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<p style="text-align: right;">Page 1</p> <p>1 IN THE CIRCUIT COURT 2 FOR JEFFERSON COUNTY, ALABAMA 3 4 CASE NUMBER 5 CV-2009-901113 6 7 U.S. BANK, N/A as trustee for 8 that certain pooling and 9 servicing agreement, 10 Series #2007-EMX1, Pool #40896, 11 Plaintiff, 12 v. 13 ERICA SUMPTER CONGRESS, 14 Defendant. 15 ***ROUGH DRAFT*** 16 REPORTER'S OFFICIAL TRANSCRIPT 17 18 Before: HONORABLE J. SCOTT VOWELL JEFFERSON COUNTY COURTHOUSE 19 BIRMINGHAM, ALABAMA JUNE 1, 2010 20 21 22 23 REPORTED BY: 24 RHONDA W. HEAD, CCR 25 and NOTARY PUBLIC</p>	<p style="text-align: right;">Page 3</p> <p>1 RHONDA S. HOOD, ESQUIRE 2 STIRLING & HOOD 3 2117 MAGNOLIA AVENUE S 4 SUITE 100 5 BIRMINGHAM, ALABAMA 35205 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFF: 4 5 ROBERT RYAN DAUGHERTY, ESQUIRE 6 BARRY A. RAGSDALE, ESQUIRE 7 SHAUN RAMEY, ESQUIRE 8 SIROTE & PERMUTT, P.C. 9 2311 HIGHLAND AVENUE SOUTH 10 BIRMINGHAM, ALABAMA 35205 11 12 FOR THE DEFENDANT: 13 14 KENNETH J. LAY, ESQUIRE 15 LEGAL SERVICES OF ALABAMA, INC. 16 1820 7TH AVENUE NORTH 17 BIRMINGHAM, ALABAMA 35203 18 19 NICK WOOTEN, ESQUIRE 20 1702 CATHERINE COURT, SUITE 2D 21 AUBURN, ALABAMA 36831 22 23 D.W. GRIMSLEY, JR., ESQUIRE 24 PO BOX 130836 25 BIRMINGHAM, ALABAMA 35213</p>	<p style="text-align: right;">Page 4</p> <p>1 I N D E X 2 WITNESS DX CX RDX RCX 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 EXHIBITS 2 MARKED REC. 3 PLAINTIFF'S EXHIBIT 1 4 PLAINTIFF'S EXHIBIT 2 5 PLAINTIFF'S EXHIBIT 3 6 PLAINTIFF'S EXHIBIT 4 7 PLAINTIFF'S EXHIBIT 5 8 PLAINTIFF'S EXHIBIT 6 9 PLAINTIFF'S EXHIBIT 7 10 PLAINTIFF'S EXHIBIT 8 11 PLAINTIFF'S EXHIBIT 9 12 PLAINTIFF'S EXHIBIT 10 13 PLAINTIFF'S EXHIBIT 11 14 PLAINTIFF'S EXHIBIT 12 15 PLAINTIFF'S EXHIBIT 13 16 PLAINTIFF'S EXHIBIT 14 17 18 19 20 21 22 23 24 25	1 JUNE 1, 2010 9:15 a.m. 2 3 PROCEEDINGS 4 * * * * * 5 THE COURT: Are there any preliminary 6 matters we need to talk about before we get 7 started? 8 MR. RAGSDALE: Yes, sir. 9 THE COURT: Mr. Ragsdale? 10 MR. RAGSDALE: Yes, Your Honor, may it 11 please the Court, we -- obviously this case has 12 been before you before and was tried before. You 13 entered a scheduling order in this case as you are 14 apt to do which provides that the parties were to 15 exchange witness and exhibit lists, which the 16 parties did. It also provides that any objections 17 to the admissibility or authenticity of those 18 exhibits have to be raised within seven days. 19 U.S. Bank filed objections. The defendant filed no 20 objections. 21 This morning we start talking about exhibits. 22 Mr. Wooten indicated that he has objections to the 23 authenticity or the admissibility of several of the 24 exhibits which we listed and to which no objections 25 were interposed. We would like some indication
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 from the Court whether or not the scheduling order, 2 in fact, requires those objections to be made 3 before trial or whether we're going to be forced to 4 now bring witnesses to try to authenticate 5 documents that were disclosed, made available and 6 no objections were made. 7 THE COURT: What is the nature of the 8 documents? 9 MR. RAGSDALE: One of the ones that -- 10 Ryan? 11 MR. DAUGHERTY: Your Honor, there are a 12 few documents. Some are the default letters that 13 were sent to the defendant prior to foreclosure by 14 the servicer of the loan. And the other document 15 is the payment history and collection notice which 16 Your Honor reviewed in the last case and you 17 actually have a copy in the folder of exhibits that 18 you had with the court. There is also the question 19 of a promissory note. The original promissory note 20 that Ms. Congress signed for this loan. 21 THE COURT: That's not in dispute, is it? 22 MR. WOOTEN: Well, only to the extent, 23 Judge, at the last trial the promissory note was 24 presented to Your Honor as endorsed in blank and at 25 this trial they now have the endorsement filled in

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<p>1 to a party in the securitization. And there's 2 apparently a separate document which they have 3 styled as, what's called an allonge, which has 4 endorsements on it as well which has never been 5 seen or heard before. Which if Your Honor will 6 recall, during all the previous arguments in this 7 case you've been told that even a thief can enforce 8 a blank endorsed promissory note, and then when the 9 expert testimony came in and said that the 10 plaintiff could not possibly own a blank endorsed 11 promissory note, nothing was said. The Court's 12 never been told that there was another note 13 somewhere else that had endorsements on it. But 14 literally last Thursday night, based on a 15 previously decided time to exchange documents, I 16 got documents from them which included the computer 17 records that we have a problem with as far as the 18 reliability, and we got this promissory note with 19 endorsements. So in effect, the Court has a new 20 promissory note today from the one that was 21 presented to you at the previous trial.</p> <p>22 MR. LAY: And if I can also interpose, 23 it's a little bit disingenuous of them to bring 24 this up now because the exhibit list that they did 25 was very vague. It listed possibilities if you go</p>	<p>1 the first lick of discovery in this case upon which 2 they have not done. Never did a Request for 3 Production. Never did a Request for Admission. 4 The question of the endorsement of the other, 5 Judge, wasn't an issue in the first trial. There 6 was no challenge to any endorsement, no challenge 7 to whether or not it had been properly endorsed. 8 It was introduced by stipulation. The only 9 question that was addressed to it frankly came from 10 you where you asked Ms. Congress, is that your 11 signature? There was no issue about the 12 assignment, none. Never challenged until -- the 13 first time that there was a challenge to the 14 endorsement of the note came a day and a half or 15 two days before the hearing on their post trial 16 motions which was in March. That's the first time 17 that there was ever an issue about that. When that 18 became an issue, we went and requested from our 19 client the original note, which includes all the 20 endorsements because that was never disputed in the 21 first trial.</p> <p>22 THE COURT: Well, do you have somebody 23 here who can simply testify that's what these 24 documents are? 25 MR. RAGSDALE: We do.</p>
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<p>1 back and look. As soon as we were actually served 2 with the actual documents, a Motion to Strike was 3 filed, which you -- I was out of town last Thursday 4 or Friday, but was partly dealt with. So there are 5 objections in the case. They have known about the 6 objections all along.</p> <p>7 And the exhibit list, if you go back and look, 8 for example, we had a trial before, they produced a 9 promissory note, and now at the last minute they 10 want to bring in a new promissory note with these 11 attached documents. And there was nothing listed 12 in their exhibit list which stated that they had 13 new documents. It was only after they actually 14 served the documents on us that we knew they were 15 going to do this, which was on last Thursday.</p> <p>16 MR. RAGSDALE: May I respond? 17 THE COURT: Yes, sir. 18 MR. RAGSDALE: Virtually none of that is 19 true. The Exhibit list that was filed on May 18th 20 pursuant to your order lists as Exhibit Number 2, 21 note along with any endorsements or allonge.</p> <p>22 THE COURT: Well, wouldn't they presume 23 that's the note that you had offered at the 24 original trial? 25 MR. RAGSDALE: Not if they had done maybe</p>	<p>1 THE COURT: All right. Well, let's do 2 that. I think to let it all in and then if you all 3 can show that some shenanigans were going on, I'll 4 consider that when I decide the case.</p> <p>5 MR. RAGSDALE: Thank you, Judge. 6 MR. WOOTEN: That will be fine, Your 7 Honor.</p> <p>8 THE COURT: All right. And is that true 9 on the default letters and the payment history as 10 well?</p> <p>11 MR. WOOTEN: Well, Judge, the issue -- and 12 it's about to become very central to the case, is 13 the authenticity of the electronically stored 14 information. And the Court is aware that there are 15 lots of wonderful things you can do with a computer 16 and computer records. Now, I have no problem with 17 their witness saying, I recognize these documents 18 as being printed off our computer system. What I 19 don't believe their witness will be able to 20 establish is a necessary foundation to prove to the 21 Court that there is any reliability or guarantee 22 regarding the veracity of the contents of those 23 printouts. So to the extent that he can recognize 24 the documents to be printed from their system, 25 that's what I consider authentication. Proving</p>

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1 reliability is a different issue, and that's the
2 problem that I have with the electronic documents.
3 MR. RAGSDALE: And that's the problem I
4 have with this Court entering an order that says
5 you've got to object before trial so that we're put
6 on notice that we've got to apparently bring a
7 computer expert from Dallas that says that's the
8 electronic data that's stored on there. It hasn't
9 been tampered with, hasn't been changed. No
10 objection gets made to that and then now he wants
11 to put us to the proof of trying to prove this
12 document is in fact accurate coming from the
13 computer. It's a demand letter. It's not like
14 it's a secret formula. It's a demand letter.
15 MR. WOOTEN: Again, Judge, the problem
16 with the software system employed is the software
17 system is capable of being manipulated at any given
18 point.
19 THE COURT: Well, I guess anything is.
20 MR. WOOTEN: Sure. And so I think it's
21 another one of those issues that as you hear the
22 cross-examination on those points or as you hear a
23 voir dire on those issues, ultimately you make a
24 ruling at that point, and we're okay with
25 conducting it as a voir dire of their witness about

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1 those issues.
2 THE COURT: Well, he doesn't want to have
3 to bring a computer man here from out of state to
4 say that these are our records. You're not going
5 to insist on that, are you?
6 MR. WOOTEN: No, sir. I mean, I'm certain
7 that the gentleman is going to say I recognize the
8 records as --
9 THE COURT: He's not going to say it if
10 he's not here.
11 MR. WOOTEN: But the witness that is here
12 today.
13 THE COURT: I'm sorry.
14 MR. WOOTEN: The witness here today, I'm
15 sure he's going to say I recognize these documents
16 are printed off our system.
17 MR. RAGSDALE: Oh, definitely.
18 MR. WOOTEN: And I guess the question will
19 become, does he understand -- is he able to testify
20 to the Court a satisfactory way about how they were
21 produced and what they are so that the Court is
22 satisfied that they're reliable.
23 THE COURT: Well, you can certainly
24 cross-examine him about that.
25 MR. WOOTEN: And that's the issue.

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1 THE COURT: All right.
2 MR. WOOTEN: Okay.
3 THE COURT: All right. Any other pretrial
4 matters?
5 MR. WOOTEN: I think that's all, Your
6 Honor.
7 THE COURT: Okay. Does anybody invoke the
8 Rule?
9 MR. RAGSDALE: We do not.
10 MR. WOOTEN: We're fine.
11 THE COURT: All right. All right. Are
12 you ready? Would you all like to give a brief
13 opening statement? I think I know what the issues
14 are, but you're welcome to.
15 MR. RAGSDALE: You know how I feel about
16 the sound of my own voice.
17 THE COURT: I know. That's what I'm
18 afraid of.
19 MR. RAGSDALE: I may be brief.
20 Mr. Daugherty here may be a little longer. He's
21 going to give you the actual facts.
22 Judge, obviously this is a -- it may not appear
23 to be, but it's a simple ejectment action in which
24 U.S. Bank acting as trustee, having foreclosed on
25 Ms. Congress' --

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1 THE COURT: Barry, hold on just a moment,
2 if you would.
3 MR. RAGSDALE: Sure.
4 THE COURT: All right. Go ahead. We'll
5 do it the old way.
6 MR. RAGSDALE: Okay. Fair enough. I'll
7 use small words.
8 THE COURT: Thank you.
9 MR. RAGSDALE: An ejectment action in
10 which the prima facie case of U.S. Bank is not in
11 dispute. Ms. Congress, as we sit here today has
12 not made a mortgage payment in about two years to
13 anybody. In addition, both at the previous trial
14 and at this trial, there is a certified stipulated
15 copy of the foreclosure deed, demand for
16 possession, and obviously Ms. Congress --
17 Is Ms. Congress here, by the way?
18 MR. WOOTEN: If she's not sitting out
19 there --
20 THE COURT: What?
21 MR. WOOTEN: She was on her way in
22 earlier. I don't know if she's in the crowd yet or
23 not.
24 MR. RAGSDALE: Obviously Ms. Congress --
25 we would not be here in she was not refusing to

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<p>1 surrender possession of the property. So the prima 2 facie case that we are required to make under 3 Alabama law is not only established and stipulated 4 to based on the certified copies of the records et 5 cetera. So what we then come to is what are the 6 defenses that Ms. Congress has raised? 7 In the previous proceedings she raised 8 questions about service of process, she raised 9 questions about whether she, in fact, received 10 notices, and also questions about whether or not 11 she had been falsely told that there would be no 12 foreclosure. I don't know whether we're going to 13 have these issues. Again, this Court found those 14 matters to be lacking in the first trial. We then 15 faced post-trial motions which new arguments got 16 raised. And those arguments are technical 17 arguments that do not have anything to do with 18 obviously whether Ms. Congress made her mortgage 19 payment or whether or not she in fact entered into 20 a mortgage with promise to make payments. Those 21 are all, as I said, not in dispute. 22 What has been raised by Ms. Congress through 23 her counsel are arguments that seek to challenge 24 the foreclosure based on events that happened long 25 after Ms. Congress decided to take out this</p>	<p>1 frankly, have the standing to raise issues dealing 2 with the pooling and service agreement under both 3 New York and Alabama law. I would say that this 4 case is governed, Judge, exclusively by Alabama law 5 with one tiny exception that the defendant's 6 have raised. They contend that the pooling and 7 service agreement has a choice of law provision, 8 which it does, that says it will be construed 9 according to New York law. That is the only place 10 that New York law has any place, if, in fact, the 11 Court concludes that it will consider the pooling 12 and service agreement is somehow restricting 13 actions that are taken. 14 More importantly, Judge, they're wrong about 15 that. The note -- Ms. Congress' note was, in fact, 16 deposited and delivered to the trust by the day 17 required in the trust. And we know this 18 interestingly enough by evidence introduced and 19 will be introduced by the defendant. The pooling 20 and servicing agreement and its attachments 21 expressly say that Ms. Congress' note was, in fact, 22 deposited and delivered by the date required under 23 the pooling and service agreement. That's what it 24 says. 25 In addition to that, they have challenged</p>
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<p>1 mortgage and during the time that she was not 2 making payments. And those arguments fall into 3 essentially two categories. One argument that they 4 make is that the trust that U.S. Bank is acting as 5 trustee for, does not own the note that she signed. 6 And again, there is no dispute that she signed the 7 note and promised to pay. But the argument is that 8 the Trust Agreement, what you're going to have and 9 you've probably already seen and gone through is 10 what's called a pooling and service agreement. 11 You've had part of it. You're probably going to 12 get all of it. It's a big monster document that 13 has a lot of attachments to it. 14 And their argument in that case is that it 15 requires that the note be deposited or delivered to 16 the trust by a date certain in 2007. And their 17 argument is that the note was not properly assigned 18 or delivered to the trust by that date. 19 Now, we respond to that in a number of forms. 20 One of which is that Ms. Congress obviously is not 21 a party to the pooling and service agreement. Both 22 New York and Alabama law provide that you have to 23 be either a party or an intended third-party 24 beneficiary to rely upon contractual provisions, to 25 make claim for raised defenses. She does not,</p>	<p>1 whether or not it was properly assigned, whether 2 the note was properly assigned. And this is the 3 argument we just spoke about that got raised for 4 the first time in their supplement to their 5 post-trial motions in March. And when they raised 6 that issue, they filed an affidavit of a gentleman 7 and lawyer from New York, who I believe is here 8 today, who says, I was surprised to see that the 9 note doesn't have any assignments to the trust. 10 When we got that affidavit, we made sure and 11 tracked down the original note and we have the sure 12 enough original, Judge, the blue ink signed by 13 Ms. Congress, initialed by her, all of that. We 14 requested that from the secret depository where 15 those things are kept, I'm pretty sure in a 16 mountain in Montana. And we got the original. And 17 sure enough we satisfied Mr. Adams' surprise 18 because affixed to it is what's called an allonge 19 that has all of the assignments that he says should 20 have been on there, and they are all on there, 21 including the final assignment which assigns it to 22 U.S. Bank Trust. 23 And again, there is evidence that is going to 24 be presented by the defendant that says it was 25 deposited in a timely fashion. So their objection</p>

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<p>1 to the assignments, we believe, is satisfied by a 2 document that has been produced, which is the 3 assignment to the adjustable rate note. The 4 objection of the timing is satisfied by their own 5 evidence. 6 We would also, importantly, I think, point out 7 that it is not our burden in an ejection action to 8 prove compliance with the pooling and servicing 9 agreement. I is not our burden to prove that the 10 trust provisions were expressly and specifically 11 complied with. It is their burden to prove that 12 they weren't. And we do not believe there will be 13 any evidence provided to you at this trial that the 14 provisions of the trust agreement, the pooling and 15 servicing agreement were not complied with, and 16 that is their burden. They make one argument to 17 try to satisfy that burden. 18 Before the foreclosure sale in this case, an 19 assignment of mortgage was filed with the probate 20 court. This will be introduced into evidence as 21 well. It was signed by my law partner Colleen 22 McCullough, who is here today and will testify in 23 this case. And she signed it, by the way, in her 24 capacity as an assistant secretary and vice 25 president of a company called MERS. MERS</p>	<p>1 And, of course, we will point out that it's 2 entitled "assignment of mortgage." But in there it 3 makes reference to the fact that MERS is assigning 4 all of its interest. It assigns the mortgage, any 5 note and indebtedness together there with. 6 The defendant's contend that that means that 7 the note was transferred in June of -- excuse me -- 8 July of 2008. They are the only people in this 9 trial or in the world that I know of that make that 10 contention. It is interesting, though, that that 11 is the classic straw man that you're going to hear. 12 Their argument is we argue that the note was 13 transferred in July of 2008. They then say, 14 because you make that argument, you lose because it 15 can't be transferred in July of 2008. The note has 16 to be deposited in 2007. The big problem with that 17 is we've never made the argument that this is the 18 assignment of the note. Never, not once. Ms. 19 McCullough is going to testify that this is a form 20 that is intended only for purposes of certificate 21 -- I mean, for title insurance. That's the only 22 function that it serves. It is not an assignment. 23 The testimony at the prior trial was that the note 24 would have been assigned long before that. The 25 testimony at this trial will be, the note was</p>
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<p>1 designated, through an agreement that's also in 2 evidence and attached and filed in the Probate 3 Court. MERS designated Ms. McCullough as someone 4 who could sign assignments of mortgage on their 5 behalf. There is an agreement, by which, I think, 6 three or four of my law partners have been 7 designated as authorized people to sign on behalf 8 of MERS. She signed that and filed it. Its sole 9 purpose, we believe the testimony is going to show, 10 is for the title insurance. It's to make sure that 11 any interest that MERS might have had -- and as you 12 may recall, this mortgage, when it was originally 13 signed by Ms. Congress, the mortgagee in that is 14 MERS. You may hear some testimony, you may have 15 already heard some testimony about MERS. But once 16 the foreclosure starts to proceed and prior to 17 foreclosure sale, it is common 18 practice for an assignment of mortgage to be 19 executed which transfers any interest that MERS 20 might have to U.S. Bank. And that is what this 21 assignment of mortgage does. 22 Now, the defendant is engaging in some clever 23 sophistry. In this note -- or excuse me -- in this 24 assignment of mortgage, the word "note" appears. 25 It says in here that the mortgage is assigned.</p>	<p>1 assigned long before that. So as a consequence, 2 these technical defenses, which again, have nothing 3 to do with whether Ms. Congress is in default. 4 These technical defenses don't get them to where 5 they want to be. They don't satisfy their burden 6 to show that the foreclosure was somehow wrongful. 7 They don't satisfy their burden of raising a 8 defense to U.S. Bank's ability to foreclose or to 9 eject Ms. Congress in this case. 10 We believe that the evidence, when it is all 11 presented, will establish that U.S. Bank has 12 satisfied the prima facie requirements for an 13 ejection proceeding and that they can't carry 14 their burden of raising these affirmative defenses 15 for which they must stand responsible. 16 That's all I have to say unless Mr. Daugherty 17 wants to add something, which he probably does. 18 MR. DAUGHERTY: Your Honor, the only thing 19 I would add to that is that we plan to introduce, 20 when we begin our case in chief, copies of the 21 certified documents, which Your Honor has already 22 seen and stipulated to exhibits to establish our 23 case in chief in this matter. We will not be 24 introducing evidence at this time with regard to 25 their claims, their affirmative defenses which they</p>

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<p>1 carry the burden to plead and to prove. They've 2 misnamed it a wrongful foreclosure. A wrongful 3 foreclosure under the law in the state of Alabama 4 is a foreclosure that's conducted for an improper 5 purpose. At best they have alleged a defective 6 foreclosure which attacks the element of the 7 ejectment which is good title. We show legal title 8 by the foreclosure deed. They're trying to go 9 behind that an attack it by alleging a defective 10 foreclosure. And Your Honor, we'll introduce that 11 evidence immediately when we begin our case in 12 chief.</p> <p>13 THE COURT: Okay. Thank you. 14 All right. Any response, Mr. Wooten? 15 MR. WOOTEN: Thank you, Your Honor. 16 Appreciate your patients and your indulgence. 17 THE COURT: Well, you've seen no evidence 18 incidence of that so far. 19 MR. WOOTEN: Well, I have been pleased to 20 be in your court before, so I know that you 21 sometimes suffer a fool to make a comment, so I 22 appreciate that. 23 Judge, there are two principles that you are 24 going to hear repeatedly in this case from our side 25 of this room. One is that this trust has never</p>	<p>1 MR. WOOTEN: No, sir. 2 THE COURT: He's not talking about you. 3 MR. WOOTEN: I'm not talking about Barry 4 personally. I'm talking about the evidence in the 5 prior case. 6 MR. RAGSDALE: Okay. 7 THE COURT: All right. 8 MR. WOOTEN: The issue being that we come 9 to a prior trial that Barry was not even involved 10 in, I was not even involved in. But the Court's 11 given a promissory note and it says, this is a true 12 and correct copy of the promissory note. The 13 testimony you're going to hear today is is that if 14 this trust had been the owner of this promissory 15 note and it had been through securitization 16 process, that it would have been impossible for the 17 Court to receive a different copy of the promissory 18 note today. Impossible. No way. You're also 19 going to hear a rebuttal witness to the allonge 20 document who's going to tell the Court that in the 21 process of looking at the document for purposes of 22 rebuttal, he was able to see that the signature on 23 the allonge of one of the alleged officers was 24 digitally altered to fit in the space on the 25 allonge, and that the document is a complete</p>
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<p>1 owned this loan. The second is that this trust can 2 never own this loan. When the issue of the allonge 3 came up, I honestly can't tell the Court I was 4 surprised. I've been doing this for three years 5 and every time I have not had a defendant sworn 6 twelve ways from Sunday and put in spinet toehold 7 about their chain of title, it always changes. And 8 in other hearings before the Court we've had other 9 affidavits entered about notes that were not 10 endorsed and then suddenly notes appear with 11 endorsements, or we've had incomplete change of 12 title, and suddenly allonges appear. The allonge 13 will be a situation in this case, Your Honor. 14 You're going to hear some testimony about these 15 issues, and I think at the end of the day the 16 Court's eyes are going to be open about degree and 17 the severity of the after the fact production of 18 documents to try to fill holes in cases once the 19 problem of ownership is established. 20 It's quite disingenuous, Your Honor, to come to 21 your court and say six months ago that we have a 22 true and correct copy of the promissory note -- 23 MR. RAGSDALE: Your Honor, I'm going to 24 have to object to this. If he's talking about me, 25 I'd like for him to say it.</p>	<p>1 digital fabrication, it can be done by any 2 reasonable skilled computer person in a matter of 3 moments. In fact, you might hear him say something 4 to the effect, if I can take the oldest Microsoft 5 art program that exist and make this document in 6 ten minutes. 7 The problem, Your Honor, is not technical. The 8 problem is a problem with integrity of the 9 structured finance markets of this country. 10 During the last century what we've had is a 11 situation where lending has been out of control. 12 And the parties to the lendings through the 13 securitization process have made incredible fees, 14 incredible profits with a goal of removing their 15 liability at origination by making themselves 16 remote down the line. 17 So we file a three-hundred page trust document, 18 on average. This one is much smaller. And we say 19 they made all these transfers, and they occurred by 20 a date certain, and for that reason we are allowed 21 certain special tax treatments because we have 22 strictly complied with requirements that exist. 23 And you're going to hear Mr. Adams, he's going to 24 take the stand and he's going to tell Your Honor, 25 these aren't loosely entered into these agreements.</p>

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<p>1 These are documents that were long in existence, 2 variations, starting in the late 80s when the REMIC 3 provisions were added to the IRS tax code, and that 4 each of these transfers are considered sales that 5 are basically sacrosanct. In other words, 6 ownership is absolute. 7 Now, you're also going to hear that the reason 8 that the necessity of having -- 9 THE COURT: Excuse me a second. 10 MR. WOOTEN: Certainly. 11 (Off the record.) 12 THE COURT: All right. Go ahead, 13 Mr. Wooten. 14 MR. WOOTEN: I'm sorry, Your Honor. As I 15 was saying, this -- 16 THE COURT: Each one of these is a sale 17 you were saying? 18 MR. WOOTEN: Yes. 19 THE COURT: All right. 20 MR. WOOTEN: And there are going to be 21 some other interesting sidelights in this case that 22 you'll be able to glean because we have experts 23 here and because you actually have someone whose 24 company is a participant in this transaction. 25 Mr. Adams' employer at the time of this transaction</p>	<p>1 counterparties to this agreement, credit, default, 2 swap, administrators, certificate insurers, 3 everyone else, we're doing everything right guys 4 because this company is in bankruptcy and if the 5 trustee comes in, they can do something called 6 substantive consolidation, where they suck all the 7 assets back out into the bankruptcy stuff. 8 So in this transaction in particular, they will 9 dotting every "I" and crossing every "T." they 10 wouldn't let anything go because we've got to make 11 sure to make this bankruptcy remote because we 12 don't want these assets pulled back down here. 13 In the documents you will see that in these 14 series trust, the documents and the parties are 15 nearly identical except for the dates. And so you 16 will see different trust names, but these previous 17 players, A, B, C, and D were all the same. What 18 changes is the trust. What doesn't change is the 19 trustee. Because we've already addressed the issue 20 of allonge, let me just say this, Your Honor, the 21 last endorsement that they intend to rely on today 22 is U.S. Bank as trustee. It doesn't say U.S. Bank 23 as trustee for this trust. You're going to hear 24 testimony that says the specificity required to 25 convey to this trust is not met by the documents</p>
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<p>1 wrote bond insurance on this transaction. So in 2 addition to having industry knowledge, he has 3 firsthand knowledge. What you're going to hear, 4 the cutoff date this trust is February 1st, 2007. 5 The closing date, the date the drop dead date, if 6 you will, by which the assets must have been 7 conveyed to the trust, March 12th, 2007. 8 What's interesting about this particular 9 transaction, Judge, well, a couple of things. One, 10 there are seventeen series trust that involved 11 these parties. Seventeen. But this party Mortgage 12 Lenders Network was in financial trouble all 13 through the end of 2006, they filed bankruptcy in 14 early 2007, February 5th, 2007. And what you're 15 going to hear is testimony that the representation 16 is being made were that these parties, who had 17 provided financing to this originator were peeking 18 through the loans and securitizing what was left as 19 this company is going out. 20 And so the parties were saying, we have a 21 heightened sense that we've got to do everything 22 right because this party is in bankruptcy or 23 nearly, and they filed before this deal was 24 complete. 25 And so the parties were telling all the</p>	<p>1 they intend to offer. Even if you consider as 2 valid documents and admit them into evidence in 3 this case, they do not convey to this trust. Never 4 owned it, never can own it. 5 Why do I keep saying "never can?" The last 6 time I tried this case, Judge, in Ohio on this 7 issue, I got to court that day, and we had 8 eliminated all these argument. So my opposing 9 counsel in that case showed up that day with the 10 original promissory note endorsed in blank and 11 said -- 12 MR. RAGSDALE: Judge, I assume we're going 13 to have evidence of this case in Ohio. 14 MR. WOOTEN: This is argument, Judge. 15 MR. RAGSDALE: Oh, I thought it was 16 opening statement. 17 THE COURT: Go ahead. Overrule. 18 MR. WOOTEN: -- showed up with the 19 original promissory note, said, endorsed in blank. 20 And the Court said, you need to tell me why they 21 can't show up with this blank endorsed note and 22 enforce it? So I have spent three years litigating 23 this issue and researching this issue. And the 24 reason, the answer to that question, why can't they 25 walk in the back door now having messed up</p>

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1 everything in the front door. Having set up a bomb
2 and blown up everything they were supposed to do,
3 why can we not walk in the back door and fix it
4 with just a blank endorsement? And that's an
5 argument you've heard. We've got a blank
6 endorsement. The reason being, if the trust does
7 not convey the asset by this date under the terms
8 of the trust, it cannot acquire any other assets,
9 period, paragraph. In an attempt to acquire the
10 asset after that point under New York law is a void
11 act.

12 One of the issues that we fault, Judge, is this
13 issue of our experts and qualifications, and I'm
14 sure we'll have a battle when Professor Bloom gets
15 here. There have been several motions to strike
16 Professor Bloom's testimony, Tom Adams' testimony,
17 and one of the issues have been their status as
18 experts. Professor Blooms status as an expert in
19 foreign law. Mr. Adams has never been offered as
20 an expert of law. He's been offered as an industry
21 participant expert.

22 But with respect to Professor Bloom, they filed
23 another objection to which we will argue later.
24 But when I went back and looked at that objection,
25 I asked somebody a lot smarter than me, and I found

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1 a case, D.S. versus Chapman, which cited back to
2 rules of procedure in some older cases which said:
3 If you put forward an issue of foreign law, the
4 best practice is to prove the issue of foreign law
5 by expert testimony. So we will enter a memo into
6 the record when we argue that point during the
7 trial, Judge. But we expect to qualify Professor
8 Bloom as an expert on hypotheticals, but also an
9 expert on New York law based on those cases.

10 When the evidence is over, Your Honor, what
11 you're going to be left the impression with is
12 there having been caught with their hand in the
13 cookie jar. Rather than fess up and a slap on the
14 wrist, someone decided to make up a story and try
15 to find one more way to get their hand out of the
16 cookie jar without getting a spanking.

17 What you ultimately choose to do with that
18 testimony and evidence is absolutely the Court's
19 province and it's a very difficult position for me
20 to be in. But the fact of the matter is that you
21 will be left with the inescapable conclusion that
22 and the documents they intend to offer as proof of
23 ownership could not possibly have been created
24 until after the objections were raised by our
25 experts.

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1 And if that is the case, Your Honor, the
2 plaintiff is going to offer you evidence that has
3 proved extrinsically of an attempt to put fraud on
4 this Court. But the evidence that is admissible
5 and the evidence the Court will consider and the
6 evidence in the case will prove beyond all doubt,
7 not some doubt, all doubt, that this trust has
8 never owned this loan and can never own this loan.

9 Thank you.

10 THE COURT: All right. Thank you, sir.

11 MR. LAY: Judge, and before they give
12 their rebuttal over there, I want to say a couple
13 of things.

14 THE COURT: What?

15 MR. LAY: Before they respond, can I say a
16 couple of things?

17 THE COURT: Yeah, but we're not going to
18 double team now from here on.

19 MR. LAY: Okay.

20 THE COURT: One lawyer to one witness.

21 MR. WOOTEN: Certainly.

22 THE COURT: Go ahead, Ken.

23 MR. LAY: Your Honor, the first thing I
24 wanted to say is it was raised before about the
25 previous trial, and if you go back and look at the

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1 transcript, the issue of the assignment of the
2 mortgage and note was an issue. It was raised
3 before, it was raised during the trial, and it was
4 raised in the post-trial motion, as Mr. Ragsdale
5 said, but it was raised during the trial. It's
6 always been an issue in the case.

7 The second thing, Your Honor, is it's
8 interesting for them to talk about her not paying
9 the mortgage and what have you and they're trying
10 to make a big deal in the case, but I would want
11 Your Honor to also remember that the only person
12 that has a power -- because this is non judicial
13 foreclosure case -- the only person that has a
14 legal power of sale by a contract is the person
15 listed in the mortgage. And the only way that
16 these folks get here is if they have the proper
17 assignment. And as my co-counsel stated, there's
18 lots of reasons why they don't. But if they do not
19 have a proper assignment in this case, then they
20 don't have the right to be here. So it's not like
21 they were there in the beginning. So I want to
22 make sure that that's clear to the Court. It's
23 only if they have a valid assignment do they have a
24 right in this state under statutory law to do a non
25 judicial foreclosure sale.

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1 We have several cases that have come out of the
2 Court of Civil Appeals recently that talk about --
3 they want to talk about our standing to raise
4 issues. It also says in those resent cases that
5 they do not have standing to bring an ejectment
6 suit unless they have a valid foreclosure. And it
7 is a standing issue. And if they do not have
8 standing, then they're out the door first and
9 foremost.

10 So let's keep in mind that the reason that what
11 is so important in this case is the assignment of
12 the note and mortgage, is because that's the only
13 way they get here. They were not the initial party
14 in this case. So if they don't have the valid
15 assignment, then they have no right to be her.

16 And finally, Your Honor, as it's been stated
17 before, we've been served various copies throughout
18 this case of this note, and we will get to that,
19 but I also wanted to point out to the Court,
20 there's a long-standing tradition in Alabama and a
21 long line of cases that talk about if the mortgage
22 and assignment are not done or they are split off
23 at some point, then the lien is defective. It's
24 not enforceable. So I'd like, as we go through
25 this case, to keep in mind when we're talking about

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1 dates and what was transferred when, and we've
2 heard testimony, oh, documents were just --were
3 introduced into the probate records just for
4 appearances sake or for title insurance or what
5 have you, well, they are important, and they are
6 there for a reason, and that's because Alabama law
7 has always talked about the power of sale and who
8 has it and when it was assigned. And so as we go
9 through this, let's keep in mind that if the note
10 and the mortgage were somehow separated at some
11 point, that that might be an issue as well. Thank
12 you.

