as
3 8, Exhibit 8.

4 (Exhibit No. 8 was marked)

5 A. Thank you.

6 Q. (BY MR. BARTHOLOW) Okay. Please take a look
7 -- minute to look at this document and confirm for me
8 that it is as I've represented to you, Wells Fargo's
9 amended objections and answers to Plaintiff's
10 interrogatories in this case.

11 (Discussion off the record)

12 A. Could you restate the exact question, just so
13 I'm -- make sure I'm clear on the answer?

14 Q. (BY MR. BARTHOLOW) If asked to sign the
15 verification of that document, would you be
16 comfortable doing that?

17 A. As --

18 MR. ALFIERI: I'm going to direct the
19 witness not to answer this question because the
20 verification requires her to be duly authorized to
21 execute the verification. And there's no evidence for
22 the Court at this point that Ms. Hirzel Roesch is
23 authorized to sign this verification. And now, in --
24 in addition, I don't believe that a couple-minute
25 review of the documents would be enough to -- for her

1 to sign a verification such as this.

2 I'm going to direct you not to answer
3 that question.

4 THE WITNESS: Okay.

5 Q. (BY MR. BARTHOLOW) Are you going to comply
6 with counsel's direction?

7 A. Yes.

8 Q. Okay. I'm going to ask you once more if you
9 were duly authorized to execute that verification if
10 you would feel comfortable doing so?

11 MR. ALFIERI: Objection, form. I'm going
12 to ask the witness -- I'm going to direct the witness
13 not to answer that question on the grounds that I have
14 already asserted.

15 Q. (BY MR. BARTHOLOW) Are you going to comply
16 with counsel's direction?

17 A. Yes.

18 Q. Is there any information contained in those
19 interrogatories which you know to be inaccurate?

20 MR. ALFIERI: Objection, form.

21 If -- answer, if you know.

22 A. In the two-minute cursory re-review that I
23 did of this documentation while sitting here, I did
24 not immediately key in on anything that stood out at
25 me as incorrect; however, that does not mean that I

1 gave it a -- thorough and official review to -- to
2 ensure that every single thing said -- contained
3 therein is 110 percent accurate.

4 Q. (BY MR. BARTHLOW) Have you ever executed a
5 verification of interrogatories on behalf of Wells
6 Fargo?

7 A. Yes.

8 Q. Okay. And are you duly authorized to do so?

9 A. Yes.

10 Q. And so your testimony is that despite being
11 duly authorized to do so you are refusing to state
12 whether or not you would be willing to sign this
13 verification?

14 MR. ALFIERI: Objection, form.

15 A. Could you repeat the question, please.

16 Q. (BY MR. BARTHLOW) So your testimony is that
17 despite being duly authorized to execute verifications
18 on behalf of Wells Fargo, you are refusing to answer
19 the question as to whether you would be willing to
20 execute the verification of these interrogatories?

21 A. Given a complete and thorough -- analyzation
22 of the loan, which is my normal procedure with
23 verification, had that been completed and I determined
24 that everything contained in the verification was
25 accurate and true to the best of my knowledge and

1 ability to research, I would execute the verification
2 under those precedences.

3 Q. Okay. So your testimony is that you have not
4 adequately reviewed the information associated with
5 this loan to feel comfortable executing the
6 verification of that document?

7 A. That's not what you asked.

8 Q. I'm asking you now. Is your testimony that
9 you have not adequately reviewed the documentation
10 associated with this loan to feel comfortable
11 verifying those responses?

12 A. I have not reviewed the individual responses
13 and answers -- to the T. I reviewed the loan, and I
14 am more than comfortable with the status of the loan
15 and what is going on with the loan. I would have to
16 review this specific document in the context of is
17 every single answer contained therein true and correct
18 to the best of my ability and knowledge, and I do not
19 have the time to sit at this table and do that right
20 this second.

21 Q. I understand that. Is it Wells Fargo's
22 custom or procedure to conduct that kind of a review
23 prior to executing a verification?

24 A. It is my procedure. I do not sign anything
25 that I am not completely comfortable with the

1 information contained therein.

2 Q. So does Wells Fargo have a procedure that
3 requires an investigation of the contents of responses
4 to interrogatories prior to executing the
5 verification?

6 A. I am unaware of any specific written
7 procedures. It is general practice for those that
8 execute these to at least review the loan and be
9 comfortable with their ability to sign in regards to
10 the information contained therein.

11 Q. Have you ever had Mr. Grissom come to you
12 directly to handle a case?

13 MR. ALFIERI: Objection, form.

14 A. I'm not sure what you mean by handle a case,
15 so --

16 Q. (BY MR. BARTHOLOW) Okay. Well --

17 A. -- if you could clarify, please.

18 Q. I'll be glad to clarify.

19 My understanding is that there is a
20 general mailbox where litigation is -- is sent for
21 your department; is that accurate?

22 A. Correct.

23 Q. And that, generally speaking, litigation is
24 then disbursed among people in your department to be
25 handled?

1 A. Well, tasks, responsibilities, not just
2 litigation.

3 Q. Okay. Tasks and responsibilities. But in
4 the event of litigation, generally speaking, it would
5 come to the mailbox and the -- my recollection is
6 that, generally, one person would be assigned to
7 generally monitor that case; is that accurate?

8 A. Things referred to the mailbox get assigned
9 to a particular person to handle that tasks, ability
10 or case.

11 Q. Okay. And have you ever had Mr. Grissom come
12 to you with completed interrogatories, responses to
13 interrogatories and a verification form, and ask you
14 to execute the verification?

15 A. Yes, sir.

16 Q. Okay. And has that ever happened in a
17 situation where that was the first that you had ever
18 heard -- given a case?

19 A. Yes, sir.

20 Q. How many times?

21 A. Only a few.

22 Q. More than ten?

23 A. No.

24 Q. More than five?

25 A. Probably not.

1 Q. More than three?

2 A. I can't say. I know it's less than five, but
3 I can't say exactly how many because I had --

4 Q. Okay.

5 A. -- a thousand and some odd cases.

6 Q. Okay. So out of a thousand cases, three to
7 five?

8 A. (No response).

9 Q. Please respond verbally.

10 A. Like I said, less than five, but I don't know
11 whether it was less than three even. I know that it
12 has happened at least --

13 Q. Okay.

14 A. -- a few times.

15 Q. And in each of those cases you've conducted
16 the type of thorough review that you've just described
17 before signing the verification; is that correct?

18 A. Yes, sir. It is my personal procedure not to
19 sign my name to any documentation that I do not feel
20 completely comfortable with the information contained
21 therein, and I will do any necessary research to have
22 that comfort level before I execute a document.

23 Q. Okay. And is it your understanding that one
24 of the issues in this case is the relationship between
25 Wells Fargo and Freddie Mac?

1 A. Yes, sir.

2 Q. Okay. And are you aware that the original
3 and amended responses to interrogatories differ in one
4 respect, in that that the original responses declare
5 that Wells Fargo is the owner of the loan and the
6 amended responses declare that Freddie Mac is the
7 owner of the loan?

8 A. Correct.

9 Q. Okay. And had you been presented with
10 interrogatories that asks you to verify that Wells
11 Fargo was the owner of the loan, would that have been
12 a detail you would have checked?

13 A. Yes, sir.

14 Q. And what would that check require?

15 A. I would review the loan origination
16 information for any possible assignments. I would
17 review our imaging system for additional assignments
18 of the loan. I would review the original note to --
19 or imaged versions of the original note to see about
20 any type of endorsements or launches that might have
21 been attached or part of the note. I would have
22 reviewed our internal Fidelity systems in regards to
23 what is listed in our systems as the investor. And I
24 would have run the loan through our investor matrix to
25 make sure that -- that the entire name of that

1 investor was accurately reflected because, as you're
2 aware, some of them -- they're pools and they have
3 very long names. And in the investor screen,
4 sometimes those can be abbreviated, so I would make
5 sure that the entire name was accurately reflected in
6 the documentation that I was signing.

7 Q. Okay. In this case, about how long would it
8 take you to determine that Freddie Mac had some role
9 and some connection to this loan?

10 MR. ALFIERI: Objection, form.

11 A. It depends on whether it was the first thing
12 I reviewed or the last piece of the information I
13 looked at.

14 Q. (BY MR. BARTHOLOW) Again, I'm -- I'm asking
15 in order -- if I said tell me who owns this loan, how
16 long would it take you to find that out for me?

17 A. For a thorough review of all the
18 documentation that I just listed that I would look
19 through, it could take anywhere from 20 minutes to 2
20 days, depending on information contained in the
21 imaging system and whether I felt that I needed to
22 pull the actual original note.

23 Q. How long would it take you to determine that
24 Wells Fargo does not own the loan?

25 A. Again, you know, depending on -- on how much

1 information I -- I felt I needed to review to make
2 sure that information --

3 Q. Wait, wait, wait, wait. Wait, wait. Wait,
4 wait. The question is, not to determine who it -- who
5 owns the loan, but to determine that Wells Fargo does
6 not own that loan, how long would that take?

7 A. Given the investor screen indicated that
8 Wells Fargo was not the -- the investor or note holder
9 on this matter, 10 or 15 minutes tops, depending on
10 whether I had to actually log in to the Fidelity
11 system. And sometimes there's some system lags and
12 actually logging in or whether I was actually already
13 logged into the system.