13 THE COURT: Thank you, sir. All right.
14 First witness for the plaintiff.

15 MR. DAUGHERTY: Your Honor, for our case
16 in chief, we would offer to admit a certified copy
17 of the mortgage. We're going to use the exhibits
18 from the last trial. This is going to be
19 Plaintiff's Exhibit 2.

20 (Whereupon, Plaintiff's Exhibit
21 Number 2 was marked for
22 identification.)

23 THE COURT: Number 2 is the mortgage.
24 All right.

25 MR. DAUGHERTY: Our second exhibit would

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1 be the Foreclosure Deed, and it is also a certified
2 copy from probate records, and is also a stipulated
3 exhibit just as the mortgage was.

4 And this is Plaintiff's Exhibit Number 12.
5 (Whereupon, Plaintiff's Exhibit
6 Number 12 was marked for
7 identification.)

8 MR. LAY: Which one was that, Ryan?
9 MR. DAUGHERTY: It's the Foreclosure Deed.

10 THE COURT: The Foreclosure Deed.

11 MR. DAUGHERTY: Your Honor, the third
12 exhibit we would offer as Plaintiff's Exhibit
13 Number 14, it is the demand for possession. It is
14 a letter demanding possession of the property after
15 the foreclosure which was sent to Ms. Congress at
16 the address stated in the mortgage. And it is a
17 stipulated exhibit.

18 (Whereupon, Plaintiff's Exhibit
19 Number 14 was marked for
20 identification.)

21 (Whereupon, Plaintiff's Exhibit
22 Numbers 2, 12 and 14 were received
23 into evidence.)

24 MR. DAUGHERTY: Your Honor, under the
25 pertinent cases and Alabama Code 6-6-280, which is

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1 the Alabama Ejectment Statute, Plaintiff that
2 claims legal title shows and has established all
3 that he needs to file a complaint. The Alabama
4 Supreme Court in Muller vs. Seeds, M-u-l-l-e-r,
5 it's a 2005 case established the proper method of
6 resolving statutory ejectment, and states that a
7 legal title is shown by the mortgage and
8 foreclosure deed, prove of the demand and refusal
9 to deliver possession, all the necessary elements
10 of ejectment.

11 THE COURT: All right.

12 MR. DAUGHERTY: And, Your Honor, as long
13 as the defendants stipulate that Ms. Congress still
14 occupies the property, we've established elements.

15 THE COURT: That's not an issue, is it?
16 MR. WOOTEN: No. What's in dispute is the
17 ownership, with valid ownership.

18 THE COURT: Right. But she's in
19 possession?

20 MR. WOOTEN: That's correct.

21 THE COURT: All right.

22 MR. DAUGHERTY: Your Honor, the plaintiff
23 rests.

24 THE COURT: What do we have for the
25 defendant?

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1 MR. WOOTEN: Your Honor, we would call
2 Bill Haughton, the representative of GMAC to be
3 disclosed as their witness today.
4 MR. RAGSDALE: You told us you were going
5 to call Colleen first, did you not?
6 MR. WOOTEN: Well, I'll call Colleen
7 first. That's fine.
8 MR. RAGSDALE: Since we got her here.
9 MR. WOOTEN: Sure. That's not a problem
10 Judge.
11 THE COURT: All right. Come up, please.
12 COLLEEN McCULLOUGH,
13 having first been duly sworn, was examined and
14 testified as follows:
15 THE COURT: C-o-l-l-e-e-n?
16 THE WITNESS: M-c-C-u-l-l-o-u-g-h.
17 THE COURT: Thank you, ma'am.
18 DIRECT EXAMINATION
19 BY MR. LAY:
20 Q You have stated your name already, correct?
21 A Correct.
22 Q And where are you employed?
23 A I'm an attorney with the law firm of Sirote &
24 Permutt.
25 Q And how long have you been there?

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1 A Since --
2 MR. RAGSDALE: Could you speak up a
3 little?
4 THE WITNESS: Sorry.
5 THE COURT: Pull up that other mic. Touch
6 it and see if it's working.
7 THE WITNESS: Sorry.
8 THE COURT: Where did this other one come
9 from? Let's get this out of the way. I'll tell
10 you what. They need to be on y'all's tables.
11 Let's take two minutes.
12 Alex, if you will plug those in.
13 THE COURT: And you have worked at Sirote
14 since when?
15 THE WITNESS: August of 2006.
16 THE COURT: Thank you.
17 Q (BY MR. LAY:) And what are your duties there?
18 A Well, I'm an attorney in the mortgage banking
19 department, so I handle mortgage foreclosures,
20 title insurance, debt disputes, a variety of things
21 that go into that department.
22 Q Okay. And are you familiar with this case?
23 A I am.
24 Q And what was your role for Sirote in this case?
25 If you can start from the beginning.

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1 A Well, I was the attorney that handled the
2 foreclosure sale, meaning I received a referral and
3 I worked with several individuals, and we processed
4 the foreclosure. We sent notice of acceleration.
5 We've sent advertisements in the newspaper, and
6 ultimately an auction at the courthouse and a
7 foreclosure sale.
8 Q Okay. In this particular case, is it true that
9 you were basically in charge of this particular
10 file from the moment that it was referred until
11 there was a foreclosure deed?
12 A Along with my team, yes, I was the attorney of
13 record.
14 Q And can you tell us what you mean by "your
15 team" and how that works. Are you their supervisor
16 or --
17 A Well, we have managers within our firm to
18 manage our support staff, but, yes, I'm the
19 attorney that they report to.
20 Q Okay. So ultimately you are the attorney in
21 charge of the process?
22 A Correct.
23 Q And you were that person in this case?
24 A Correct.
25 Q Now, how did you get --

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1 Well, let me back up. How does a foreclosure
2 case begin for you?
3 A Well, it depends on the client.
4 Q And who was the client in this particular case?
5 A It was referred by Homecomings Financial which
6 is GMAC, LLC.
7 THE COURT: I didn't understand you.
8 A Homecomings Financial, now GMAC Mortgage.
9 Q Okay. And is that the client?
10 A It is a client of mine, yes.
11 Q And when you were referred this case by
12 Homecomings, what documents would you have been
13 sent?
14 A I didn't look at the referral in this case
15 prior to today, so I'm not sure what was included
16 in the referral.
17 Q What about atypical?
18 A Each one is different. Typically we'll get
19 instructions from the client that, you know,
20 indicates the default. It provides the payoff
21 figure for acceleration letters, as well as usually
22 a copy of the mortgage, and the instructions on the
23 entity in which title is to be vested. In other
24 words, the true holder of the note.
25 Q Okay. And do you know when the referral was

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<p>1 made in this case? 2 A I do not. 3 Q How long before a foreclosure sale is a 4 referral normally made? 5 A Well, you know, state law provides how many 6 times a publication has a to run. I would say on 7 average forty-five days. 8 Q I'm going to show you -- 9 MR. LAY: Judge, we also, from a previous 10 exhibit -- this was Plaintiff's Exhibit 13 in the 11 previous trial. There is a stipulation by the 12 parties that that be introduced again. 13 THE COURT: All right. It's in as 14 Plaintiff's 13. 15 (Whereupon, Plaintiff's Exhibit 16 Number 13 was marked and received 17 into evidence.) 18 THE COURT: And what is it? 19 MR. LAY: It's the assignment of the 20 mortgage. It's filed with the Probate Court in 21 this case. 22 Q (BY MR. LAY:) Could you take a look at that 23 document that's been marked as 13? Tell the Court 24 what that is, please. 25 A It's the assignment of the mortgage that was</p>	<p>1 signing authority, and that the information is 2 filled out within the body of the document. 3 Q Okay. And I believe that particular document 4 is notarized; is that correct? 5 A That's correct. 6 Q And who notarized it for you? Is that somebody 7 on your staff? 8 A It is. Candace Rause. 9 Q And there are some attachments to that document 10 as well. If you will flip over. What is the first 11 attachment to Exhibit 13? 12 A It's an Agreement for Signing Authority between 13 MERS, my client, Homecomings, and my law firm. 14 Q Okay. And tell the Court about that. 15 A Well, to describe it to a lay person, I would 16 say it's basically a Power of Attorney that allows 17 my firm to sign assignments out of Mortgage 18 Electronic Registration Systems, Inc. 19 Q Okay. And who gave you that authority? 20 A MERS and Homecomings. 21 Q And who signed off on it for those parties? 22 A It's not incredibly legible, but I believe 23 Sharon Horsecamp, Bill Haughton. I'm not sure. 24 I'm not familiar with him. And Bernie Smith at 25 Homecomings.</p>
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<p>1 prepared by my office. 2 Q Okay. And does it have your name on the 3 document? 4 A It does. 5 Q Okay. And tell us about how you prepared that 6 document? 7 A Well, it could have been prepared by a member 8 of my staff for my signature. 9 Q So you don't personally prepare them? 10 A It's under my direction, my supervision. 11 Q So if someone brings you a stack of documents 12 and you review them and if they're appropriate you 13 would sign them; would that be a correct -- 14 A Well, they're reviewed before they're given to 15 me and then I do a final review, yes. 16 Q And what did that review include in this case? 17 A I don't remember signing this particular 18 document, so I couldn't tell you. 19 Q Well, what would your review normally entail? 20 A Well, I can confirm that it's been reviewed. 21 It's gone through the normal practices and 22 procedures and they were reviewed by someone on my 23 staff. And then I will make sure that there's 24 applicable Power of Attorney, the correct Power of 25 Attorney attached. In this case, the agreeing for</p>	<p>1 Q Okay. And is this a document that you use in 2 other cases, these assigning authority, as you 3 called it? 4 A I no longer use this particular signing 5 authority because Homecomings Financial is no 6 longer in existence. 7 Q Right. I understand. 8 A But, yes. 9 Q It's a form -- that's a form document that you 10 use? 11 A There is only one copy of this. No, it's not a 12 form document. The assignment is a form document. 13 This agreement for signing authority is not. 14 Q But you have other agreements with other 15 companies that are similar? 16 A That's correct. 17 Q Tell us -- I'm going to show you what we've 18 marked Exhibit 2, which has been stipulated to. 19 MR. RAGSDALE: What is it? 20 MR. LAY: The mortgage. 21 Q Do you recognize that? 22 THE COURT: That's the mortgage? Yeah. 23 A I've seen it before, yes. 24 Q And in this case, the mortgage is between Erica 25 Congress and MERS; is that correct?</p>

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<p>1 A MERS solely as nominee for Mortgage Lenders 2 Network, USA, Inc. 3 Q Okay. And is that why -- well, tell us how we 4 get from that point to the signing authority you 5 have? Why did you need signing authority in this 6 case? 7 A Well, when we pull the title records in the 8 probate office of Jefferson County, the mortgage 9 had not been assigned into the entity in which I 10 was instructed to vest title. For title insurance 11 purposes, an assignment mortgage was therefore 12 prepared and placed of record. 13 Q Okay. So your testimony to the Court as to 14 when you pulled the records for this case to do the 15 foreclosure, you could find no assignment in the 16 records? 17 A In the probate records of Jefferson County 18 there was no assignment. 19 Q And what did you do at that point? 20 Well, let me back up. Do you know when that 21 was? 22 A I do not. 23 Q Well, if we have a document where you did an 24 assignment dated -- could you go back to Exhibit 25 13?</p>	<p>1 A That's incorrect. No. They gave me a copy of 2 her mortgage. There were no applicable findings 3 attached, at which point I made the decision that 4 an assignment was needed. 5 Q Well, you wouldn't have done an assignment if 6 you didn't feel it was necessary, would you? 7 A No. But you asked me if there was a report 8 that indicated there was a problem and that was not 9 the case. 10 Q Well, what does the report indicate? 11 A It indicates that there was a mortgage from 12 Erica Congress to MERS Economy for Mortgage Lenders 13 Network U.S.A., Inc.. 14 Q Okay. So it wasn't in the -- the records would 15 not reflect a proper -- that your client had the 16 proper authority to conduct a foreclosure? 17 MR. RAGSDALE: Object to the form. There 18 was no assignment. 19 A That's correct. 20 THE COURT: All right. Let's move on. 21 Q And what does the assignment that you prepared 22 say? 23 A It says that Mortgage Electronic Registration 24 Systems, Inc, does hereby transfer, assigns, 25 conveys onto U.S. Bank as trustee, all right,</p>
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<p>1 A Yes, sir. 2 Q What is the date of that assignment? 3 A It's dated July 29th, 2008. 4 Q And does that help you with the time frame. I 5 mean, if you did the assignment on that date, when 6 would you have been looking in the records to find 7 an assignment? 8 A Jefferson County a little bit behind, and the 9 Probate records, I couldn't tell you when that 10 date. It probably would have been some day in May, 11 it's a guess, May of 2008. 12 Q So maybe a couple of months before you actually 13 did the assignment? 14 A Is when the effective date would have been -- 15 go through. We had likely received a title report 16 in July, and it would have been good through a date 17 in May. 18 Q Okay. Now, when you say you received the title 19 report, could you explain that? 20 A We utilized the title abstractors to review the 21 title, the probate records, and they provide us 22 copies of all the documents of record. 23 Q So you got a report stating there was problem 24 with this case and that there was no assignment of 25 record?</p>	<p>1 title, interest of the assigned order -- 2 Q Okay. 3 A -- to that certain mortgage. 4 Q And it talks about assigning the mortgage and 5 the indebtedness thereon; is that correct? 6 A Yes. The note and the indebtedness secured, 7 yes. 8 Q And you, again say, that it was done on 9 July 26th, 2008? 10 A July 29th. 11 Q 29th. And when was that recorded in the 12 probate records? 13 A August 20th, 2008. 14 Q All right. Now, and I also show you what we 15 have as Exhibit 12. Do you recognize that? 16 A I do. It's a foreclosure deed. 17 Q Did you prepare that or did a member of your 18 staff prepare that? 19 A It was prepared under my supervision. 20 Q And when was that done? 21 A I anticipate it was done on August 12th, 2008. 22 Q Okay. And when was it recorded? 23 A August 20th, 2008. 24 Q And was that recorded at the same time as the 25 assignment?</p>

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1 A The assignment was recorded a minute before. 2 Q Okay. So why would it have been done a minute 3 before? 4 A For title insurance purposes, the assignment 5 needed to be recorded before the foreclosure deed 6 to effectuate the change of title. 7 Q Okay. So you did them the same day and you 8 handed them that document first, and then, as soon 9 as it was stamped in, you handed them the 10 foreclosure deed; is that accurate? 11 A No. I didn't hand them anything. They were 12 not prepared the same date. We mailed them or sent 13 them with a runner. 14 Q Let me rephrase. I believe what I was asking 15 was, did you or a member of your staff file these 16 in on the same date? 17 A Correct. 18 Q And the assignment was dated a minute before? 19 A No. The assignment was dated July 29th, 2008. 20 Q I'm -- Ma'am -- 21 MR. RAGSDALE: You have to ask the 22 question to get the right answer. 23 A It was recorded -- 24 MR. LAY: Thank you, Barry. I don't need 25 your help.	1 I prepared all of the documents in question. 2 Q Does the document state that it was an 3 assignment of the indebtedness as well as the 4 assignment of the mortgage? 5 A It does. And it was intended to convey any 6 interest that MERS had in the property and the note 7 and mortgage. The mortgage itself. I'm sorry. 8 Not the note. 9 Q Now, why -- when was the indebtedness on this 10 mortgage transferred? 11 A I'm not privy to that information right now. 12 Q And, in fact, at your deposition before you 13 said you didn't know anything about that; is that 14 correct? 15 A I don't have that information. That's correct. 16 Q So the only information you have is that you 17 assigned the note and the indebtedness thereon and 18 the mortgage on July 29th, 2008? 19 A I assigned the assignment of mortgage on that 20 date. 21 Q Did you sign a document stating that you were 22 assigning the mortgage as well as the indebtedness 23 thereon and the note? 24 A That's what this form document says. Correct. 25 Q And according to your testimony, you had the
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1 THE COURT: All right. None of that. I 2 think I understand what's happening. Let's move 3 on. 4 MR. LAY: All right. 5 Q (BY MR. LAY:) What is the last page of the 6 document? 7 A It's a list of certifying officers from 8 Mortgage Electronic Registration Systems, Inc. 9 Excuse me. 10 Q Okay. And do you work for Mortgage Electronic 11 Registration Systems? 12 A I do not. 13 Q Have you ever worked for them? 14 A No. 15 Q Do you currently have signing authority for 16 them? 17 A With respect to whom? 18 Q Any mortgages? 19 A I do. 20 Q So if I'm understanding correctly, you did the 21 assignment of the mortgage and the indebtedness 22 thereon in this case, and you also conducted the 23 foreclosure sale, and you also prepared the deed? 24 A The assignment of mortgage was simply that, an 25 assignment of mortgage, not indebtedness, but, yes,	1 authority to do that? 2 A I do, based on the agreement attached to 3 assignment of mortgage. 4 Q And there's nothing in the document that 5 indicates any kind of previous assignment or 6 anything else or references anything else? 7 A Which document? 8 Q The assignment that you filed with the Probate 9 Court. 10 A No, because it's simply reflecting the probate 11 record for that mortgagee of record which was MERS. 12 Q You also stated at your deposition, did you 13 not, that you had no information about the 14 securitization documents in this case? 15 A That's correct. 16 Q You have never seen them before? 17 A I haven't. 18 Q And when you stated earlier that -- about the 19 referral that you got, none of that was sent to 20 you? 21 MR. RAGSDALE: What's that? 22 Q Were any securitization documents sent to you 23 when the case was referred to you from your client? 24 A I've never received those before, so I don't 25 anticipate that I did in this case either.

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<p>1 Q And you don't recall there being an issue? 2 A No. You're talking about the time of the 3 foreclosure sale. 4 Q Right. 5 A No, not that I recall. 6 Q And did you make any inquiry to your client 7 about any of those issues? 8 MR. RAGSDALE: Objection, Your Honor. I 9 assume you're talking about prior to the 10 foreclosure? 11 MR. LAY: Yes. 12 A No. All attorneys rely on my client's 13 reputation. 14 THE COURT: You what? 15 THE WITNESS: Rely on our client's 16 representation as to the correct -- 17 Q And your client was Homecomings at the time? 18 A GMAC, Homecomings merged in the summer of 2008, 19 I believe or maybe a little earlier 2008. So I 20 believe Homecomings, yes. It could have been GMAC 21 at the time the sale took place. 22 Q So either Homecomings or GMAC, whichever it was 23 at the time? 24 A Correct. 25 Q The servicer at the time that the referral was</p>	<p>1 Q So Homecomings gave you their name and you had 2 nothing to support that, but you went forward with 3 it? 4 A I relied on my client's representation. 5 Q Well, you're stating that you rely on your 6 client's reputations. But you also did an 7 assignment in this case which was notarized. 8 A Right. 9 Q But you didn't check to see if anything in the 10 assignment was accurate? 11 A The assignment was checked to be sure that it 12 accurately describes the mortgage and gave the 13 correct recording information, yes. The holder of 14 the note U.S. Bank, NA as Trustee was given to me 15 by my client. When I searched the credit records, 16 that was not the last appellee of record, and 17 therefore an assignment of mortgage was needed for 18 the probate records for purposes of conveying title 19 and obtaining title insurance post foreclosure, 20 yes. 21 Q So you've just relied on what they told you is 22 what you're saying? 23 A I did. 24 Q As the person -- and I understand what you're 25 saying, because as of the attorney, and we do we</p>
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<p>1 sent over to you was actually the person that 2 Ms. Congress would have been dealing with would 3 have been Homecomings; is that correct? 4 A I believe so, yes. 5 Q And when did you know that U.S. Bank was a 6 party in this case? 7 A I took it that -- 8 Q Or might be a party to this case? 9 A In the foreclosure? 10 Q Yes. 11 A The information was likely included with the 12 referral. It typically is. 13 Q Well, but I thought you just said earlier that 14 you didn't know anything about the securitization? 15 A You asked if I had seen the pooling and 16 servicing agreement. No, I haven't. I don't get 17 any information on that. 18 Q Well, how did you know that they might be 19 involved? 20 A Well, I just had their name, but I didn't have 21 any documentation to back up that pooling and 22 servicing agreement. I don't receive the, you 23 know, voluminous documents of each referral. 24 Q So who would have given you their name? 25 A Homecomings.</p>	<p>1 rely on our clients. 2 But my question is: Weren't you acting as a 3 different capacity when you made the assignment? 4 You were acting as an officer or assigning 5 authority of this organization. 6 A I have limited power of attorney, correct, and 7 I was acting pursuant to that corporate resolution 8 that allowed me the limited power of attorney to 9 execute the document. 10 Q Well, as that authority, don't you have certain 11 obligations and responsibilities in that capacity? 12 A I have no reason to believe this information is 13 incorrect. I still have no reason to believe it's 14 incorrect. So it was true -- 15 Q My question is -- 16 A -- at the time -- 17 Q Ms. McCullough, please. My question is, did 18 you have any obligations or responsibilities, not 19 as the lawyer, but as the signing authority to 20 check any of this out or to make sure it was 21 accurate or reliable? 22 A I did not receive any such instructions from 23 MERS, no. 24 Q Okay. What does the agreement state? 25 A The whole thing?</p>

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1 Q Yes.
2 A It says the purpose of the agreement is for
3 signing authority and it defines the rights and
4 obligations of the parties.
5 Q Rights and obligations. What are those?
6 A It doesn't define them. If you point me to the
7 -- I don't see a definition of the rights and
8 obligations. It says that all parties agree that
9 MERS is not responsible for the accuracy of any
10 information provided by member. And member is
11 Homecomings to vendor, which is me. And that
12 problems between the two would be resolved between
13 the member and the vendor.
14 Q Who is the member and who is the vendor?
15 A Homecomings Financial was the member. The
16 vendor is Sirote & Permutt.
17 Q Do you have the power of attorney or authority
18 to prepare documents affecting title to real
19 estate?
20 A With respect to MERS?
21 Q Yes.
22 A I do in this instance, yes.
23 Q And what is that?
24 A It's the corporate resolution that was attached
25 at the time the mortgage was recorded. It says,

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1 Number 2, Paragraph 2 says I have the power to
2 execute any and all documents necessary to remove
3 MERS as titleholder of the property or non FINDERS
4 of interest in the property.
5 Q What about for the other groups involved here
6 that we saw on the chart?
7 A I couldn't see the chart from where I was
8 sitting.
9 Q Well, how about for the person named originally
10 in the note?
11 A From MERS, yes, I do have the power of
12 attorney.
13 Q No, for the note.
14 A Oh, the note. Sorry. I don't have a copy of
15 the note here, but I presume your referring to
16 Mortgage Lenders, which is part of the --
17 Q Yes, Mortgage Lenders. Yes.
18 A -- network. I don't have power of attorney for
19 them, no.
20 Q Let me mark this -- well --
21 MR. LAY: Judge, and this is originally
22 Plaintiff's Exhibit 1 from the previous trial.
23 We've stipulated to using it.
24 (Whereupon, Plaintiff's Exhibit
25 Number 1 was marked for

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1 identification.)
2 THE COURT: All right. What is Exhibit 1?
3 MR. LAY: It's a true certified copy of an
4 adjustable rate note.
5 THE COURT: All right.
6 MR. RAGSDALE: Judge?
7 THE COURT: Sir?
8 MR. RAGSDALE: We would object under Rule
9 106. That is an incomplete copy. And we're
10 entitled under 106 to insist on the introduction of
11 a complete copy, which is an exhibit that was
12 disclosed by the plaintiff and that was stipulated
13 to.
14 THE COURT: Well, I think he can go
15 through it in the order in which he has it.
16 Certainly that will come in. He has a right to
17 proceed in the order he thinks.
18 MR. LAY: I'm just telling you what it
19 says on the top.
20 THE COURT: All right.
21 Q (BY MR. LAY:) Go ahead. Do you recognize
22 that?
23 A I do.
24 Q Is that the note that you worked from in this
25 case?

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1 A I don't recall looking at the original note.
2 Q Well -- and I don't want to get into --
3 THE COURT: One at a time, folks.
4 Q All right.
5 A I'm sorry. I don't recall looking at a copy of
6 the note prior to the foreclosure sale. It's not
7 required under Alabama law.
8 Q Okay. So you didn't review the note?
9 A I don't recall. It's been several years.
10 Q Well, is it your -- you sounded like it wasn't
11 your standard practice to do that.
12 A I don't always look at the note, no.
13 Q And you don't know if you did in this case or
14 not?
15 A I don't know.
16 Q Okay. But you do recognize that the party
17 mentioned is the Mortgage Lenders Network?
18 A Correct.
19 Q And you don't have any signing authority or
20 have any authorization to prepare documents
21 investing real estate in their name?
22 A They're not my client. No, I don't.
23 Q What about EMAX?
24 A I'm not familiar with that, no,
25 Q RFC?

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1 A Sorry. What was that? 2 Q RFC? 3 A I'm not familiar with them, no. 4 Q RAFC? 5 A I don't have power of attorney for them, no. 6 Q What about this U.S. Bank? 7 A No, I don't have power of attorney. 8 Q What about for the trust in this case? 9 A No. I didn't sign any documents for the trust. 10 That's not true. That's supposed to be in 11 possession now under the trust name. 12 Q Do you understand that the trustee in this case 13 would have a distinct legal entity from the 14 individuals? 15 A Could you elaborate? 16 Q That the plaintiff named in this case is a 17 trust. 18 A Correct. 19 Q Right? 20 A That's correct. 21 Q Do you understand that as a trust that's 22 different from the other parties involved? 23 A When you say "other parties," are you referring 24 to MERS and Homecomings? 25 Q Like U.S. Bank and Homecomings.	1 Q Do you know if MERS was a member of the trust? 2 A I don't know. 3 Q Do you know if MERS has the right to act for 4 the trust? 5 A I do not know. 6 Q And again, I believe you stated that you did 7 not inquire into the veracity of any of the 8 documents in this case? 9 A I believe what I said was I didn't question 10 whether U.S. Bank, NA as Trustee was the holder of 11 the note. That's correct. 12 Q Well, but you also did not inquire into any of 13 the -- well, any of the documents, I believe you 14 said earlier, you just relied on what they sent you 15 and what the client told you. 16 A And the probate records, correct. 17 Q Did you know that the original party to the 18 mortgage -- I mean, to the promissory note Mortgage 19 Lenders Network was in bankruptcy at the time you 20 were doing this? 21 A I did not. I learned at my deposition. 22 MR. LAY: Judge, may I have just a moment? 23 THE COURT: Yes, sir. 24 (Whereupon, Defendant's Exhibit 25 Number 1 was marked for
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1 A Oh, yes. Yes, I understand that. 2 Q And Homecomings is not the servicer for the 3 trust? 4 A They were at that time, yes. Yes, Homecomings 5 was the servicer of the note and mortgage on behalf 6 of the trust. The trustee, I guess. Yes. 7 Q Well, that's -- one of the questions is were 8 they the servicer for U.S. Bank or were they the 9 servicer for this trust? 10 A I couldn't tell you for sure. I assumed they 11 were the subservicer. That U.S. Bank Trustee is 12 the servicer and Homecomings was the subservicer, 13 but I couldn't say it was a hundred percent 14 accuracy. 15 Q But you don't -- you also don't have any 16 documentation or the resolution that we have there 17 that says that you can act on behalf of the trust 18 or U.S. Bank? 19 A I had a referral from GMAC or Homecomings who 20 was servicer and the person whom payments were 21 being made. 22 Q Do you have anything showing that MERS has the 23 authority to act for the trust? 24 A No. The agreements between MERS and 25 Homecomings Financial.	1 identification.) 2 Q I'm going to show you what's been marked as 3 Defendant's Exhibit 1, which is entitled a MERS 4 Procedural Manual. Have you ever seen this? 5 A This may be a copy of what you showed me at the 6 deposition, but otherwise, no I've not seen it. 7 Q Okay. And were you ever, when you were given 8 the signing authority, were you ever given any 9 parameters or procedural manuals or what have you 10 on how you were supposed to -- 11 A Well, the parameters are clearly outlined in 12 the corporate resolution. I did not receive a 13 procedural manual, no. 14 Q Could you read for us right here what the first 15 paragraph says? 16 MR. RAGSDALE: Objection, Your Honor. The 17 witness has never seen this document except when it 18 was show at her deposition. If we're going to have 19 to authenticate everything, he needs to call 20 somebody to authenticate that document, but she 21 cannot. 22 MR. LAY: Judge, we're not offering it go 23 into evidence. We're asking her to read. 24 MR. RAGSDALE: Read it into the record. 25 THE COURT: She's not --

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1 MR. LAY: Well, it talks about the rights
2 of whether MERS, who was listed in the original
3 mortgage as the mortgage holder on how it can be
4 assigned.
5 THE COURT: Well, if she never has seen it
6 before, how can she testify about it?
7 MR. LAY: Okay.
8 THE COURT: I sustain the objection. You
9 haven't offered the document, but I sustain the
10 objection to questioning her about it.
11 Q (BY MR. LAY:) Going back to Exhibit 13 for a
12 moment.
13 A Okay.
14 Q You stated earlier -- well, let me ask --
15 Exhibit 13 is a copy of the assignment that was
16 record in this case, that was prepared by you and
17 your office?
18 A That's correct.
19 Q And signed by you?
20 A Correct.
21 Q Why was it notarized?
22 A I think that the state laws requires that
23 documents be notarized. Sometimes it's missed, but
24 that's why it was notarized in order to record it.
25 Q And what did you intend to do by preparing this

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1 document?
2 A I intended to effectuate a transfer of the
3 mortgage itself in the probate records for purpose
4 of the title insurance.
5 Q Okay. Did you intend to transfer the debt?
6 A No.
7 Q Why does it say that in there?
8 A This is a form document that's used by my firm
9 and several other firms, and it's intended to
10 transfer any interest that may be held. Sort of a
11 quick claim deed.
12 Q And it says you're transferring the above
13 described property and said mortgage together with
14 the note and the indebtedness secured by the
15 mortgage and all interest of the undersigned and to
16 the property described in said mortgage. Is that
17 correct?
18 MR. RAGSDALE: You're asking her did you
19 read it correctly?
20 MR. LAY: I'm asking her if that's what it
21 says?
22 A That is what it says.
23 Q If you didn't intend to transfer the
24 indebtedness or the note, why does it say that?
25 A I believe the purpose -- I didn't draft this

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1 original document. I mean, I drafted this, the
2 document that's the form. I believe it's to be all
3 encompassing to insure that MERS doesn't hold any
4 interest in anything, note, mortgage, indebtedness.
5 THE COURT: So you say you treat it almost
6 as if it were a quick claim?
7 THE WITNESS: That's --
8 THE COURT: Just in case somebody else had
9 any other interest and convey that as well?
10 THE WITNESS: That's correct.
11 Q And your office or yourself prepared this form?
12 A I'm not sure who prepared the original form.
13 My office did fill out the form, yes. All the
14 parts that are relevant to this particular
15 mortgage.
16 Q Okay. And you could have used different
17 language, could you not, if that wasn't your intent
18 to convey the note and indebtedness?
19 A We could have used different language, yes,
20 sir.
21 Q You could have referenced dates of previous
22 transfers, could you not?
23 A Not necessary for probate records.
24 Q I said, could you not have used that if that
25 was your intent?

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1 A We could have, yes.
2 Q And you have see that it says what it says.
3 THE COURT: She agrees it says what it
4 says.
5 A Yes.
6 Q Okay. Did you -- you said that it does have a
7 notary on there. Who was the notary?
8 A Her name was Candace Rause at the time. It's
9 Candice Day now.
10 Q And is she an employee of Sirote?
11 A She is.
12 Q And I believe you have said earlier that you
13 did not sign or date this in front of the notary;
14 is that correct?
15 A Sometimes I do. Sometimes I don't. I couldn't
16 tell you for sure in this particular instance. She
17 knows my signature though.
18 Q So you don't know if you, in this particular
19 case, whether you did or not?
20 A I don't know.
21 Q What is your policy on executing documents with
22 a notary in your office?
23 A I'm sorry?
24 Q What is your policy on -- I understand you said
25 you don't recall in this particular case, but what

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1 is the policy on executing documents in front of a
2 notary or not?
3 A Well, they're certifying that that's my
4 signature. And Candace is familiar with my
5 signature. They'll bring me the documents to sign.
6 Sometimes they'll stay with me. But perhaps, if
7 I'm on the phone or in a meeting, someone else will
8 just drop them off and I'll handle them and give
9 them back to the notary.
10 Q So it is safe to say that there are times when
11 you don't.
12 THE COURT: Don't what?
13 Q Execute these documents in front of the notary?
14 A That's correct.
15 MR. LAY: That's all at this time,
16 Your Honor.
17 THE COURT: All right. Any cross?
18 CROSS-EXAMINATION
19 BY MR. RAGSDALE:
20 Q Colleen, I'm Barry Ragsdale. We've met before,
21 I believe.
22 A We have.
23 Q Let me ask you to identify a couple of
24 documents if you don't mind. First is Plaintiff's
25 Exhibit 10 from the previous trial, which is kind

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1 of a letter thing. And 11 is the Affidavit of
2 Publication, also from the previous trial.
3 (Whereupon, Plaintiff's Exhibit
4 Numbers 10 and 11 were previously
5 marked for identification.)
6 THE COURT: Tell me what they are.
7 MR. RAGSDALE: Sorry. Excuse me.
8 Plaintiff's Exhibit 10 is a letter dated July 11th,
9 2008, which is, I think, commonly called the
10 acceleration letter.
11 THE COURT: All right.
12 MR. RAGSDALE: And Plaintiff's Exhibit 11
13 is the Affidavit of Publication in this case.
14 THE COURT: All right. Thank you.
15 Q (BY MR. RAGSDALE:) Let me ask you, if you
16 could, please tell me what Plaintiff's Exhibit 10
17 is.
18 A It's a copy of a notice of acceleration.
19 Q Okay. I'm sorry. Was that addressed to
20 Ms. Congress?
21 A It was.
22 Q And it is dated what date?
23 A July 11th, 2008.
24 MR. RAGSDALE: Your Honor, we would offer
25 Plaintiff's Exhibit 10.

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1 THE COURT: It's in.
2 (Whereupon, Plaintiff's Exhibit
3 Number 10 was received into
4 evidence.)
5 Q And let me show you Plaintiff's Exhibit 11 and
6 ask you to tell me what that is.
7 A It's an affidavit of publication from Alabama
8 Messenger.
9 Q Okay. And is that document something you're
10 familiar with?
11 A Yes.
12 Q And would you normally receive that in the
13 normal course?
14 A We would, yes.
15 MR. RAGSDALE: Judge, we would whoever
16 Plaintiff's Exhibit 11.
17 THE COURT: It's in.
18 (Whereupon, Plaintiff's Exhibit
19 Number 11 was received into
20 evidence.)
21 Q Colleen, if you would, find the assignment
22 mortgage that we've been talking about this
23 morning. Have you got that in front of you?
24 A I do.
25 Q Have you ever taken the position at any time

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1 that this assignment of mortgage was the transfer
2 of the note to U.S. Bank?
3 A No.
4 Q To your knowledge has anybody on our side ever
5 taken the position that this document is the
6 transfer of note?
7 A Of the note, no.
8 Q It is intended, is it not, to transfer whatever
9 interest MERS has to U.S. Bank.
10 MR. LAY: Objection, Your Honor.
11 THE COURT: Overrule.
12 Q Correct?
13 A Correct.
14 Q And if it purports to transfer things that MERS
15 doesn't have, it doesn't transfer those things,
16 right?
17 A Correct.
18 Q What it is intended to do is to search --
19 MR. LAY: Objection again. Leading.
20 THE COURT: On what basis?
21 MR. WOOTEN: He's leading.
22 MR. LAY: Well, he's trying to tell her
23 what she intended to do.
24 MR. RAGSDALE: I was under the impression
25 this is cross-examination.