14 Q. Okay. So assuming you're logged in, then
15 about how long?

16 A. Couple of minutes.

17 Q. I think that's all that I need today.

18 MR. BARTHLOW: Pass the witness.

19 MR. ALFIERI: All right. I'm not going
20 to be long.

21 EXAMINATION

22 BY MR. ALFIERI:

23 Q. I want to go through --

24 MR. ALFIERI: Can I get some of those red
25 -- exhibit -- I'm just going to go through some of the

1 documents we brought today.

2 MR. BARTHLOW: And I'm going to just
3 have a running objection to any new evidence that has
4 not been produced previously in the case. Discovery
5 is closed. I haven't seen any of these documents.
6 And based on the testimony of the witness, she can't
7 authenticate the information contained in them.

8 MR. ALFIERI: I understand. My response
9 will be that these documents have the same
10 authenticity that documents previously -- that have
11 been produced in this case and, in fact, actually have
12 more authenticity because, in this case, a employee of
13 Wells Fargo was actually testifying to pulling these
14 documents off the system, utilizing them in her
15 deposition testimony today. And in fact, there is no
16 one to controvert her testimony. And so to the extent
17 these are subject to any motion in limine or contest
18 at trial, I think we've got enough to authenticate
19 these documents at trial.

20 All right. The first set of documents I
21 want to -- I'm going to put before Ms. Hirzel Roesch
22 we're going to list as Exhibit -- what's the last
23 exhibit?

24 THE WITNESS: I think it was 8 --

25 MR. ALFIERI: Exhibit -- Deposition

1 Exhibit 9.

2 (Exhibit No. 9 was marked)

3 Q. (BY MR. ALFIERI) Can you please identify this
4 exhibit for the record?

5 A. These are print screens off of our Fidelity
6 system. They are a subsection of our bankruptcy
7 workstation and are individually entered tracking of
8 the pre and post petition application of the payments,
9 and I utilized this in order to effectively create
10 Exhibit 7 in regards to the pre and post determination
11 of application of payments.

12 Q. Okay. When you say you utilized them to
13 create --

14 A. Well, I shouldn't say I utilized -- I
15 utilized it in my review of -- of 7 --

16 Q. Okay.

17 A. -- to ensure that information was accurate.

18 Q. All right. So to clarify, you used Exhibit
19 No. 9 to -- to review deposition -- Deposition Exhibit
20 No. 7, which is the bankruptcy payment history?

21 A. Correct.

22 Q. All right. I'm going to hand to you a
23 document that's been marked as Deposition Exhibit No.
24 10.

25 (Exhibit No. 10 was marked)

1 Q. (BY MR. ALFIERI) Can you identify that,
2 please?

3 A. Absolutely. These are the microfiche history
4 as -- as requested and pulled by our microfiche group,
5 which provides me with payment history information
6 that was no longer active on the Fidelity system in
7 order for me to review payment application prior to
8 the bankruptcy filing and even post bankruptcy filing
9 but not contained within the past three years. This
10 runs from the beginning of 2001, through the
11 completion of 2007.

12 Q. All right. I'm going to place before you
13 another document, a set of documents, entitled
14 "Customer Account Activity Statement" that has been
15 marked as Deposition Exhibit No. 11.

16 (Exhibit No. 11 was marked)

17 Q. (BY MR. ALFIERI) Can you briefly describe
18 what that is?

19 A. This is a customer account activity
20 statement. It is a report generated directly off of
21 the Fidelity system. This is something that I
22 personally requested and pulled off of the Fidelity
23 system as referenced in the top left-hand corner,
24 where it says "REQ by VBZ." As we have already gone
25 over, every processor has their three-digit code. VBZ

1 is my three-digit code. And I pulled this as a easier
2 to read version of the information contained in the P
3 309 history that runs from 4/1 of 2007 through 4/5 of
4 2010, in order to verify the information contained in
5 Deposition Exhibit 7.

6 Q. Okay. I'm going to put another document in
7 front of you listed as Deposition Exhibit No. 12.

8 (Exhibit No. 12 was marked)

9 Q. (BY MR. ALFIERI) Can you please discuss what
10 that document is?

11 A. They are two print screens from our MAS 1
12 subsection of the Fidelity system for this particular
13 loan. These are screens that I reviewed that reflect
14 the investor information on the loan and specifically
15 showing that the investor was Freddie Mac.

16 Q. Okay. And so this is -- this is the investor
17 screen that you alluded to a few minutes ago to
18 Mr. Bartholow?

19 MR. BARTHLOW: Objection, form --

20 A. Yes, sir.

21 Q. (BY MR. ALFIERI) Okay. Let's go back. Just
22 tell me what Exhibit 12, again, is, please.

23 A. It is the investor print screen from our MAS
24 1 subsection of our Fidelity system, and it would have
25 been the documentation that I would have reviewed and

1 looked at as part of the determination that Freddie
2 Mac was the investor --

3 Q. And how do you know Freddie Mac is the
4 investor?

5 A. If you look down on the left-hand side of the
6 column -- or left-hand side of the page, about halfway
7 through the top section of it, it says "INV space
8 FHLMC." FHLMC, which is a pretty common known sortage
9 for Freddie Mac.

10 Q. Okay. Thank you.

11 I'm going to hand to you documents --
12 listed as document Exhibit No. 13.

13 (Exhibit No. 13 was marked)

14 Q. (BY MR. ALFIERI) Can you tell me what that
15 is, please?

16 A. These are monthly mortgage statements that
17 would have been produced and -- and sent to the
18 borrowers in regards to this loan. I had requested
19 and -- and pulled this information as additional
20 backup to the application of the payment information,
21 as it shows about middle section of the monthly
22 mortgage payment. It shows activity since last
23 statement and it shows payments. It also shows a
24 summary of contractual information on the loan,
25 including late charges as they occurred and other

1 charges as they occurred.

2 Q. Now, why -- again, I'm sorry, I didn't mean
3 to cut you off.

4 A. I was -- I was...

5 Q. Okay. Why did you pull these account
6 statements?

7 A. As I was saying, to review that information
8 and to ensure that the monthly mortgage statements
9 that -- that we were sending out were correctly
10 reflecting the information and -- and stating that --
11 that it was for informational purposes so that there
12 was confirmation in my thought process to ensure that
13 we hadn't actually physically requested of the
14 borrower the charges that the opposing counsel had --
15 had questioned in this matter.

16 Q. Okay. So this -- does this go back to the
17 issue that was -- that was discussed earlier in the
18 deposition with respect to fees that are actually --
19 that are assessed, as opposed to fees that are
20 actually charged to a borrower?

21 MR. BARTHOLOW: Object to the form.

22 Q. (BY MR. ALFIERI) You can answer.

23 A. If I understand your correction -- question
24 correctly, yes, it -- ultimately, it was a
25 determination to make sure that this reflected

1 everything that -- that was being assessed that was
2 initially determined to be recoverable.

3 Q. Okay. Great. And finally, I'm going to
4 place before you Exhibit -- a document that's been
5 identified as Exhibit No. 14.

6 (Exhibit No. 14 was marked)

7 Q. (BY MR. ALFIERI) Can you -- this is a
8 document that I believe you alluded to earlier. Would
9 you please identify it?

10 A. Absolutely. This is a -- screen shot
11 directly off of my computer that -- that I personally
12 printed off. It is the -- what I would see when I
13 pulled up the imaging system and, specifically, in
14 reference to the first time noted on here that -- that
15 the note was entered into that imaging system of
16 February 1st of 2007. And if you refer to this same
17 document a little further down on there, it shows
18 that, you know, somebody had requested that the -- the
19 note be imaged into the system again on 6/15 of 2007.

20 Q. And in fact -- in fact, drawing on your
21 testimony, as a screen shot, this -- it appears that
22 there may be more history to this particular search or
23 result than what's just on this screen shot; is that
24 correct --

25 MR. BARTHLOW: Object to the form.

1 A. My review and knowledge and preparation for
2 this depo is there is absolutely more information than
3 what fit on this screen shot alone. I had pulled it
4 just to -- to ensure, you know, what my information
5 about when we received the note and -- and part of my
6 backup processes. I happen to know the -- that
7 additional information that was contained in here
8 included information surrounding opposing counsel's
9 QWR that would be -- would have been further down on
10 this screen because the screen sort of runs by year
11 dates that -- that doesn't show here.

12 Q. (BY MR. ALFIERI) According to the screen shot
13 entered as Exhibit No. 14, what date was the note
14 scanned?

15 A. The -- the first --

16 MR. BARTHOLOW: Object to the form.

17 MR. ALFIERI: What's -- tell me your
18 objection, Counsel.

19 MR. BARTHOLOW: It doesn't say anything
20 about scanning on here.

21 MR. ALFIERI: Okay. Let me correct it.

22 Q. (BY MR. ALFIERI) If -- taking a look at the
23 image services documents -- the screen shot that you
24 provided, it appears that the note was entered --
25 there's an entry for note. What does that mean?