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<p>1 MR. LAY: It's their witness. 2 THE COURT: Can't he lead on the same 3 subject about your direct examination. 4 MR. LAY: Well, if he would -- I think 5 there's a difference between leading, Your Honor, 6 and, you know, just pure out stating the answer. 7 THE COURT: Don't state the answers. 8 MR. RAGSDALE: Okay. Can I lead? 9 THE COURT: Yes, sir. 10 MR. RAGSDALE: Thank you. 11 Q (BY MR. RAGSDALE:) This assignment of mortgage 12 is intended to transfer all interest that MERS 13 might have; is that right? 14 A That's correct. 15 Q To your knowledge, do you know whether or not 16 MERS ever owned the note or held the note or 17 anything like that? Do you have any knowledge 18 about that? 19 A I don't. 20 Q The sole purpose of this assignment of mortgage 21 is for purposes of title insurance; is that not 22 correct? 23 A That's correct. 24 Q It is not intended in any way, shape, or form 25 to transfer the note, is it?</p>	<p>1 Q And in this case, do you have any doubt that 2 your signing an assignment of mortgage fell within 3 that signing authority? 4 A It was within the authority provided, yes. 5 MR. RAGSDALE: Thank you, Ms. McCullough. 6 THE COURT: Anything else? 7 MR. WOOTEN: Just a moment, Your Honor. I 8 want to make a motion to exclude the assignment of 9 mortgage at this time. 10 THE COURT: Well, anymore questions of 11 this witness? 12 MR. WOOTEN: No, sir. 13 THE COURT: Thank you, Ms. McCullough. 14 You may step down. 15 MR. WOOTEN: I'd like to make an oral 16 motion to exclude -- 17 MR. RAGSDALE: Is this the document you 18 just introduced, the assignment of mortgage? 19 MR. WOOTEN: No. This is a memo. 20 MR. RAGSDALE: No, no. I'm saying the 21 document you're moving to exclude is the document 22 you introduced in evidence? 23 MR. WOOTEN: Yes. We're actually moving, 24 Your Honor, that it be stricken from the probate 25 records in Jefferson County. And let me explain</p>
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<p>1 A It is not. 2 Q Now, the process through which Mr. Lay took you 3 about how you get a referral of the mortgage or the 4 foreclosure and the process that you go through, 5 does it appear that this particular foreclosure was 6 done in the normal and ordinary, customary practice 7 and the way that it's done by your office? 8 A It does. 9 Q Is there anything about this that stands out, 10 out of the ordinary? 11 A No, not -- no. 12 Q When you signed the assignment of mortgage, did 13 you believe it to be accurate? 14 A I did. 15 Q Do you still believe it's accurate? 16 A I do. 17 Q Is there any dispute that you signed it. 18 A No. It's my signature. 19 Q Now, the signing authority that you have from 20 MERS through Homecomings, and this three-party 21 agreement, is that anything out of the ordinary? 22 A It's not. 23 Q You have signing authority on behalf of several 24 clients, don't you? 25 A I do.</p>	<p>1 why. The testimony in the case is that 2 Ms. McCullough executed the assignment of mortgage 3 in the name of MERS under signing authority from 4 MERS. 5 The law in Alabama is well settled that the 6 person has the right to assign interest in land as 7 the owner of the indebtedness. All of the other 8 parties to this transaction, including the parties 9 that the plaintiff claims is the owner of this loan 10 are not authorize -- have not given Ms. McCullough 11 any authorization to transfer any interest in the 12 lien. By their own admission it is in the nature 13 of quick claim deed and they are not certifying 14 that it is accurate. They're also not certifying 15 that intends to transfer the indebtedness in this 16 case. That statement is contained under oath in 17 the form of a notary in the document and it's 18 admittedly untrue. Therefore, because the person 19 who executed the document had no authority to move 20 the lien interest under Alabama law, and because it 21 contains untruth, the document is due to be 22 stricken at this time, not only from this 23 proceeding, Your Honor, in considering the legal 24 chain of title, but also the Court could order the 25 document stricken from the records of Jefferson</p>

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1 County probate records. And that's how we so move
2 and this memo supports that.
3 THE COURT: Do you want to respond to
4 that?
5 MR. RAGSDALE: Just a couple of things,
6 Your Honor. I'm intrigued by the notion them
7 introducing a document that was stipulate to both
8 in the prior trial and in this case, and then
9 arguing that it's due to be stricken.
10 Secondly, I don't believe he has standing to
11 challenge an assignment of mortgage to which
12 Ms. Congress is not a party by any stretch of the
13 imagination.
14 Thirdly, it was good enough for and continues
15 to be good enough for the probate court to accept
16 it as an official record.
17 And lastly, I would suggest that to the extent
18 he's trying to argue that somehow this violates
19 Alabama law, we ought to have an opportunity to
20 respond to it before you go changing the probate
21 record.
22 THE COURT: All right. Well, I'm going to
23 hold motion under advisement until I hear all the
24 evidence.
25 MR. WOOTEN: Yes, sir.

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1 MR. RAGSDALE: Yes, sir.
2 THE COURT: All right. Let's take a
3 ten-minute break. Thank you.
4 (Short break.)
5 THE COURT: Next witness for the
6 defendant.
7 MR. WOOTEN: Judge, we call Bill Houston.
8 BILL HAUGHTON,
9 having first been duly sworn, was examined and
10 testified as follows:
11 DIRECT EXAMINATION
12 BY MR. WOOTEN:
13 Q Mr. Haughton, how are you today?
14 A I'm fine. How are you?
15 Q I'm fine. Could you tell us your full name,
16 please, sir?
17 A William Carnish Haughton.
18 THE COURT: Would you spell it for the
19 court reporter.
20 THE WITNESS: H-a-u-g-h-t-o-n.
21 THE COURT: Thank you.
22 Q Mr. Haughton, you did not participate in the
23 last trial of this matter on behalf of your
24 employer, correct?
25 A I did not.

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1 Q When is the first time that you became aware
2 that your employer had a loan with Erica Congress?
3 A In mid April.
4 THE COURT: Do you want to establish who
5 is employer is?
6 MR. WOOTEN: Yes, sir.
7 Q Please tell us who your employer
8 A GMAC Mortgage.
9 Q When did you become employed with GMAC
10 Mortgage?
11 A Well, originally I was with Homecomings January
12 of 2004.
13 Q And just to clarify, you first became aware
14 that Ms. Congress had a loan with GMAC or
15 Homecomings in April of 2010?
16 A That's correct.
17 Q Where is your employment domicile, please, sir?
18 A Well, our main office is Fort Washington
19 Pennsylvania.
20 Q Where are you, please, located?
21 A I'm in Dallas, Texas.
22 Q What is the Dallas, Texas facility?
23 A I'm sorry?
24 Q What is the Dallas, Texas facility, please sir?
25 A What do you mean by that?

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1 Q Is there a special -- is that a vision of your
2 employer or is that location responsible for
3 certain duties for your employer?
4 A In the Dallas office we handle an REO, real
5 estate owned and loss mitigation.
6 Q Okay. And can you explain to us what loss
7 mitigation is, please, sir?
8 A Loss mitigation is the department that strives
9 to help homeowners keep their properties if they
10 can afford to do so, or assist in selling the
11 properties if they are not able to keep it due to
12 financial restraints.
13 Q And tell the Court what the REO department
14 does?
15 A REO is Real Estate Owned so that in the event
16 of a foreclosure and the bank is the high bidder of
17 the sale, then that property reverts to the bank
18 and they take care of selling the property.
19 Q Am I correct in saying that your employment
20 with GMAC has basically covered these two areas
21 throughout your entire employment with your
22 company?
23 A Not REO. I worked in loss mitigation.
24 Q So you have worked in one of the two areas your
25 entire career?

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<p>1 A That's correct. 2 Q You have never worked as a custodian of records 3 for GMAC? 4 A No. 5 Q You have never been responsible for the 6 accuracy or completeness of any of GMAC's records? 7 A Well, our system of record is a record that I'm 8 responsible and I put notes in that system. 9 Q So personally as you were, you are responsible 10 to accurately input data into your company's 11 computer system? 12 A That's correct. 13 Q Other than your personal responsibility for 14 your personal data, do you have any responsibility 15 for your employer for any of the other data that is 16 entered into their system? 17 A No. 18 Q Are you part of any team or committee that is 19 responsible for the integrity of the data that is 20 input into your computer records of your employer? 21 A No. 22 Q Do you have any knowledge of the policies or 23 procedures which govern the input of that data into 24 your company's computer system? 25 A What data would you be speaking of?</p>	<p>1 Q Do you have any firsthand knowledge of any of 2 these parties that are on this chart? And I'll 3 read them off to you. 4 A Okay. 5 Q Do you have my firsthand knowledge regarding 6 Mortgage Lenders Network U.S.A.? 7 A Yes, I've heard of them. 8 Q Well, it's my understanding they originate 9 loans which, at some point your company, 10 Homecomings may have serviced or subserviced; is 11 that right? 12 A Yes. 13 Q What about EMX Financial Group? Do you know 14 anything about that them? 15 A No. 16 Q Okay. Do you know where they're place of 17 corporate residence is? 18 A No, I don't. 19 Q Residential Funding Company. I'm sure you're 20 familiar with that name, right? 21 A Yes. 22 Q Tell the Court how you're familiar with 23 Residential Funding Company. 24 A That's a subsidiary of GMAC. 25 Q Not GMAC Mortgage?</p>
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<p>1 Q Well, other than what you know about what 2 you're personally required to input as apart of 3 your job, do you have any knowledge of the 4 corporate policies and procedures regarding that? 5 A Yes. There's policies and procedures online in 6 our manual, discuss what goes into a loan that's 7 inboarded into the system, or if you are talking to 8 a homeowner or a third party, the type of 9 information you should put into the system. 10 Q Do you have any of those policies and 11 procedures with you here today? 12 A No, I don't. 13 Q Could you verify under oath to the Court that 14 all the entries that are made into your company's 15 computer system are accurate and truthful? 16 A No, I didn't put all of them in the system. 17 Q Okay. Did you put any of the entries regarding 18 Ms. Congress's loan into the system? 19 A No. 20 Q You never had anything to do with her loan 21 whatsoever? 22 A No. 23 Q Prior to April of 2010, did you ever review any 24 documents regarding Ms. Congress's loan? 25 A No.</p>	<p>1 A No. 2 Q GMAC? 3 A Yes. 4 Q That's the big holding company that has lots of 5 corporations, right? 6 A That's right. 7 Q You've never been employed by Residential 8 Funding, have you? 9 A No. 10 Q You're not employed by them today, are you? 11 A No. 12 Q Do you have any information regarding 13 Residential Funding Company's policies and 14 procedures? 15 A No. 16 Q Have you been briefed on those policies and 17 procedures in preparation to testify today? 18 A No. 19 Q What about Residential Asset Securities 20 Corporation? 21 A Yes, I'm familiar with them. 22 Q Is it because they also fall under the general 23 corporate umbrella of GMAC? 24 A Yes, it is. 25 Q But you've never been employed by them, have</p>

22 (Pages 85 to 88)

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<p>1 you? 2 A No. 3 Q Do you have any knowledge of their corporate 4 policies and practices? 5 A No, I've never seen them. 6 Q Have you ever been employed by the trust whose 7 name Home Equity Asset-Backed Pass-Through 8 Certificate Series 2007-EMX1? 9 A No. 10 Q Have you ever been employed by U.S. Bank? 11 A No. 12 Q Do you have any knowledge of the corporate 13 policies and procedures regarding document, custody 14 or retention? 15 A No. 16 Q Have you ever worked in document custody or 17 retention? 18 A No. 19 Q Do you have any knowledge of your employer's 20 document custody and retention policies? 21 A Yes, I do. 22 Q How did you gain that knowledge? 23 A Through six and a half years of being employed 24 by the company and knowing that our custodian is 25 located in Minneapolis.</p>	<p>1 this loan? 2 A I don't recall seeing all their names in there, 3 no. 4 Q And that's because you didn't find them in this 5 document? 6 A I didn't read every word of the document, so, 7 no, I don't know. 8 Q Noticeably conspicuously absent from your 9 description of your employment, I did not hear you 10 mention that you have any experience whatsoever in 11 securitization. 12 A That's correct. 13 Q Prior to April 2010, had you had any knowledge 14 of even that term? 15 A Oh, yes. 16 Q Because you know that your company Homecomings, 17 now GMAC Mortgage services loans which have been 18 sold in a secondary mortgage, right? 19 A Correct. 20 Q And securitization is a generic term, 21 basically, that encompasses the transfer of loans 22 from originators to the secondary mortgage, right? 23 A That's right. 24 Q Prior to April of 2010, had you ever actually 25 looked at the documents which involve a</p>
Page 90	Page 92
<p>1 Q Your custodians? 2 A Custodians for the documents that you asked me 3 for. 4 Q For GMAC Mortgage, correct? 5 A Yes. 6 Q Do you have any idea where the document 7 custodian for Residential Funding Company is? 8 A No. I would imagine it's probably the same 9 one, but I'm not for sure. 10 Q You don't have any firsthand knowledge, do you? 11 A No. 12 Q What about Residential Asset Securities 13 Corporation? 14 A No, I don't know. 15 Q I'm assuming at some point if someone handed 16 you something that looks like this notebook maybe 17 and said, we want to talk to you about this, right. 18 MR. RAGSDALE: What is that? 19 MR. WOOTEN: This would be the Pooling and 20 Servicing Agreement for the Congress loan? 21 A Correct. 22 Q Have you flipped through this document? 23 A I have. 24 Q Were you able to identify all these parties who 25 allegedly are in the securitization process for</p>	<p>1 securitization? 2 MR. RAGSDALE: Any securitization? 3 Q Any securitization. 4 A Yes, I've looked at them. 5 Q So you've looked at pooling and servicing 6 agreements before? 7 A Yes. 8 Q At what period in time? 9 A Well, I couldn't tell you the exact date, but 10 since I've been employed by GMAC I have. 11 Q How many have you looked at? 12 A I have probably looked at four or five. 13 Q Four or five. Well, do you mind, sir, what was 14 the purpose of that inquiry? Why did you look at 15 those documents? 16 A One was to gain knowledge about them, and I've 17 testified in other cases as well. 18 Q Okay. Are you someone who testifies frequently 19 for your company? 20 A Not frequently, no. 21 Q Do you know when the last time you gave 22 testimony for your employer was? 23 A It was about five weeks ago. 24 Q Do you remember how many times you have given 25 testimony this year for your employer?</p>

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1 A That was the only other time than today.
2 Q And what was the date of that previous
3 testimony?
4 A It was -- I think it was April 29th.
5 Q Do you remember what court that was in?
6 A It was -- no, I don't remember the name of the
7 court, but it was in Long Island, New York.
8 Q And is that the only testimony that you have
9 given for your employer in this calendar year?
10 A Yes, it is.
11 Q Are you sure?
12 A Yes.
13 Q You know, I'm just curious, have you might have
14 possibly have been in Dallas, Texas on February
15 2nd, 2010?
16 A That was -- I wasn't testifying. That was a --
17 I think that was a deposition.
18 Q Is a deposition testimony, sir?
19 A Yes. I did forget about that one. I did do
20 that one in Dallas.
21 Q What did that matter involve?
22 A It's a matter regarding foreclosure. It's a
23 bankruptcy account.
24 Q Do you remember who the lawyer was that took
25 your deposition?

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1 A No. I know his name starts with a "B" but I
2 don't remember his last name.
3 Q Bartholow maybe?
4 A That's correct.
5 Q Bartholow, B-a-r-t-h-o-l-o-w?
6 A That's correct.
7 Q Do you recall explaining your qualifications as
8 an employee of your employer during that
9 deposition?
10 A I'm sure I did.
11 Q Do you know if you told Mr. Bartholow that you
12 were a custodian or had familiarity with the
13 company's custodial records?
14 A I don't recall saying that for sure, no.
15 Q Is it fair to say that that case was about a
16 wrongful foreclosure also, or allegations of a
17 wrongful foreclosure?
18 A I believe so, yes.
19 Q A few moments ago the local attorney who
20 conducted this foreclosure for your employer was on
21 the stand and she testified that she was instructed
22 to vest title in the name of this trust.
23 Do you have any familiarity with when the title
24 should have vested in this trust under the
25 securitization of documents?

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1 A No, I don't.
2 Q Do you have any way to dispute that the closing
3 date of March 12th, '07 was the date when the trust
4 should have vested title in this loan?
5 A I know that's the date of the documents.
6 Q Do you have any firsthand knowledge,
7 Mr. Haughton, about how Residential Funding would
8 have conducted its affairs in this securitization?
9 A No.
10 Q And you have not been employed by Residential
11 Funding?
12 A No.
13 Q The notice in the securitization documents that
14 Residential Funding Company is the actual master
15 servicer for this trust?
16 A That is correct.
17 Q Do you know a young man named a Mr. Houle,
18 H-o-u-l-e, Jason Houle who came here and testified
19 previously?
20 A I do.
21 Q Have you reviewed his testimony as the
22 corporate representative of GMAC?
23 A Yes.
24 Q So when he told the Court that Homecomings was
25 the servicer for this trust that was inaccurate,

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1 was it not?
2 A They're the subservicer.
3 Q Right. And as the subservicer, Homecomings
4 does not even have a contractual relationship to
5 this trust, does it?
6 A I don't believe so, no.
7 Q The contract is with Residential Funding,
8 correct?
9 A Correct.
10 Q Do you have any idea why you were selected to
11 come here today?
12 A No. I have knowledge of how our operations
13 work. I have knowledge of loss mitigation.
14 Q So that would be like if they wanted to show
15 you their notes and say we were talking to
16 Ms. Congress about not foreclosing, you would have
17 personal knowledge of how that process is supposed
18 to work, right?
19 A That's right.
20 Q But you wouldn't know anything about anybody
21 who made any entry in those records, would you?
22 A I'm sorry. I didn't follow your question.
23 Q Well, as to loss mitigation, are all the
24 employees involved in loss mitigation based in
25 Dallas?

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1 A Nearly all of them are. 2 Q Okay. Do you know them all? 3 A No. 4 Q Would you have any firsthand knowledge that you 5 could testify for the Court under oath that all the 6 entries that were made in those records are 7 truthful and accurate? 8 A No, I couldn't say that. 9 Q Wouldn't swear to what the other employees did 10 or what, would you? 11 A No. 12 Q Could you swear to the Court that the records 13 that they would offer, had those notes had not been 14 altered since the time they were put into your 15 system? 16 A They cannot be altered. 17 Q Cannot be altered. And how do you know that? 18 A That's the system of record that we use and you 19 cannot go back and change the records. 20 Q What is the system of record that you use? 21 A It's called Mortgage Serve. 22 Q Okay. 23 THE COURT: Mortgage Serve? 24 THE WITNESS: Serve. 25 Q Mortgage Serve. And who provides that software	1 of the data in which they store electronically? 2 A As far as verbiage that's put into our account 3 or for the passwords? 4 Q All of it. 5 A In essence -- let me hear your question again. 6 Q Sure. Do you have any firsthand knowledge of 7 the procedures your company has in place to insure 8 that the data they store electronically is accurate 9 and reliable? 10 A No. 11 Q So as to notes which might have been generated 12 as printouts from that data, you really only can 13 tell Your Honor that you recognize them as being 14 printed off your system, correct? 15 A That's true. 16 Q But as to veracity of any entry, you could not 17 swear to it, could you? 18 A No. 19 Q Do you know if a network administrator or 20 anyone else has the ability to alter the data which 21 an individual user, such as yourself, enters? 22 A No, I've never heard that they have that 23 ability. 24 Q Do you know of any employee in your department 25 or within your knowledge has ever been disciplined
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1 for your company? 2 A Mortgage Serve. 3 Q Okay. And where are they out of? Where are 4 they based at? 5 A I'm not sure. 6 Q Okay. Do you have a supervisor or network 7 administrator, password authorization on that 8 system? 9 A We do. 10 Q Do you have that? 11 A Do I have what? 12 Q A supervisor or network administrator 13 authorization on your computer system? 14 A No. If your password expires or something, you 15 call into the GMAC help desk to get it reset. 16 Q Right. Do you know who has control of or 17 maintains control of the user names or passwords 18 for your employer? 19 A Our IT department. 20 Q Okay. Do you know if they have any procedures 21 in place to verify that no one has accessed any 22 records under someone else's name or password? 23 A No. 24 Q Are you familiar with the policies and 25 procedures your company has to audit the integrity	1 or fired for accessing a computer under someone 2 else's name or password? 3 A No. 4 Q Do you have any knowledge about whether that's 5 ever occurred? 6 A I've never heard of anybody sharing their 7 password. 8 Q Okay. 9 A We have -- we take online classes for security 10 every year and that's one of the main points they 11 make is never share your passwords with anyone. 12 Q Do you know that that does not ever happen 13 within your employer structure? 14 A No, I don't know that. 15 Q And you have no way to tell the Court that that 16 doesn't happen? 17 A No. 18 Q We talked about the fact earlier that you are 19 not a custodian of any of this electronically 20 stored information. 21 A I don't maintain it on a daily basis. I have 22 access to the information. 23 Q Okay. If the plaintiff were to offer notes on 24 loss mitigation or notes on foreclosure, that would 25 not be a complete copy of all the notes which are

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1 maintained in your computer system, would it?
2 A I'm sorry. You have to ask the question again.
3 They're printed out of our system. That's all the
4 records of our system, all the notes.
5 Q But your system is segregated by departments
6 also, right?
7 A Not the general where you put in notes, no.
8 Q So if you printed off the notes field for the
9 Erica Congress loan, your testimony is that it
10 would exclude notes from customer service; is that
11 correct?
12 A That's correct.
13 Q Cashiering?
14 A If they put any notes in, yes.
15 Q Bankruptcy?
16 A Yes.
17 Q Foreclosure?
18 A Yes.
19 Q Loss mitigation?
20 A Yes.
21 Q REO?
22 A No, they use their own system.
23 Q Okay. What system is REO?
24 A REO uses a system called REO Trends.
25 Q Okay. So it's --

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1 THE COURT REPORTER: Repeat that.
2 A It's also called Equator.
3 Q So if notes were offered and you saw no entries
4 from customer service, would you believe it's a
5 complete copy of the notes?
6 MR. RAGSDALE: If we offered.
7 MR. WOOTEN: I said -- hypothetically, if
8 they were offered.
9 MR. RAGSDALE: Okay.
10 A It would depend on if she ever called in -- the
11 homeowner ever called in and talked to customer
12 service.
13 Q Okay. What about if you had notes offered and
14 they didn't mention the foreclosure department?
15 That would seem odd, wouldn't it?
16 A If it's been through foreclosure, there would
17 be different types of notes regarding the progress
18 of the foreclosure process.
19 Q And, in fact, notes which you would offer from
20 your servicing software would not contain all the
21 information regarding your foreclosure process,
22 would it?
23 A No, not necessarily.
24 Q Right. There is another system that you manage
25 foreclosures on, right?

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1 A I don't work in foreclosure so I don't use the
2 system.
3 Q So you have no knowledge about whether there is
4 a separate platform called LPS Desktop?
5 A There is.
6 Q Oh, you do have knowledge of that?
7 A Yes.
8 Q Is it used by the foreclosure department?
9 A Yes.
10 Q Do you know anything about it?
11 A You can communicate back and forth with our
12 attorneys that are handling the foreclosures.
13 Q And is it your understanding that at least some
14 information comes over from the foreclosure site,
15 the desktop, back to the notes field?
16 A Yes.
17 Q Okay. Do you know if it is complete
18 information?
19 A It's the information that can transfer over
20 from LPS.
21 Q Do you have any idea if it is all the
22 information?
23 A No, I don't think it would be all it.
24 Q And, again, you don't work in foreclosure,
25 right?

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1 A Correct.
2 Q So you would not have become involved in this
3 loan in the normal course of affairs until it
4 became what your employer considered and REO
5 Property?
6 A No, because I work in loss mitigation. So if a
7 homeowner is in eminent default, they have an issue
8 in their life and they're going into default in the
9 future, it could come into loss mitigation. Or if
10 they do default become past due, then it could come
11 into loss mitigation.
12 Q With respect to anything that was done from the
13 time of the loan origination up until April of
14 2010, on this loan, you have no firsthand knowledge
15 whether any action was taken in this case, right?
16 A Well, I know there are actions taken because we
17 have a loan in our books.
18 MR. DAUGHERTY: Objection.
19 Q The question -- the question, sir, is prior to
20 April of 2010, you have no firsthand knowledge of
21 anything that was done with respect to
22 Ms. Congress' loan?
23 A No.
24 MR. DAUGHERTY: Objection, Your Honor, on
25 this basis of firsthand knowledge, if he has. I

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<p>1 mean, he's reviewed the business records of the 2 corporation and has testified extensively to that. 3 THE COURT: I overrule the objection. 4 Q (BY MR. WOOTEN:) Is it your testimony that 5 there are no employees in loss mitigation other 6 than employees of your company in Dallas, Texas? 7 A No. We have some loss mitigation in Fort 8 Washington, Pennsylvania office. 9 Q Do you have any idea how many there are? 10 A No, I don't. 11 Q Do you have any idea how many employees your 12 company has in Dallas, Texas? 13 A We have roughly between seven hundred and seven 14 hundred and fifty. 15 Q So, if I were to pull out the securitization 16 documents and start flipping through them with you, 17 you really couldn't do anything but read what was 18 in the document, right? 19 A Correct. 20 Q So you couldn't testify that anything the 21 document said occurred ever occurred, right? 22 A What's in the documents is what I could read. 23 Q And you have no idea whether anything that is 24 recited in the document ever actually took place, 25 do you?</p>	<p>1 something like that, it wouldn't say, I'm a 2 custodian of records for Residential Funding 3 Company, LLC, right? 4 A No, it would not. 5 Q And it wouldn't say I'm a custodian of record 6 for Homecomings right? 7 A Correct. 8 Q It might say I work in REO loss mitigation for 9 GMAC Mortgage, right? 10 A I work only in loss mitigation, not REO. 11 Q When did that come into being? 12 A What? 13 Q When did you become responsible only for loss 14 mitigation? 15 A I have not worked in REO before. I worked in 16 first lien, loss mitigation, and then I moved into 17 being a portfolio manager for bankruptcy and legal 18 loss mitigation. 19 Q What was the last thing you said you were? 20 A Portfolio. 21 THE COURT: Tell me what I'm supposed to 22 be learning from this. 23 MR. WOOTEN: Your Honor, what I'm 24 establishing is that my witness does not have any 25 firsthand knowledge of any of the documents that</p>
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<p>1 A No. 2 MR. WOOTEN: Approach, Your Honor? 3 THE COURT: Yes. 4 Q Do you have the exhibits in front of you? Let 5 me -- we talked about the mortgage. That's fine. 6 Let's talk about this promissory note right here. 7 Plaintiff's Exhibit 1. 8 A All right. 9 Q Am I correct in saying that the only reason 10 that Homecomings is involved in this case is 11 because they have a contractual agreement with 12 Residential Funding Company, LLC? 13 A Yes. Yes, to be the subservicer. 14 Q And you are not a custodian for Residential 15 Funding Company, LLC? 16 A In my everyday course of work no I'm not 17 custodian of the original documents. 18 Q So if somebody, say, you might need to say 19 you're a custodian of records for purposes of 20 testifying today -- 21 A I do review the documents but I'm not a 22 custodian on a daily basis of the original 23 documents, no. 24 Q So if I were to look you up on one of those 25 social networking sites like Link, Facebook or</p>	<p>1 are relevant to this transaction or any documents 2 which they intend to offer, other than being 3 brought here to say, I recognize this document. He 4 doesn't have any firsthand knowledge of how any of 5 this came into being or how these documents got 6 into this case. He's just been brought here, 7 basically to parrot questions he's been spoon fed. 8 THE COURT: Well, I haven't heard him 9 asked any questions yet. I mean, what is this sort 10 of preemptive cross-examination? 11 MR. RAGSDALE: You call a witness in order 12 to decimate him. 13 MR. WOOTEN: Well, Your Honor, we assume 14 they would put the witness on themselves to 15 authenticate the documents. 16 THE COURT: Well, let's don't try it that 17 way. If you've got anything the defendant have 18 about proving their case for Ms. Congress -- 19 MR. WOOTEN: Yes, Your Honor. 20 THE COURT: All right. Let's move to it. 21 Q (BY MR. WOOTEN:) The promissory note that's in 22 front of you that was previously offered in this 23 case, it contains no endorsement to any party, does 24 it? 25 MR. DAUGHERTY: Your Honor, again, those</p>

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<p>1 are our objections. Again, under Rule 106 repletes 2 that document. Just for record. 3 THE COURT: Okay. Overrule. 4 A I'm sorry. Can you ask the question again? 5 Q Yes. The document in front of you, Plaintiff's 6 Exhibit 1, is a promissory note, correct? 7 A Correct. 8 Q And it says a true and accurate copy, correct? 9 A Correct. 10 Q And that's stamped on top of the document, 11 right, the front page? 12 A True and certified copy. 13 Q Okay. And it does not have any endorsements on 14 that document except one blank endorsement, right? 15 A That's correct. 16 Q You would not have had access to the documents 17 which were part of this trust until after you 18 signed a contractual agreement to act as a 19 subservicer, right. 20 A That is correct. 21 Q So you have not had access to whatever 22 documents were available to the trust as proof of 23 ownership until after the trust had been created? 24 A Correct. 25 Q So you would have only been able to get that</p>	<p>1 Q You have no firsthand knowledge where that 2 document came from, do you? 3 A I know that we get credit files on every loan 4 that we service. That's the initial file that 5 comes across. That's from loan boarding, gives the 6 pertinent documents. 7 Q And how did you know that? 8 A Because that's common knowledge on our company 9 We have to receive something in order to board that 10 loan into our system and to take over the servicing 11 of that loan. 12 Q And then the servicing to you would transfer as 13 a result of the creation of this trust, right? 14 A Correct. 15 Q So, if the documents, the trust documents say 16 that the loan file is complete by the date this 17 trust is created, why would you have not gotten the 18 trust file to onboard into your service system? 19 A Because we get the file to board onto our 20 system that comes from the previous servicer and 21 not from the trust. 22 Q Okay. Do you know who the previous servicer 23 was in the case? 24 A Well, the loan was originated in late 2006, and 25 it was originated by Mortgage Lenders Network. So</p>
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<p>1 copy of that document through your capacity as a 2 subservicer for this trust, right? 3 A We have a copy from the previous servicer or 4 the this originator. 5 Q Okay. 6 A This came in the credit file. 7 Q In the credit file. 8 Will you look across the top page of the 9 document that is offered as Exhibit 1. It is -- 10 appears to be a fax line, right? 11 A It does. 12 Q And it comes from GMAC Mortgage, correct? 13 A Correct. 14 Q Your testimony to the Court is that you have 15 been informed that you received that document from 16 the credit file of Ms. Congress? 17 MR. DAUGHERTY: Objection to his 18 mischaracterization of his testimony. 19 THE COURT: He asked him if that was 20 right. He can answer it. 21 MR. DAUGHERTY: Well, Judge, he said that 22 he had been informed. I'm objecting to the 23 informed part. 24 THE COURT: Overrule the objection. Ask 25 your question.</p>	<p>1 it could have been that this came from them. 2 Q You would agree with me that the fax line on 3 Exhibit 1 indicates that it was faxed after the 4 date of the foreclosure? 5 A Yes, that's true. 6 Q Are you familiar with the term custodial file 7 as it relates to securitization? 8 A Yes. 9 Q Do you know what that term means as it relates 10 to this securitization? 11 A Well, it's the file of the -- it's the file of 12 the records of the loans in that securitization. 13 Q Okay. 14 A Giving the information on those loans. 15 Q Would it also include a copy of the promissory 16 note? 17 A Most likely. I believe it does. I'm not for 18 sure about that. 19 Q Do you know who would have been in possession 20 of the custodial files for the Congress loan? 21 A Our custodian of records. 22 Q Who would that be? 23 A It's not one person individually. Wells Fargo 24 is the custodian that holds our documents for us. 25 Q How do you get those records from Wells Fargo?</p>

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1 A We make a request through our document request
2 service.
3 Q Okay. And who is that?
4 A It's different people in the department.
5 Q And do you know whether or not the
6 relationships you have by contract with this
7 securitization dictate how you obtain those
8 records?
9 A No, I don't know that.
10 Q By September 29th of 2008, was there any reason
11 you're aware of that you would not have been able
12 to access the custodial file under the subservicing
13 agreement for the Congress loan?
14 A No.
15 Q Is it your testimony that the credit file is a
16 different file than the custodial file?
17 A Well, the credit file is copies of the
18 documents and pages that go on top of the documents
19 to show when they were received, and just the
20 background of that account, specific account.
21 Q Okay. And your testimony is that you believe
22 Homecomings had that information but did not have
23 the custodial file from the trust?
24 A No, that's not my testimony.
25 Q Have you reviewed the securitization documents

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1 to see if they mention the credit file or accessing
2 credit file as the records of this trust?
3 A No, I have not.
4 Q Have you asked anyone if the credit file is
5 part of the records of this trust?
6 A No.
7 Q Let me ask you, sir, if you would, would you
8 look at the Assignment of Mortgage, just dated --
9 Exhibit 13. Sir, you're familiar with the term
10 grantee?
11 A Yes.
12 Q And does that mean the person who receives the
13 assignment in this case?
14 A Yes.
15 Q And who is the entity who received the
16 assignment in this case?
17 A U.S. Bank, NA as Trustee for that certain
18 Pooling and Servicing Agreement, Series 2007-EMX1
19 Pool Number 40896.
20 Q Is Pool Number 40896 or 40986, is that in the
21 name of this trust?
22 A No. It's not up there on that board.
23 Q Does the name of this trust mention pooling and
24 servicing agreement?
25 A No.

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1 MR. DAUGHERTY: Again, Your Honor --
2 Q Do you know --
3 MR. DAUGHERTY: -- he was looking at the
4 board, I believe.
5 THE COURT: Sir?
6 MR. DAUGHERTY: I just want the record to
7 reflect that he was showing the witness the board,
8 not an actual document.
9 THE COURT: Yes.
10 MR. DAUGHERTY: Okay.
11 Q Do you know the name of the trust under the
12 agreement?
13 A No, not by memorization.
14 Q Sir?
15 A Not by memorization.
16 Q Would you look at that as part in preparing to
17 testify?
18 A Look at what?
19 Q The name of the trust?
20 A I am sure I did see it, but I didn't memorize
21 it.
22 Q I show you a document which was part of the SEC
23 filings for this securitization trust.
24 MR. DAUGHERTY: Your Honor, may we know
25 what that document is?

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1 MR. WOOTEN: That is -- it's in Tab 4 in
2 the notebook. It's in 8(k).
3 MR. DAUGHERTY: Which notebook?
4 MR. WOOTEN: The one that we gave y'all
5 two copies of.
6 THE COURT: You can come up and look at
7 it.
8 MR. WOOTEN: Do you want an extra one?
9 We've got an extra copy.
10 THE COURT: Just show him what you're
11 asking him.
12 MR. DAUGHERTY: Did not receive --
13 MR. RAGSDALE: I didn't get a notebook.
14 MR. WOOTEN: That's the 8(k).
15 Q Does that appear to be an 8(k) filed with the
16 SEC on April -- or March 27th, 2007?
17 A Yes, it does.
18 Q And does it give a name of the trust?
19 A It says "Residential Asset Securities
20 Corporation on behalf of RFC Series 2007-EMX1
21 Trust."
22 Q Does that name give a mention of pooling and
23 servicing agreement?
24 A No, it doesn't.
25 Q Does it mention a pool number?

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<p>1 A No, it doesn't. 2 Q Is that name different than the name on the 3 mortgage assignment? 4 A Yes, it is. 5 Q With respect to the previous trial, how do you 6 pronounce Mr. Houle's name? 7 A Houle. 8 Q Houle? 9 A Yes. 10 Q H-o-u-l-e? 11 A That's correct. 12 Q I believe Mr. Houle testified that that 13 mortgage assignment was the assignment that vested 14 the mortgage interest in the trust. 15 MR. DAUGHERTY: Your Honor, at this time 16 we would move to admit the trial testimony from the 17 last trial. 18 THE COURT: Let's wait. Go ahead. 19 MR. DAUGHERTY: Well, if he's going to 20 testify about what Mr. Houle testified to. I 21 think it's in the record -- 22 THE COURT: Well, this is his examination 23 of the witness. Let him do it the way he goes 24 forward. Go ahead. 25 Q Is it your understanding --</p>	<p>1 Exhibit 14, which is a Demand for Possessions? 2 A Yes, it's the same. 3 Q Does Plaintiff's Exhibit 12, which is the 4 Foreclosure Deed, does it also contain the same 5 name that the Mortgage Assignment is in? 6 A Yes, it does. 7 Q Each of those documents have a different name 8 than the name of the trust according to the SEC 9 records, correct? 10 A Yes. 11 Q Do you know if there is a mortgage 12 securitization trust has the name that all those 13 documents are in? 14 A I'm sorry. Would you repeat that one? 15 Q Sure. All of the documents that you're 16 attorneys have presented as proof that this 17 plaintiff, Home Equity Asset-Backed Pass-Through 18 Certificates, Series 2007-EMX1, all the documents 19 presented as proof that that plaintiff is an owner 20 of this loan and the owner of this property by 21 foreclosure. All of these documents have a name 22 other than the name of this trust, right? 23 A That is right. 24 Q No document vest title in this trust that you 25 have introduced in this case; is that correct?</p>
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<p>1 THE COURT: Do you know what he testified 2 to at the last trial? 3 THE WITNESS: I read the -- I read the -- 4 THE COURT: All right. 5 Q (BY MR. WOOTEN:) And was the testimony that 6 the mortgage interest was transferred by Exhibit 13 7 to the plaintiff? 8 A It was transferred to this U.S. Bank as 9 trustee. 10 Q And I want to also show you the Affidavit of 11 Publication. Is the Affidavit of Publication -- I 12 believe the name is right over in here. 13 A Yes. 14 Q Is it the same name that the Mortgage 15 Assignment was taken in? 16 A Let's see. Yes. It's the same as on the 17 assignment of mortgage. 18 Q Let me show you Plaintiff's Exhibit 10 which is 19 an acceleration letter prepared by your attorneys. 20 A Correct. 21 Q Is the name in Plaintiff's Exhibit 10 identical 22 to the name in Plaintiff's Exhibit 11 and 23 Plaintiff's Exhibit 13? 24 A Yes, it is. 25 Q Is that statement also true for Plaintiff's</p>	<p>1 MR. DAUGHERTY: Judge, I'm a little 2 ambiguous about what he's introduced in the case. 3 If we could verify that. 4 MR. WOOTEN: The exhibits that are offered 5 into evidence and admitted already. 6 MR. DAUGHERTY: Thank you. 7 A That's true. 8 Q When you put a promissory note, that is Exhibit 9 1, aside Exhibit 13, and you read those two 10 documents together, would a reasonable person be 11 led to believe that the mortgage assignment 12 memorializes a single transfer of indebtedness 13 which appears in the form of a blank endorsement 14 upon Exhibit 1? 15 A It appears to, yes. 16 Q And on that document, there is no evidence of 17 any transfers of this promissory note other than 18 one single blank endorsement? 19 A That's true. 20 Q And you cannot testify to this Court about any 21 other purported transfers of this promissory note, 22 can you? 23 A I can with the -- with the adjustable rate that 24 has the other assignments on it. 25 Q And when you say "the other assignments," are</p>

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1 you referring to a document called an allonge which
2 is a separate document from the promissory note?
3 A It's attached to the adjustable rate note.
4 Q And how is it attached?
5 A It's in the same rubber banded together folder
6 when it came from our document vault.
7 Q How is the allonge attached to the promissory
8 note? Is it because it is in the same folder?
9 A I'm not sure. I'd have to look at it.
10 Q And that would be part of the collateral file
11 from the securitization file?
12 A That would be apart of the original document
13 file.
14 Q The original document file. And is that
15 different than the credit file?
16 A It is.
17 Q Would that be the file that should have been
18 transferred to this trust?
19 A I don't know what you mean when you say
20 "transferred to the trust." Physically
21 transferred?
22 Q Yes, sir.
23 A No. The transfer doesn't physically maintain
24 those documents.
25 Q Who physically maintains those documents?

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1 A The custodian of records for GMAC.
2 Q And when you say "the custodian of records" for
3 GMAC, who is that?
4 A Wells Fargo.
5 Q Okay. And so I just want to be clear. You're
6 talking about the custodian of records for GMAC?
7 A GMAC Mortgage. GMAC is the ultimate umbrella
8 company of all the various companies that we have.
9 Q So again your testimony is you got these
10 documents from GMAC's custodian?
11 A No. I might have misspoke. GMAC Mortgage, we
12 maintain a relationship with Wells Fargo as the
13 holder of the original documents for us in a vault
14 in Minneapolis.
15 Q Would that be why documents have bar codes on
16 it?
17 A Yes, I believe so.
18 Q What are those bar codes supposed to tell us?
19 A I believe they go with -- they enjoin the
20 documents together so you know that they go
21 together.
22 Q Do they tell us anything else about the
23 documents? What trust they're in? Who owns it?
24 Anything like that?
25 A I don't believe so.

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1 Q Do you have any information about that?
2 A No.
3 Q Have you ever examined bar codes on any of the
4 documents in this case?
5 A Not really examined them, no.
6 MR. WOOTEN: I'm going to tender the
7 witness subject to recross.
8 THE COURT: Do you want to cross him now?
9 MR. DAUGHERTY: Yes, sir, that will be
10 fine.
11 THE COURT: All right.
12 CROSS-EXAMINATION
13 BY MR. DAUGHERTY:
14 Q Good morning.
15 A Morning.
16 Q Opposing counsel spoke with you a good bit
17 about what your duties have been since you worked
18 for GMAC. I also -- I just want to talk to you a
19 little bit about what GMAC's relationship is to
20 U.S. Bank in this case.
21 A Okay.
22 Q Could you tell me a little bit about that?
23 A We are the servicer on behalf of U.S. Bank.
24 Q And as the servicer for U.S. Bank, does GMAC
25 and its family of companies have -- or does GMAC

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1 have power of attorney for U.S. Bank --
2 MR. WOOTEN: Objection, Your Honor, to the
3 extent if they intend to have this witness testify
4 about power of attorney, the law requires them to
5 have a copy of the power of attorney for him to be
6 able to authenticate both that he had a power of
7 attorney and the contents of that document. We
8 have a memo that we would like to offer the Court
9 on that issue.
10 THE COURT: You say he can't ask him a
11 question about whether he has power of attorney?
12 MR. WOOTEN: Well, Your Honor, he's
13 established he knows nothing about what was going
14 -- records of funding, so --
15 THE COURT: Overrule. So. Lets move on.
16 Q (BY MR. DAUGHERTY:) Mr. Haughton, do you have
17 power of attorney for U.S. Bank? Does GMAC have
18 power of attorney for U.S. Bank?
19 A Yes, we do.
20 Q And is there subservicing agreements between
21 GMAC, LLC --
22 MR. WOOTEN: Objection. Again, Your
23 Honor, this is the best evidence rule. He's
24 offering testimony about a document which has not
25 been offered into evidence, both the Power of

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1 Attorney and the Subservicing Agreement.
2 THE COURT: Overrule.
3 Q Now, does GMAC have subservicing agreements
4 with those companies that service the loans?
5 A Yes.
6 Q And do you know what some of those companies
7 are such as GMAC Mortgage?
8 A Correct.
9 Q And that's who you work for?
10 A That's right.
11 Q And in your duties with GMAC Mortgage, you had
12 access to those books and records as you testified
13 earlier, right?
14 A I do.
15 Q And you review those when necessary to become
16 familiar with the files?
17 A That's correct.
18 Q And you understand that there's a difference
19 between the custodian of records as defined in this
20 Pooling and Servicing Agreement that opposing
21 counsel is speaking of and actually being a
22 custodian of the records of a company?
23 MR. WOOTEN: Objection, Your Honor. He
24 established through his testimony he was not a
25 custodian for his employer.

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1 MR. DAUGHERTY: Your Honor --
2 MR. WOOTEN: He testified explicitly to
3 that.
4 THE COURT: Overrule.
5 Q And the records that you have that are imaged
6 on your system are kept with GMAC Mortgage, those
7 are kept in the normal and the ordinary course of
8 GMAC Mortgages business?
9 A It is.
10 Q And this policy at all times to input true and
11 accurate information into those records; is that
12 correct?
13 MR. WOOTEN: Objection, Your Honor. He
14 just testified he cannot establish the veracity of
15 any entries of those records. I also asked him
16 about the policies and procedures. He didn't
17 testify about that.
18 THE COURT: All right. Overrule.
19 Q Is it the policy to input true and accurate
20 information into the records at all times for GMAC
21 Mortgage?
22 A Most definitely.
23 Q And are you familiar with the loan in the
24 present case and have you reviewed Ms. Congress's
25 records?

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1 A Yes, I have.
2 Q Is the account number for Ms. Congress's loan,
3 -- well, let me show you Plaintiff's Exhibit Number
4 3. This is payment history.
5 MR. WOOTEN: Your Honor, we reserve our
6 objection to that document based on the earlier
7 testimony, the fact he's testified that he can't
8 authenticate those documents, he can't testify to
9 the veracity or accuracy.
10 THE COURT: All right.
11 Q Mr. Haughton, do you recognize that document?
12 A I do.
13 Q Have you reviewed it in preparation for this
14 case?
15 A Yes, I have.
16 Q And is that document the payment history for
17 Ms. Congress's mortgage loan?
18 A Yes, it is.
19 Q And is that document a document of GMAC
20 Mortgage, LLC?
21 A Yes, it is.
22 Q Is that document also kept in the normal and
23 ordinary course of GMAC Mortgage, LLC's business?
24 A Yes, it is.
25 MR. DAUGHERTY: Your Honor, we'd move to

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1 admit Plaintiff's 3.
2 MR. WOOTEN: And we would object, the same
3 reasons, Your Honor.
4 THE COURT: All right. Overrule.
5 MR. DAUGHERTY: Document admitted?
6 THE COURT: Yes.
7 MR. DAUGHERTY: Thank you, Judge.
8 (Whereupon, Plaintiff's Exhibit
9 Number 3 was received into
10 evidence.)
11 Q Mr. Haughton, is Ms. Congress's loan number on
12 that payment history?
13 A It is.
14 Q And what is that loan number?
15 A 7655540227.
16 MR. DAUGHERTY: Your Honor, I'm going to
17 give you a copy of the payment history, if that's
18 okay.
19 THE COURT: Yes, sir.
20 MR. DAUGHERTY: It will help you follow
21 along. It's the same one you used last time.
22 THE COURT: All right.
23 MR. DAUGHERTY: Gentlemen, I presume you
24 have a copy.
25 MR. LAY: If you have an extra one. No,

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<p>1 wait. I have it. I've got it. Let me make sure 2 that's the correct one. 3 Q Mr. Haughton, when did GMAC -- can you tell by 4 looking at that document when GMAC started 5 servicing Ms. Congress's loan? 6 A Yes, I can. February 7th, 2007. 7 Q In looking at the payment history and notes, 8 can you tell the first time that Ms. Congress would 9 have gone into default on the loan? 10 A There is a record here dated February 20th, 11 2007, and a promise to pay via a speed draft. 12 Q And what does that mean to you? 13 A She was past due probably for the February 1st 14 payment. And the speed draft is a service you can 15 use to where the funds are taken out of your 16 account and you pay a fee for it. 17 Q And does the payment history indicate at any 18 point whenever Ms. Congress was sent a default 19 letter in May of 2007. I think it would help if 20 you turn to Page 4 of the payment history. 21 A Yes. On May 8th there is a note: Breach Erica 22 S. Congress, indicates a breach letter was mailed. 23 Q Mr. Haughton, I'm going to show you what's been 24 marked in the previous trial of this case as 25 Plaintiff's Exhibit Number 4.</p>	<p>1 that an electronically imaged copy that GMAC 2 Mortgage, LLC had in its system? 3 A It is. 4 THE COURT: And what is the exhibit number 5 of the breach letter? 6 THE WITNESS: Four. 7 THE COURT: Thank you. Go ahead. 8 Q Mr. Haughton, is that a true and correct copy 9 of the currently imaged document that's in GMAC 10 Mortgage's LLC system? 11 A Yes, it is. 12 Q And would GMAC have any reason to keep the 13 actual document that was mailed to Ms. Congress? 14 A No, we would not. We service two and a half 15 million loans, and we're not able to keep a file on 16 every -- a hard file on every loan. 17 Q You see a jumble of letters at the top of that 18 document. What is that? 19 A That comes out of the system called ExNet where 20 these are housed. 21 Q Is it an electronic header that shows what the 22 document is or the header of the document when it's 23 mailed? 24 A Yes, it does. 25 Q And once again, is that a business record that</p>
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<p>1 MR. WOOTEN: We reserve our objection to 2 those documents. Same grounds. 3 THE COURT: All right. Overrule. 4 Q Mr. Haughton, do you recognize that document? 5 A I do. 6 Q What is that document? 7 A It is a breach letter. 8 Q What does the breach letter mean? 9 A It's a courtesy letter sent to a homeowner 10 telling that they're in default at this time and 11 how much they need to pay to bring their account 12 current. 13 Q Mr. Haughton, are you familiar with the 14 mortgage entered into in this case by Ms. Congress 15 which is Plaintiff's Exhibit Number 2? 16 A Yes, I am. 17 Q And does that letter -- does that letter comply 18 -- and you can look at the mortgage in Paragraph 22 19 if you want, but does that letter comply with the 20 provisions in Paragraph 22 of the mortgage with 21 regard to what needs to be contained in a default 22 letter? 23 A Yes, it does. 24 Q Thank you. Now, Mr. Haughton, that breach 25 letter that you have in your hand, the copy, is</p>	<p>1 is kept and ordinarily maintained in the course of 2 GMAC's business? 3 A Yes, it is. 4 MR. DAUGHERTY: Your Honor, we would move 5 to admit that document. 6 MR. WOOTEN: Same objection. 7 THE COURT: Overrule. 8 (Whereupon, Plaintiff's Exhibit 9 Number 4 was received into 10 evidence.) 11 Q I am going to attempt to short circuit for the 12 Court, for the parties. And Mr. Haughton, I have 13 five more default letters that are all the same. 14 I'm going to ask Mr. Haughton to review those and 15 then we're going to move to admit each one of them. 16 MR. WOOTEN: And Judge, we preserve out 17 objection. 18 THE COURT: Yes, sir. So noted. 19 MR. DAUGHERTY: This will be Exhibits 5 20 through 9. 21 MR. LAY: What numbers are these? 22 MR. DAUGHERTY: 5 through 9. 23 A These are all default letters. 24 Q Are they all default letters for Ms. Congress's 25 loan?</p>

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1 A Yes, they are.
2 Q And were all of these records also on the ExNet
3 system and are they also business records of GMAC?
4 MR. WOOTEN: Objection, again, Your Honor,
5 the same basis.
6 THE COURT: Overrule.
7 A Yes, they are.
8 Q These are kept and are ordinarily maintained in
9 the course of the business?
10 A Yes, they are.
11 MR. DAUGHERTY: Your Honor, we move to
12 admit 5 through 9.
13 THE COURT: Admitted offer Defendant's
14 objection.
15 MR. DAUGHERTY: Thank you, Your Honor.
16 (Whereupon, Plaintiff's Exhibit
17 Numbers 5 through 9 were received
18 into evidence.)
19 Q Bill, I would like for you to look at
20 Plaintiff's Exhibit 5, which is the next default
21 letter. And what date is that letter?
22 A This is dated June 27th, 2007.
23 Q Do you see a contemporaneous entry in the
24 payment history and call notes for that particular
25 breach?

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1 MR. DAUGHERTY: For the Court, Page 7
2 of the payment history.
3 A Oh, yes. I'm sorry. I can see it.
4 Q What date is that on?
5 A June 28th, 2007.
6 Q And what date is the loan due for at that time?
7 A The loan is due for --
8 Q Is it the next column over from the breach
9 letter date?
10 A Yes, it is. It's due for April 1st, 2007.
11 Q And Ms. Congress defaulted again in November of
12 2007, didn't she?
13 A That is correct.
14 Q And that would be reflected in the payment
15 history on Page 16.
16 A Yes. A breach letter was sent on November 5th,
17 2007.
18 Q And pursuant to that default is another breach
19 letter sent which would be Plaintiff's Exhibit
20 Number 6?
21 A Yes.
22 Q And at that time was Ms. Congress put on a
23 repayment plan? Was that loss mitigation option
24 offered to her at that point?
25 A Yes, it had been before as well.

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1 Q And where did you see that in the notes?
2 A On 11-19-2007. On November 19th, it says repay
3 plan set up.
4 Q And so was that GMAC trying to help
5 Ms. Congress to keep her home?
6 A Yes, it was.
7 Q Is that something that you normally do in a
8 situation such as this?
9 A Yes.
10 Q Is it in your interest to try to help the
11 borrower keep their home by employing these
12 options?
13 A Most definitely. The last thing we want to do
14 is foreclose on the property.
15 Q Now, was she able to make those payments or
16 she's in another default again?
17 A She did not make those payments.
18 Q When was the next default letter sent in
19 December of 2007?
20 A It was sent on December 24th, 2007.
21 Q Is that also reflected in the notes?
22 A Yes, it is.
23 Q Now, the notes reflect that in March
24 Ms. Congress was able to actually cure her loan and
25 GMAC allowed her to do that. And on Page 23, I

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1 believe, of the notes you will see that a couple of
2 payments were made. And then on Page 24, does it
3 say that Ms. Congress kept her promise to pay
4 there?
5 A Yes, it does.
6 Q But then did she pay in April of 2008, and was
7 another breach letter sent at that time?
8 A I believe she did pay but the check was not
9 honored at the bank.
10 Q And if you look at Page 27 of the payment
11 history, does that reflect that yet another breach
12 letter was sent to Ms. Congress?
13 A Yes, it was.
14 Q And was that in May of 2008?
15 A It was May 6th, 2008.
16 Q And is Plaintiff's Exhibit Number 9 a breach
17 letter that was sent to Ms. Congress in May of
18 2008?
19 A Yes, it is.
20 Q And do you know if that was -- if that was the
21 breach letter that immediately preceded the
22 foreclosure?
23 A I believe it was.
24 Q Now, in the payment notes it reflects on Page
25 28, there's an entry on 5-13 that says, "options to

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<p>1 avoid foreclosure." 2 A Yes. 3 Q What does that mean? 4 A There are still options available to the 5 homeowner if they want to retain their home. 6 Q I also would like to have you look at pages 24, 7 from about midway down the page, to Page 27 of the 8 notes. I see several entries there where there are 9 no words but there are times and then a simple 10 notation that says, "left message." In other 11 words, no notes, there are no notes made of the 12 call. What do those indications mean? 13 A Okay. This is from an automatic dialer trying 14 to reach the homeowner so we can talk to them about 15 loss mitigation options, if they have the ability 16 to maintain their home. If there is no answer, 17 then the message is left. 18 Q And from pages 24 to 27 in the notes, does it 19 appear that anybody was ever able to get in touch 20 with Ms. Congress? 21 A No. 22 Q Does it appear that they tried? 23 A Yes. Multiple times. 24 Q It appears from the notes in May and June of 25 2008 on pages 29 and 30, that another repayment</p>	<p>1 A The foreclosure will continue until such time 2 that an agreement is reached between both parties 3 and a signed document is received or a repay plan 4 or modification document and down payment, if 5 that's applicable to that solution. 6 Q Is the borrower ever told that the foreclosure 7 process would stop while loss mitigation is 8 proceeding? 9 A No, they're not. 10 Q Is it incumbent upon the borrower to follow up 11 and take actions to help protect their interest in 12 their home? 13 A Yes, it is. 14 Q Is there anything you can do to force the 15 borrower to participate in that process? 16 A No. 17 Q Do you find that frequently? 18 A We do. 19 Q Okay. Mr. Houghton, at the time that Ms. 20 Congress was referred for foreclosure on Page 33 of 21 the notes, can you tell how far behind she was at 22 that point? 23 A Currently due for the March, April, May and 24 June payments. 25 Q And so once it was approved foreclosure would</p>
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<p>1 plan was set up. Do you recall that? 2 You can look at the document and let us know. 3 A Yes, it was, in June. 4 Q Where is that in the payment history, 5 Mr. Houghton? 6 A It's at the top of Page 30, June 2nd, 2008, 7 repayment plan set up. 8 Q And on the next page does it say whenever that 9 plan was canceled? 10 A Yes. On June 16th it says repay plan canceled. 11 Q Was there a reason for that that appears right 12 below that entry? 13 A It was non sufficient funds. 14 Q Does that mean that the check bounced? 15 A Yes, it does. 16 Q Moving on through the payment history, on Page 17 33 on June 24th, 2008, does the payment history 18 reflect that Ms. Congress's loan approved for 19 foreclosure? 20 A Yes, it does. It says, "foreclosure referral, 21 review complete." 22 Q When a borrow contacts the company for loss 23 mitigation, what is the policy whenever the loss 24 mitigation representative is talking to the 25 borrower regarding foreclosure?</p>	<p>1 be filed within the court -- foreclosure to a law 2 firm to foreclose on the debt, on the mortgage? 3 A Yes, it would. 4 Q And the last thing that I want to draw your 5 attention to for right now is some entries in the 6 notes regarding a call that was placed to you. 7 On Page -- 8 MR. WOOTEN: Objection, Your Honor. 9 Characterizing a call to him. I need to make sure 10 we're clear that he's not talking about personal 11 knowledge. 12 THE COURT: All right. 13 MR. DAUGHERTY: I'll fully agree, Your 14 Honor, that I'm talking about a call to the 15 company. 16 THE COURT: Yes, sir. 17 MR. DAUGHERTY: Thank you. 18 Q On Page 35 there was a conversation on July 19 14th, 2008. Can you tell from the notes what that 20 conversation consisted of? 21 A Yes. 22 MR. LAY: Could we have the date again? 23 MR. DAUGHERTY: July 14th, 2008. 24 THE COURT: Page 35. 25 A It says, TTB1, means talk to Borrow 1, advised</p>

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1 that she has to have an income and a down payment
2 to set up a plan. Will start working in 30 days.
3 Was advised to contact us with the information.
4 Advised of foreclosure process. No sale date.
5 Q You said that TTB1 means talk to Borrower 1?
6 A That's correct.
7 Q And you see the next entry below that is sale
8 schedule. Would that have been after or before
9 this conversation that that note was inputted?
10 A That was after.
11 Q And do you still have the acceleration up
12 there, Mr. Haughton?
13 A I believe so. I do.
14 Q Now, was that acceleration letter -- does it
15 give the date of the foreclosure, when it's
16 scheduled?
17 A Yes, it does. It was scheduled for August
18 12th, 2008.
19 Q And what date is that letter dated?
20 A It's July 11th, 2008.
21 Q Was -- can you tell from looking at the notes
22 if any further information was provided for
23 Ms. Congress regarding loss mitigation after the
24 July 14th call?
25 A There were no other conversations with the

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1 homeowners.
2 Q By looking at the entry on July 14th, whose
3 duty was it to follow up to submit information?
4 MR. LAY: Objection.
5 THE COURT: Overrule.
6 A The notes state that it says, advised to
7 contact us with this information. It was regarding
8 her status of employment.
9 Q And was the default ever cured on another loss
10 mitigation plan ever entered into?
11 A No, it was not.
12 Q Was the property foreclosed on?
13 A It was.
14 Q And do you know if that foreclosure sold to the
15 trustee of the trust?
16 A It was. They were the high bidder at the sale.
17 Q Mr. Wooten, my opposing counsel, spent a good
18 bit of time with you talking about the electronic
19 systems. And I just wanted to clarify one point.
20 You stated that once the customer service
21 representative puts in a note that they cannot
22 alter it?
23 A That is correct. Nobody can alter it.
24 Q Mr. Haughton, you also testified that you
25 received documents from Wells Fargo who is the

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1 custodian for the trust?
2 A That's correct.
3 Q And what were those documents?
4 MR. WOOTEN: Objection. Your Honor, he
5 testified that he did not receive documents from
6 trust. He received documents from GMAC's
7 custodian.
8 THE COURT: That's what he said. That's
9 Wells Fargo, Mr. Wooten.
10 MR. WOOTEN: Okay. The custodian for the
11 trust filed into the status from GMAC Mortgage's
12 custodian. They have distinct records.
13 THE COURT: All right.
14 Q Did they send those to you, Mr. Haughton?
15 A They did.
16 Q And did you get those in the last couple of
17 weeks?
18 A I did.
19 Q Did you review the original collateral file for
20 this loan?
21 A I did.
22 Q And did it have the original note in it.
23 MR. WOOTEN: Objection to the extent that
24 he's offering other documents, Your Honor. The
25 best evidence is the actual document. He's talking

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1 about collateral file. He's talking about where it
2 came from and where it went. We need to see those
3 documents.
4 THE COURT: Well, I agree we need to see
5 the documents, but I overrule the objection to the
6 question.
7 Q Did you review the file, Mr. Haughton?
8 A I did.
9 Q And do you know who you received that file from
10 individually?
11 A Individually it came from -- I mean, I don't
12 know who sent it to us from Minneapolis.
13 Q Right. But someone in your office received it
14 through FedEx, right?
15 A Yes, Chantell Fain, who is a paralegal in our
16 legal department in Dallas.
17 Q And she directly gave it to you?
18 A She did.
19 Q And that was the first time that you looked
20 through it was when she gave it to you?
21 A That's correct.
22 Q And then you gave it back to her?
23 A I did.
24 Q And she sent it directly to us?
25 A That's correct.

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1 THE COURT: What's her name?
2 THE WITNESS: Chantell, C-h-a-n-t-e-l-l
3 Fain, F-a-i-n.
4 MR. LAY: We would like to see the
5 document.
6 MR. DAUGHERTY: Sure.
7 (Whereupon, Plaintiff's Exhibit
8 Number 15 was marked for
9 identification.)
10 Q Mr. Haughton, I'm giving you what I have marked
11 as Plaintiff's Exhibit 15.
12 MR. LAY: Your Honor, may we please see
13 the documents before the witness --
14 MR. DAUGHERTY: I'm working on it, Ken.
15 Q Mr. Haughton, do you recognize that document
16 which I have just handed you marked Plaintiff's
17 Exhibit Number 15?
18 A Yes, I do.
19 Q And does that document appear to be a true and
20 correct copy of the document that was in the
21 original collateral file that you reviewed after
22 receiving it from Wells Fargo?
23 A Yes.
24 MR. WOOTEN: Objection, Your Honor.
25 That's still not the original note. If it's in the

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1 collateral file, it should have the original note.
2 THE COURT: He said it was a copy of it.
3 MR. DAUGHERTY: I'm asking about a copy,
4 Judge.
5 Q And so that is a copy of the original note that
6 you reviewed?
7 A Yes, it is.
8 Q And attached to the back page of that copy, is
9 there an allonge?
10 A There is.
11 Q And it bears two separate endorsements, doesn't
12 it?
13 A It does.
14 Q And when you reviewed the collateral file, how
15 was the note and where was the allonge when you
16 reviewed it to receive it?
17 A They were side-by-side in the file together.
18 Q But there was the note and it was rubber banded
19 and there were some items that were in the file
20 with it?
21 A Yes.
22 Q And so the allonge was in the file?
23 A Yes.
24 Q But it wasn't actually stapled to that?
25 A No.

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1 MR. DAUGHERTY: I just want to represent
2 to the Court that that Exhibit Number 15 has been
3 stapled together for the benefit of not losing the
4 pages, and Mr. Haughton's testimony talks.
5 THE COURT: All right.
6 Q Now, Mr. Haughton, do you understand it to be
7 Wells Fargo duty to keep those documents in the
8 normal and ordinary course of their business for
9 you to receive in your role as servicer?
10 A Yes, it is.
11 Q Your Honor, we will move at this time to admit
12 a copy of the original note that Mr. Haughton has
13 testified to.
14 MR. WOOTEN: Your Honor, we would object
15 to, at least we need the right to inspect the
16 collateral file and their file --
17 THE COURT: Is the original file here?
18 All right. You will have that. Overrule the
19 objection based on their representation.
20 Q Mr. Haughton, Mr. Wooten spent a good deal of
21 time with you discussing various permutations of
22 the names of the trust.
23 A That's correct.
24 Q And what I want to ask you is, do you have any
25 doubt in your mind whatsoever that the trust that

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1 foreclosed on this property and the trust that is
2 prosecuting the lawsuit are the same that is
3 covered in the documents that Mr. Wooten showed
4 you?
5 A I have no doubt.
6 Q And isn't the actual party that does the
7 foreclosure the trustee?
8 A Yes.
9 Q So that would be you U.S. Bank?
10 A That's correct.
11 Q Now, Mr. Wooten also showed you a copy of
12 Plaintiff's Exhibit Number 1 which is up there on
13 your witness stand. If you could, please, pull
14 that out to refer to it.
15 Q Now, you testified earlier that that is a
16 document out of GMAC's credit file; is that
17 correct?
18 A That is correct.
19 Q And once again, is it apart of GMAC's normal
20 and ordinary course of business for them to receive
21 this credit file from the original servicer and
22 then upload it into your system to maintain it as a
23 business record?
24 A That is correct.
25 Q And in that document package that you received,

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1 does that include the origination document such as
2 the appraisal, the original note and things of that
3 nature?
4 A It does.
5 Q And would it also include a copy of the note as
6 it was executed at the closing table or as
7 maintained by the original servicer?
8 A Yes, it would.
9 Q Have you had a chance to review your credit
10 file in this case?
11 A Yes, I have.
12 (Whereupon, Plaintiff's Exhibit
13 Number 16 was marked for
14 identification.)
15 Q I show you what I have marked as Plaintiff's
16 Exhibit Number 16.
17 MR. DAUGHERTY: I have a copy for you
18 guys.
19 THE COURT: Are you going to be awhile
20 longer?
21 MR. DAUGHERTY: I don't think too much
22 longer, Judge. It just depends on the objections.
23 MR. WOOTEN: Your Honor, I suggest we may
24 can look at the collateral file during the break
25 and then come back and do recross after the lunch

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1 break.
2 THE COURT: All right. We'll go on and
3 take --
4 MR. RAGSDALE: Let's stop now.
5 THE COURT: All right. Let's be back at
6 1:15 by that clock.
7 (Lunch recess.)
8 THE COURT: Back on the record.
9 CROSS-EXAMINATION CONTINUED
10 BY MR. DAUGHERTY:
11 Q Mr. Haughton, before we broke for lunch we were
12 discussing the issue that opposing counsel raised
13 regarding Plaintiff's Exhibit Number 1 which is a
14 copy of the note. And I had just showed
15 defendant's counsel Plaintiff's Exhibit Number 16,
16 which I'm also handing to you at this time.
17 A Okay.
18 Q Do you know what that document is and have you
19 seen it before?
20 A Yes, I have.
21 Q What is that document, please?
22 A It's an asset cover sheet that comes with the
23 credit file.
24 THE COURT: And that's 16.
25 MR. DAUGHERTY: It's 16, Your Honor.

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1 THE COURT: Thank you. Tell me again what
2 it is.
3 THE WITNESS: It's an asset cover sheet
4 from the buyer, with the documents to tell you who
5 the custodian is and what the original servicer was
6 and the address of the property.
7 Q Is it dated at the bottom?
8 A It is dated.
9 Q What is the date on that?
10 A October 7, 2006 at 2:43 in the afternoon.
11 Q And Bill, did you see that document in your
12 credit file when you reviewed it?
13 A Yes, I did.
14 Q And that credit file, those are consistent with
15 the other documents we've discussed, copies that
16 GMAC Mortgage keeps in the normal and ordinary
17 course of its business?
18 A They are.
19 Q And they preserve those in their system
20 pursuant to the document retention policies?
21 A Yes.
22 Q And then you reviewed them in connection with
23 this loan?
24 A That's correct.
25 MR. DAUGHERTY: Your Honor, we would move

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1 to admit that document.
2 THE COURT: It's admitted, Plaintiff's 16.
3 (Whereupon, Plaintiff's Exhibit
4 Number 16 was received into
5 evidence.)
6 (Whereupon, Plaintiff's Exhibit
7 Number 17 was marked for
8 identification.)
9 Q I'm going to show you what's been marked as
10 Plaintiff's Exhibit Number 17. Let me show you
11 Plaintiff's Exhibit Number 17. Do you recognize
12 that document?
13 A Yes, I do.
14 Q And is that document similar in most respects
15 to Plaintiff's Exhibit Number 1?
16 A Yes, it is.
17 Q And is there one difference in between those
18 documents on the top of the page?
19 A Yes, there's not a fax across the top of
20 Exhibit Number 17.
21 Q Do you know where Exhibit Number 17 came from?
22 A This would have come from the credit file.
23 Q And where would GMAC, where would they have
24 received that document from?
25 A From Mortgage Lenders Network.