1 **A. That means that -- that if I clicked on that**
2 **particular --**

3 MR. BARTHLOW: Object to the form.

4 I'm sorry, go ahead.

5 THE WITNESS: I'm sorry.

6 MR. ALFIERI: What's your objection to
7 that, Counsel?

8 MR. BARTHLOW: Lack of foundation.

9 MR. ALFIERI: Lack of foundation?

10 MR. BARTHLOW: Yeah, she doesn't -- she
11 hasn't testified that she knows what that entry means.

12 MR. ALFIERI: Okay --

13 MR. BARTHLOW: And the basis for that
14 knowledge.

15 MR. ALFIERI: All right.

16 **Q. (BY MR. ALFIERI) Ms. Hirzel Roesch, do you --**
17 **in looking at the screen shot and then based on your**
18 **review and preparation for your deposition today, do**
19 **you understand what the notation on this screen shot**
20 **means with respect to the word "note"?**

21 MR. BARTHLOW: Object to the form.

22 **Q. (BY MR. ALFIERI) Go ahead, you can answer.**

23 **A. My knowledge and -- and review and the fact**
24 **that the -- the note in this particular screen shot is**
25 **underlined indicates that I had clicked on that**

1 particular document and pulled it up to look at it,
2 and all six pages of it, and it included imaged pages
3 of the note on this matter, as well as other
4 documentation and -- and without the -- the original
5 that I had. I want to say it was either like a name
6 affidavit or another originating document that -- that
7 was attached with the note in -- in that particular
8 entry.

9 Q. Okay. That's all I've got.

10 MR. ALFIERI: Pass the witness.

11 EXAMINATION

12 BY MR. BARTHOLOW:

13 Q. We may have to have you back.

14 Let's look at Exhibit 10, please. And I
15 don't know how we do this quickly, but I need to
16 understand how to read this thing.

17 A. Sure. Not a problem. If you will just let
18 me --

19 Q. Go.

20 A. -- rattle, I will try to --

21 Q. Okay.

22 A. -- see if we can do this as -- as quickly as
23 possible.

24 Starting in the upper left-hand corner, I
25 do not know what the exact codes in the -- the first

1 four or five digits of the codes are. Wells Fargo
2 Home Mortgage, Inc., would be our indicator that --
3 that it is a record maintained by us. It's loan
4 history information, investor code, investor category,
5 investor number, and the 12/31 of 2001 indicates that
6 this section of the microfiche was for a 2001 time
7 frame. Microfiche runs in sections of years, and it
8 will purge -- or maintain a year at a time. So if
9 you'll follow with me, the first two pages reflect the
10 year of 2001. The second two pages reflect the year
11 of 2002, and et cetera, on down the line.

12 Next line, LN number, loan number, the
13 borrower's name, borrower's address information is all
14 contained in that next top section. On down the line,
15 we go into the --

16 Q. Wait. I'm sorry, there's the EMPO and then
17 POFO?

18 A. I do not know that.

19 Q. Okay. I need you to please --

20 A. Okay.

21 Q. -- like if you don't know, tell me you don't
22 know --

23 A. Okay.

24 Q. -- but please do go through everything.

25 A. I'll try to the best of my ability --

1 Q. Okay. Yeah, I understand. That's fine.

2 A. Okay. First principal, again, that would be
3 the balance of the -- principal balance of this loan
4 at the completion of 2001. The second mortgage
5 principal, again, in this case, it's zero, but I think
6 we've already gone through that on the mortgage loan
7 history, Exhibit No. 5, and it's the same information.
8 Next over, it says "ESC BAL." That would be an escrow
9 balance as of the completion of the year. REST ESCO,
10 that would be the restricted escrow balance as of the
11 close of the year. Suspense, it would be the suspense
12 balance as of the end of the year. Advance balance,
13 advance balance as of the end of the year. REPO RES
14 and zeros on that and HUD balance and the -- those, I
15 do not know exactly the application of those terms.
16 LC balance would be the late charge balance as of the
17 close of the year. INT DUE, if there was outstanding
18 interest due on the loan or delinquent payment type
19 interest, that would be reflected there. Due date
20 reflects the due date of the loan at the close of the
21 year. PRT of M and it's 00 DM 1 underneath of it, I
22 do not know what those codes mean.

23 We okay so far? All right.

24 Q. Um-hmm.

25 A. P&I first, that is the principal and interest

1 section of the payment only for this time frame, or at
2 least as of the close of that year, as reflected on --
3 on our systems at that time. P&I second would be if
4 -- again, if there was a second and the principal.
5 And then it goes across county tax, city tax, hazard
6 insurance, mortgage insurance, other liens that might
7 have been on the property, say a mechanic's lien or
8 something along that lines. I do not know what BSC
9 means. A&H, is, again, accidental health. Life would
10 be your health insurance. Miscellaneous, again,
11 that's a column that I've never seen anything in, and
12 I don't really know what it refers to. RP -- REP RES,
13 I don't know that coding. TOT PAYMT, total payment as
14 of the close of the year. INT RATE, interest rate,
15 what was reflected on the systems at the end of the
16 year. DT and BM with a one and a nine, I'm not clear
17 on what those are utilized for. The next line, it
18 says first -- original mortgage. That's the -- the
19 originating principal balance as reflected on our
20 systems for the loan in question. Second would be if
21 the -- again, if there was a second one. The
22 principal balance BEG, which is -- next thing over is
23 the beginning principal balance, as at the beginning
24 of the year where did the principal balance sit. INT
25 INB, cap flag and then -- those two, I -- I don't

1 really know the -- the codings for those. MTGR SSN,
2 I'm -- it is the mortgager's Social Security number,
3 and it's another way for us to reference that the
4 person is who they are.

5 And if I can have that redacted from this
6 information before it goes on any official records, I
7 would greatly appreciate it for the security of all
8 people evolved.

9 Q. Took the words out of my mouth.

10 A. DF -- DEF INT BAL, I don't know those
11 codings. PRIOR YR PPD INT, prior year -- I'm not
12 quite sure what PPD is, but I think the INT is
13 interest.

14 Q. Might it be prepaid?

15 A. Possibly.

16 And the rest of that line, I'm unclear
17 on. Then it goes into like assumption date, transfer
18 deed, FHA slash SEC slash number, LIP payoff, a bunch
19 of coding that -- that goes through the system. And
20 if there was information that -- that needed to be in
21 there, it would. The -- this particular one, it says
22 YEACQRPD hyphen DATE, that's acquisition date when
23 Wells Fargo started servicing of the loan. And it
24 references --

25 Q. Can you stop -- can you stop real quick? You

1 said that the -- that that YE dash ACQ dash RPT slash
2 date is acquisition of the servicing?

3 A. Yes, sir.

4 Q. Okay. Not acquisition of the loan, just
5 acquisition of the servicing?

6 A. Yes, sir.

7 Q. Okay.

8 A. When -- when this particular loan was boarded
9 onto our systems for us to be able to have this
10 information and start servicing and applying payments
11 and stuff like that.

12 Q. Okay. And -- and I think you testified
13 earlier, but I just want to reconfirm that as far as
14 you're aware Wells Fargo has never owned this loan; is
15 that right?

16 A. To my knowledge, yes.

17 Q. Okay.

18 A. So 3/2 of 2001, and sale I.D., which is an
19 internal I.D. in regards to the -- the transfer of the
20 servicing of the loan. And this just says Crossland
21 three. What that entails, I do not know. And the --
22 some of the other information, exempt PLG -- PLGD
23 hyphen LN, clear to about the end of that line, I
24 don't know. The very end of that line says "BNK RPCD
25 space CH hyphen -- or back slash date -- DT," sorry.

1 And that would be if there was a bankruptcy filing and
2 the date of the bankruptcy filing.

3 The next line item, I'm not clear on,
4 most of the codings because they're old codings and we
5 don't really utilize them. At least in my particular
6 reviews, I -- I refer back to the Fidelity system
7 itself. There is a BNKRPT SAT, bankruptcy status, and
8 a LAST DEF DUE, which I -- I don't -- I'm not exactly
9 clear on the DEF part, but it does say three of --
10 3/31. Next line, recoverable -- corporate advance
11 balance, and I -- and I totaled it for the year. A
12 third party recoverable corporate advance balance and
13 an amount that would have been due for that particular
14 year. The next thing is a foreclosure workstation
15 code slash re-instatement date. INIT ESC statement
16 code, initial escrow statement code with a date. If
17 the loan wasn't escrowed, and during that year it
18 needed to be escrowed and an initial escrow statement
19 was sent out, a date would be filled in there. And
20 then the last one is allotment status slash completion
21 date. If there was an open and active loss mitigation
22 on the matter during this time frame, it would show
23 either the status or the completion of that lost
24 mitigation. Rolling on down, we have the due date,
25 which is the date that the loan was showing due for at

1 the time of the application of these transactions.
2 Next is the processing date. The processing date is
3 the actual date that we did this transaction. If you
4 look just a little further down, the due date shows 4
5 of 2001, and the processing date of 3/5 of 2001. Do
6 you see how they're --

7 Q. Uh-huh.

8 A. Okay. I'm just making sure that we
9 understand each other.

10 Q. Well, okay. So -- but the one that follows
11 3/5 is not 2001 --

12 A. No.

13 Q. -- it's just -- okay.

14 A. No, that's a -- that's actually -- I'm
15 getting to that.

16 Q. Okay.

17 A. Okay. The 1 space 42 following that are your
18 TRAN codes, your 173s, your 171s, 168s, and -- and I
19 believe we already went through those in prior --

20 Q. Are they the same for purposes of this as
21 they are on the P 309?

22 A. For the most part, they should be comparable.
23 I can't think of any that are -- are different, but
24 there may be one or two just because of the age of --

25 Q. Okay.

1 A. -- the transactions. Next thing is SC -- SEQ
2 NO, sequence number. If we had a payment that was
3 received that was --

4 Q. Wait, wait, wait. I'm sorry -- oh, okay.
5 Never mind --

6 A. Do you see it across --

7 Q. -- the TP and TR, the first time is the type
8 and the other is the --

9 A. TRAN.

10 Q. -- you said the transaction --

11 A. And the two go out into --

12 Q. Got you.

13 A. -- a TRAN code. SEQ NO, and that's a
14 sequence number. If we receive a check for, say,
15 \$4,000 and their payment's only \$1,000, we would have
16 to apply four payments at \$1,000 each to equal that
17 \$4,000 check that we received and -- and those
18 payments would be sequenced.

19 Q. Is that how that works? Payments are applied
20 -- if I over pay my mortgage by a double payment, then
21 am I a month ahead?

22 A. Well, you would still be a month ahead in
23 that sense. If you were current right now and you
24 made this month's payment, and you paid double, it'd
25 pay this month's and next month's, but because we

1 received one check and we need to do two transactions
2 off of one payment from you, then we sequence those
3 transactions so that we're not confusing ourselves.

4 Q. Okay. So I could make one payment, one
5 double payment, every two months and never be in
6 default; is that what you're telling me?

7 A. Well, no. Eventually, you would probably
8 fall into default due to excess -- other fees that
9 would occur on your account, like the late fee for the
10 second month that -- unless you were current when you
11 started.

12 Q. That's what I mean. If I made a double --

13 A. Yeah, if you were current when you started,
14 then as long as -- as the funds received -- and of
15 course, it -- it depends on your deed of trust and how
16 your deed of trust reads. If your deed of trust read
17 -- says, you know, apply principal, interest, escrow,
18 as long as you have enough to make principal,
19 interest, escrow, do that, and if there's extra, you
20 know, do whatever, depending on, of course, the
21 wording of the deed of trust. But, say, for -- for
22 explanation purposes only, your payment is a thousand
23 dollars and you are current on your loan. And you pay
24 us \$2,000, then we will apply one payment at \$1,000
25 for this month's and one payment at \$1,000 for next

1 month's payment. You're not due then until two months
2 from now. Two months from now you paid another double
3 payment, again, it would keep rolling forward. The
4 contractual dates automatically roll every time we
5 make a payment to the loan.

6 Q. Okay. Except to the extent the deed of trust
7 says something different?

8 A. Exactly.

9 Q. Okay.

10 A. And -- and the sequencing helps us when we
11 are play -- applying mass payments under
12 reinstatements or payoffs or other things of that
13 nature, where we have to pay more than one mortgage
14 payment into the -- the mortgage account at a time.

15 You're looking at me blankly. Do --

16 Q. I -- I understand what you're saying -- with
17 respect to payments in arrears. I'm not sure I
18 understand -- I mean, I understand what you're saying.
19 I just don't know that that's been my understanding
20 previously as to prospective payments, but it's really
21 not relevant, so let's move on --

22 A. Well, it -- it's just so that we can
23 understand the sequencing of the numbers if you see --

24 Q. Sure, sure. Okay.

25 A. -- more than one sequence, it's -- it's a --

1 one transaction that had to have multiple transactions
2 to occur.

3 Next is amount received, pretty
4 self-explanatory. That's the fund -- the amount that
5 we received from --

6 Q. Um-hmm.

7 A. -- wherever we received them. The next is
8 the amount of the principal paid. Then the running
9 principal balance, interest paid, escrow paid, escrow
10 balance, advance balance, advance balance being the --
11 the negative side of the deposit of escrow account,
12 status amount, status balance, unearned interest
13 balance, other amounts and CFDDTC numbers.

14 Q. What is CFDDCT --

15 A. I do not know.

16 Q. Okay. All right. Then there are notations
17 underneath status amount balance, unearned interest
18 balance that say batch 888 edit dash SEQ 028578. What
19 -- what is that?

20 A. They're in regard -- they're internal batch
21 and sequence codes that refer to the actual, you know,
22 check that was going around that equals that payment
23 or -- or the transaction because a lot of things
24 happen in mass amounts. You know, we -- we get
25 hundreds of thousands of dollars worth of mortgage

1 payments in, and that is the batch code that that
2 batch of mortgage payments went to the bank to
3 actually be cashed after our application process.

4 Q. Okay. So turn to the next page, it appears
5 that there are other codes described at the --

6 A. At the bottom.

7 Q. And we're on the second page of Exhibit 10,
8 for the record --

9 A. Yes, sir. These are to assist with fee
10 code -- fee assessment decoding. And if you'll give
11 me just a second, I'll see if I can find one to help
12 you -- okay. If you will go -- to the beginning of
13 the year 2003, which should be about page 5 of this
14 transaction history?

15 Q. Okay.

16 A. And the -- the first --

17 Q. And it says page 68950 in the upper
18 right-hand corner?

19 A. Yes, sir.

20 Q. Okay.

21 A. If you will follow the first line that has
22 the -- the money amounts about mid section.

23 Q. Okay.

24 A. And -- and follow over to where it says other
25 amounts. It says 50.65 with a negative beside it.

1 Q. Uh-huh.

2 A. And a code of an 11 beside that.

3 Q. Uh-huh.

4 A. That 11 code equals the -- a late fee charge.

5 Q. Okay. And --

6 A. So a 11 is a late fee. A 12 would be a bad
7 check fee. A 13 would be a CRG hyphen owner, and I'm
8 not quite sure -- I've never really seen a 13. A 14
9 would be an inspection fee.

10 Q. That's not on here, though, is it?

11 A. I -- I don't see it on this particular
12 history, but that -- that is my knowledge, 14 is -- is
13 an inspection assessment. Also, if -- if you will
14 allow.

15 Q. Um-hmm.

16 A. If you continue to the very next page of the
17 transaction history.

18 Q. Can you tell me what the page number is in
19 the upper right-hand corner?

20 A. Sure. Hold on. 68951.

21 Q. Okay.

22 A. Okay. Near the bottom with the due date of
23 12 hyphen 03, and the process date of 11/17 of '05,
24 and the transaction code of 175. Do you see where I'm
25 referring, sir?

1 Q. Yes.

2 A. And it shows that 50.65 negative with a W
3 beside it?

4 Q. Uh-huh.

5 A. That is \$50.65 coming out of suspense --

6 Q. Uh-huh.

7 A. -- and being applied directly to the
8 principal amount of the loan.

9 Q. Okay. Is it your understanding that \$50.65
10 is the amount of a late fee for this loan?

11 A. Yes, sir. Or at least this is what that --
12 this transaction is showing at this point in time.
13 And it looks like the -- that sufficient funds for a
14 late fee were removed from suspense and actually
15 applied directly to the principal balance of the loan
16 at that particular transaction.

17 Q. Okay. Now, is there any reason why the late
18 fee amount would change?

19 A. It would be ruled by the deed of trust and
20 note on whether the late fee was a set amount under
21 those or whether it was a percentage of the
22 delinquency or some other calculation of late charges.

23 Q. Okay. And do you know for this case --

24 A. I remember looking at the deed of trust note,
25 but do not recall off the top of my head exactly which

1 this one was.

2 Q. That's fine. And for the record, I'm -- I'm
3 not asking you to memorize the deed of trust.

4 So -- okay. So that's a late fee -- or
5 not a late fee, but a W means it was taken out of
6 suspense. And where would I see the suspense balance?

7 A. Suspense balances only show on these
8 microfiche history effective as the very end of the
9 year balance, which is reflected --

10 Q. At the top?

11 A. -- at the top part of the section for that
12 history.

13 Q. Okay. So for this history, I don't see money
14 moving in and out of suspense?

15 A. Well, you would in the fact that if you go
16 one transaction above the one that I showed you?

17 Q. Uh-huh.

18 A. It shows 50.65, no negative with the W, which
19 shows that \$50.65 going into suspense, which then we
20 turned around and took back out of suspense and
21 applied to principal.

22 Q. Okay.

23 A. But it doesn't do a running balance of the
24 suspense. It does show the in and out of suspense.

25 Q. Is the data contained in this microfiche in a

1 format that can be manipulated in any way?

2 A. Not to my knowledge.

3 Q. Meaning you don't know?

4 A. Meaning that I have -- I have never been
5 provided with a microfiche history that was in any way
6 editable -- able to be edited.

7 Q. I got your meaning.

8 A. Sorry.

9 Q. Okay. Okay. I think that I don't need to
10 ask a ton of questions about Exhibit 11, but I'd like
11 you to look at it, please.

12 A. Sure.

13 Q. Exhibit 11, we've got the transaction codes
14 are three column -- the third column from the left?

15 A. Yes, sir --

16 Q. And those are probably going to be the same
17 transaction codes that we've --

18 A. Yes, sir.

19 Q. -- been discussing all along? And I think
20 I've seen this format sufficiently that I can probably
21 decode it --

22 A. Well, and it's a lot easier to --

23 Q. Um-hmm, it is.

24 A. Or at least I find it that way.

25 Q. Um-hmm.

1 A. And like I said, you know, in this case, it's
2 something I personally pulled.

3 Q. Yeah, and -- and how long did it take you to
4 pull this?

5 A. This particular document alone, by itself,
6 about three minutes for it to -- it is a report
7 generated out of Fidelity, so I have to ask Fidelity
8 to pull the report. And then it ships it to specific
9 printers that print information directly from
10 Fidelity. Screen shots can be printed to any printer,
11 but this has to go to a letter writer printer, so it
12 takes a little longer sometimes for that transaction
13 to occur.