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1 Q Is that what's indicated on that asset cover
2 sheet?
3 A Yes, it is.
4 Q And Mr. Haughton, is -- in the credit file, did
5 the note that you saw that you're holding,
6 plaintiff's Exhibit Number 17, did it come
7 sequentially soon after that asset cover sheet?
8 A Yes, it did.
9 Q I want to refer you back to the payment
10 history. And if you could, please, tell the Court
11 the Exhibit Number of that.
12 A Exhibit Number 3.
13 Q Does that document also have a fax stamp at the
14 top of it?
15 A It does.
16 Q Is the date the same as the date on Plaintiff's
17 Exhibit Number 1 or from the same entity?
18 A It is from the same date, about twenty minutes
19 apart, and from the same fax number.
20 Q Do you understand that documents were faxed
21 from GMAC to GMAC's counsel in this case for use in
22 the earlier trial and in the earlier case?
23 A Yes, I do.
24 Q Now, that document, Plaintiff's Exhibit Number
25 1, and also Number 17, say that, on the top, "true

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1 and certified copy." Is that the way that that
2 document exist in the file that you received from
3 Mortgage Lenders Network?
4 A Yes, it did.
5 Q And would it have been that company that put
6 the true and certified copy at the top?
7 A Yes, it would.
8 MR. DAUGHERTY: Your Honor, I would also
9 move to admit Plaintiff's 17.
10 THE COURT: It's admitted.
11 MR. DAUGHERTY: Thank you.
12 (Whereupon, Plaintiff's Exhibit
13 Number 17 was received into
14 evidence.)
15 Q Mr. Haughton, I'm going to hand to you that
16 package. What is that package of documents I've
17 just given you there?
18 A This is the original documents on this loan.
19 Q And are those documents we discussed earlier
20 that you received from Wells Fargo?
21 A Yes, they are.
22 Q And it's your understanding that Wells Fargo is
23 the custodian of record for the file documents for
24 this trust?
25 A That's correct.

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1 Q And that is where you received these documents
2 from?
3 A That is right.
4 (Whereupon, Plaintiff's Exhibit
5 Number 18 was marked for
6 identification.)
7 MR. DAUGHERTY: Your Honor, I'm going to
8 mark as a stipulated exhibit Plaintiff's Exhibit
9 18. And this is copies of everything that was in
10 the collateral file that Mr. Haughton is holding,
11 and I'm going to hand that to him. Then I'm going
12 to offer to the Court for inspection the original
13 note and the allonge.
14 THE COURT: All right. Have you all
15 looked now -- I don't want to hear later that they
16 left something out.
17 MR. WOOTEN: We've seen everything in the
18 file.
19 THE COURT: All right.
20 MR. DAUGHERTY: Judge, if I could --
21 THE COURT: All right. Do you want to
22 come up here and see what he's showing me?
23 All right. Let the record show that I am
24 examining the original documents.
25 MR. WOOTEN: I just told co-counsel and

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1 Your Honor that defendant is satisfied that the
2 copy presented to the witness is an identical copy
3 of the collateral file.
4 Q (BY MR. DAUGHERTY:) Mr. Haughton, the copy of
5 that has been introduced as Plaintiff's Exhibit
6 Number --
7 A 18.
8 Q That's an accurate and correct copy of what you
9 received from Wells Fargo?
10 A Yes, it is.
11 Q And an accurate and correct copy of what's in
12 the collateral file?
13 A Yes, it is.
14 Q I want you to turn specifically to the last
15 page of that document. Is that the allonge?
16 A Yes, it is.
17 Q Do you see where there are endorsements on
18 there?
19 A Yes.
20 Q Did you physically stamp either of those
21 endorsements on that document?
22 A No, I did not.
23 Q Are you aware that anyone in your office
24 physically stamped those endorsements on that
25 document?

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1 A No, I am not.
2 Q Is that the way you received it?
3 A Yes, it is.
4 Q Did you fabricate any portion of that file?
5 A Absolutely I did not.
6 Q Did anyone in your office fabricate any portion
7 of that file?
8 A No.
9 Q Do you have any reason to think that Wells
10 Fargo did it before they sent it to you?
11 MR. LAY: Objection, Your Honor.
12 THE COURT: Overrule.
13 A I'm sorry. Can you reask the question?
14 Q Do you have any reason to think that Wells
15 Fargo may have before they sent it to you?
16 A No, I do not.
17 Q Mr. Haughton, is it the course of business at
18 GMAC to offer loss mitigation to borrowers even
19 after foreclosure?
20 A It is in some cases, yes.
21 Q Within the last few weeks did you extend an
22 offer to Ms. Congress to apply for loss mitigation?
23 A We did by sending a workout package to be
24 filled out.
25 Q Have you received any documents back in

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1 response?
2 A No, we have not.
3 Q Before I finish, if you could look briefly at
4 the payment history again. And again, tell the
5 Court when GMAC began servicing the loan. And I
6 want to make it clear on the record that when I say
7 "GMAC" at that time would it have been Homecomings?
8 A It would have been Homecomings.
9 Q Thank you. And what date did they start
10 servicing the loan?
11 A It was boarded in in the system February 7th,
12 2007.
13 Q And does that predate the creation date of this
14 trust to your knowledge?
15 A Yes, it does.
16 THE COURT: February 7, 2007?
17 THE WITNESS: Yes, sir.
18 THE COURT: Thank you.
19 MR. DAUGHERTY: Your Honor, we pass the
20 witness at this time.
21 THE COURT: All right.
22 REDIRECT EXAMINATION
23 BY MR. WOOTEN:
24 Q Mr. Haughton, so now we've -- I think we've
25 heard the explanation of why we have two different

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1 promissory notes in the case. We had an original
2 copy and now we've got one that's got some
3 endorsements, right?
4 A Right.
5 Q And you testified earlier that Wells Fargo, who
6 is also the custodian for GMAC Mortgage, correct?
7 A Correct.
8 Q You testified that that is where you received
9 these documents from, correct?
10 A The original documents, yes.
11 Q Okay. Do you know if there is any required
12 form to request documents from the trustee for this
13 trust?
14 A From the trustee?
15 Q For this trust.
16 A No, I don't know.
17 Q In examining the collateral file, did you see
18 any evidence that a request had been made to the
19 trustee for this trust for the collateral file?
20 A No.
21 Q Did you personally make the request for the
22 original documents?
23 A No, I didn't. Our legal department did.
24 Q And the collateral file does not contain the
25 form the request was made on, correct?

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1 A No, it wouldn't be in the file.
2 Q Okay. With respect to the pooling and
3 servicing agreement for this trust, let me show
4 Page 93 of 117 and call your attention specifically
5 to Exhibit G.
6 A Okay.
7 Q Does that document indicate that is a request
8 for release of documents for pooling and servicing
9 agreement.
10 THE COURT: Does it say what? Repeat
11 that, please.
12 Q Does it indicate that it is a request for
13 release of documents from the trustee for this
14 trust?
15 MR. DAUGHERTY: Take your time and read
16 through it if you need to.
17 A It says it's a request for the release of the
18 mortgage loan file described below.
19 Q Does it have a place to put in the pooling and
20 servicing agreement date?
21 A It does.
22 Q The series date?
23 A Yes.
24 Q The account number?
25 A Well, it says, series number. I don't think it

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1 has a series date.
2 Q Well, I'm sorry. The series number?
3 A Yes.
4 Q The account number?
5 A Yes.
6 Q A pool number?
7 A Correct.
8 Q A loan number?
9 A Yes.
10 Q A MIN?
11 A What's that?
12 Q M-I-N, MIN. What's a MIN number?
13 A I'm not sure what that is.
14 Q Are you familiar with MERS?
15 A Yes.
16 Q Do you know if MIN might stand for Mortgage
17 Identification Number on the MERS system?
18 A It could. I don't look at the MERS system.
19 Q And in the document you reviewed in Ms.
20 Congress's file, did you see any document like this
21 requesting a release of documents from a trustee?
22 A No, I didn't.
23 Q Do you know what the trustee's responsibilities
24 are to segregate and maintain their assets under
25 this agreement?

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1 A What do you mean by that, to segregate and
2 maintain their assets?
3 Q Do you know what the trustees responsibilities
4 are under this agreement to have this trust assets
5 segregated and marshalled and maintained so that
6 they are identifiable?
7 A Yes.
8 Q Okay. You're familiar with those requirements?
9 A Well, generally, I am. The certain loans in
10 this pool has to be maintained just in this pool of
11 loans.
12 Q Okay. And with respect to that, if you would,
13 please, sir, flip back to Page 89 of that document.
14 Do you see the document listed as Exhibit 1?
15 A Yes, I do.
16 Q Does that say that that is a custodian's
17 certification?
18 A It's titled: The Form of Custodian's Initial
19 Certification.
20 Q Okay. And does that document indicate that the
21 custodian has, in this certification, is certifying
22 they received a custodian file which contains the
23 original mortgage note or a lost note affidavit?
24 A Yes, it does.
25 Q Did you see a document like that in this

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1 collateral file?
2 A No, I did not.
3 Q Have you seen a document like that in
4 association with Ms. Congress's loan?
5 A No.
6 Q In reviewing the collateral file, do you see
7 any document that indicates in the collateral file
8 that there is a specific trust named?
9 A I don't believe so.
10 Q Okay. Looking at the endorsements on the
11 allonge, in reviewing the endorsements on the
12 allonge, please point out any evidence on the
13 allonge that indicates what trust is the owner of
14 this loan?
15 A It does not point that out. It does not
16 evidence that on the allonge.
17 Q Okay. So if we assume that the allonge is a
18 valid document and it's considered as part of the
19 evidence, does the allonge convey in the trust who
20 is the plaintiff in this case?
21 A It -- well, the last one is paid to the order
22 of U.S. Bank National Association as Trustee.
23 Q You mentioned very early on that you have no
24 familiarity with securitization at all; is that
25 right?

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1 A No, I didn't say that. I am familiar with
2 securitization. I don't know a lot of the
3 specifics about securitization.
4 Q Have you ever heard of the term "series trust?"
5 A Yes.
6 Q Tell the Court what you know about the
7 definition of a series trust.
8 A I don't know the definition of it. I've simply
9 heard that term.
10 Q Do you know if the series trust might be one of
11 several in sequence that involve the same parties
12 but create separate pools?
13 A No, I don't know that.
14 Q Is there anything about the allonge that
15 identifies a specific trust?
16 A No.
17 Q It just says U.S. Bank as trustee?
18 A U.S. Bank National Association as Trustee.
19 Q If you will open the collateral file that we
20 just marked, I'll show this document to you.
21 MR. WOOTEN: I am referring, Your Honor,
22 to next to last page of the collateral file.
23 Q I apologize for standing right here beside you.
24 A That's all right.
25 Q But I want to call out to your attention the by

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1 line, and let's just, first of all, talk about what
2 this page is.
3 That is a bar code label to identify documents
4 being scanned to a collateral file; is that right?
5 A I believe so, yes.
6 Q Or delivered; is that right?
7 A Right.
8 Q And what does it say is being delivered?
9 A An allonge.
10 Q Can you please read across the bottom of the
11 document where the document identification
12 information is? Please read this portion right
13 here where it says "desktop."
14 A It says: Desktop back slash new doc type
15 sheets back slash N-A-L-G doc doc.
16 Q Desktop. That's a term we heard early on in
17 your testimony, wasn't it?
18 A Regarding what?
19 Q As in LPS Desktop who manages your
20 foreclosures, right?
21 A That's a system used to -- for our foreclosure
22 attorneys to converse back and forth with our
23 foreclosure department.
24 Q And that document says desktop.
25 A It does.

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1 Q And it says new document.
2 A It says new doc type sheets.
3 Q Desktop new document, last document in the
4 custodial file; is that fair?
5 A Yes.
6 Q And it certainly isn't part of the note that
7 was signed by Ms. Congress, is it?
8 A No, it wasn't.
9 Q Do you have any experience with purchasing or
10 making rubber stamps?
11 A No.
12 Q Would it be hard to get a rubber stamp made
13 that has the name EMAX Financial Group, LLC on it?
14 MR. DAUGHERTY: Objection, Your Honor, it
15 calls for speculation with regard to a stamp made.
16 THE COURT: Overrule.
17 A No, it wouldn't be hard.
18 Q Take a moment and look at the stamp on the
19 allonge because it is a stamped, right?
20 A Which one?
21 Q EMAX Financial. Which stamp? That's a good
22 question. The EMAX Financial Group stamp.
23 A Do you mean the signature or the -- without
24 recourse pay to the order of?
25 Q You mean the stamped signature?

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1 A Uh-huh.
2 Q Which stamped signature?
3 A I didn't say there's a stamped signature. I'm
4 asking what you're referring to as the stamp.
5 Q EMAX Financial Group, LLC?
6 A Okay.
7 Q Flip back to earlier in the collateral file
8 where the endorsement is now filled in with a stamp
9 to EMAX Financial Group, LLC.
10 A I'm sorry. Where do you want me to flip to?
11 Q Flip back to the early part of the collateral
12 file, the last page of the note where there used to
13 be a blank endorsement. Take a look at the file in
14 EMAX Financial Group, LLC. That's also a stamp,
15 right?
16 A It appears to be. It's printed.
17 Q Okay. Is there anything about that collateral
18 file that you can say would indicate that no one
19 could go in and stamp EMAX Financial Group into
20 that blank endorsement?
21 A I'm sorry. I'm not following your question.
22 Say it again.
23 Q Well, let's just say yesterday this had a blank
24 endorsement, nothing about your custodial file
25 would give us any information as to who's requested

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1 it? When? Who's had access to it? When?
2 Correct?
3 A There are records kept with the custodian of
4 who's requested the forms, but I don't know that
5 they're kept in the file.
6 Q Uh-huh. And my question is: There is nothing
7 in the documents you've given us that we could rely
8 on to say that no one has had access to the
9 original promissory note to stamp in the name EMAX
10 Financial Group, LLC in the last few weeks or days?
11 A No.
12 Q Compare the stamp on the note to the stamp on
13 the allonge, please, sir.
14 Can you tell whether EMAX Financial Group is
15 stamped on the allonge?
16 A Well, I mean, it's printed. It says, "without
17 recourse, pay to the order of." And then It says,
18 "Residential Funding Company, LLC, EMAX Financial
19 Group, LLC by John Higbock.
20 Q Let's talk about Mr. Higbock signature. Do you
21 know Mr. Higbock?
22 A No, I don't.
23 Q Do you work with him?
24 A No.
25 Q Have you ever seen his signature before?

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1 A No.
 2 Q Can you tell from that document if his
 3 signature has been added to that document
 4 digitally?
 5 A No.
 6 Q Can you tell if that signature was stamped onto
 7 that document?
 8 A No.
 9 Q You are certain that the right trust is
 10 foreclosing, right?
 11 A Yes, I have every belief that it is.
 12 Q So nothing about those endorsements can give
 13 any of us in this room any certainty of the trust
 14 that is the owner of that loan, right?
 15 A That's correct.
 16 Q It's completely confiscated or a morphis? In
 17 other words, the only name that we can tell is the
 18 trustee's name and nothing else, right?
 19 A Right.
 20 Q And you have no knowledge of what the industry
 21 standards and customs and practices were with
 22 respect to the endorsement of a promissory note in
 23 the securitization process, do you?
 24 A No, I guess not. No.
 25 Q Do you have any knowledge of when it was proper

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1 or not to use an allonge to attempt to endorse a
 2 promissory note?
 3 A It used to be that you would have to fill out
 4 the entire promissory note and then you could move
 5 and have an allonge.
 6 Q Right. And isn't it true that you used to also
 7 tax the allonge in such a manner that it couldn't
 8 be pulled away from the promissory note or
 9 detached?
 10 MR. RAGSDALE: Is he asking for a legal
 11 conclusion?
 12 MR. WOOTEN: I'm asking his --
 13 THE COURT: He's asking about the way he
 14 used to handle it.
 15 MR. RAGSDALE: Okay.
 16 A Used to handle it when?
 17 Q When you said you used to use the endorsement
 18 and allonge only after all the spacing on the note
 19 had been filled in, right?
 20 A Right.
 21 Q And that's not just front. That's back also,
 22 right?
 23 A I believe so.
 24 Q So if they got to the point of using an
 25 allonge, is it not true, sir, that usually the

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1 allonge was attached in such a way it couldn't be
 2 separated from the note?
 3 A I don't know. It would depend on the
 4 individual handling the document.
 5 Q Do you know what the industry standards were
 6 for the use of that type of document?
 7 A No.
 8 Q And certainly you don't know anything about
 9 legal rules for use of that type of document?
 10 A No.
 11 Q Let me show you another one of these SEC
 12 documents and see if this loan number looks
 13 familiar to you. Can you look at -- let's see --
 14 this document right here, this asset cover sheet.
 15 Is that the ID Number 10625616?
 16 A It is.
 17 Q Is that the same one right here in this SEC
 18 filing?
 19 A Yes, it is.
 20 Q And does this says 9-1-06?
 21 A It does.
 22 Q And that would be before this document is dated
 23 10-7-06, right?
 24 A Before this cover sheet is dated.
 25 Q The cover sheet, right.

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1 You understand this is like a print off in the
 2 SEC schedule of loans?
 3 A Yes, I do.
 4 Q Is this another page -- normally these pages
 5 would be beside each other, right?
 6 A Right.
 7 Q And this is another page. It says 10625616
 8 also?
 9 A Correct.
 10 Q Look at the page, one more page. And does this
 11 also say 10625616?
 12 A It does.
 13 Q And I think that is all the pages that were
 14 associated with this loan profile.
 15 What is the name of the trust where that loan
 16 number shows up, please, sir?
 17 MR. DAUGHERTY: To the extent you know.
 18 I'm not sure if he's asking him to read it, Judge.
 19 I'm just unclear about the question, so I will
 20 object to that extent.
 21 THE COURT: Overrule.
 22 Q What does that say right here? It says RASC
 23 Series 2006. Series 2006, right?
 24 A Right.
 25 Q And what does that last part of that name?

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1 A EMX9 Trust. 2 Q Series 2006-EMX9 Trust; is that right? 3 A Correct. 4 Q And that's not the name of the plaintiff in 5 this lawsuit, right? 6 A No. 7 Q This is a different trust, right? 8 A It is a different name. 9 Q One of a series, right? 10 A Right. 11 Q And is this another document for that same 12 2006-EMX9 Trust dated January 2nd of '07. And this 13 is Exhibit 99.1 the distribution statement which is 14 referring to this list of loans, right? 15 A Yes. 16 Q Okay. And this says the issuing entity is RASC 17 Series 2006-EMX9 Trust. Right? 18 A Yes. 19 Q And we agree that all the foreclosure documents 20 in this case do not name the plaintiff in this 21 case, right? 22 A Right. 23 Q But this trust documents show Ms. Congress's 24 loan to be in a different trust than the plaintiff 25 in this case?	1 in the data base that they maintain. 2 MR. DAUGHERTY: So he says. 3 THE COURT: Is the witness coming down? 4 MR. WOOTEN: Yes, sir. 5 THE COURT: Then on the representation, I 6 overrule the objection. 7 Q Okay. Now -- 8 THE COURT: I mean, I don't want this 9 witness to have to stay here and go on for weeks 10 and be called back after the document is admitted. 11 MR. DAUGHERTY: I agree, Judge. 12 THE COURT: All right. 13 Q Now -- 14 MR. WOOTEN: And Judge, we've not marked 15 this document. We want to mark it at this time and 16 offer it as SEC filings from this particular trust. 17 MR. DAUGHERTY: And we would object to 18 that, Your Honor, until such time as he wants to 19 move to admit it. 20 THE COURT: All right. All three of these 21 are being marked for identification. What's your 22 number? 23 MR. WOOTEN: It will be 2, Your Honor. 24 THE COURT: Defendant's 2. 25 MR. WOOTEN: We'll also authenticate it
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1 A If those pages at the back go with the front 2 pages, yes. 3 Q Sure. Well, let's check that so we can be 4 certain because I thought you might ask that 5 question. 6 Across the heading at the top of this page, 7 does it also say RASC Series 2006-EMX9 Trust free 8 writing prospectus which is FWP? 9 A Yes, it does. 10 Q And does it say that that is on 10-23 of '06? 11 A Yes. 12 Q And the other page that has her number, does it 13 also say these same trust name? 14 MR. DAUGHERTY: Your Honor, I'm going to 15 object to any further use of this document until we 16 establish some kind of foundation or -- I was going 17 to let him read from it for a period of time. I'm 18 going to go ahead and object to his further use of 19 it because there is absolutely no foundation for 20 that document in this case. 21 MR. WOOTEN: Judge -- 22 THE COURT: What is the document? 23 MR. WOOTEN: The document is an officially 24 filed document with the federal government to the 25 Securities and Exchange Commission that's contained	1 with the experts as well. And I'm just going to 2 mark the inside of the binder on the first page, so 3 it will stick to something. The outside is 4 laminated. 5 (Whereupon, Defendant's Exhibit 6 Number 2 was marked for 7 identification.) 8 Q Do you know how many trust are in the series 9 that includes the plaintiff who is named in this 10 case? 11 A No, I don't. 12 MR. WOOTEN: I'm also going to mark this 13 for identification, Your Honor. Judge, for 14 purposes of identification and cross-examination, 15 I'll mark this as 3. 16 (Whereupon, Defendant's Exhibit 17 Number 3 was marked for 18 identification.) 19 THE COURT: All right. Defendant's 3. 20 What is it? 21 MR. WOOTEN: This is a search of the SEC 22 document filings by the SEC file number for 23 Residential Asset Securities Corporation, which is 24 333031209. 25 MR. DAUGHERTY: Your Honor, we're going to

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<p>1 object to at least --.</p> <p>2 MR. WOOTEN: It's for identification and</p> <p>3 we will authenticate it further on.</p> <p>4 Q Let me represent to you, Mr. Haughton, that</p> <p>5 that is the result of the search that I did on the</p> <p>6 SEC file number for Residential Asset Securities</p> <p>7 Corporation who is listed as the depositor of the</p> <p>8 plaintiff in this case, correct?</p> <p>9 MR. DAUGHERTY: Your Honor, I believe I'm</p> <p>10 going to go ahead and put my objection on record to</p> <p>11 a document that Mr. Wooten searched for and is</p> <p>12 providing to the witness who is not here to testify</p> <p>13 to others SEC filings?</p> <p>14 THE COURT: What are you going to ask him</p> <p>15 about it?</p> <p>16 MR. WOOTEN: I'm just showing him an</p> <p>17 identification of the list of Series Trust.</p> <p>18 THE COURT: Well, he wouldn't know</p> <p>19 anything about that.</p> <p>20 MR. WOOTEN: Just as far as the number</p> <p>21 that's shown by that chart.</p> <p>22 THE COURT: Overrule.</p> <p>23 Q (BY MR. WOOTEN:) In looking at this, are there</p> <p>24 seventeen distinct trusts which are listed as</p> <p>25 series trusts which are numbered by using the SEC</p>	<p>1 show when they went into the system allegedly,</p> <p>2 right?</p> <p>3 A Correct.</p> <p>4 Q So, when the note was sent to the collateral</p> <p>5 file, a cover sheet with a bar code, that indicated</p> <p>6 what documents went to the collateral file, right?</p> <p>7 A That's right.</p> <p>8 Q And the allonge clearly was the last document?</p> <p>9 A The last document in the file.</p> <p>10 Q After the title policies, after the mortgages,</p> <p>11 the last thing, right?</p> <p>12 A Yes.</p> <p>13 Q And the footer identifying the scan sheet says</p> <p>14 "desktop slash new document." Do you want me to</p> <p>15 show it to you?</p> <p>16 A It did.</p> <p>17 THE COURT: Here's the copy.</p> <p>18 Q And LPS Desktop is the software platform your</p> <p>19 company uses with the attorneys to manage the</p> <p>20 foreclosure?</p> <p>21 A Did you say is it LPS Desktop?</p> <p>22 Q LPS Desktop is the software platform your</p> <p>23 company uses to manage foreclosure process with its</p> <p>24 attorneys?</p> <p>25 A Yes, sir.</p>
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<p>1 file number for Residential Asset Securities</p> <p>2 Corporation and then begin with a dash 01 and go</p> <p>3 through dash 17?</p> <p>4 A Yes, there are.</p> <p>5 Q And you know nothing about the contents of</p> <p>6 those files, right?</p> <p>7 A No, I don't.</p> <p>8 Q Do you have any idea how many of these trust</p> <p>9 have the same parties from right here to right</p> <p>10 here, from Mortgage Lenders Network, EMAX</p> <p>11 Financial, Residential Funding, and Residential</p> <p>12 Asset Securities Corporation?</p> <p>13 A No, I don't.</p> <p>14 Q Do you have any idea how many of those trust</p> <p>15 could hold the Congress note based on the timing of</p> <p>16 her loan?</p> <p>17 A No.</p> <p>18 Q Do you have any explanation as to why an</p> <p>19 allonge that was allegedly part of a securitization</p> <p>20 that took place by March 12th of '07 is the last</p> <p>21 document in your collateral file as opposed to</p> <p>22 being part of the collateral file that includes the</p> <p>23 note?</p> <p>24 A No, I don't.</p> <p>25 Q Because they're separated by scan sheets which</p>	<p>1 Q Does it make sense to you, Mr. Haughton, that</p> <p>2 if the allonge was done as apart of the</p> <p>3 securitization that it would have been with the</p> <p>4 promissory note?</p> <p>5 A Not in all cases because it was assigned to</p> <p>6 different entities.</p> <p>7 Q Well, wouldn't -- if this process had been</p> <p>8 completed prior to delivering to your trustee,</p> <p>9 would not the allonges, if they were done, be there</p> <p>10 when the note got there? Wouldn't those steps have</p> <p>11 already taken place, sir?</p> <p>12 A Yes. But that's why there's MERS.</p> <p>13 Q MERS has nothing to do with promissory note,</p> <p>14 does it?</p> <p>15 A No. They're the --</p> <p>16 Q Mortgagee of record?</p> <p>17 A Right.</p> <p>18 Q Right. They don't have anything to do with the</p> <p>19 note, right?</p> <p>20 A Correct.</p> <p>21 Q So if the note traveled through securitization</p> <p>22 process and made it to this trustee, the allonge</p> <p>23 created these steps would have made it with the</p> <p>24 note, would it have not?</p> <p>25 MR. RAGSDALE: I'm sorry. Could you</p>

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1 repeat the question?
2 MR. WOOTEN: Could you read it back?
3 (Requested portion of record read.)
4 A Not if there was a need for that allonge at
5 that point.
6 Q Okay. So if the securitization documents
7 require an endorsement between this party from
8 Mortgage Lenders Network to EMAX Financial, from
9 EMAX Financial to Residential Funding who then
10 endorsed the trust, and that's what the document
11 said was required, that would have been done prior
12 to March 12th of '07, when the note was delivered
13 to the trust, right?
14 A If that was what it stated.
15 Q Right. One last question about the allonge --
16 well, two. You mentioned that the collateral file
17 was delivered first to a paralegal, right?
18 A I'm sorry. To a what?
19 Q To a paralegal?
20 A Oh, yes.
21 Q What was her name?
22 A Chantell Fain.
23 Q Chantell Fain. She doesn't have anything
24 competitively to do with the foreclosure for your
25 company, does she?

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1 A No, she does not.
2 Q She doesn't have anything to do anything with
3 employment with LPS, does she?
4 A With what?
5 Q She's not also employed by LPS, is she?
6 A No.
7 Q She's not on-site of LPS?
8 A No.
9 Q You know what on-site is, right?
10 A Yes.
11 Q That's somebody from LPS at your facility?
12 A Right.
13 Q Looking at these kinds of problems, right?
14 A Yes.
15 Q Yes. Do you know what your paralegal did with
16 the file between the time she got it and it got to
17 you?
18 A She received it from FedEx and she brought it
19 to me.
20 Q Do you know what the time frame was for that
21 process to take place?
22 A She brought it to me the same day she received
23 it.
24 Q How much time lapsed?
25 A I don't know.

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1 Q Do you know if your company has preprinted
2 forms that have allonge information on it?
3 A That says allonge at the top or it says what?
4 Q Yeah. Let me ask you: Does this look an awful
5 lot like the allonge that --
6 MR. DAUGHERTY: I'm going to object to
7 using that exhibit until we look at it first.
8 THE COURT: All right. Let him look at
9 it.
10 MR. WOOTEN: I can give him an extra one
11 too.
12 MR. DAUGHERTY: That's fine
13 MR. WOOTEN: I've got a few.
14 THE COURT: All right. Go ahead.
15 Q Does this allonge look an awful lot like the
16 allonge that's in your collateral file?
17 A Yes, it does.
18 Q Does it even have the bar coding on it.
19 THE COURT: The what? The bar what?
20 Q The bar coding.
21 A This one you just gave me does.
22 Q The only difference between this one and the
23 one that's in your collateral file stamps, right?
24 A And a signature.
25 Q A signature?

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1 A Well, John Higbock and Judy Faber.
2 Q Stamps and a signature. Is it your testimony
3 that you believe that the signature of John Higbock
4 is an original written signature?
5 A I don't know. I have a copy, so I don't know.
6 Q Okay. Fair enough. I mean, is that your
7 impression that it was signed by John Higbock?
8 A I'd have to look at it.
9 Q And what's conspicuous is the signatures on the
10 document in your collateral file, all those people
11 are employed right here, right, Residential Funding
12 Company, LLC?
13 A Judy Faber signed for Residential Funding
14 Company, LLC.
15 Q And what does Mr. Higbock say in his document?
16 What does it say under his signature?
17 A Assistant Vice President Residential Funding
18 Company, LLC as attorney in fact, for EMAX
19 Financial Group, LLC.
20 Q So you have a vice president of RFC, the party
21 in the middle of this, signing as attorney in fact
22 for the party prior to this?
23 A Correct.
24 Q On the last document to enter the collateral
25 file?

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1 A Correct.
2 Q Which seems pretty accurately reproduced right
3 here, right?
4 MR. RAGSDALE: What's that?
5 Q With the exception of signatures, stamps?
6 A Yes.
7 Q Do you have any idea of the complexity of the
8 technology involved in stamps that go on this?
9 A No, not really.
10 Q Do you have any idea about how quickly you can
11 get your hands on stamps with this information
12 that's on your collateral file?
13 A No.
14 Q Do you even know whether the contents of that
15 file are digital images drag and dropped onto this
16 document?
17 A No.
18 Q Anything about your bar coding unique or
19 special on this document?
20 A Which document?
21 Q The allonge?
22 A The blank one.
23 Q Or the one in your collateral file?
24 A No.
25 MR. WOOTEN: Your Honor, I want to do this

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1 for the benefit of the Court. It's a bar code
2 scanner on this phone. The two documents, the bar
3 code on --
4 MR. DAUGHERTY: Your Honor, I guess I'm
5 going to have to object to the demonstrative
6 evidence and the lack of foundation that it's a
7 working bar code scanner.
8 THE COURT: Well, you can cross-examine
9 him for it.
10 MR. DAUGHERTY: I don't have a bar code
11 scanner.
12 MS. HOOD: Do you want to borrow one?
13 MR. WOOTEN: There we go.
14 Q Now, does that bar code read out to the loan
15 number on the allonge?
16 A It says, found and play text 10625616.
17 Q Does that agree with the Loan ID Number beside
18 the bar code?
19 A Yes, it does.
20 Q And that's on bar code for the blank one,
21 right?
22 A Correct.
23 Q That's the one I handed you. Flip it back to
24 the one on your documents. Does that also indicate
25 the same information as on the blank allonge?

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1 A Yes, it does.
2 Q And that's the loan number, right?
3 A Right.
4 Q Nothing else?
5 A No.
6 Q It doesn't indicate a trust number or a pool
7 number or anything like that?
8 A No.
9 Q I obviously haven't had any access to your
10 computer system, have I?
11 A Not that I know of.
12 Q But from looking at the blank document, other
13 than stamps and signatures, it has everything that
14 the document in your collateral file has, right?
15 A Right.
16 MR. WOOTEN: Tender the witness.
17 THE COURT: All right. Any further cross?
18 MR. DAUGHERTY: Yes, Judge. I'll try to
19 be brief.
20 RE-CROSS-EXAMINATION
21 BY MR. DAUGHERTY:
22 Q You have a copy of the collateral file still
23 with you there?
24 A I do.
25 Q Have you ever used a computer before,

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1 Mr. Haughton?
2 A Yes, I have.
3 Q Are you familiar with a document ID?
4 A Yes, I am.
5 Q Is that stamped on the bottom of the document?
6 A Yes.
7 Q Are you familiar with the C Drive of what your
8 computer is?
9 A Yes, I am.
10 Q Are you familiar with the fact that you have a
11 desktop folder in your C Drive?
12 A Yes.
13 Q Are you familiar with the fact that whenever
14 you create a document you can put that file
15 location in the footer of the document?
16 A Yes, I am.
17 Q Would it look a lot like the footer of that
18 document?
19 A It would.
20 Q And I want to ask you --
21 MR. DAUGHERTY: This is actually not a
22 complete copy, Judge, and I'm going to have to have
23 this redone of this collateral file because it cut
24 off the very top of this scan sheet, I just
25 noticed. So I'm going to go back to the original

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<p>1 and use it for purposes. 2 MR. RAGSDALE: We'll check and confirm it 3 before printing -- 4 MR. WOOTEN: Which one are we talking 5 about? Show me. 6 MR. DAUGHERTY: All right. 7 Q Now, whenever you look at this document, that 8 has the desktop folder of the C Drive on it in 9 document and settings, right? 10 A Yes, it does. 11 Q And it's a doc doc, which means it's a word 12 document. 13 A Yes. 14 Q And at the top does it have a date on it? 15 A It does. 16 Q What does that date say? 17 A 8-29-2007. 18 Q 2007? 19 A 2007. 20 Q I want to go backwards through the file at this 21 point. 22 A Okay. 23 Q Here we run across another scan sheet. And the 24 footer of that document is a little bit different. 25 What does it look like it's off of?</p>	<p>1 Q Is it the original mortgage with Ms. Congress's 2 blue ink signature on it? 3 A Her initials and her signature on the last 4 page. 5 Q Okay. Thank you. 6 MR. DAUGHERTY: Judge, do you want to see 7 any of that? 8 THE COURT: No. 9 MR. DAUGHERTY: Do you have the PSA that 10 you let him read from earlier? 11 MR. WOOTEN: We've got copies of it, yeah. 12 The PSA, they're all the same. 13 Q (BY MR. DAUGHERTY:) Mr. Wooten had you read 14 from this earlier, from this Exhibit 4, the PSA 15 which is a form of Request for Release. What are 16 the reasons that it gives for that document 17 request? 18 A Starting right here? 19 Q Yes. 20 A We certify -- I'm sorry. "We hereby certify 21 that all amounts received or to be received in 22 connection with such payments which are required to 23 be deposited have been or will be so deposited as 24 provided in the pooling and servicing agreement." 25 Q And so -- and then the reasons for document</p>
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<p>1 A It's from the F Drive. It says GMAC Mortgage 2 back slash GMAC M master forms back slash new doc 3 type sheets. 4 Q Does that one also have a date on it? 5 A Yes, it does. It's 8-29-07 as well. 6 Q And I'm going to skip up to the scanner sheet 7 for the title policy and ask you to take a look at 8 that one and talk about the document footer on that 9 one. 10 A It's C colon back slash documents and settings 11 back slash scan 05 back slash desktop back slash 12 new doc type sheets back slash TPOL doc doc. 13 Q And does that scan sheet have a date on it? 14 A It does. 8-29-07. 15 Q Okay. And I'm going to show you this next one 16 which is the cover sheet for the mortgage. Does it 17 also have a footer on it? You don't have to read 18 the whole thing. Just tell me what drive it's from 19 and what folder on the computer? 20 A C desktop new doc type sheets. 21 Q Does it have a date on it? 22 A It does. 8-29-07. 23 Q All right. Please flip to the document behind 24 that scan sheet and tell me what it is. 25 A It's the mortgage.</p>	<p>1 request, what are those two possible reasons? 2 A Mortgage loan repaid in full. Mortgage loan 3 repurchased. 4 Q Now, then, Mr. Wooten was trying to imply that 5 no request was ever made for that collateral file 6 pursuant to this exhibit. And has Ms. Congress's 7 loan been paid off? 8 A No. 9 Q Has it been repurchased? 10 A No. 11 Q Has it been foreclosed? 12 A Yes, it has. 13 Q Mr. Haughton, it's been implied that 14 Ms. Fain got this collateral file, took it to her 15 office, pulled out her big box of rubber stamps, 16 stamped the document, gave it to you, which you 17 gave it back to her and then sent it to us. Is 18 that what happened? 19 A Absolutely not. 20 Q Is that something you have ever done or would 21 ever see in your practice? 22 A Never. 23 MR. DAUGHERTY: Your Honor, pass the 24 witness again. 25 THE COURT: All right. Any other</p>

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1 questions? Let's make it brief. We've heard about
2 enough from this gentleman.
3 MR. WOOTEN: Judge, I'm going to let the
4 witness step down.
5 THE COURT: Sir?
6 MR. WOOTEN: I'm going to let the witness
7 step down.
8 THE COURT: All right. Thank you, sir.
9 THE WITNESS: Thank you.
10 THE COURT: All right. Next.
11 MR. WOOTEN: Your Honor, we would call
12 Chase Greene.
13 THE COURT: All right.
14 MR. DAUGHERTY: Your Honor, we reserve an
15 objection on the record that Mr. Green was not an
16 identified witness in the witness list, and we're
17 absolutely unsure at this point what his testimony
18 is going to be. I've never heard his name before
19 in my life.
20 MR. WOOTEN: Judge, Mr. Greene's testimony
21 is going to be that of a lay witness with respect
22 to rebuttal regarding the allonge document.
23 THE COURT: Well, why wasn't his name
24 given to the another side?
25 MR. WOOTEN: Well, because yesterday, Your

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1 Honor, when we were looking at the allonge document
2 trying to figure out what was on the stamps, we
3 took it to a local Staples store to see if it could
4 digitally recreated, and that's where Mr. Greene
5 works. And he has testimony about the contents of
6 the allonge document that are fact testimony in
7 relation to the document they've produced dealing
8 with digital images.
9 THE COURT: Well, if you all want, I will
10 postpone this testimony and give you time to depose
11 him this evening.
12 MR. RAGSDALE: I would love to hear what
13 he has to say.
14 THE COURT: All right. Go ahead. Let's
15 get him under oath.
16 CHASE GREENE,
17 having been first duly sworn, was examined and
18 testified as follow:
19 DIRECT EXAMINATION
20 BY MR. WOOTEN:
21 Q Chase, yesterday --
22 THE COURT: State your name, please, sir.
23 THE WITNESS: Chase Greene.
24 THE COURT: C-h-a-s-e?
25 THE WITNESS: Yes.