14 Q. Okay. And as far as you're aware, this is
15 something that could have been produced and -- you
16 know, at the time that the bankruptcy case was filed
17 if somebody had requested it?

18 A. If somebody had requested that specific
19 report to be run, yes.

20 Q. Okay. And what do you call it?

21 A. It is the PHST report, which reflects the
22 customer account activity, which is -- contained the
23 same information as the P 309.

24 MR. ALFIERI: What was that designation,
25 P?

1 THE WITNESS: PHST.

2 Q. (BY MR. BARTHOLOW) Okay. So if I ever end up
3 suing Wells Fargo again, I should ask for the PHST
4 report?

5 A. Well, like I said, it is -- it is not
6 editable. It's directly generated from the Fidelity
7 systems. And -- and as a personal thing, I find it
8 easier to read than the P 309, but not quite as easy
9 to comprehend without transition -- transaction codes
10 and -- and other information than, say, Exhibit No. 7
11 of the deposition.

12 Q. Which is, as we've discussed, a secondary
13 document, not straight from the data, right?

14 A. Correct.

15 Q. Okay. Okay. And let's see. I guess let's
16 go to Exhibit 9.

17 A. 9?

18 Q. What is Exhibit 9 called?

19 A. 9, 9, 9, 9 -- okay. I'm sorry, I just --

20 Q. That's all right --

21 A. -- got a little confused over here.

22 It is the bankruptcy history screens as
23 printed off the Fidelity system.

24 Q. Okay. And this is something that you can
25 print the screen shots off yourself?

1 A. Yes, sir.

2 Q. Okay. Okay. And I think that it's pretty
3 straightforward. And then -- did we already talk
4 about 10? We did.

5 Let's talk about 12, briefly --

6 A. Sure.

7 Q. -- where did this come from?

8 A. It is a print screen out of our Fidelity
9 system that includes our investor information that I
10 have referenced earlier. It's one of the screens that
11 I would have looked at in my verification of any
12 documentation.

13 Q. Okay. And this is what is reflected as of,
14 it appears, April 1st, 2010? That's the date of this
15 document?

16 A. That's the date the system reflects. The --
17 the actual print date that was printed was the 2nd.

18 Q. Okay. Right --

19 A. At about 2 o'clock.

20 Q. Okay. And prior to the 2nd, had you looked
21 at this screen before?

22 A. Yes, I just hadn't gotten --

23 Q. When did you first --

24 A. -- printed.

25 Q. look at this screen?

1 A. Shortly after my initial conversation with
2 Grissom.

3 Q. Okay.

4 A. Which I don't remember the exact date --

5 Q. Okay. And -- and I do want to remind you
6 that's --

7 A. Yes.

8 Q. -- something that's important to me to know.

9 Okay. But that's something that you
10 checked right away, is what you're telling me?

11 A. It's one of -- of the many documents I pulled
12 as one of my initial steps to the review process for
13 this deposition.

14 Q. Okay. And I understand that Grissom's an
15 attorney, so I'm not asking for you to disclose the
16 contents of the communications, but when you first
17 spoke with him, about how long did that conversation
18 last?

19 A. I do not recall.

20 Q. Okay. Do you recall whether it was more or
21 less than five minutes?

22 A. As I do not believe this was the only case
23 that was discussed on that phone call, it was a -- a
24 lengthy call.

25 Q. Okay. That's fair.

1 But you don't recall how much of the call
2 was devoted to this one?

3 A. No, sir.

4 Q. Okay. That's fine.

5 And -- okay. Exhibit 13, how did you
6 obtain these statements? What -- what did you have to
7 do to get them?

8 A. I -- I was provided them.

9 Q. By?

10 A. By Grissom.

11 Q. Grissom provided them to you, okay. Okay.
12 If you had wanted to obtain these yourself, do you
13 know how?

14 A. Yes, sir.

15 Q. Okay. How do you do that?

16 A. They -- they are -- some of them are
17 maintained within an imaging section of our systems;
18 otherwise, I could always go to the mail operations
19 team and have them regenerate copies of the mortgage
20 statements that were sent out.

21 Q. Okay. Do you know what Grissom did in order
22 to obtain these?

23 A. No, I do not.

24 Q. Okay. And Exhibit 14, is that a screen print
25 that you could slide the slider bar down and show me

1 everything that or the other stuff that's not revealed
2 on this section, if you wanted to go back into the
3 system and do another screen print?

4 A. Absolutely.

5 Q. Okay. I think I would like that.

6 MR. BARTHLOW: Can we take a little
7 break? I'm --

8 MR. ALFIERI: Yeah, how many -- how long
9 have we got in this case?

10 MR. BARTHLOW: We started at 9:30. It's
11 4:30 right now.

12 THE REPORTER: We started at 9:56.

13 MR. BARTHLOW: Or yeah, actually, 9:56,
14 that's right.

15 THE REPORTER: Yeah, if you want me --
16 I'll calculate it, if you'll --

17 MR. BARTHLOW: Can you?

18 THE REPORTER: -- go off the record.

19 (Recess taken from 4:35 PM to 4:46 PM)

20 Q. (BY MR. BARTHLOW) Okay. We are back on the
21 record. And let me see. I'll just need to mark one
22 more -- one more document.

23 MR. BARTHLOW: What are we on now, 15?

24 THE REPORTER: 15.

25 THE WITNESS: Yes, sir.

1 MR. BARTHLOW: Okay.

2 (Discussion off the record)

3 (Exhibit No. 15 was marked)

4 Q. (BY MR. BARTHLOW) All right.

5 A. Thank you.

6 Q. Okay. What I have marked for you is Exhibit
7 15, and I will represent to you is Wells Fargo's
8 amended objections and responses to our requests for
9 production. Have you seen this document before?

10 A. Sitting here right this second, I do not
11 recall whether it's one of the many documents that I
12 reviewed in my preparation for this matter.

13 Q. Well, I understand and it's been a long day.

14 Well, I will submit to you that that's
15 what it is. And I guess to the extent we need to
16 quibble about whether that is what it is at trial, we
17 can -- we can deal with that at trial. For now, I'd
18 just like to ask you a few questions about the
19 responses that are contained in here --

20 A. Sure.

21 Q. -- okay? Now, let's just go ahead and turn
22 to the third -- the page that's marked at the top is
23 page 3 of 33 and request No. 1. I think you're -- I
24 think you're at the right page.

25 A. Yeah, my document is -- is page 18 of 52.

1 Q. That's because I have given you the wrong
2 document. I'm sorry. Can we just...

3 A. Do you want to --

4 Q. Oh, nice work. Okay. There we go.

5 MR. BARTHLOW: For the record, we
6 removed the label from the document that I handed to
7 the witness, and she has deftly placed it on the
8 amended objections and responses to Plaintiff's
9 requests for production.

10 Q. (BY MR. BARTHLOW) Do you agree that that's
11 at least what this document is entitled?

12 A. Yes, sir.

13 Q. Okay. Now, I'd like you to turn to request
14 No. 1, which asks that all documents in your
15 possession or available to you that identify the
16 entity or entities that are the true owners of the
17 promissory note that's the subject of the lawsuit.
18 And there were -- the response says that there were
19 documents attached that were responsive to the
20 requests and goes on to say that Defendant will
21 continue to search for relevant responsive
22 non-privileged documents and will supplement to the
23 extent that they exist.

24 I'm going to represent to you that this
25 language about Defendant will continue to search for

1 relevant responsive non-privileged documents and will
2 supplement to the extent they exist is repeated a few
3 times throughout this document. What I'd like to know
4 is whether with regard to documents that identify what
5 entities are the owner of the note, whether there has
6 been, to your knowledge, a search conducted to
7 discover those documents prior to preparation for
8 today's deposition.

9 MR. ALFIERI: Objection, form.

10 Answer, if you know.

11 A. Prior to my -- and for clarification
12 purposes, prior to my personal preparation for this
13 deposition or including my personal -- preparation for
14 this deposition?

15 Q. (BY MR. BARTHOLOW) To the extent you know of
16 any search that -- that was conducted prior to your
17 personal preparation for this deposition, was there
18 one?

19 A. I do not know.

20 Q. Okay. All right. Now, is it your testimony
21 that with the documents that you've brought with you
22 today Wells Fargo has now produced all documents in
23 its possession that indicate the identity of the true
24 owner of the promissory note?

25 A. To the best of my research, we have provided

1 what we have located thus far. In response to that,
2 as it states, additional research would continue and,
3 if found, any additional documentation would be
4 provided.

5 Q. Okay. And what would the nature of that
6 research entail?

7 A. Continuing searching the mass amount of
8 documentation retained in regards to any loan to see
9 if any of the additional documentation gives further
10 reference to the -- to a response to request No. 1.

11 Q. Okay. I'd like you to turn -- or look down
12 the page to request No. 4, please. That request asks
13 for all documents in your possession or available to
14 you of all records concerning the transfer or
15 assignment of the loan since the loan was -- was
16 created to the date of the response of this request.
17 And once more, there is the -- the language that we
18 discussed a minute ago about Defendant continuing to
19 search.

20 Are you aware of any search having been
21 conducted prior to your involvement in the case for
22 additional documents regarding transfer or assignment
23 of the loan in this case?

24 MR. ALFIERI: Objection, form.

25 Answer, if you know.

1 A. I do not know.

2 Q. (BY MR. BARTHOLOW) Okay. Have you conducted
3 any search for responsive documents that would be
4 responsive to this request?

5 A. Again, if anything that I came across would
6 have been provided at this point through my deposition
7 has been -- research still continues on that matter.

8 Q. Okay. To the extent we're sitting here
9 today, is there anything you haven't produced that
10 you're aware of that would be responsive to this
11 request?

12 A. Not to my knowledge.

13 Q. Okay. Let's look at request -- No. 5 starts
14 at the bottom of page 3 and continues to page 4, any
15 documents regarding any trust, transfer, depository,
16 pooling, servicing, custodian or related agreement,
17 transfer and assignment documents, trust or servicing
18 documents or other documents concerning the loan,
19 including any agreement in which Wells Fargo or the
20 original lender were a party.

21 There is an objection stated as to it
22 being vague, ambiguous, not relevant, but the response
23 goes on to say that Defendant will continue to search
24 for relevant, responsive, non-privileged documents and
25 will supplement to the -- to the extent they exist.

1 As far as you are aware -- or let me
2 rephrase.

3 Are you aware of any search having been
4 conducted for these documents?

5 A. I do not know.

6 Q. Okay. And have you conducted a search for
7 documents that would be responsive to these requests
8 yourself?

9 A. Yes.

10 Q. You have? Okay --

11 A. Yes, sir.

12 Q. And as we sit here today, have you produced
13 every document that you are aware of that would be
14 responsive to this request?

15 A. Yes, sir.

16 Q. Okay. Now, let's look at No. 6. It's very
17 similar, documents in your possession or available to
18 you of any trust, transfer, depository, pooling,
19 servicing, custodian or related agreement, transfer
20 and assignment documents, trust or servicing documents
21 or other documents concerning the loan, including any
22 agreement in which Freddie Mac or the original lender
23 were a party.

24 This response says that there were
25 documents attached that were responsive to the

1 request, but also says that Defendant will continue to
2 search for relevant responsive documents.

3 To the -- are you aware, prior to your
4 involvement in this case, of any search having been
5 conducted -- any continued search having been
6 conducted for documents responsive to this request?

7 A. I have no personal knowledge.

8 Q. Okay. Have you conducted a search for
9 documents that would be responsive to this request?

10 A. Yes.

11 Q. Okay. And as we sit here today, have you
12 produced all documents that you're aware of that would
13 be responsive to this request?

14 A. To my knowledge, yes.

15 Q. Okay. Now, when you say to your knowledge,
16 does that mean that -- I mean, is that a
17 qualification? Is that a suggestion that there --
18 that you think there may be, but you don't know?

19 A. Well, the search continues.

20 Q. Okay. And in terms of the search, what have
21 you specifically done so far?

22 A. As I said, I have done a thorough review of
23 -- of the loan data contained in our systems and the
24 imaged documentation contained in our systems in an
25 effort to make myself as knowledgeable as I can in

1 regards to issues contained in this deposition. And
2 some of those issues referred to the relationship
3 between us and Freddie Mac. And if there were any
4 documentation as suggested in request No. 6 that would
5 reference that information, I would have located it
6 and provided it. To my knowledge, I did not locate in
7 any -- anything that hadn't already been provided
8 through my deposition or prior --

9 Q. Okay.

10 A. -- entry in this case.

11 Q. If you'll continue on to page 5 with request
12 No. 10, it states: "All original assignments
13 concerning the deed of trust and the note." It states
14 that documents responsive to the request were provided
15 and that Defendant would continue to search.

16 Prior to your involvement, were you aware
17 of any search having been conducted -- continued
18 search following the response to this?

19 A. I do not know.

20 Q. Okay. And have you conducted a search for
21 original assignments concerning the deed of trust and
22 the note in this case?

23 A. Personally, I was not looking for original
24 assignments, but I did review some of our
25 documentation that indicated that there were at least

1 imaged assignments on the matter.

2 Q. That had not been produced?

3 A. I don't know whether they had been produced
4 or not, as I do not recall every document that I
5 reviewed in the production of this matter.

6 Q. Fair enough.

7 Okay. And request No. 13 on page No. 6
8 states: "All documents in your possession or
9 available to you establishing that Freddie Mac is the
10 owner of the promissory note that's the subject of
11 this lawsuit." And it states that there are no
12 responsive documents.

13 Do you agree with that response?

14 A. Again, without knowing every document that --
15 that had been previously produced, I don't know
16 whether the -- the answer is accurate.

17 Q. Okay. Prior to your involvement in this
18 case, are you aware of any ongoing -- any search
19 following this response conducted with regard to the
20 request in No. 13?

21 A. I do not know.

22 Q. Okay. Have you conducted a search in this
23 case to discover documents in your possession or
24 available to you that establish that Freddie Mac is
25 the owner of the promissory note that is the subject

1 of this lawsuit?

2 A. Yes, and that documentation has been provided
3 for my deposition.

4 Q. Okay. And as we sit here today, are you
5 aware of any other document that would be responsive
6 to this request that has not been produced yet?

7 A. Not to my knowledge.

8 Q. Okay. Let's go -- bottom of page 6, request
9 No. 16, please produce copies of all servicing, master
10 servicing, subservicing, contingency servicing,
11 special servicing or backup servicing agreements with
12 respect to this account not already provided.

13 There's an objection that the request is
14 vague and ambiguous, not relevant, not likely to lead
15 to admissible evidence, but evidently, there were
16 documents attached that were responsive to this
17 request, and again, the statement that there would be
18 a continuing search.

19 Are you aware of any continuing search
20 prior to your involvement in this case having been
21 conducted with regard to the requests in this
22 document?

23 A. I do not know.

24 Q. All right. And sorry, request No. 16 here.
25 And your answer would be you do not know; is that

1 right?

2 A. Yes.

3 Q. Okay. And as we sit here today, other
4 than -- well, as we sit here today, are you aware of
5 any servicing, master servicing, subservicing,
6 contingency servicing, special servicing or backup
7 servicing agreement applicable to this loan?

8 A. As previously stated in my deposition, I'm
9 only aware of the servicing guidelines on the Freddie
10 Mac website and they are still the same.

11 Q. Okay. Okay. Please skip ahead to page 10.

12 A. Page 10 referenced on the bottom or --

13 Q. On the bottom right-hand corner, yeah. I
14 think it's --

15 A. At the top. I think they're similar, but...

16 Q. It says 10 of 33 on the top, too.

17 A. Just want to make sure that we are on the
18 same page.

19 Q. Good idea.

20 Okay. Have you ever heard of a form 1034
21 E?

22 A. No, I have not.

23 Q. Have you ever heard of a form 1034 T?

24 A. No, I have not.

25 Q. Have you ever heard of a 1035 tri-party

1 custodial agreement?

2 A. No, I have not.

3 Q. Okay. Then let's look at the next page. Oh,
4 we've already asked. And so are you aware of any --
5 any version of form 1035?

6 MR. ALFIERI: Objection to form.

7 MR. BARTHOLOW: I'm sorry -- yeah, that's
8 fair enough.

9 Q. (BY MR. BARTHOLOW) A Freddie Mac form 1035?

10 A. As I believe I stated earlier, I don't know
11 what a 1035 form is without something to reference in
12 front of me on whether I have any knowledge of that
13 particular form, so I -- I do not know.

14 Q. Okay. Now, you've mentioned that the Freddie
15 Mac servicing guidelines are your reference point for
16 Wells Fargo's rights and obligations with respect to
17 Freddie Mac; is that a fair characterization?

18 A. That, and -- and controlled by deed of trust
19 and the other loan origination documentation.

20 Q. Okay. And is it your testimony that you have
21 read the Freddie Mac servicing guidelines?

22 A. I -- I have read parts of them. And at one
23 point in time, have read them all, but do not recall
24 every wording and everything that those guidelines
25 cover.

1 Q. Have you read the portions of the guidelines
2 relating to transfers of mortgage loans?

3 A. If I have, I do not recall any specifics in
4 regards to those requirements.

5 Q. Okay. Do you think that those requirements
6 would have any relevance to the case that we are
7 discussing today?

8 MR. ALFIERI: Objection, form.

9 A. I don't know what you mean by relevance.

10 Q. (BY MR. BARTHOLOW) Okay. We'll move on.

11 Let's see. And I think we're almost
12 done.

13 Page 12, please. If you'll look at
14 request No. 42, it asks for the note delivery cover
15 sheet provided to Freddie Mac in connection with its
16 acquisition of this loan. States here objections and,
17 further, that there are no responsive documents.

18 As we sit here today, are you aware of
19 any note delivery cover sheet applicable to the
20 Guevara loan?

21 A. In my research and preparation of this, I did
22 not see any document with that specific title.

23 Q. Have you ever heard of a document with that
24 specific title?

25 A. The title --

1 Q. For any case?

2 A. The title itself is sort of self-explanatory,
3 in -- in that it is a cover sheet in regards to note
4 delivery.

5 Q. And are you familiar with that form as a
6 Freddie Mac form?

7 A. I do not recall without a specific copy of
8 this exact form whether the one that -- the general,
9 you know, delivery cover sheet of a note form that I
10 have looked at in the past was the Freddie Mac form or
11 not.

12 Q. Have you conducted any search for any
13 document that would be responsive to this request?

14 A. As I said, if it was covered in my search for
15 -- for information under this deposition, it has been
16 provided; otherwise, I am not aware of anything.