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1 THE COURT: Greene?
2 THE WITNESS: With and "e" on the end of
3 it.
4 THE COURT: With an "e." All right.
5 Thank you.
6 Q (BY MR. WOOTEN:) Tell us where you're
7 employed, Chase?
8 A Staples.
9 Q Okay. Where at?
10 A In the copy center.
11 Q Okay. And which Staple store?
12 A The one, 1204, located in Birmingham, Alabama.
13 THE COURT: Which Staples?
14 THE WITNESS: The one in Birmingham,
15 Alabama. It's 1204 Edwards Lake Road.
16 Q Is that over kind of toward Trussville, that
17 area?
18 A It's on the border of Trussville and
19 Birmingham.
20 Q Okay. And yesterday, did you happen to come in
21 contact with my co-counsel Mr. Grimsley?
22 A Yes, I did.
23 Q In the course of your employment?
24 A Uh-huh.
25 Q Did he present you with a document to look at

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1 to see if the images on document could be
2 reproduced?
3 A Yes.
4 Q Okay. Let me show you a copy of --
5 MR. WOOTEN: Did y'all take the collateral
6 file down?
7 MR. RAGSDALE: We've got a copy of it.
8 MR. WOOTEN: That's not the --
9 MR. DAUGHERTY: We can use it for now.
10 Q Okay. The document that you saw yesterday,
11 Chase, was it the document you just heard testimony
12 from Mr. Haughton about the allonge to the
13 promissory note in this case?
14 A Yes, it is. It's exactly the same document.
15 Q Did you undertake an analysis of that document
16 by running it through some of your computers there
17 at Staples?
18 A I did.
19 Q Okay. And what could you tell about that
20 document when you ran it through your system to see
21 if the images could be reproduced?
22 A It was fairly easy to reproduce.
23 Q Okay. And tell us, if you could, what in
24 particular jumped out at you when you looked at
25 this document based on your experience with digital

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1 images?
2 A There was a signature by a John Higbock.
3 Q What was the issue? Why did it jump out at
4 you?
5 A Normally when we do signature stamps there's a
6 proportional quality that comes with it for it to
7 be a valid. And this one was shrunk this way,
8 whereas a normal signature would have a certain
9 height to it. And this was made to either fit in a
10 PDF box or a stamp.
11 Q Okay. You indicated when you were testifying,
12 you made your hands come together as if you were
13 indicating it was a crushing down of the signature?
14 A Yeah, the height was diminished.
15 Q I'm sorry. What was the term?
16 A The height was diminished.
17 Q The height was diminished, yeah. Is there an
18 industry term for that?
19 A It's resizing.
20 Q Okay. And was there any alteration to the
21 signature other than collapsing the size of the
22 signature down?
23 A That's about it because the width from side to
24 side looks about accurate, right on the signature.
25 Q Did you, then -- after commenting about that

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1 signature, did you then print off enlarged copies
2 of that signature to show Mr. Grimsley?
3 A Yes, I did.
4 Q Are these the documents that you printed off to
5 show Mr. Grimsley the issues with the signature?
6 A Yes. I was showing him that it was a digital
7 image, it happens when you digitalize a image from
8 scanning it.
9 Q And so from viewing the document, were you able
10 to tell that the signature was a digitalized
11 signature which had been added to the document?
12 A Yes, sir.
13 Q Okay. For identification purposes, will you
14 tell me which is the signature that was diminished
15 of these two documents? Can you point, of the two
16 which one was pressed down?
17 A This is the one right here that -- the
18 original.
19 Q Okay.
20 A And the other one was the one I reproduced to
21 show them what it should look like.
22 Q All right. So let me, for purposes of
23 identification, I'm going to mark the one that you
24 copied or scanned --
25 A Uh-huh.

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1 Q -- as Defendant's Exhibit 4. Have I marked the
2 correct reproduction?
3 (Whereupon, Defendant's Exhibit
4 Number 4 was marked for
5 identification.)
6 A Yes.
7 Q And for our purposes of identification, I'm
8 going to mark the one that you reproduced, which is
9 Defendant's Exhibit 5.
10 (Whereupon, Plaintiff's Exhibit
11 Number 5 was marked for
12 identification.)
13 A Yes.
14 Q And is it your testimony that from your
15 experience dealing with digital images, that the
16 image had been altered to fit in the space on the
17 document?
18 A Yes.
19 Q Looking at the document and the exhibit, which
20 is the allonge, which the plaintiff is relying on,
21 what is important about the location of that
22 signature?
23 A What stood out to me was the fact that it
24 looked like a field when there's obviously plenty
25 of room for it to be signed.

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1 Q Okay. And when you say "a field," and you
2 mentioned like a PDF document --
3 A Yeah.
4 Q -- explain that to the Court.
5 A PDF document is basically like a word file that
6 is used by Adobe software, which is Adobe Acrobat.
7 What you can do is you can create personal forms
8 with that software. And when you have a form like
9 that, it's a field, which is basically just a
10 little box, and it has certain constraints where
11 you have to fit. So if the image was scanned or
12 stamped, it would have to be resized and it may
13 auto resize it in order to fit in that box.
14 Q Okay. So in other words a digital image had to
15 be altered to fill the space on that document?
16 A Right.
17 Q And that is the space where the signature is to
18 make an endorsement for Mr. Higbock to the next
19 party in the chain, right?
20 A Right.
21 Q Did you also analyse the signature on the stamp
22 from Ms. Favor?
23 A Yes, I did.
24 Q Is this the reproduction that you made of that
25 document?

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<p>1 A Yes, sir. 2 Q Why did you blow up that document, Chase? What 3 was significant about that document to you? 4 A I wanted to show Mr. Grimsley that the entire 5 portion of it looked like a stamp to me because the 6 way we make stamps, there's an actual dipping in 7 the stamp where the ink flow goes, and the first 8 portion to wear out is the center because of its 9 u-shape when you make the stamp. And what appeared 10 to be wrong with this is the entire center portion 11 was bowed out so it looked like an entire stamp of 12 a signature and the original text. 13 Q I'm going to mark this as Defendant's Exhibit 14 6. 15 (Whereupon, Defendant's Exhibit 16 Number 6 was marked for 17 identification.) 18 Q And it's your testimony to the Court, Chase, 19 that you produced these documents as you were 20 explaining the problems that you saw with the 21 digitalized images that were on this document? 22 A Yes, it is. 23 Q Okay. Could you tell from what you looked at 24 whether that file -- whether those digitalized 25 images had been added by stamp or by dragging and</p>	<p>1 THE COURT: I'm going to overrule the 2 objection. You can cross-examine him. Go ahead. 3 MR. WOOTEN: Okay. 4 Q Well, I'm not offering you as an expert, 5 Chase, but I am -- 6 THE COURT: Just ask him the question. 7 Q How many digital images do you come in contact 8 with on a daily basis in your employment there? 9 A Several. 10 Q Several. And are you familiar with the ways 11 that these images can be altered and changed and 12 manipulated? 13 A Yes. I do it myself personally as a graphic 14 designer. 15 Q Okay. So that would be a distorted view just 16 for purposes of creating a different effect or look 17 in graphic design? 18 A Definitely. 19 Q Okay. The form itself, the allonge form, what 20 can you tell the Court about the text that was 21 added to the allonge form that you could identify 22 when you scanned it into that computer system there 23 where you worked? 24 A What about it specifically? 25 Q Well, are there different sections in that</p>
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<p>1 dropping a separate image onto the document? 2 MR. RAGSDALE: Objection. I've indulged 3 as much as I can, but this gentleman is not an 4 expert on document production. There has not been 5 a foundation laid for any of this as to what he 6 might speculate how this document was created. I 7 don't think he's qualified as an expert. I've not 8 been to this particular Staples, but I don't 9 believe that they train people there on document 10 authentication, verification of handwriting 11 analysis, document verification, any of the things 12 that might qualify you for it. 13 I've got a fourteen year old who is pretty good 14 with Microsoft, but I wouldn't put him on the stand 15 as an expert. 16 MR. WOOTEN: Well, I haven't offered him 17 as an expert, Judge. 18 MR. RAGSDALE: Well, you just asked him 19 for his expert opinion, didn't you? 20 MR. WOOTEN: No, I didn't. I asked him in 21 his opinion -- 22 THE COURT: Well, that's an expert 23 opinion. I don't think a lay person can answer 24 that. 25 MR. WOOTEN: Well --</p>	<p>1 document as far as the text? 2 A Yes. The thing that struck me was everything 3 looked to be added after the fact with the plain 4 text being preprinted. 5 Q Okay. Could you identify the font in plain 6 text? 7 A The font is actual aerial. 8 Q Okay. 9 A Do you know what size the font is? 10 A It looks to be an eleven point or twelve point 11 font. 12 Q Okay. And is that a common font -- 13 A Yes, it is. Very common. 14 Q -- in computing? 15 How long would it take to generate a form with 16 that information on it digitally? 17 A Probably five to ten minutes max. 18 Q Okay. 19 MR. WOOTEN: Tender the witness. 20 THE COURT: All right. 21 CROSS-EXAMINATION 22 BY MR. RAGSDALE: 23 Q Do you mind if I call you Chase? 24 A Not at all. 25 Q We haven't ever met before, have we?</p>

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<p>1 A No, sir. 2 Q I don't think I've ever been in that Staples. 3 A No, sir. 4 Q How long have you worked at Staples? 5 A Five years. 6 Q And what did you do before that? 7 A Nothing. It was actually my first job. 8 Q Okay. And tell me how far you have gotten in 9 school? 10 A I actually did two years at Jeff State. 11 Q And do you have an AA Degree from Jeff State? 12 A No, sir. 13 Q And have you had any special training on 14 document verification, any classes or training 15 about that other than your five years at Staples? 16 A No, sir. 17 Q Have you ever forged or fabricated a document? 18 A I have the ability, but no. 19 Q You wouldn't do that, would you? 20 A It's against company policy to do something 21 like that. 22 Q It might even be against the law, right? 23 A Yes, of course. 24 Q Now, have you look at the original of this 25 document, the allonge?</p>	<p>1 that's the one you say is digitally done, right? 2 A That's what I believe it to be, digital, yes. 3 Q Okay. Do you know if there's anything wrong 4 with a digital signature? 5 A It can be fake. 6 Q Oh. 7 A You can pull it off anybody's check. You can 8 pull it off -- 9 Q And just stick it on there, right? 10 A You can pull it off a petition. 11 Q You don't, of course, have any knowledge about 12 whether or not GMAC fabricated this document, do 13 you? 14 A No factual knowledge. 15 Q None at all. 16 A Just my personal opinion. 17 Q Your personal opinion is that they fabricated 18 this document? 19 A Yes, because I could easily could reproduce 20 that with anybody's signature. 21 Q Well, let me ask you this: Do you know about 22 the internet? 23 A Yes. 24 Q Can you pull documents off the internet and 25 claim them to be something that they're not?</p>
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<p>1 A Is that it? 2 Q Yes. No? 3 A No, I haven't. 4 MR. RAGSDALE: Is it all right if I 5 separate it long enough to show it to him? 6 They do not trust me with this. 7 THE COURT: Just don't leave the 8 courtroom. 9 MR. RAGSDALE: I'm going to tell you that 10 right now. 11 Q Here is the, what we purport to be the original 12 of that document. You can tell, can't you, that 13 the thing says "Residential Funding Company." 14 That's a stamp, isn't it? 15 A Yes, sir. 16 Q No doubt. 17 A Without a doubt. 18 Q You don't even have to work at Staples to see 19 that's stamp? 20 A No. 21 Q And this right here, that's a stamp too, isn't 22 it? 23 A Definitely. 24 Q Okay. And then this signature right here that 25 I can't read at all, what we think is John Higbock,</p>	<p>1 A Yes. 2 Q So just something that comes off the internet 3 may have a heading on it that says it's a 4 particular document. It could be anything? 5 A Yes. 6 Q People are talented at fabricating that stuff, 7 aren't they? 8 A That's right. 9 Q We're going to keep our I open for that stuff. 10 Let me ask you this: You don't understand the 11 UCC, do you? You don't know whether or not, for 12 example, a digital signature satisfies the 13 requirements for the Uniform Commercial Code in 14 Alabama? 15 A No, sir. 16 Q That's not within your training and purview? 17 A Right. 18 MR. RAGSDALE: Judge, we would move to 19 strike Mr. Greene's testimony in its entirety. 20 THE COURT: Motion denied. 21 MR. WOOTEN: Judge, we would offer 4, 5, 22 and 6 Defendant's, which he's testified to with his 23 reproduction -- 24 MR. RAGSDALE: We would object to all 25 those documents</p>

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<p>1 THE COURT: They're admitted over 2 objection. 3 (Whereupon, Plaintiff's Exhibit 4 Numbers 4, 5, and 6 were received 5 into evidence.) 6 MR. WOOTEN: Thank you Chase for being 7 here. 8 THE COURT: All right. Next. 9 MR. WOOTEN: We would call Tom Adams, Your 10 Honor. 11 THE COURT: All right. Does anybody need 12 a break? 13 MR. RAGSDALE: Can we have five minutes. 14 THE COURT: Five minutes. Sorry. 15 THE WITNESS: That's all right. 16 THE COURT: All right. Five minutes. 17 (Short recess.) 18 THE COURT: Come up, please, sir. 19 THOMAS J. ADAMS, 20 having been first duly sworn, was examined and 21 testified as follows: 22 DIRECT EXAMINATION 23 BY MR. WOOTEN: 24 Q Tom, will you please tell the Court your full 25 name.</p>	<p>1 for structured finance, which included a variety of 2 assets and mortgage backed securities. 3 Q All right. And during your day-to-day 4 employment in that position, are you familiar with 5 the industry custom, standards and practices which 6 were prevalent in the industry during that period 7 of time involving structured finance? 8 A Structured finance, yes. 9 Q And does that also include securitization? 10 A Yes, it does. 11 Q Does it also include mortgage backed 12 securitization like we've been talking about today? 13 A Yes, it does. 14 Q Do you have some personal familiarity with this 15 particular trust from your employment? 16 A As it turns out, I do. Yes. That was one of a 17 number of transactions that we participated in. 18 Q And what was your company's participation in 19 this transaction? 20 A We acted as the insurer of the senior 21 certificates in the transaction. 22 Q Okay. And when you say you acted as the 23 insurer, what did that entail from your company? 24 Were they a financial risk by the position that you 25 took?</p>
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<p>1 A Thomas J. Adams. 2 Q And Tom, how are you presently employed? 3 A I work as an attorney at Paykin, Krieg & Adams 4 and as an independent consultant. 5 THE COURT: Give me the name of the firm 6 again. 7 THE WITNESS: Paykin, P-a-y-k-i-n, Krieg, 8 K-r-i-e-g and Adams. 9 MR. WOOTEN: And Judge, we would note that 10 we previously submitted in the pleadings a copy of 11 the Mr. Adams CV during the previous half of day 12 that the Court's aware of. 13 THE COURT: All right. You want to offer 14 it again. 15 Q We have. Tom, prior to working for Paykin, 16 Krieg & Adams, how were you employed? 17 A I worked for Financial Guarantee Insurance 18 Company. 19 Q Financial Guarantee Insurance Company. When 20 were you employed with them, please, sir? 21 A December of 2003 through January 2008. 22 Q All right. And tell the Court what you did 23 when you worked for Financial Guarantee Insurance 24 Company? 25 A I was the senior managing director responsible</p>	<p>1 A Yes, we took the credit risk of those 2 certificates which were protected by certain 3 aspects of the structure. So effectively with the 4 benefit of some structural protection, we took the 5 credit risk of the mortgage loans. 6 Q That's why we look at these SEC filings on 7 these deals. They're voluminous, right? They set 8 out these terms of these agreements and set forth 9 who's the parties and who's taking what risk and 10 who has what responsibilities, that sort of thing? 11 A That is correct. 12 Q Okay. And as to documents that are filed with 13 the SEC, the participants file those documents 14 under oath; is that correct? 15 A That's my understanding. 16 Q And are they subject to criminal prosecution if 17 they misrepresent the terms of those documents? 18 A I believe that's the case. I can't say with 19 certainty. 20 Q Possibly civil liability also? 21 A Yes. 22 Q Before you went to work for FGIC, I think y'all 23 refer to it as "figit;" is that right? 24 A That's right. 25 Q And that's Financial Guarantee. Before you</p>

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<p>1 worked for them, who was your employer? 2 A Prior to FGIC, I worked for Ambac Insurance 3 Corporation. 4 Q And was Ambac, in your employment there, were 5 you also involved in structured finance? 6 A Yes, I was. It's essentially a competitor or a 7 peer of FGIC. 8 Q Okay. And were you doing the same type of work 9 for them? 10 A The same type work? Somewhat more narrow at 11 Ambac. 12 Q And did you also have the opportunity to be 13 employed with Moody's? 14 A Yes, prior to Ambac. 15 Q What type of work did you do for Moody's? 16 A I worked in the mortgage backed securities 17 department for a number of years as well as 18 sometime in other structured finance department. 19 Q And how many -- do you recall how long you 20 worked at Moody's? 21 A About four-and-a-half years. 22 Q And prior to your employment at Moody's, where 23 were you employed? 24 A I worked at a law firm in New York called 25 Thacher, Proffitt & Wood.</p>	<p>1 be in compliance. They were also non REMIC 2 transactions. 3 Q And because of nomenclature, when you say 4 REMIC, it's an abbreviation, R-E-M-I-C dealing with 5 real estate -- 6 A Yes. 7 Q --- that section of the Code; is that right? 8 A That's right. 9 Q Once you left Thacher, Proffitt & Wood and went 10 to work for Moody's, did you spend basically the 11 rest of your career until you left Financial 12 Guarantee as a participant in structured finance 13 rather than an attorney? 14 A Yes. I worked for three years as an attorney 15 at Thacher, Proffitt & Wood, and then I was 16 employed on the business side of our industry 17 Moody's, Ambac and FGIC. 18 Q Over the last year and a half, two years since 19 you left FGIC, have you done some work as a 20 consultant or an expert? 21 A Yes. I have worked with a number of different 22 entities providing advice and information regarding 23 mortgage backed securities and more broad 24 securitization. 25 Q And over the course of your career in this</p>
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<p>1 Q Thacher, Proffitt & Wood, what type of work did 2 you do there as an attorney? 3 A I worked in their mortgage finance group. We 4 worked on mortgage mitigated transactions, home 5 trades and mortgage backed securities and 6 securitization. 7 Q In looking at your CV, it says you were there 8 from '89 until '92; is that correct? 9 A Yes, sir. 10 Q Are you familiar with the IRS Tax Code limits 11 dealing with real estate mortgage investment 12 conduits? 13 A Yes, I am. 14 Q Do you recall when those amendments to the tax 15 code were made? 16 A 1986, I believe. 17 Q And in 1989 through 1992, when you were at that 18 Thacher, Proffitt & Wood, were you personally 19 involved in structuring pooling and servicing 20 agreements for these types of transactions? 21 A Yes. 22 Q Okay. And were they designed to be in 23 compliance with the IRS Tax Code dealing with real 24 estate mortgage investment conduits? 25 A Yes. Their REMIC transactions were designed to</p>	<p>1 field, do you have an opinion about how many 2 finance deals you have reviewed and taken part in? 3 A Over the course of my career? 4 Q Yes. 5 A North of three hundred. 6 Q Those were ones that your career played some 7 active involvement in, right? 8 A That's correct. 9 Q And is it fair to say that with respect to 10 mortgage backed securitization, they follow a 11 similar pattern. Each deal is unique, but they 12 have a same basic pattern or structure? 13 A Yes, within -- mortgage transactions follow a 14 basic pattern. 15 Q And is that because of the desire to obtain the 16 benefits of creating a REMIC structure so that the 17 holy entity trust has passed through taxation 18 treatments? 19 A Yes, that is one of the reasons. 20 Q One of the reasons. 21 A Yes. 22 Q The other being bankruptcy remoteness? 23 A That's another, and marketability. 24 Q Okay. 25 A If they are familiar in form they are more</p>

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1 marketable.
2 Q Okay. And you have an understanding from your
3 participation in these deals about what the
4 industry standards, customs, and practices were
5 during the period of time that you were an active
6 participant, correct?
7 A Yes.
8 Q And during the period of time with respect to
9 the securitization of Ms. Congress's loan, you were
10 familiar with requirements for this securitization
11 based on the circumstances in this particular
12 series of trust, right?
13 A Yes.
14 Q What were the -- some of the unique things that
15 were going on with this particular securitization
16 with respect to the market in general in this
17 period of time?
18 A That was the first quarter of 2007. There were
19 already at that point problems appearing in the
20 securitization market, problems with certain
21 lenders and the issuers that they worked with with
22 respect to their own financial liability. So there
23 were a number of well-known cases in the industry
24 where the company was struggling at that time,
25 including Mortgage Lenders Network.

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1 Q Okay. Mortgage Lenders Network at or around
2 the time of this securitization, were they at or
3 near bankruptcy?
4 A They had been struggling financially for a
5 number of months at the time of that transaction.
6 MR. RAMEY: I didn't hear you? What was
7 the time frame, what transaction? PSA or --
8 MR. WOOTEN: The PSA date, the cutoff date
9 is February 1. Mortgage Lenders Network bankruptcy
10 was February 5th.
11 THE COURT: He's saying there were
12 problems in early 2007.
13 THE WITNESS: That's right.
14 Q And was the industry aware that there were
15 issues with Mortgage Lenders Network prior to early
16 2007?
17 A I can't recall the exact month, but I believe
18 that they were struggling in late 2006.
19 Q Okay.
20 A As well as 2007.
21 Q And was Residential Funding Company, they're
22 mentioned in this chart, but there are also
23 documents for this deal, correct?
24 A Yes.
25 Q Okay. Was Residential Funding Company also a

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1 lender to Mortgage Lenders Network?
2 A That is my understanding.
3 Q And with respect to this particular
4 transaction, are there disclosures in the SEC
5 filings about the fact of Mortgage Lender Network's
6 Chapter 11 filing in February of '07?
7 A Are there disclosures in which SEC filing?
8 Q With respect to the prospectus in this case, do
9 you remember if there are disclosure whether or not
10 this loan was -- this company, Mortgage Lenders
11 Network already filed bankruptcy?
12 A I don't recall exactly.
13 Q But it was within the window of time when that
14 deal was being done, the cutoff date, right?
15 A It was certainly assumed to be a risk at the
16 time that the deal was done.
17 Q With respect to the participants in these
18 series trust during this period of time, do you
19 have any firsthand knowledge about whether the
20 participants were critically watching these parties
21 and making sure that they were doing things
22 appropriately to protect themselves against
23 a possible bankruptcy filing? Was that an industry
24 concern?
25 A Yes. Generally in the marketplace there were

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1 concerns about lenders, such as Mortgage Lenders
2 Network, being much more greatly exposed to extreme
3 final stress. And so I believe that the Mortgage
4 Lenders was one of those entities of a relatively
5 decent sized list of companies.
6 Q Tom, I'm going to show you a notebook that
7 we've previously prepared. And actually, I believe
8 you have a copy up in front of you. Just flip over
9 to the beginning that document.
10 Let me ask you, if you will -- let me see if
11 this one has got. This one has the cover sheet.
12 Swap that one with you.
13 MR. RAGSDALE: Do we have a copy of that?
14 MR. WOOTEN: Yeah, I've given y'all like
15 two. I'll give you another one if you want it.
16 MR. RAGSDALE: Was it in that nice white
17 notebook I gave you.
18 MR. WOOTEN: Y'all keep calling it a
19 notebook, but here's another copy.
20 MR. RAGSDALE: Thank you.
21 MR. WOOTEN: No problem.
22 Q With respect to --
23 THE COURT: Do you need another one.
24 Y'all gave me two.
25 MR. WOOTEN: I have a couple, Your Honor.

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1 THE COURT: All right.
2 MR. WOOTEN: We were afraid of running
3 out. We're trying to kill some trees.
4 Q With respect to the notebook which I've handed
5 you, Tom, does that notebook contain the pooling
6 and servicing agreement as well as the assignment
7 and assumption agreement that -- and the AK filing
8 with respect to the plaintiff in this case?
9 A It appears that it does.
10 Q Okay. And are you able to, from your
11 familiarity with reviewing SEC filings, reviewing
12 documents that are placed online with the SEC, are
13 you able to look at those documents and recognize
14 them as copies of the SEC filings for this
15 particular plaintiff trust?
16 A Yes, they look like documents that are
17 available on the SEC website in the filing form.
18 Q All right. Now, with respect to the chart
19 we've been referring to all day, does this chart
20 adequately reflect the parties that were involved
21 in the securitization for this trust based on your
22 review of the SEC documents?
23 A Yes, it does.
24 Q An do you know if there was an affiliation
25 between EMAX and Mortgage Lenders Network?

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1 A It is my understanding that there was one.
2 Q Okay. Can you explain to the Court what your
3 understanding of their relationship was?
4 A I believe that Mortgage Lenders Network was the
5 U.S. domicile lending entity that was a subsidiary
6 of the Virgin Islands domicile EMAX, either parent
7 or a sister corporation.
8 Q Now, Tom, when I asked you to originally look
9 at the evidence in this case regarding the
10 promissory note that was presented to the Court at
11 the previous trial, you -- I believe that document
12 may be up there also. I believe it's labeled exit
13 one.
14 THE COURT: Before we move on, run that by
15 me again about what EMAX is.
16 MR. WOOTEN: EMAX and Mortgage Lenders
17 Network have an affiliation, they have some common
18 ownership. EMAX is a Virgin Island's corporation.
19 MLN is Connecticut. The exact affiliation is --
20 Q Did you say EMAX was --
21 A I believe EMAX is either the parent or a sister
22 corporation of Mortgage Lenders Network. I'm not
23 exact sure of the exact appropriate --
24 THE COURT: All right.
25 Q Let's see. Here's a copy of the note. It is

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1 marked as Plaintiff's Exhibit 1 today, which is the
2 note which was presented during the previous trial;
3 is that correct, or does it appear to be correct?
4 A Yes, it appears to be correct.
5 Q And is that the document that was sent to you
6 for review to see if you believed it complied with
7 the requirements of the securitization documents?
8 A Yes, it is.
9 MR. RAMEY: Your Honor, I object to
10 the exhibit. It calls for a legal conclusion.
11 THE COURT: Overrule.
12 Q Now, tell the Court the problems that you
13 originally had with that particular document, with
14 the endorsement that was presented on that
15 particular document?
16 A Well, this note is endorsed in blank by
17 Mortgage Lender Network, pay to the order of blank
18 without recourse. And based on my review of the
19 pooling and servicing agreement, it was my
20 understanding that the document was supposed to be
21 endorsed into the trust showing the chain of note
22 ownership through the endorsements along the way.
23 Q Would your expectation in the market have been
24 that the endorsement on a promissory note would
25 have been on the promissory note?

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1 A Yes.
2 Q And would that have been the industry standard,
3 custom and practice?
4 A Yes.
5 Q And is there a clearly adequate space on
6 Exhibit 1 for the endorsements that occur on the
7 allonge that we've been discussing?
8 A It does appears to have space.
9 Q And that's on the face of the document. That
10 doesn't count space on the back document, right?
11 A Right.
12 Q And you have been around this market a long
13 time, your whole professional carrier basically,
14 right?
15 A Yes.
16 Q And has it been the custom and practice in the
17 industry to put these endorsements somewhere on the
18 actual promissory note throughout your career?
19 A That's is always the way I see it.
20 Q Okay. And you're not saying to the Court that
21 someone can't use an allonge in some fashion or in
22 some way, but there are industry standards about
23 that as well, right?
24 A There are.
25 Q Okay. And with respect to -- you have been

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Page 225	1 here through the whole trial and you heard the 2 testimony of GMAC about the endorsements and how we 3 got two notes and that sort of thing, correct? 4 A Yes, sir. 5 Q With respect to the assertion that the loan was 6 securitized and then the subservicer got a copy of 7 the note from the credit file, would that have been 8 outside of the -- your expectations as an industry 9 participant of the documents they would have had 10 access to? 11 A Yes. I would expect that the servicer or the 12 master servicer would have begun participating in 13 the transaction upon the creation of the trust. 14 Q And so your expectation would have been that 15 whatever operative documents a subservicer was 16 working on would have been whatever documents the 17 trust acquired ownership of? 18 A That would be my expectation, yes. 19 Q When you reviewed the collateral file, the 20 original collateral file together at the lunch 21 break, right? 22 A Yes, sir. 23 Q When you reviewed the collateral file, was the 24 promissory note at the front of the collateral 25 file?	Page 227	1 A The Plaintiff's Exhibit 1, I'm not sure how 2 that would have come into the possession, no. 3 Q Okay. So your testimony is is that had all 4 these steps taken place prior to the cutoff date 5 and the closing date as contemplated in the 6 agreements, that there would have been no way for a 7 blank endorsed note to come before the Court in a 8 previous trial? 9 A That's right. 10 Q Does the position of the allonge in the 11 collateral file indicate anything to you based on 12 your industry experience? 13 A It's -- well, initially I would say it's 14 confusing that they are separate. It would suggest 15 to me an opportunity for a problem or confusion, 16 not definitive though. 17 THE COURT: Say that again. 18 A It success an opportunity for confusion, or a 19 problem, although not definitively. 20 Q All right. So what you're saying is is that 21 the way it was structured in the collateral file, 22 the last document in, does that give you any 23 information about when that document was created? 24 A It suggests that it would have showed up in 25 that custodial file after things, such as, the
Page 226	1 A Yes, it was the first. 2 Q The first entry? 3 A Yeah. 4 Q And if the allonges had occurred during the 5 securitization process, would your expectation have 6 been that the allonges would have been apart of the 7 scans that went into the note? 8 A Yes, my expectation is that the allonge would 9 be attached to the note. 10 Q Okay. And when you say, "attached," this 11 allonge is not in any way affixed to the promissory 12 note so that it's apart of that document, right? 13 A It's not. 14 Q Would it have been your expectation that if 15 there was a necessity of an allonge that it would 16 have been affixed to the note such that it could 17 not have been separated in this securitization 18 process? 19 A Based on my understanding of what was typical 20 in practice, that would have been my expectation. 21 Q And if the promissory note had all the 22 necessary endorsements during the securitization 23 process, is it your opinion that the previous 24 promissory note could have been offered into 25 evidence as a blank endorsement?	Page 228	1 title policy. 2 Q Okay. And also the collateral file has a scan 3 sheet that says the allonge was loaded into a 4 collateral file as a single new document into the 5 file, right? If you want to flip over to -- 6 A I'm not sure I observed that. 7 Q There is the collateral file. So I guess my 8 question is, Tom, is does the bar code scan 9 indicates that the only document added to the 10 collateral file is the allonge, correct? 11 A At this time, yeah. 12 Q Right. And the testimony earlier was that it 13 was the last document into the collateral file, 14 right? 15 A It's the last document in the collateral file, 16 yes. 17 Q Okay. Now, series trust, Tom, explain to the 18 Court the issues or potential issues was series 19 trust where you have the same participants in a 20 series of transactions. 21 A Yes. Many of the participants in these 22 transactions, including these, would issue a 23 variety of mortgage backed transactions over the 24 course of a year or a quarter designated with 25 similar terms but a different series number and

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<p>1 different dates and amounts, basically. So 2 Mortgage Lenders Network or EMAX had a series of 3 transactions that were designated as related to 4 them with other parties, typically with an EMX 5 designation. Residential Funding corporation or 6 RASC had, you know, about more than a dozen 7 transactions over the course of 2006 and 2007 8 associated with them. 9 Q Okay. Let me show this document, Tom, ask you 10 if you recognize that document as a pooling and 11 servicing agreement and a prospectus from one of 12 the trust in this series. 13 A Yes. 14 MR. RAGSDALE: Do we have a copy of this? 15 MR. WOOTEN: Y'all can look at it if you 16 want to. 17 THE COURT: All right. Let them see it 18 before handled. 19 MR. WOOTEN: Okay. Judge, there's a box 20 on there. There are like ten different trusts that 21 have these date issues at all in this series. And 22 until we had the allonge, we had no need for this 23 evidence. So we have to demonstrate the number of 24 trust that these parties are party to where the 25 dates would make --</p>	<p>1 originator and subservicer is Mortgage Lenders 2 Network, U.S.A., Inc. And the trustee is U.S. Bank 3 National Association. 4 Q All right. So U.S. Bank is the same, 5 Residential Asset, Residential Funding, and 6 Mortgage Lenders Network. 7 A Yes. 8 Q Is EMAX mentioned there? 9 A I don't see a reference to EMAX. 10 Q Does it mention mortgage loan seller rather 11 than a specific seller on the next page? 12 A Yes. On the subsequent page of the document, 13 Page -- is that right? Page 11 of 143? Yes. Page 14 11, I believe that's of an exhibit. 15 Q Right. 16 A It says EMX Financial Group, LLC, seller of 17 mortgage loans. And it shows a chart that 18 designate the sale of mortgage loans to Residential 19 Funding Corporation. 20 Q Is it also, Tom, one of the same series of 21 trust that include the plaintiff in this case? 22 A I'm sorry. Could you ask? 23 Q Is this trust also one of the same series of 24 trust that includes the plaintiff in this case? In 25 other words, does this also fall within the series?</p>
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<p>1 THE COURT: I just ask you to let them see 2 the document. 3 MR. WOOTEN: I'm sorry. 4 Q Tom, I reached in the box and pulled out the 5 first I grabbed my hands on. 6 Do you recognize those documents to be SEC 7 filings from one of the other series trust? 8 A Yes, it looks like an SEC filing for a pooling 9 and servicing agreement. 10 Q And is that one -- what's the name of that 11 trust? 12 A RASC Series 2006-EMX7 Trust. 13 Q If you flip back to the tabs on the back of the 14 document back there. There's some information 15 that's highlighted. The Court can see the parties 16 involved. 17 Are the parties, in the document that you're 18 holding, the same as the parties for the 19 plaintiff's in this case, up to the trust name? 20 A The issuing entity is different because that's 21 the series number. 22 Q So the trust name is different? 23 A But the depositor is Residential Asset 24 Securities Corporation, the master servicer and 25 sponsor is Residential Funding Corporation, and the</p>	<p>1 A It includes the trustee, U.S. Bank National 2 Association. 3 Q Okay. 4 A Technically not exactly the same as the 5 plaintiff in this case. It's trustee for a 6 different trust. 7 Q And I guess I didn't ask the question real 8 well, but this is one of the series of twelve or 9 thirteen trusts we were talking about, right? 10 A This appears to be, yes, another series with 11 the same parties to collateral. 12 Q So there's nothing really different than a 13 unique trust name, but other than that -- 14 A Yes. 15 Q -- nothing really changed as far as the parties 16 involved? 17 A That's right. The same basic structure. 18 Q I'm going to mark this for identification 19 purposes as Exhibit 8. 20 (Whereupon, Defendant's Exhibit 21 Number 8 was marked for 22 identification.) 23 MR. WOOTEN: And Judge, we would offer 24 that as the SEC documents for that series trust. 25 THE COURT: All right. It's Defendant's</p>

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1 Exhibit 8.
2 (Whereupon, Defendant's Exhibit
3 Number 8 was received into evidence.)
4 (Whereupon, Defendant's Exhibit
5 Number 9 was marked for
6 identification.)
7 Q I'm going to also mark as Exhibit 9 another one
8 of these trust documents from the series and ask
9 you to identify the name of that trust.
10 MR. RAGSDALE: These aren't complete SEC
11 filings?
12 MR. WOOTEN: That is the prospectus and
13 the pooling and servicing agreement --
14 MR. RAGSDALE: Without attachments?
15 MR. WOOTEN: Yeah, without all the --
16 what's filed on record with the SEC.
17 MR. RAGSDALE: It doesn't have the
18 mortgage loan schedule or anything like that?
19 MR. WOOTEN: Okay.
20 A RASC Series 2006-EMX9 Trust.
21 Q Okay. Now, that's another in the series,
22 right?
23 A Yes.
24 Q We earlier marked Exhibit 2, and Mr. Haughton
25 found a mortgage loan schedule that said that

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1 Ms. Congress's loan was in the EMX9 trust; is that
2 right?
3 A Yes.
4 Q The documents contained in Exhibit 2 would have
5 been other SEC filings related to the trust that we
6 identified in Exhibit 9, right?
7 A That's what it says, yes.
8 Q So it would have been EMX9 trust in the series?
9 A Yes, it's identified with the same series name.
10 MR. RAGSDALE: Have you offered that?
11 MR. WOOTEN: I'm about to offer it.
12 Q Do you recognize the documents in Exhibit 2 as
13 being SEC filings related to that trust?
14 A Yes. It's indicated as a 10-d filing.
15 Q Okay. Tom, if EMX1 was the owner of
16 Ms. Congress's loan, would you expect to see her
17 loan number appear in EMX9?
18 A No. I would not expect to see it in the trust
19 that is separate from the trust that's indicated in
20 EMX1, 2007-EMX1.
21 Q Okay. Then your affidavit that we filed
22 earlier in the case, one thing you said was that
23 you expect to see as part of the industry standard
24 and practices, specific endorsements to the
25 trustee, right?

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1 A Yes.
2 Q When you say, "specific endorsements," do you
3 consider endorsed to the order of U.S. Bank as
4 trustee specific endorsement?
5 A No, that seems a bit vague and creates an
6 opportunity for confusion.
7 Q Okay. Let me show you Defendant's Exhibit 10
8 which is another series trust that's EMX8; is that
9 right?
10 A Yes. RASC Series 2006-EMX8 Trust.
11 Q And again, all the parties and the plaintiff
12 are present -- the Plaintiff trust are present in
13 that trust as well, right?
14 A Appears to have the same parties.
15 MR. RAMEY: I object just to the extent as
16 far as "all the parties." I know some of these
17 have different servicers and what not. I know
18 servicers aren't parties to this agreement.
19 THE COURT: Why do I need to know all
20 these other trusts other than the one that
21 Ms. Congress's loan is --
22 MR. WOOTEN: Well, Your Honor, we're
23 trying to establish that this Plaintiff is not on
24 this loan that we spoke about in our opening
25 statement. And what we're establishing is is that

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1 there are a dozen other trusts, that based on the
2 endorsements on the note could own Ms. Congress's
3 loan and nothing else. In addition to the fact
4 that we have a trust that has filings that says
5 that it does belong to it. I mean, I'll be glad to
6 represent to the Court that that's what these
7 documents that we're offering them --
8 THE COURT: Let's offer all of them at
9 once. We don't need to go through this.
10 MR. WOOTEN: And, Judge, I'll mark these.
11 As a matter of fact, I'll let my co-counsel mark
12 these so we can move on.
13 THE COURT: All right. Those are all
14 admitted.
15 MR. WOOTEN: We'll put the numbers on
16 those and we'll get those admitted.
17 Q Tom, based on the endorsements on the allonge
18 that we've been talking all day, if that -- if
19 those endorsements had been present when we
20 originally looked at the documents in this case,
21 would it have satisfied, in your opinion, the
22 standard to convey that promissory note to the
23 plaintiff in this case?
24 A It would have satisfied the standard to convey
25 it to the trustee. But had I been looking at that

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1 note at the time of closing it would have -- I
2 would have had a question as to whether it was
3 specifically transferred to this trust.
4 Q Now, we marked in all of these exhibits and all
5 of these trusts with these same issues, with the
6 same trustee. In all these trusts, the timing
7 would fit for conveyance to any of these trusts by
8 the date of Ms. Congress's loan?
9 A Yes. The ones we've discussed so far were
10 trusts that closed after the origination of
11 Ms. Congress's loan.
12 Q All right. And that's the ones we've talked
13 about so far, right?
14 A (Witness nodding head).
15 Q Now, even some trusts that might have closed
16 right up against her loan date might have taken her
17 loan in the ninety-day window allowable under tax
18 code to take a funding period, right?
19 A Yes. Transactions at the time sometimes have a
20 prefunding period, so they could close and then add
21 loans to them after the fact.
22 Q So just based on the dates and the documents
23 that we've identified, and the endorsements that
24 are present in the case, you couldn't look at those
25 endorsements and say which of any of these trust

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1 own that loan?
2 A That's correct.
3 Q Let me ask you this, Tom: Let's see. We've
4 marked up to 21.
5 MR. WOOTEN: Your Honor, we would move to
6 admit --
7 THE COURT: They're in.
8 MR. WOOTEN: Up to 21.
9 THE COURT: Yes, sir
10 (Whereupon, Defendant's Exhibit
11 Numbers 21 was marked for
12 identification.)
13 MR. RAMEY: Can you tell us what the first
14 number was?
15 MR. GRIMSLEY: Eleven.
16 MR. RAMEY: Eleven.
17 THE COURT: Well, we already had 9 and 10.
18 MR. GRIMSLEY: It's 11 to 21.
19 MR. RAGSDALE: Eight.
20 MR. LAY: Eight.
21 THE COURT: Yeah.
22 THE WITNESS: Eight, looks like the first
23 one. 2006-EMX8.
24 THE COURT: All right. So we'll start
25 with 8 and it goes through 21.

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1 MR. WOOTEN: Yes, sir.
2 THE COURT: Those are all admitted.
3 (Whereupon, Defendant's Exhibit
4 Numbers 8 through 21 were received
5 into evidence.)
6 Q (BY MR. WOOTEN:) With respect to the
7 foreclosure documents which were offered earlier
8 today, let's begin by talking about the mortgage
9 assignment that we've been discussing in the case.
10 It's Document 13.
11 If the parties to the plaintiff's
12 securitization had complied with the statements
13 about what took place and there was a necessity for
14 an assignment of mortgage to the trust, would you
15 expect to see a MERS assignment to the trust in
16 June of 2008?
17 A No.
18 Q Would you expect to see it prepared by the
19 foreclosure attorney?
20 A No.
21 Q Would the industry standard have been
22 different?
23 A Yes.
24 Q And what would that standard have been?
25 A The standard would have been for it to be

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1 assigned to the trust at or prior to closing of the
2 trust.
3 Q Okay. So what you're saying is if there was
4 the necessity for an assignment. It should have
5 been dated prior to the closing date?
6 A Yes.
7 Q And it should have been executed by someone
8 involved in this securitization transaction?
9 A That would have been my expectation.
10 Q And then it would have only needed to have been
11 filed as a result of default on Ms. Congress's
12 loan, right?
13 A That's right.
14 Q So your -- you don't even have an issue with
15 the fact that there's a MERS assignment. Your
16 issue is with who made the assignment and the
17 timing of it, right?
18 A Yes.
19 Q The name that is conveyed to the trust that's
20 named as the grantee in that assignment. Do you
21 see that information?
22 A Yes.
23 Q Okay. Is that the name of the plaintiff in the
24 case?
25 A The name indicated as U.S. Bank, NA as Trustee

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1 for that Certain Pooling and Servicing Agreement
2 Series Number 2007-EMX1 Pool Number 40896. And my
3 understanding is what the name of the trust is RASC
4 Series 2007-EMX1 Trust.
5 Q Okay. Do you know if any of the SEC filings
6 containing alias names for the trust?
7 A No, I don't.
8 Q Do you know if they pertaining -- doing
9 business as names of the trust?
10 A They may. I'm not sure.
11 Q Have you seen any of that so far? Have you
12 seen any name other than the name you just told the
13 Court?
14 A With the SEC filings? No I have not.
15 Q With respect to the name that was used in
16 Exhibit 13, is that the same name that is in the
17 documents that have been identified as ten, eleven,
18 twelve, fourteen?
19 A Ten and twelve. That's fourteen. And fourteen
20 as well.
21 Q Okay. So --
22 A It doesn't appear to be in eleven.
23 Q Eleven may be an aside fine print?
24 A Too small for me.
25 Q So from the exhibits you can read, the names

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1 are the same?
2 A Yes.
3 Q Let me show you what I marked earlier as
4 Exhibit 7 but I've yet to offer, which is your CV.
5 Would you flip through that real quick and see if
6 it is a correct and an accurate copy of your CV?
7 A Yes.
8 MR. WOOTEN: Judge, we would offer 7. I
9 previously moved to offer it.
10 THE COURT: All right. It's admitted.
11 (Whereupon, Defendant's Exhibit
12 Number 7 was received into
13 evidence.)
14 Q Tom, have you been asked to testify or act as
15 an expert by any governmental agencies who are
16 addressing the financial crisis that the market has
17 experienced in 2007, 2008?
18 A No, I haven't been asked to testify.
19 Q Have you acted as a consultant to parties as an
20 expert in the issues of securitization?
21 A Yes, I do.
22 Q Tell the Court without, of course, divulging
23 anything confidential, but in the general areas
24 that you have previously been qualified to testify
25 as an expert or retained as an expert on.

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1 MR. RAGSDALE: Testified as an expert or
2 retained as an expert?
3 Q Sure.
4 A Yes. I participated in another dispute that
5 was an arbitration, which the parties, the nature
6 of which have been ordered to remain confidential.
7 But my role was as an expert on customs and
8 practices in the mortgage market at the time of the
9 transaction and dispute.
10 Q Okay. And over the course of your career, were
11 you always familiar with the applicable custom,
12 standards and practices in the industry dealing
13 with mortgage backed securitization?
14 A Yes.
15 MR. WOOTEN: Judge, we would ask to have
16 Mr. Adams certified as an expert in this matter
17 based on that testimony.
18 THE COURT: Well, I thought that's what
19 we've been talking about.
20 MR. WOOTEN: Okay.
21 Q Tom, with respect to your ultimate opinion in
22 this case regarding the ownership of the promissory
23 note by this particular plaintiff trust, you have
24 previously stated in an affidavit in your opinion
25 that the blank endorsed note was not sufficient

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1 evidence, that the trust on the loan, and in your
2 opinion it did not own the loan; is that right?
3 A That's right.
4 Q Even if the Court were to consider the allonge
5 promissory note in this case, and you considered
6 that as additional evidence, the testimony you have
7 heard today and the documents you've reviewed, is
8 your ultimate opinion as to whether this trust on
9 this loan changed?
10 A Based on my reviews of that allonge that
11 ownership of the note has changed compared to the
12 note that I looked at at the time that I prepared
13 my affidavit. But there is nothing that would
14 allow me to be certain that this trust was the
15 owner of that note.
16 Q And that is today in 2010.
17 Now, if the trust had owned the loan according
18 to the terms of the agreement in 2007, you would
19 have expected to have seen already evidence that
20 that had taken place and there had been a
21 conveyance to this trust before we got here today,
22 right?
23 A Yes, I would have considered that would be
24 important at the time the trust the was created.
25 Q With respect to the documents that you have

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1 seen today including the other trust that has the
2 loan file -- the loan number in it, if you were
3 reviewing the other exhibit for the EMX9 Trust and
4 you saw that loan number in it, based on your
5 experience in the industry, custom, standards, and
6 practices, would you believe that the loan was
7 owned by EMX9 Trust?
8 A On the schedule for the 2006-EMX9 Trust that
9 indicates that loan number would be an indication
10 that that loan was in the trust.
11 Q And when you take the sum of the testimony
12 today and the documents that you have reviewed, is
13 it still your opinion that the plaintiff does not
14 own this loan?
15 A Yes. It's my opinion that there's uncertainty
16 as to who owns that loan based on the endorsement
17 on the allonge, and in addition, the fact that the
18 loan ID is identified in another trust, would give
19 me cause for concern that that note belonged to the
20 2007-EMX1 Trust, which is the exact reason why I
21 would look for a chain of title and specificity in
22 the chain of title to clear up the risk or the
23 possibility that the loan had been sold more than
24 one time.
25 Q And would you have expected reasonable industry

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1 participants given circumstances with Mortgage
2 Lenders Network and the market, in general, to have
3 exercised for reasonable care standard to insure
4 that their assets were conveyed to the appropriate
5 trust in a manner that was identifiable because of
6 those issues?
7 A Yes.
8 Q If the allonges were prepared since your
9 original affidavit was entered in this case, would
10 that be an effective conveyance to the trust, if
11 that were the case?
12 A If the allonges were prepared contemporaneously
13 with 2010 events, no I would consider that to be
14 after the fact creation of the trust.
15 Q Okay. And is it your understanding that once
16 the -- once the closing date passes that the trust
17 is no longer able to acquire any asset; is that
18 right?
19 A With certain limited exceptions, the trust is
20 supposed to be closed as of the startup date of the
21 trust.
22 Q Is that because of the terms of the trust
23 instrument and the law which is incorporated into
24 those trust agreements?
25 A Yes. The REMIC rules, the tax rules for this

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1 type of trust had the specific requirements. The
2 document had specific requirements, and industry
3 practice would have favored that type of practice
4 because of issues and concerns about multiple sales
5 of collateral.
6 Q If you were considering the original Exhibit 1
7 that was offered to the Court with the blank
8 endorsement, would you have an opinion about
9 whether there's any indication -- is there anything
10 about that document that indicates to you that
11 possibility of the note being sold more than one
12 time?
13 A Well, it's a barren document, I guess is the
14 way I would interpret that endorsement. Yes, it
15 could have been transferred from party to party as
16 such.
17 Q Let me call your attention to Page 62 of the
18 pooling and servicing agreement for the plaintiff
19 trust.
20 MR. RAMEY: And Nick, can you give us the
21 letters when you reference the sections?
22 MR. WOOTEN: Yes.
23 MR. RAMEY: Give us the section.
24 MR. WOOTEN: Yeah. Page 62 is the very
25 first paragraph.

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1 MR. RAMEY: "D?" Oh, I'm sorry. 62.
2 MR. WOOTEN: Page 62.
3 MR. RAMEY: "D."
4 MR. WOOTEN: I apologize, Shaun. I think
5 at some point I gave y'all a highlighted copy of
6 the notebook.
7 MR. RAMEY: 62 D?
8 MR. WOOTEN: Yeah, it's the very top
9 paragraph of the trust instrument.
10 Q And does that paragraph expressly state that
11 the trust will not acquire any assets after the
12 certificate are issued?
13 A That's how I would read that paragraph. The
14 Trustee shall not accept any contribution of assets
15 to the trust unless they've received a, basically,
16 an opinion of counsel saying that they may.
17 Q All right. And let's talk about those
18 provisions, Tom.
19 That provision isn't to help Ms. Congress get a
20 free house, is it?
21 A No.
22 Q That provision is designed to protect the
23 investors in the agreement, right?
24 A Yes. That's the way I would interpret it, that
25 their to protect the certificate holders as well as

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1 the certificate insurers, which is my company.
2 Q And, of course, you've been gone from your
3 company for a while, so you ain't got a dog in that
4 fight about what they've done here.
5 A No. I have no current affiliation with them.
6 Q Okay. So with respect to the ultimate issue of
7 why they closed these things down, tell the Court
8 what you know about servicers rights to access cash
9 flow on foreclosed loans. Or did I ask a good
10 question?
11 A Yes. When a loan is -- a loan within the
12 securitization trust is delinquent, the servicer is
13 required to advance to the benefit of the trust and
14 the certificate holders delinquent payment of
15 interest upon foreclosure, and then liquidation of
16 the property from the loan. The servicer gets
17 reimbursed for those advances of delinquent
18 interest from proceeds of the property as well as
19 for legal fees and closing costs and other related
20 expenses in the liquidation of the loan.
21 Q And can those dollar amounts in those instances
22 be substantial?
23 A Yes. They typically are quite substantial.
24 Q And so if a servicer cause documents to appear
25 that a trust on the loan can foreclosure the

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1 process, based on the face of those documents,
2 would they be able to submit -- would they be able
3 to try to access the cash flows for that particular
4 trust?
5 A I'm sorry.
6 Q I probably didn't ask that very cleanly.
7 If, in the course of the foreclosure process,
8 the title is made to appear to be in the name of
9 the trust when the foreclosure is completed. Could
10 the servicer then be able to try to access the cash
11 flow of the trust based on documents saying that it
12 was foreclosed as an asset of the trust?
13 A I believe in certain transactions there was a
14 mechanism for shared access to the collateral
15 account so that -- to deal with the issues of
16 timing and expenses. So the expense of one
17 foreclosure could be paid for with the payments of
18 another loan and then reimbursed subsequently.
19 Q Do you have any idea who might be able to
20 monitor that type of conduct by a servicer in
21 presenting those types of claims to the trustee or
22 accessing the custodial account for those payments?
23 A Access that type of potential sharing among
24 accounts, the trustee would have some degree of
25 monitoring oversight and potentially if there was a

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1 lender for the advancing obligations, they might
2 have an oversight of that as well.
3 Q Going back to the allonge for just a moment.
4 I'm sorry. I need to mark this document. We need
5 to mark it. I'm going to mark the notebook that
6 has those securitization documents in it inside as
7 22. And offer it, Your Honor.
8 (Whereupon, Defendant's Exhibit
9 Number 22 was marked for
10 identification.)
11 THE COURT: Is that your trial notebook?
12 MR. WOOTEN: This is the pooling and
13 servicing agreements, securitization agreements.
14 THE COURT: Does it have any charts in it?
15 Is that what you gave me last week?
16 MR. WOOTEN: Yes, sir.
17 THE COURT: Do y'all have any objection to
18 it?
19 MR. DAUGHERTY: I think, yes.
20 MR. WOOTEN: They can pull the charts out.
21 THE COURT: When we take a break y'all
22 look at it.
23 MR. DAUGHERTY: I'll look at it again.
24 We'll figure it out.
25 MR. WOOTEN: The main thing I want to do

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1 is get the securitization documents from this into
2 evidence.
3 We'll sit that one to the side.
4 Q (BY MR. WOOTEN:) On the allonge, Tom, that was
5 in the case which was in the collateral file. Have
6 you got it?
7 A It's the exhibit I'm looking at?
8 Q Yeah. It's also attached. It's stapled to the
9 copy 15 that they offer, which is the first time
10 it's been physically attached, a copy of the
11 promissory note, right?
12 A Yes, it is. Yes.
13 Q Okay.
14 MR. RAMEY: Just to clarify, do you want
15 to point out that the allonge was rubber banded as
16 far as attachment issue.
17 THE COURT: Yes, I'm aware of that.
18 Q (BY MR. WOOTEN:) The documents assertion that
19 -- in the document itself, the execution of it
20 means it's permanently affixed to the promissory
21 note. Would that comply with industry standards,
22 customs and practices for attachment?
23 THE COURT: Haven't we been through this
24 already?
25 MR. WOOTEN: I'm sorry, Your Honor.

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<p>1 THE COURT: I thought that he has 2 testified that he thought it would not. Didn't 3 you? 4 THE WITNESS: Yes, I believe so. 5 MR. WOOTEN: Let me check just a couple of 6 things. I may tender, Your Honor. I want to make 7 sure. I'll look at my checklist. 8 THE COURT: While he's doing that, 9 Mr. Adams, let me ask you a question: Your 10 ultimate opinion is that you think that we cannot 11 be certain that this plaintiff is entitled to the 12 -- that it's the holder of the note and mortgage? 13 Did you tell me that in your professional judgment 14 you don't think it is? Which? 15 THE WITNESS: The trustee -- based on the 16 allonge, the trustee would be indicated as the 17 holder of the note. But there is no way of knowing 18 which trust they are holding nor based on that 19 note. 20 THE COURT: All right. Thank you. I 21 wanted to make sure I had that right. 22 THE WITNESS: I gave you a third version 23 of those two. 24 THE COURT: That's all right. 25 Q (BY MR. WOOTEN:) But based on the appearance</p>	<p>1 parties or the same except for the trust name, 2 there are fifteen or so different trusts we 3 identified, tabbed and marked documents on. We 4 also saw EMX1 Trust that said -- that they said 5 owned the loan, which they would say is the 6 plaintiff for a while now in this case. The 7 earlier evidence that you saw when you entered your 8 initial opinion was there was no endorsement to the 9 trust at or before the closing date, right? 10 A That's right. 11 THE COURT: Because we just had the blank 12 note? 13 MR. WOOTEN: Right. 14 Q (BY MR. WOOTEN:) In your experience in the 15 industry, you would not have expected to see a 16 blank endorsed promissory note that had allonges 17 presented to the Court in 2009 if the parties had 18 securitized this loan to this trust, right? 19 A That's right. 20 Q And so even if the Court were to be inclined to 21 say U.S. Bank as trustee endorsement was 22 sufficient, there's no evidence that that occurred 23 until after your affidavit came into the case, 24 right? 25 A There is no evidence, no.</p>
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<p>1 and the order that we've seen these documents, Tom, 2 and based on your experience in the industry, does 3 it appear to you that the allonge came up sometime 4 after your testimony came in this case, these 5 issues were raised. 6 THE COURT: Well, I -- do you object to 7 that? 8 MR. RAGSDALE: He does. He objects to it. 9 THE COURT: I sustain. 10 Q (BY MR. WOOTEN:) Is there anything, Tom, that 11 leads you to change your opinion expressed in your 12 initial affidavit that this particular trust does 13 not own this loan? 14 A As far as the conclusion, no, there's nothing 15 that would lead me to change my conclusion that I 16 can't know for certain that this -- there is no way 17 for me to know that this trust owns this note. 18 THE COURT: See that's what I thought you 19 said before. There is no way you can know for 20 certain. I don't think that's the burden of proof, 21 but you might want to pursue that. 22 MR. WOOTEN: Sure. 23 Q Well, what we were talking about earlier is 24 that with respect to the number of trust 25 identified, it could be the holder, where all these</p>	<p>1 Q And based on the contents of the collateral 2 file, if the allonges had been done in accordance 3 with the securitization process, the allonge, in 4 your expectation would have been part of the note 5 that was scanned into the collateral file when the 6 collateral file was created, correct? 7 A That's right. 8 Q So if this securitization had taken place, 9 there would have been no way to present a blank 10 endorsed promissory note at the last trial, 11 correct? 12 A That would be my understanding. That's right. 13 Q And then with respect to Mr. Haughton's 14 testimony that they received the collateral file 15 from Wells Fargo who is GMAC's custodian. Well, 16 are you familiar with custodial arrangements where 17 an entity like Wells Fargo services custodian for 18 trust, but also serves as custodian for servicers 19 and originators, right? 20 A Yes. 21 Q So was it significant to you when he said he 22 received his documents from his document custodian? 23 Did that communicate to you that he was receiving 24 these documents from GMAC's document custodian or 25 from the trust?</p>

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1 A From his description, it sounded like it was
2 coming from GMAC's custodian.
3 Q And there is nothing in the collateral file to
4 indicate that the file was released from the
5 trustee for the trust, right?
6 A That's right.
7 Q So if the loan were conveyed to this trust,
8 somewhere in these documents there should have been
9 evidence that says that the loan is in the name of
10 this trust, right?
11 A That would be my expectation, yes.
12 Q And the reason you say you're uncertain --
13 you're not saying that you're uncertain that this
14 trust doesn't own this loan. You're saying you're
15 uncertain who the owner is among all the possible
16 parties?
17 A It's clear that the trustee has, based on the
18 allonge, has had the note transferred to them based
19 on the allonge. But it is unclear what that means.
20 That could -- any number of parties could or any
21 number of trusts could actually own that note.
22 Q And so the requirements, a specific endorsement
23 to this trust in the way that you identify as an
24 asset of this trust has not been met, right?
25 A That's right. That's exactly why I would

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1 expect to see a specific endorsement to the trust.
2 Q So when you said you were saying you weren't
3 sure who owned it, what you're saying is that any
4 of those trusts we identified marked cumulatively,
5 based on the allonge, could be the owner of it?
6 A That's right. Any of the other parties could
7 be the owner as well. And the suggestion of the
8 loan number appeared in a different trust, would
9 give me significant concern that the note may have
10 possibly have been sold more than one time.
11 Q So have you been involved in an industry
12 situation where a note sold more than one time?
13 A Yes, I have.
14 Q Do you know anything about the priority of
15 ownership of a note when it's sold more than one
16 time?
17 A In my experience, documentation has existed
18 that would make that fairly confusing or it would
19 indicate that they both appear to have priority of
20 ownership.
21 MR. RAGSDALE: I'm sorry. What was that
22 answer. They both?
23 A I have seen situations where the documentation
24 would appear to indicate that both, more than one
25 entity had priority of ownership.

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1 Q So with respect to showing a conveyance to this
2 trust, nothing you have seen says there's a
3 conveyance to the plaintiff in this case, right?
4 A The plaintiff U.S. Trustee as in trust or as
5 the trustee for RASC 2007-EMX1.
6 Q Okay. So is it your opinion, then, based on
7 that that this trust is not the owner of this loan?
8 A Yes, that's my opinion.
9 Q Okay.
10 MR. WOOTEN: We would tender the witness.
11 THE COURT: All right. You want to take
12 five minutes?
13 MR. RAGSDALE: Please.
14 THE COURT: All right. Five minutes.
15 (Short recess.)
16 THE COURT: All right.
17 CROSS-EXAMINATION.
18 BY MR. RAMEY:
19 Q Good afternoon, Mr. Adams.
20 A Afternoon.
21 Q My name is Shaun Ramey. I don't think you and
22 I have ever met before. I have a few questions for
23 you.
24 First of all, the name of the insurance company
25 you worked for, was it FCIG?

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1 A I worked for two insurance companies. One was
2 Ambac Insurance.
3 Q And the other?
4 A The other was Financial Guarantee Insurance
5 Company.
6 Q And that's the one that had -- that company had
7 some involvement with this pool?
8 A Yes, by coincidence.
9 Q With respect to that company having some
10 involvement with this pool, did you personally have
11 any involvement?
12 A The transaction was done in my group, yes.
13 Q Okay. In your group. How big is your group?
14 A It had about five people in it, in the mortgage
15 area.
16 Q In the mortgage area. So you supervised those
17 folks?
18 A Yes. I supervised. It was a small group. I
19 was actively involved in many aspects of that
20 transaction.
21 Q All right. And with respect to your testimony
22 here today, you've been retained by Ms. Congress,
23 correct, or her attorneys?
24 A Yes.
25 Q You haven't been -- you haven't been retained

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1 by Mortgage Lenders Network in this case?
2 A No, I have not.
3 Q Or the bankruptcy trustee, if there is one for
4 that bankruptcy?
5 A No.
6 Q Or EMAX, or Residential Finding, Residential
7 Asset, the trust of the trustee, you haven't been
8 retained by any of those?
9 A No, I have not.
10 Q You haven't been retained by any certificate
11 holders in this case, have you?
12 A No.
13 Q Or any certificate insurers?
14 A No. The certificate --
15 Q Correct.
16 A -- FGIC, to my knowledge.
17 Q Correct. You haven't been retained by them to
18 give testimony in this case?
19 A No, I am not affiliated with them in any way
20 any longer.
21 Q Okay. And you haven't been retained by any of
22 swap counter parties or anything?
23 A No.
24 Q With respect to this -- we've spent time a lot
25 of time talking about this pooling and servicing

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1 agreement. Ms. Congress isn't a party to that
2 contract is she?
3 A No, she's not.
4 Q In fact, the parties, if I understand, are the
5 depositor, which is -- is that that Residential
6 Asset Securities Corp?
7 A I believe so.
8 Q Okay. And you're welcome to look on the -- is
9 that -- which exhibit is that there?
10 A I have different ones here.
11 MR. WOOTEN: This is the securitization
12 documents for those.
13 Q Let me make sure I've got you on the right one.
14 So Residential Asset Corporation is the depositor
15 and they're a party to the contract, right?
16 A Yes, sir.
17 Q Aren't they?
18 A Yes.
19 Q And Residential Funding Company is a party to
20 the contract with Master Servicer?
21 A Residential Lending Company, LLC.
22 Q And the trustee, they're a party to the
23 contract?
24 A Yes.
25 Q There are no other explicit parties to the

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1 contract, are there?
2 A No other signatories to this.
3 Q No other signatories, okay.
4 Now, Ms. Congress, she's not a third-party
5 beneficiary to the contract either, is she?
6 A No.
7 Q In fact, the pooling and servicing agreement,
8 you may need to look in there specifically, but you
9 may know from your general experience, there are
10 certain parties who tend to be beneficiaries, like
11 the certificate holders, right?
12 A Yes, and the certificate insured.
13 Q Okay. And she's none of those. So she's not a
14 party to the contract and she's not a third-party
15 beneficiary to the contract, is she?
16 A That's right.
17 Q In fact, none of the mortgagors are parties to
18 the pooling and servicing contract, are they?
19 A Yes. None of the borrowers are parties to the
20 pooling and servicing agreement.
21 Q None of the borrowers. In fact, I think you
22 may have testified to this earlier, but the primary
23 purpose of this pooling and servicing agreement is
24 to protect the certificate holders, right?
25 A It's to create a trust that creates

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1 certificates that investors purchase.
2 Q Okay. And by the way, I forgot about this:
3 With respect to your testimony today, are you being
4 paid for your testimony here today?
5 A I am.
6 Q How much are you being paid?
7 A My rate is six hundred dollars an hour.
8 Q Do you have any idea how many hours you've put
9 into this?
10 A I don't. I can find out.
11 Q I appreciate it. Is it more than a hundred
12 hours?
13 A No.
14 Q Less than fifty?
15 A Yes.
16 Q Less than twenty?
17 A Yes. I believe it's less than twenty as well.
18 Q Okay. Now, I think I heard some of your
19 opinion today and you spoke a lot about you weren't
20 sure if the trust was the owner of this note; is
21 that right?
22 A I spoke a lot about -- I'm sorry. I'm not
23 following the question.
24 Q I'm sorry. Let me backup.
25 During your testimony, part of your testimony