17 Q. Okay. Request No. 43 asks for forms 11, 13
18 SF and 1034 that Wells Fargo submitted to Freddie Mac
19 in connection with the Guevaras' loan. Are you
20 familiar with forms 11, 13 SF or 1034? I think we've
21 already discussed 1034.

22 MR. ALFIERI: Objection, form.

23 Answer, if you know.

24 A. Without the specific forms in front of me to
25 -- to know exactly which -- form 11 is, I don't know

1 that I can answer that question.

2 Q. (BY MR. BARTHOLOW) Okay. Have you ever heard
3 of a Freddie Mac form 11?

4 A. I don't know whether I have heard of it or
5 have referred to it as a -- a different name in any of
6 my prior experiences, and without a documentation --
7 document in front of me to reference, I don't think I
8 can answer.

9 Q. Would your answer be the same as to form 13
10 SF?

11 A. Yes, sir.

12 Q. Okay. Okay. We're looking at -- or I'm
13 looking now at page 14 and the request No. 51, please
14 provide a copy of any Freddie Mac form 1036, request
15 of release of documents, submitted to Freddie Mac with
16 regard to the Guevaras' loan. Are you aware of any
17 form 1036, request of release of document, having been
18 submitted to Freddie Mac with -- regard to the
19 Guevaras' loan?

20 A. I don't recall if it was a form that may have
21 been already produced or is in -- already in evidence
22 and I may have reviewed it as part of this deposition,
23 but I don't recall sitting here at this particular
24 moment whether I saw something specifically noted as
25 form 1036.

1 Q. Okay. Well, I -- if you'll look at the
2 response, it says that there are -- in addition to
3 making objections, it says that there are no
4 responsive documents and that Defendant will continue
5 to search.

6 Prior to your involvement in the case,
7 are you aware of there having been any continued
8 search for this document?

9 A. I do not know.

10 Q. Okay. Have you conducted any search
11 specifically for this document?

12 A. Not specifically for this.

13 Q. Okay --

14 A. 1036.

15 Q. Okay. Are you aware of Wells Fargo having
16 anything called a note tracking system?

17 A. No, sir.

18 Q. Okay. And do you know whether anybody who
19 worked for Wells Fargo has been designated to Freddie
20 Mac to request the release of documents -- loan
21 documents electronically?

22 A. I do not know.

23 Q. Okay. And are you aware of there -- prior to
24 your involvement, of there having been any search
25 conducted for responsive documents?

1 A. I do not know.

2 Q. And have you conducted any search for
3 documents specifically responsive to this request?

4 A. I don't believe specific to this exact
5 request, if it was something that was researched in my
6 preparation for this deposition, no.

7 Q. Okay.

8 A. It would have been provided at this point.

9 Q. Okay. If you'll look at page 18 and request
10 No. 70, that asks for every transactional history
11 prepared by Wells Fargo regarding the Guevaras'
12 mortgage loan from the loan's inception to the date of
13 your response.

14 And other than the P 309 transaction
15 history and the spreadsheet that was discussed in
16 Ms. Savery's deposition, are you aware of there having
17 been produced any other transaction history prior to
18 today?

19 A. I do not know.

20 Q. Okay. Do you agree that you've produced
21 other transaction histories today?

22 MR. ALFIERI: Objection, form, presumes
23 that what was produced today was not produced prior to
24 today's deposition.

25 Q. (BY MR. BARTHOLOW) You can answer, if you

1 know.

2 A. Well, I was going to ask you to --

3 Q. Okay.

4 A. -- restate, please, sir.

5 Q. Okay. Prior to today, are you aware of there
6 having been any other transaction histories produced
7 for this case, aside from the one that was discussed
8 with Ms. Savery and the P 309?

9 A. As I have previously stated, I don't know
10 everything -- every document and whether I have
11 reviewed every single document that has been -- been
12 produced in this matter as part of my deposition
13 research, so I do not know.

14 Q. Okay. Taking a look at Exhibit 10, briefly,
15 is this a loan transaction history?

16 A. It is a microfiche history.

17 Q. Okay. And did this exist at the time that
18 this request was made?

19 A. At least portions of it would have.

20 Q. Okay. And taking a look at Exhibit 9, does
21 this provide a history of transactions related to the
22 bankruptcy in this case?

23 A. It shows receipt and application of payments
24 in regards to the bankruptcy.

25 Q. Okay. Are you aware of it having been

1 produced prior to today?

2 A. I do not know.

3 Q. Okay. And except for transactions that
4 occurred subsequent to the date of this request or the
5 response to this request, would the information
6 contained in this Exhibit 9 have otherwise been
7 available at the time that this request was responded
8 to?

9 MR. ALFIERI: Objection, form.

10 A. Could you --

11 Q. (BY MR. BARTHOLOW) Okay.

12 A. -- restate? I'm not sure I understand what
13 you're asking, I'm sorry.

14 Q. Is this a new type of printout?

15 A. No.

16 Q. No? How long -- did it exist when you first
17 came to work at Wells Fargo four years ago?

18 A. Yes, sir.

19 Q. Okay. So -- and does it exist with regard to
20 every bankruptcy account that Wells Fargo services?

21 A. A -- a BNKH screen print would exist for any
22 bankruptcy history that we had on -- on any particular
23 loan.

24 Q. Okay. And I would like to have you take a
25 look now at Exhibit 11, which we have discovered is

1 called a PHST report. Does this provide a history of
2 transactions for this loan?

3 A. It is another version of the -- the P 309
4 screen already printed.

5 Q. Okay. So --

6 A. Provided.

7 Q. -- would it be fair to call this a loan
8 transaction history?

9 A. It contains the exact same information. It
10 is a customer account activity statement, as listed at
11 the top of the documentation.

12 Q. Is that a yes, then?

13 A. It -- well, it depends on what you
14 consider -- any transactional history. That's a
15 customer account activity statement. That's the title
16 of it --

17 Q. Okay. Does it provide a history of
18 transactions in this case --

19 A. It -- it shows application of the payments.

20 Q. Okay. And when you first came to work for
21 Wells Fargo four years ago, was this a printout that
22 you could have created?

23 A. I do not know.

24 Q. Okay. When was the first time that you
25 created one of these for any case?

1 MR. ALFIERI: Objection, form.

2 Q. (BY MR. BARTHLOW) And I'm referring to, for
3 the sake of the question, Exhibit 11, a customer
4 account activity statement. When was the first time
5 you produced a customer account activity statement,
6 AKA, a PHST report, for any case in which you were
7 representing Wells Fargo?

8 A. I want to say about three years ago.

9 Q. Three years ago, okay. And that -- you'd
10 agree that's before this case was filed, right?

11 A. Correct.

12 Q. Okay. And -- okay. Let's look at page 22,
13 request No. 89. It seeks copies of any and all
14 documents related to how legal fees are charged to,
15 advanced against or assessed to the subject mortgage?

16 A. I'm sorry, where were you?

17 Q. Page 22, request No. 89, towards the bottom.

18 A. Okay.

19 Q. Okay. There are objections here based on
20 disclosure of attorney-client information and vague,
21 harassing, not relevant, not likely to lead to
22 discovery of admissible evidence, but it also says
23 that there were responsive documents produced and that
24 a search would continue.

25 Prior to your involvement in this case,

1 are you aware of there having been any continuing
2 search for documents responsive to this request?

3 MR. ALFIERI: I'm going to direct the
4 witness not to answer the question -- that question on
5 the basis of attorney -- on the basis that it attaches
6 to it the attorney-client privilege.

7 MR. BARTHLOW: What's privileged about a
8 search for responsive documents?

9 MR. ALFIERI: I'm going to ask that the
10 witness not answer that question.

11 MR. BARTHLOW: Okay.

12 Q. (BY MR. BARTHLOW) Are you going to follow
13 the advice of counsel and not answer a question --
14 answer that question?

15 A. Yes.

16 Q. If you'd take a look at request No. 90.
17 There are objections, including an objection to the
18 extent that it calls for the disclosure of
19 attorney-client information. The request is for
20 copies of documents related to the procedures to be
21 used for court approval of the legal fees. And I'd
22 like to know what is privileged about procedures being
23 used for court approval of attorney's fees --

24 MR. BARTHLOW: Mark, if you're going to
25 make that objection.

1 MR. ALFIERI: Well, we can argue that to
2 the Court, if you'd like, but I'm going to --

3 MR. BARTHLOW: We're going to.

4 MR. ALFIERI: -- direct my witness --

5 MR. BARTHLOW: We're absolutely going
6 to.

7 MR. ALFIERI: -- not to answer that
8 question.

9 Q. (BY MR. BARTHLOW) Are you going to follow
10 counsel's advice and refuse to answer that question?

11 A. Yes, sir.

12 Q. Okay. Let's look at request No. 91. It asks
13 you to provide copies of any and all documents related
14 to written notices to be provided to the debtor or
15 debtor's counsel in a Chapter 13 bankruptcy case with
16 respect to legal fees. Objection is vague, harassing,
17 not specific, not relevant, not likely to lead to
18 admissible evidence, and then also an attorney-client
19 objection. Then it says that responsive documents
20 were produced. And it states that there would be a
21 continuing search for relevant, responsive,
22 non-privileged documents and that they would be
23 supplemented to the extent that they exist.

24 My question for you is whether you are
25 aware of there having been a continuing search for

1 responsive documents?

2 MR. ALFIERI: Objection, form.

3 Answer, if you know.

4 A. I do not know.

5 Q. (BY MR. BARTHOLOW) Have you conducted any
6 search for relevant responsive documents?

7 MR. ALFIERI: Objection, form.

8 Answer, if you know.

9 A. I'm just making sure that I understand the
10 request, so that I can --

11 Q. Why don't I --

12 A. -- appropriately --

13 Q. -- why don't I re-ask the question so that
14 we're clear --

15 A. Please.

16 Q. -- on what I'm asking.

17 Are you aware of there having been any
18 search for documents related to written notices that
19 are to be provided to the debtor or the debtor's
20 attorney in a Chapter 13 bankruptcy case with respect
21 to legal fees?

22 A. Including my research and -- and the mortgage
23 statements, previous monthly mortgage statements
24 provided.

25 Q. Monthly mortgage statements provided --

1 provide the debtor with notice of legal fees?

2 A. Well, they would provide notice of the fees
3 assessed to the account.

4 Q. Okay. We'll need to look at that in a
5 minute, if there -- if that's, in fact, the case.

6 Other than that, are you aware of there
7 having been a search conducted for responsive
8 documents?

9 A. Prior to my --

10 Q. Prior to your involvement.

11 A. -- involvement, I am not aware.

12 Q. Okay. Since you've been involved, have you
13 conducted any search for responsive documents, other
14 than what's been produced today?

15 A. Other than what's been produced today, I am
16 unaware of any additional information; however, the
17 search will continue.

18 Q. Okey-doke.

19 MR. BARTHOLOW: I will pass the witness.

20 MR. ALFIERI: Okay. Just a couple
21 questions and we'll be done.

22 EXAMINATION

23 BY MR. ALFIERI:

24 Q. Other than the -- Ms. Hirzel Roesch, did you
25 review the -- document No. 15 with respect to bringing

1 any documents that might be responsive thereto to
2 today's deposition?

3 MR. BARTHLOW: Object to the form; asked
4 and answered.

5 A. In -- in regards to each and every specific
6 request and -- and providing, you know, any additional
7 documentation that -- that was above and beyond what
8 had already been produced, that was not the goal of my
9 research in preparation for this deposition.

10 Q. (BY MR. ALFIERI) Okay. What was the goal for
11 your research in preparation for today's deposition?

12 A. To -- to ensure that I had a complete
13 knowledge of the loan history, application of payments
14 and relationship with -- between us and -- and Freddie
15 Mac as to who the -- the holder of the note and
16 mortgage -- or the owner of the note and mortgage were
17 in regards to this matter -- is in regards to this
18 matter and -- and anything that there was -- as I have
19 referenced before, a recent document filing that you
20 had that stated out additional information that you
21 felt -- and when I say "you," I'm referring to --

22 THE WITNESS: How do you pronounce your
23 last name correctly, I'm sorry?

24 MR. BARTHLOW: Bartholow.

25 THE WITNESS: Bartholow.

1 A. Mr. Bartholow's request for additional
2 information, and I utilized that to see if I could
3 determine appropriate responses and -- and know
4 appropriate responses to those issues that he
5 addressed in that documentation.

6 Q. (BY MR. ALFIERI) Okay. I don't know that I
7 can recall everything you just said, but your -- okay.
8 Let's strike that.

9 In the course of your investigation and
10 in preparation for today's deposition, did you
11 research the application of certain debtor payments
12 during allowed grace periods?

13 MR. BARTHLOW: Object to the form.

14 A. Part of -- of my deposition research would be
15 to review the account history for accuracy of
16 application of payments and accuracy of information
17 contained in the -- the bankruptcy payment history and
18 -- and relevant backup information for that payment
19 history.

20 Q. (BY MR. ALFIERI) Okay. Do you recall a -- an
21 allegation that Plaintiffs made with respect to a
22 payment made by the Plaintiffs on March 15th, within
23 the -- March 15th, 2005, within an allowed grace
24 period?

25 MR. BARTHLOW: Let the record reflect

1 that counsel is asking the witness to refer to an
2 unmarked document right now.

3 MR. ALFIERI: Okay. Then I will enter
4 this document as Exhibit 16.

5 (Discussion off the record)

6 (Exhibit No. 16 was marked)

7 MR. ALFIERI: And I will state that this
8 is page 6 of the Plaintiff's response to Wells Fargo's
9 motion for summary judgment filed in this case and --

10 MR. BARTHLOW: Mark, is that the second
11 motion?

12 MR. ALFIERI: Yes, second motion.

13 Q. (BY MR. ALFIERI) And I'm referring
14 specifically to paragraph No. 12. And then I'll read
15 it to you since it's in evidence. "Wells Fargo's
16 collection and customer service loan activity archive
17 produced in discovery shows that a late fee was
18 charged for March of 2005, despite a payment made by
19 the Plaintiffs on March 13th, 2005, paren, and within
20 the allowed grace period, close paren, see Exhibit B
21 to Appendix at WFB 00302," which is -- which indicates
22 that Exhibit B is a Wells Fargo Bates stamped
23 document.

24 Did you, in your preparation for today's
25 deposition, address the Plaintiff's allegation that a

1 late charge -- that a late fee was charged from March
2 of 2005, despite a payment made by the Plaintiffs on
3 March 15th, 2005?

4 A. Yes, I did additional research to -- to be
5 prepared to respond to that information.

6 Q. Okay. And what -- and what is your response
7 to that information?

8 A. I utilized the -- the Exhibit B that counsel
9 referenced in that document and referred back to
10 multiple payment information that has been provided on
11 this account. And on March of 2005, are -- a late fee
12 was automatically assessed by the Fidelity system
13 because the -- the lag between the bankruptcy -- or
14 the -- give me just a second.

15 The lag between the system utilized by
16 the bank office that accepted that payment and the --
17 the notification of that on the Fidelity system, the
18 Fidelity system doesn't know that there's that lag in
19 there. It doesn't have a -- you know, say, that --
20 hold up, there's a pending payment. It just realizes
21 that a payment had not been received at that point and
22 automatically assesses a late fee.

23 Once the transaction occurred, the
24 --Fidelity recognized as an application of that
25 payment, that payment, per the -- the Exhibit B that

1 counsel had attached to that specific document, gave
2 an effective date of that specific transaction, which
3 was prior to when the late fee should have been
4 charged, and thus, an adjustment was made to the
5 Fidelity system to remove that late fee and waive it
6 back off the account.

7 Q. Okay. So is it your testimony that the
8 reason the late fee was charged is a function of the
9 interface between the branch banking accounting and
10 posting of checks -- of payments and the mortgage loan
11 company's posting of payments?

12 A. Correct.

13 Q. Okay. No. 13, referencing the same
14 deposition exhibit, let me read it to you. "Every
15 time Plaintiffs have made a post petition monthly
16 payment at a Wells Fargo branch, the bank
17 representative tells Plaintiffs that the -- that the
18 payment they made was less than the full monthly
19 payment due." And here, Plaintiffs reference the
20 affidavit of Herlinda Guevara.

21 In your deposition preparation, did you
22 research this particular allegation of Plaintiffs?

23 A. Without knowing exactly which bank officer
24 they spoke to in regards to the responses that -- that
25 they are claiming, that they were told that it was a

1 insufficient monthly payment, I have had experience
2 where the bank offices do not necessarily understand
3 the pre petition, post petition distinction; and
4 therefore, they are looking at a -- total contractual
5 amount due on a loan and would say this is not the
6 full amount due on the loan. But again, without
7 knowing the exact representative that was spoken to
8 and -- and each time and contacting them to determine
9 exactly what was said by them, it is hard to combat
10 that statement.

11 MR. ALFIERI: Pass the -- pass the
12 witness.

13 MR. BARTHOLOW: I've got nothing further.

14 MR. ALFIERI: All right. Very good.

15 (Proceedings concluded at 5:28 PM)

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1 STATE OF _____)

2 COUNTY OF _____)

3

4 Before me, _____, on this day
5 personally appeared ERIN HIRZEL ROESCH known to me (or
6 proved to me under oath or through

7 _____) (description of identity card

8 or other document) to be the person whose name is

9 subscribed to the foregoing instrument and

10 acknowledged to me that they executed the same for the

11 purposes and consideration therein expressed.

12 Given under my hand and seal of office this _____

13 day of _____, 2010.

14

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NOTARY PUBLIC IN AND FOR

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THE STATE OF _____

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1 oral deposition is a true record of the testimony
2 given by the witness;

3 That the deposition was submitted on
4 _____, 2010 to the witness or to the
5 attorney for the witness for examination, signature
6 and return to me by _____, 2010;

7 That the amount of time used by each party at the
8 deposition is as follows:

9 THEODORE O. BARTHOLOW, III - 05:53

10 MARK ALFIERI - 00:22

11 That pursuant to information given to the
12 deposition officer at the time said testimony was
13 taken, the following includes counsel for all parties
14 of record:

15 FOR THE PLAINTIFFS:

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25

1 I further certify that I am neither counsel for,
2 related to, nor employed by any of the parties or
3 attorneys in the action in which this proceeding was
4 taken, and further that I am not financially or
5 otherwise interested in the outcome of the action.

6 Certified to me by this ____ day of _____,
7 2010.

8
9 



10 CINNAMON BOYLE

CSR 6394

11 Expiration Date: December 31, 2011

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