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<p>1 was that you weren't sure if the trust, this 2 current trust, the plaintiff is the owner of 3 Ms. Congress's promissory note. 4 A I believe I said that there is nothing, there 5 is no evidence that this trust was the owner of 6 this note. 7 Q There is no evidence that -- so it's your 8 testimony that there's no evidence that this trust 9 owns her note? 10 A That's right. 11 Q Now, we spoke a lot about owner, and I just 12 want to make sure I'm clear about this. You're not 13 giving any opinion today as to whether or not the 14 plaintiff could be the holder of a promissory note, 15 are you? 16 A Physical holder or are you talking about a -- 17 define legal contract -- 18 Q Let's back up. Can the trust be a physical 19 holder of her promissory note? 20 A They could be. The trust could be through a 21 custodian. 22 Q I mean, are you giving any opinion that the 23 trust can't be a holder of her note under the 24 Uniform Commercial Code, Alabama's version? 25 A No.</p>	<p>1 MR. WOOTEN: No, it was 22. Flip to the 2 front page right inside the cover. 3 THE COURT: It's inside. 4 A 22. 5 Q And I should have done this earlier. Let me 6 just make sure. You've got 22 there? 7 A That says 22. 8 Q Okay. This appears to have a pooling and 9 servicing agreement, an assignment assumption 10 agreement and there's two documents. Looks like 11 under tabs two and three, and the 8(k) on Tab 4. 12 Okay? 13 A Yes, sir. 14 Q I'm going to refer to section symbols. If you 15 can't follow that section symbol, just let me know 16 and I'll try to get you a copy of it. 17 A Okay. 18 Q One thing I didn't not notice there is the 19 mortgage loan schedule for this trust. The 20 plaintiff's trust is not attached to that document, 21 is it? 22 A Does not appear to be. 23 Q In forming your opinion today, did you ever go 24 and look at the actual mortgage loan schedule with 25 respect to plaintiff's trust?</p>
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<p>1 Q That's why -- I just want to make sure. You're 2 talking about ownership issues, not holder issues; 3 is that fair to say? 4 A Yes, sir. 5 Q Okay. 6 THE COURT: Would there be any difference 7 as far as standing? 8 MR. RAMEY: No. I mean -- well, there 9 would be no difference with respect to her standing 10 the challenge of the transaction. I do believe 11 that we can force the obligation of any holder 12 under Alabama's UCC and enforce -- 13 THE COURT: Whether you're the holder or 14 owner? 15 MR. RAMEY: Correct. As will be set forth 16 in our briefs. It's completely irrelevant, the 17 ownership issue. 18 THE COURT: All right. 19 Q (BY MR. RAMEY:) You have a copy of the pooling 20 and servicing agreement we've talked about. 21 A I do. 22 Q Is this Defendant's Exhibit 1? 23 MR. WOOTEN: I believe we've marked that 24 as 2. 25 MR. RAMEY: As 2.</p>	<p>1 A I don't believe so. I don't believe that that 2 was the document that I reviewed and it is not 3 here. 4 Q Okay. Do you know -- well, let me back this 5 up. If that's the case, have you gone and looked 6 to see if her loan is even listed in the mortgage 7 loan schedule with this trust? 8 A I have seen it on a listing of a document. I'm 9 not sure which document it was. 10 Q Okay. And I don't want to be painful about 11 this, but I'm going to go ahead and get the 12 mortgage loan schedule, because I think it would be 13 important to determine, first of all, whether her 14 name is actually listed in the original mortgage 15 loans. Would you agree with me? 16 A Sure. 17 Q I mean, doesn't the original mortgage loan 18 schedule list the loans that are supposed to be in 19 the trust? 20 A It does. 21 Q I mean, that's the purpose of it. I'm going to 22 try to par this down, but this is the nine hundred 23 and seventeen page mortgage loan schedule that goes 24 -- that's filed with the SEC and goes with the 25 pooling and servicing agreement. Do you have any</p>

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1 disagreement about this?
2 MR. WOOTEN: Are you representing that
3 that is the full and complete loan schedule for
4 this pooling and servicing agreement?
5 MR. RAMEY: For this pool, yes.
6 MR. WOOTEN: Is it redacted in any way?
7 MR. RAMEY: No. You can take a look and
8 see it.
9 THE COURT: Is this just this one trust?
10 MR. RAMEY: This is just this one trust.
11 The trust we claim is the plaintiff in this case.
12 THE COURT: Yeah.
13 MR. WOOTEN: And this is in the same
14 format as the other one that you have a loan number
15 repeating every certain of the page because it's a
16 spreadsheet, right?
17 MR. RAMEY: Exactly.
18 MR. WOOTEN: So that's why it's nine
19 hundred and seventeen pages, right?
20 MR. RAMEY: Exactly.
21 MR. WOOTEN: Okay.
22 MR. RAMEY: And Your Honor, I'll take your
23 advise on this. This is one of the exhibits to the
24 pooling and servicing agreement that's previously
25 been entered as Defendant's Exhibit 22, and the

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1 completion document should be considered part of
2 it. And I'm happy to enter it as a separate
3 exhibit.
4 THE COURT: Let's call it 22-A.
5 MR. RAMEY: 22-A?
6 THE COURT: Does that suit you?
7 MR. RAMEY: That's our exhibit there.
8 (Whereupon, Plaintiff's Exhibit
9 Number 19 was marked for
10 identification.)
11 Q And I'll show this. Have you ever seen a
12 mortgage loan schedule like this before?
13 A I've seen hundreds of mortgage loan schedules.
14 Electronic form.
15 Q An electronic form. Does this look any
16 different than some of the typical mortgage loan
17 schedule you've looked at?
18 A No, it does not.
19 Q Okay. As I understand it, and you can flip
20 through and take a look at it. But for example,
21 there are no names in here, are there? There was
22 no debtor, mortgagor, or borrower names at all, are
23 there?
24 A I don't see any.
25 Q Okay. But there is relevant information on

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1 these, including looking here on first page, it has
2 a loan number, it has the gross interest rate, RFC
3 net interest rate, first payment date, maturity
4 date, original amount, and principal balance.
5 Would those be categories you would typically see
6 in a mortgage loan schedule?
7 A Yes.
8 Q And you probably also see additional
9 information as well. And I'll show you an example
10 of that.
11 Starting here on Page 41 of the document. You
12 see there is a break and we have different
13 information, don't we?
14 A Yes.
15 Q We have loan number again, but we have
16 principal and interest amount, RFC, LTV
17 information, paid to date, pay type. I can't tell
18 what that is. Loan -- loan purp and home
19 improvement IMV. Take that out. And that's
20 typical information you would see in some of these
21 mortgage schedules?
22 A Yes.
23 Q And there's additional information typically in
24 these mortgage loan schedules as well, the max
25 interest rate, min interest rate and arm loan, for

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1 example?
2 A Yes.
3 MR. RAMEY: Let me ask you this,
4 Mr. Wooten.
5 (Off the record.)
6 MR. WOOTEN: Judge, basically the issue is
7 is that we're aware that the mortgage loan was
8 scheduled -- and for this EMX1 says that the loan,
9 the same loan number is in that loan schedule. And
10 that's the reason I have offered the Court a nine
11 hundred page exhibit in one of these affidavits.
12 THE COURT: That's pretty important, isn't
13 it?
14 MR. WOOTEN: Well, but it's in two
15 different trusts. It's in '06, the EMX9, and it's
16 in '07, the EMX1. So what --
17 THE COURT: I thought he had testified to
18 that.
19 MR. LAY: Yes.
20 MR. WOOTEN: So what we're trying to
21 stipulate to save time is to say that the loan, the
22 information appears in the loan schedule for two
23 different trust. Is that right?
24 MR. RAGSDALE: That's not true.
25 MR. RAMEY: I'm going to take some issue

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<p>1 with the other trust in that. 2 MR. WOOTEN: Sure. 3 MR. RAMEY: With respect -- 4 THE COURT: So you're just trying to get 5 him to stipulate that in this trust, the one with 6 which we are concerned with lists Ms. Congress's 7 loan? 8 MR. RAMEY: Correct. Loan number, 9 interest rate, maturity date, date of loan. 10 THE COURT: Okay. And you stipulate to 11 that? 12 MR. WOOTEN: It's the same information 13 that's in the '06-EMX9. 14 THE COURT: All right. But that's another 15 issue? 16 MR. WOOTEN: Yes, sir. 17 THE COURT: All right. So it's stipulated 18 without me reading nine hundred pages that 19 Ms. Congress's loan is included in this trust of 20 which we're concerned today. 21 MR. WOOTEN: On the schedule, the mortgage 22 loan schedule. 23 THE COURT: On the schedule, yeah, on the 24 mortgage loan schedule. 25 MR. WOOTEN: Right. I think we entered</p>	<p>1 Q And when you reviewed the pooling and servicing 2 agreement, the depositor here represented that they 3 had put all the loans in the mortgage loan schedule 4 into the trust, correct? 5 A Yes. 6 Q Likewise, the trustee, they're the ones who 7 received it, right? They give representation about 8 receiving it? 9 A Yes. They have an acceptance. 10 Q Okay. And when you reviewed the pooling and 11 servicing agreement, they represented that they had 12 received all the loans, the mortgage loan schedule, 13 including Ms. Congress's loan? 14 A They represent that they accept subject to the 15 terms of the pooling and servicing agreement, yeah. 16 Q But they stated that they received the mortgage 17 loans and the mortgage loan schedule, correct? 18 A Yes. Is there a provision? 19 Q Yeah, we can go to a specific provision. 20 That's fine. 21 A I'm not -- the specific wording of that. 22 Q That's fine. That's fine. See the pages I'm 23 flipping by it's because we got past that whole 24 agreed upon stipulation. 25 Specifically, we can start first with -- look</p>
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<p>1 that into evidence already. 2 (Whereupon, Plaintiff's Exhibit 3 Number 19 was marked for 4 identification.) 5 MR. RAMEY: I think we entered that as 6 evidence already. 7 THE COURT: 19 is admitted if it wasn't 8 before. 9 (Whereupon, Plaintiff's Exhibit 10 Number 19 was received into 11 evidence.) 12 Q And in preparing to give your opinion, you had 13 reviewed the actual pooling and servicing 14 agreement, the representations and warranties set 15 forth by the various parties in that agreement, 16 right? 17 A Yes, sir. 18 Q And, for example, various parties to the 19 agreement state -- give various representations of 20 warranties? 21 A Yes. 22 Q Okay. For example, the depositor, they're the 23 ones who put the loans into the trust; is that 24 correct? 25 A Yes.</p>	<p>1 at Section 2.01 which talks about the conveyance of 2 mortgage loans. And I'm backing up a little bit 3 because we were talking about the trustee. But 4 this backs it up to the depositor issues. 2.01(A) 5 tell me if I'm reading this incorrect. 6 The depositor concurrent with the execution and 7 delivery -- 8 THE COURT: What is this from, Shaun? 9 MR. RAMEY: This is from the current 10 pooling and servicing agreement. 11 THE COURT: Okay. 12 MR. RAMEY: That is Section 2.01 -- 13 MR. LAY: Page 31 if our notebook that you 14 have. 15 MR. RAMEY: Thank you. My pages are all 16 going to be one page difference. 17 Q 2.01 is entitled Conveyance of Mortgage Loan. 18 Do you see that section, Mr. Adams. 19 A I do. 20 Q Okay. 2.01(A) says the depositor concurrently 21 with the execution and delivery hereof, does hereby 22 assign to the trustee and respect to the trust fund 23 without recourse all the right, title, and interest 24 of the depositor and into, open paren, little i 25 one, close paren, mortgage loans, correct?</p>

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<p>1 A Yes. 2 Q Okay. So is it your understanding that the 3 depositor when they signed this document said they 4 conveyed all the things that were in the mortgage 5 loan including Ms. Congress's loan to the trust? 6 A Yes. 7 Q Okay. 2.01(B) right below that, do you see 8 that? 9 A Yes. 10 Q It says, in connection with such assignment and 11 contemporaneously with the delivery of this 12 agreement except as set forth in Section 2.01(C) 13 allowing subject to Section 2.01(D) below, the 14 depositors hereby, open paren, one, does hereby, 15 open paren, one, with respect to each of the 16 mortgage loans deliver to master servicer or an 17 affiliate of the master servicer each of the 18 documents or instruments described in clause little 19 two i have below. Do you see that? 20 A Yes. 21 Q Did I read that correctly? 22 A Yes. 23 Q Okay. So is it from your experience in the 24 industry, does that mean the depositor saying they 25 conveyed all the underlying documents that went</p>	<p>1 A Okay. 2 Q Specifically, I want to go to all the way, flip 3 to letter B. B as in boy. And as I understand it, 4 here it says: The depositor hereby represents and 5 warrants to the trustee for the benefit of the 6 certificate holders and the certificate insurer, 7 that as of the closing date of otherwise described 8 below, as to the date so specified, immediately 9 prior to the conveyance of the mortgage loan, the 10 trustee, the depositor had good title to and was 11 the sole owner -- 12 THE COURT: Slow down, Shaun. 13 MR. RAMEY: Sorry. -- was the sole owner 14 of each mortgage loan free and clear of any pledge, 15 lien, encumbrance or security interest. 16 Is that another one of the representations that 17 the depositor would have made by executing this 18 document? 19 A Yes. 20 Q And getting us back to where we were, if you 21 would skip back to the Section 2.02, entitled 22 Acceptance by Trustee. And I think this is in 23 section you wanted to double-check. 24 It says the trustee acknowledges receipt or 25 with respect to mortgage loan subject to a</p>
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<p>1 with these mortgage loans that were in the mortgage 2 loan schedule, including Ms. Congress's loan? 3 A The depositor does hereby deliver to the master 4 servicer. So master servicer is not -- 5 I'm sorry. What was your question? The master 6 servicer is the servicer. 7 Q I'm sorry the master servicer is what? 8 A It's the master servicer then -- the answer to 9 your question about ownership or position. 10 Q I guess the question was -- and it may have not 11 been a good question. 12 That representation is that in connection with 13 signing this document, they've transferred the 14 various documents of the master custodian with 15 respect to the mortgage loans -- sorry. The master 16 servicer. 17 A Yes. Yes, that's right. 18 Q Okay. Great. 19 Let's look at -- I want to skip a few sections 20 down to Section 2.03 entitled, Representation of 21 Warranties and Covenants of the Master Servicer and 22 the Depositor. It may be Page 31, maybe, of 23 y'all's copy, maybe 33. It's 32 of mine. 24 A Did you say 2.03 you said? 25 Q Yes, sir.</p>	<p>1 custodial agreement and based solely upon a receipt 2 or certification executed by the custodian, receive 3 it in respect to custodian, appointed agent of the 4 trustee, close paren, of the documents referred to 5 in Section 2.01(B) little i above, except that for 6 purposes of such acknowledgement, only a mortgage 7 note may be endorsed in blank and an assignment of 8 mortgage may be in blank and declares that it as 9 custodian as its agents holds and will hold such 10 documents and the other documents constitute part 11 of the custodial file delivered to it or the 12 custodian as its agent and trust for the use and 13 benefit of all present and future certificate 14 holders and the certificate insurer. The trustee 15 or custodian, the custodian being so obligated 16 under the custodial agreement, agrees for the 17 benefits of certificate holders. (As read.) 18 MR. RAMEY: I was originally born up 19 north, and I apologize for that. 20 THE COURT: You haven't seen trouble until 21 you get Rhonda mad at you. Slow down. 22 Q So is it my understanding that the trustee is 23 given a representation that they have accepted the 24 documents regarding mortgage loans from the 25 depositor by signing this document?</p>

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<p>1 A Yes. 2 Q So just to re -- sorry -- just to recap. I 3 want to make sure I understand. 4 The pooling and servicing agreement, the 5 parties to that document, the depositor said they 6 have given -- that they have transferred the 7 mortgage loans by the closing date; is that 8 correct? 9 A Yes. 10 Q And the trustee acknowledge that they had 11 received it by the closing date; is that correct? 12 A Yes. 13 Q And Ms. Congress's loan is listed as one of 14 those -- is listed as one of those loans in the 15 mortgage loan schedule which is filed with the SEC? 16 A Yes. 17 Q Okay. Is it your contention that that's no 18 evidence that the trust actually owns the note in 19 question? 20 A It is my contention that the documentation used 21 to convey the note does not provide evidence that 22 it belongs to this trust. 23 Q I guess to put it another way, you would like 24 to go beyond just the representations and the 25 warranties put in the publicly filed Document C the</p>	<p>1 Q And that you found some evidence that 2 Ms. Congress's loan was also listed in this pooling 3 and servicing agreement? 4 A Yes. 5 Q Does this one predate? 6 A Yes, it does. 7 Q This one predates the one we're talking about 8 on the board there? 9 A Yes. 10 Q Okay. I'm going to direct your attention, 11 first of all, to Tab 2 the first page, where it 12 says: File pursuant to Rule 433 SEC file number, 13 and then it has an SEC file number after that? 14 A Yes. 15 Q This says: Free writing prospectus, 16 preliminary pooling information, right? 17 A Yes. 18 Q And it says, Residential Funding Company, 19 Master Servicer and Sponsor. 20 Is it your contention that this is the actual 21 pooling and servicing agreement even though it says 22 it's a preliminary pooling and servicing agreement? 23 A No. 24 Q Is it your contention that there be a pooling 25 and servicing agreement issued after this one, the</p>
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<p>1 actual transfers; is that right? 2 A Well, included among the steps to demonstrate 3 these provisions and the other paragraphs of the 4 sections that you were referring to, describe the d 5 steps that are supposed to be taken with the 6 assignment and the note. 7 Q All right. So you want to see the specific 8 steps, not just the representations that the steps 9 have been complied with? 10 A And which the trustees saying that they 11 complied with. Yes. 12 THE COURT: Say that again. 13 A In which the trustee issues a certification 14 saying that they complied with the steps. 15 Q Okay. I want to talk a little bit about -- do 16 you have, I think it's Defendant's Exhibit 2 up 17 here. Let's see. Okay. Defendant's Exhibit 2. 18 Do you remember talking about this earlier during 19 your direct examination, this exhibit? I'll let 20 you take a look at it again. 21 A Yes. 22 Q Okay. As my understanding was you said that 23 this document related to a different pooling and 24 servicing agreement? 25 A Yes.</p>	<p>1 preliminary one? 2 A I'm sorry. Can I see that again? 3 Q Yes. And I guess my concern is the word 4 "preliminary." 5 THE COURT: What is the name of that 6 trust? 7 MR. RAMEY: This one says the Home Equity 8 Mortgage Asset-Backed Pass-Through Certificate,, 9 Series 2006-EMX9 Certificates. 10 Q Is that the name of this trust? Did I say that 11 right? 12 A Yes. 13 THE COURT: Okay. 14 Q So is this the final pooling and servicing 15 agreement there would be for this? 16 A No. This is free writing prospectus. It's not 17 a pooling and servicing agreement. 18 Q So this it not a pooling and servicing 19 agreement we're looking at Tab 2? 20 A Right. 21 Q Okay. 22 A It's a disclosure document. 23 MR. WOOTEN: Shaun, do you want me to pull 24 out the stack down there? 25 MR. RAMEY: Pardon?</p>

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1 MR. WOOTEN: Do you want me to pull the
2 trust agreement out of the stacks, in the fifteen
3 or so --
4 MR. RAGSDALE: Do you have the original
5 copy of the mortgage schedule for that?
6 MR. WOOTEN: The free writing prospectus
7 is filed after the pooling and servicing agreement.
8 MR. RAMEY: Okay
9 MR. WOOTEN: Read it.
10 Q (BY MR. RAMEY:) Let me ask you this, sir: Is
11 the free writing prospectus filed after the pooling
12 and servicing agreements were finalized?
13 A I believe that might depend or depends on
14 circumstances. So I'm not sure.
15 Q Okay. The reference to Ms. Congress's loan, it
16 was in this loan pool information here, right?
17 A Yes, sir.
18 Q So the reference we were talking about earlier
19 about Ms. Congress's loan was in the preliminary
20 PSA prospectus; is that correct?
21 A The free writing prospectus that has the word
22 preliminary in it. There's no reference in this
23 document to the pooling and servicing agreement,
24 this free writing prospectus.
25 Q And I want to make sure I understand. The

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1 reference to Ms. Congress's loan is from this
2 prospectus?
3 A Yes.
4 Q That you have referenced earlier?
5 A Right.
6 Q And your time in the industry, does it
7 sometimes happen that a loan might be originally
8 contemplated to go into a particular trust, but for
9 some reason may not make it in that trust and go
10 into a subsequent trust?
11 A I have seen that happen, yes.
12 Q That has happened?
13 A Yes.
14 Q Is it possible that that happened in this case,
15 assuming her name wasn't in the prospectus.
16 A It's possible.
17 Q After all, the trust we're talking about today
18 is after this date, isn't it?
19 A That's right.
20 Q Okay.
21 MR. RAMEY: Did y'all want to point out
22 the particular -- was it Number 9?
23 MR. WOOTEN: That's good with us.
24 One of the ones up there, Tom, that is bound.
25 MR. RAMEY: This one may be.

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1 MR. GRIMSLEY: It should be EMX9.
2 Q I want to be fair and make sure I've got this
3 right. I'm showing you Defendant's Exhibit 9,
4 which is an RASC Series, 2006-EMX9 Trust.
5 A Yes.
6 Q Is that the same trust?
7 A That we were just talking about for the
8 prospectus.
9 Q Okay. So this would have been the finalized
10 pooling and servicing agreement after that
11 document?
12 A Yes.
13 Q Is there any mortgage loan schedule in this
14 document identifying Ms. Congress's loan?
15 A Not attached to this, no.
16 Q Attached to this, okay.
17 THE COURT: Where is it?
18 A It is filed electronically, the mortgage loan
19 schedule, simultaneous with this in the document.
20 MR. WOOTEN: Judge, we need to supplement
21 that, we can. That goes back to the issue of a
22 nine hundred page mortgage loan schedule because
23 it's printing off four sheets on a spreadsheet out.
24 THE COURT: Well, if she's listed on this
25 particular trust, I need to know it.

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1 MR. WOOTEN: Well, that's the purpose of
2 introducing the free writing prospectus, which
3 shows that she was --
4 THE COURT: Well, the prospectus is not
5 the final defining document.
6 MR. WOOTEN: Well, that's true, Your
7 Honor. That's one of the reasons, like I told you
8 we'll --
9 THE COURT: Well, do you have a document,
10 a final document which lists Ms. Congress's loan in
11 a trust other than the one which we're concerned?
12 MR. WOOTEN: I have not pulled the final
13 mortgage loan schedule for that EMX9 Trust.
14 THE COURT: Didn't you testify that she is
15 listed or that she's listed on the preliminary --
16 THE WITNESS: She's listed on the free
17 writing prospectus which was Exhibit 2.
18 MR. LAY: We'll get it.
19 MR. RAMEY: And just to clarify, this is,
20 once again, the free writing prospectus,
21 Defendant's Exhibit 2.
22 Q (BY MR. RAMEY:) And I'm turning to the second
23 tab, which does have a date on it. Can you tell us
24 what the date is there?
25 A 10-23-06.

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<p>1 Q Okay. Sorry about that. And Defendant's 2 Exhibit 9 we were just talking about is the actual 3 PSA. On the cover page, does that have a date as 4 well? 5 A 11-13-06. 6 Q Okay. So that is the PSA was after the 7 prospectus, correct? 8 A Yes. 9 Q Let's talk a little bit about the note itself. 10 Do you have a copy? Two notes. Are they all up 11 here? Okay. 12 A Yeah, not one. 13 Q Can I see that one? Thank you very much, sir. 14 A Which note? It is the one in blank? This is 15 the one with allonge. 16 Q Thank you very much. Okay. When you gave your 17 -- when you gave your opinion, you gave an 18 affidavit originally in this case, didn't you? 19 A Yes, that's correct. 20 Q Was that in -- was that -- do you recall when 21 that was, about when that was? 22 A A few weeks ago. April. 23 Q When you had given your opinion, you had just 24 -- the copy of the note you had seen was this, what 25 we're showing as Plaintiff's Exhibit 1, this</p>	<p>1 Q Now, with respect to the note, Exhibit 1 there 2 that has the blank endorsement, you said, I guess 3 per this PSA that you expected it to end with a 4 specific endorsement; is that correct? 5 A Are you referring to my affidavit? 6 Q Yes. 7 A I don't recall the exact wording that I said in 8 the affidavit, but yes I believe that is what I 9 said in the affidavit. 10 Q Your point was that the note was going to have 11 to be specifically endorsed to a person at the end? 12 A According to the terms in the pooling and 13 servicing agreement. 14 Q Not a company or an entity per the terms of the 15 pooling and servicing agreement? 16 A Right. 17 Q Okay. Not necessarily per interest standards 18 now? 19 A No, under the terms of the pooling and 20 servicing agreement. 21 Q Because as far as the industry goes, there are 22 lots of pooling and servicing agreements that 23 typically have endorsements in blank, but that's 24 the way the note is negotiated? 25 A That's correct.</p>
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<p>1 adjustable rate note which ends with an endorsement 2 in blank by Mortgage Lenders Network; is that 3 correct? 4 A Yes. 5 Q And when you gave your opinion, one of your 6 problems was that you would expected per to PSA, 7 that this note would have had interim endorsements, 8 right? 9 A Yes, sir. 10 Q And that it would end with a specific 11 endorsement as well? 12 A Yes. 13 Q Okay. We talked a lot about -- I'm going to 14 show you Exhibit 5 to see if you have it as well. 15 This is Plaintiff's Exhibit 5 is the adjustable 16 rate note which contains the allonge on the back as 17 well as the filled-in endorsement here? 18 A Yes. 19 Q First of the all with respect to Plaintiff's 20 Exhibit 1, when you had done your investigation or 21 gave your original opinion, you had never seen the 22 original of any note, had you? 23 A No, copies. 24 Q Had you ever asked to see the original note? 25 A No.</p>	<p>1 Q And when we speak, by the way, about your 2 industry background, we're talking about based on 3 what you know from the industry from where you've 4 been. For example, you have represented or you 5 worked at a certificate insurance; is that my 6 understanding? 7 A Yes. 8 Q And you worked on some of these securitizations 9 in private practice? 10 A Or beyond, yes. 11 Q But you never, for example, worked at a 12 trustee? 13 A No. 14 Q Or worked at a servicer? 15 A No. 16 Q Master or subservicer? 17 A I never was employed by those companies. 18 Q Or a document custodian? 19 A Right. 20 Q So when you speak about your opinion from an 21 industry standard, you're talking about from your 22 experience in the industry working in private 23 practice and also working for certificate 24 insurance? 25 A And rating agency.</p>

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1 Q Rating agency too. I apologize.
2 Now, as far as -- let me go back to. Let's
3 look at both of them first, after all.
4 As far as the difference between Plaintiff's
5 Exhibit 1 and 15, they're both signed by
6 Ms. Congress, right?
7 A Yes.
8 Q It's the same signature, in fact, isn't it?
9 And that may be an unfair question because I know
10 you're not a handwriting expert.
11 A It appears to be the same.
12 Q And the terms of the note are all the same,
13 aren't they?
14 A They appear to be the same.
15 Q I mean, the same interest rate, the same
16 principal due date?
17 A Yes.
18 Q The difference being that the Plaintiff's
19 Exhibit 1 has a endorsement in blank where the
20 other one has that endorsement filled in plus an
21 allonge; is that fair to say?
22 A Yes.
23 Q Now, as far as the actual endorsements, you
24 said one of your concerns was when you looked at
25 Plaintiff's Exhibit 1 when you had not reviewed the

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1 original of the note was it didn't have interrim
2 endorsements because you had expected certain
3 people in the chain in here to endorse it?
4 A That's right.
5 Q Assuming the allonge there is a valid allonge,
6 does that satisfy your concern as far as any in
7 between endorsement?
8 A The allonge does pick up the interrim steps of
9 transfer.
10 Q Okay. And as far as the final step, doesn't
11 that satisfy your concern that it was specifically
12 endorsed at the end of the day to U.S. Bank as
13 trustee?
14 A Yes, specific to the trustee U.S. Bank.
15 Q Okay. Which it's supposed to end specifically
16 endorsed to U.S. Bank as trustee?
17 A For a trust was my understanding.
18 Q Now, what do you mean when you say, "for a
19 trust?" That it should actually continue that out
20 in the endorsement?
21 A It should reference a specific trust.
22 Q On the endorsement itself?
23 A Yes.
24 Q Okay. And where did you get that understanding
25 from?

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1 A My understanding is that that would be
2 indicated as a -- under the pooling and servicing
3 agreement.
4 Q For the pooling and servicing agreement?
5 A Uh-huh.
6 Q Because as you said in some of the other
7 pooling and servicing agreements, lots of times an
8 endorsement in blank is acceptable?
9 A Correct.
10 Q Do you have the -- I'm going to go back just a
11 few times. The pooling and servicing agreement we
12 were talking about there. Let me get it again.
13 Yes, the notebook.
14 Can you turn to Section 2.01? Let me know when
15 you get there. I'm doing the same thing.
16 A Yep, I'm there.
17 Q You're there. 2.01 is the section entitled
18 Conveyance of Mortgage Loans, correct?
19 A Yes.
20 Q In section little b there, it talks about in
21 connection with such assignment and
22 contemporaneously with the delivery of this
23 agreement except as set forth 2.01 see below
24 subject to Section 2.01(D) below, the depositor
25 does hereby, open paren, one, with respect to each

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1 loan deliver to master servicer and if failure to
2 master servicer, each of the document instruments
3 describes in clause two below.
4 Do you see that?
5 A Yes.
6 Q Now below that there's some little Roman
7 numerals. Specifically, I want to look at Number
8 1.
9 A Yep, I see it.
10 Q Are these little Roman numerals the directions
11 or the steps on how it's to be transferred, telling
12 you exactly what you're supposed to do?
13 A Yes. It's the different items in the custodial
14 file.
15 Q Okay.
16 A The original file.
17 Q And I want to pay attention to little i, one
18 little i, I guess?
19 A Yes.
20 Q The original mortgage note endorsed without
21 recourse to the order of the trustee.
22 A Yes, that's what it says.
23 Q And showing unbroken chain of endorsements. So
24 doesn't that mean for the pooling and servicing
25 agreements specific endorsements at the end of the

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1 note is supposed to be payable to U.S. Bank as
2 trustee?
3 A Yes, that's right.
4 Q It doesn't say anything about you U.S. Bank as
5 trustee for the certain trust?
6 A Yes, that's right.
7 Q Thank you. So assuming the allonge we are
8 talking about there -- I keep forgetting my
9 numbers?
10 A Fifteen.
11 Q Fifteen. Thank you very much. Fifteen, that
12 specific endorsement, then, at the end of the day
13 to U.S. Bank trustee, complies with the terms of
14 the pooling and servicing agreement, doesn't it?
15 A Yes.
16 Q Now, just for argument sake, does this PSA
17 contemplate situations if the trustee hadn't
18 received a note endorsed in blank or do you know?
19 A I'm not certain. Could you --
20 Q That maybe wasn't a good question.
21 A Yeah. Can we refer to the --
22 Q Sure. Sure. Sure.
23 A Yes.
24 Q Do you have Section 2.01 of the PSA handy
25 again?

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1 MR. WOOTEN: Page 32, fourth paragraph.
2 Q Specifically, I want to look at Subsection C,
3 little c. Let me know when you get to the
4 subsection little c.
5 THE COURT: The page number?
6 MR. WOOTEN: On page 32, fourth paragraph
7 under Subsection C.
8 THE COURT: All right.
9 Q Let me know when you get to C?
10 A Yeah, C.
11 Q Three paragraphs down, one full paragraph of C,
12 two, three. Do you see where it says: If the
13 depositor delivers? Do you see that language?
14 A Yes.
15 Q If the depositor delivers to the trustee or
16 custodian any mortgage note or assignment of
17 mortgage in blank, the depositor shall or shall
18 call the custodians to complete the endorsement of
19 the mortgage note and the assignment of mortgage in
20 the name of the trustee in conjunction with the
21 interrim certification issued by the custodian.
22 That's contemplated in Section 2.02.
23 A Yes, sir.
24 Q So the PSA does provide a mechanism for filling
25 in a blank endorsement should a blank endorsement

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1 be delivered to the trust?
2 A Yes. Yes. In connection with the initial
3 certification.
4 Q I understand.
5 With respect to Plaintiff's Exhibit 15, the
6 note with allonge, I want to make sure we're clear
7 about this. Are you giving any opinion that that's
8 a forged or manufactured document?
9 A No, I am not giving an opinion on that.
10 Q You talked a little bit about the tax
11 consequences of or the tax treatment of these
12 pools. What is it called? REMIC?
13 A REMIC. R-E-M-I-C.
14 Q R-E-M-I-C. And you will have to help me out
15 here because I'm not a tax guy. It's probably
16 pretty obvious. But is it my understanding from
17 your testimony that the trust can't accept any new
18 assets after a certain date because that could
19 cause the trust to suffer some kind of taxable
20 liability?
21 A Yes, that's right.
22 Q Okay. So that's the reason why you have a
23 concern that loan can't go in beyond the closing
24 date because that would jeopardize the tax
25 treatment?

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1 A That's right.
2 Q Okay. Do you know if the pooling and servicing
3 agreement has any provision for bringing in things
4 after the fact?
5 A There are certain exceptions.
6 Q What would one of those exceptions be?
7 A I mentioned earlier, after the closing date
8 there are certain transactions that have provided
9 for prefunding periods, that means for ninety days
10 following closing date additional loans can be
11 added to the trust. The period is limited to
12 ninety days.
13 In addition, there's typically a provision for
14 a qualified substitute mortgage.
15 Q Okay. I think you said something, maybe I read
16 this in your affidavit, or otherwise, it's
17 something about an opinion of counsel?
18 A Yes.
19 Q Is an opinion of counsel always required in
20 order to acquire assets, loans after the closing
21 date?
22 A I don't believe it's required for all of those
23 circumstances that I just described. I don't think
24 it's required, but I'm not for sure on that one,
25 but typically it is required fore most other

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1 changes to the trust.
2 Q Okay. The idea being that counsel would give
3 an opinion that by accepting this loan it would not
4 suffer tax consequences?
5 A That's right.
6 Q Okay. Do you know if there are any provisions
7 that if an entity transferring it to the trust can
8 indemnify the trust for any tax liability in lieu
9 of an opinion of counsel?
10 A I'm not sure. That may be the case.
11 Q Okay. Have you ever had any experience with
12 that, with the indemnity issues like that?
13 A No. I don't recall anybody being willing to
14 take the tax consequence themselves.
15 Q Okay.
16 A Most people want an opinion.
17 Q Pardon?
18 A Most people would want an opinion.
19 Q Most people would want an opinion?
20 A Yes.
21 Q And, for example, assuming, just for sake of
22 argument that Ms. Congress's loan was not put into
23 the trust until after the closing date, you don't
24 know if any entities offered to provide any
25 indemnification or anything like that with respect

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1 to any potential tax consequence?
2 A That's right.
3 Q And you don't know whether or not the IRS or
4 anyone has ever said if her loan was, in fact,
5 acquired after the date whether or not they're
6 claiming that this was a taxable event?
7 A The IRS, no, I haven't heard that from them.
8 Q I want to direct your attention to 10.01(F).
9 In my copy it's about Page 65. Yours should be a
10 page or two off.
11 THE COURT: Page 66 in here.
12 Q Page 66. Just let me know when you get to it.
13 It's called REMIC Provisions.
14 A Uh-huh.
15 Q And this is going to be a -- it's going to be a
16 tough one. Specify Section F.
17 MR. RAMEY: Do y'all mind if I show him
18 the highlighted portions in the middle of the
19 sentence?
20 MR. WOOTEN: The whole paragraph is
21 highlighted in mine.
22 MR. RAMEY: Okay.
23 Q I just want to direct your attention a little
24 quicker. Focusing on Section (f) specifically, you
25 see the little f there?

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1 A Uh-huh.
2 Q And we're focusing -- that is one very long
3 paragraph so, we're focusing towards the middle of
4 this paragraph right here with "wherever." And can
5 you read that out loud?
6 A "Wherever in this agreement contemplated action
7 cannot be taken because of the timing of such
8 action might result in the imposition of a tax in
9 the trust fund, or may only be taken pursuant to
10 the opinion of counsel that such action would not
11 impose a tax on the trust fund. Such actions being
12 nonetheless be taken provided the indemnity given
13 in the preceding sentence with respect to any taxes
14 that might have been imposed on the trust fund have
15 been given, and that all other preconditions to the
16 taking of such action have been satisfied."
17 (As read.)
18 Q So, if I understand, the PSA provides that you
19 can transfer a loan after the closing date so long
20 as you agree to certain additional provisions like
21 indemnity?
22 A Frankly, I would have to sit down and think
23 about that sentence for a little bit longer to
24 really know what that is saying.
25 Q Okay. We talked a little bit about whether or

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1 not two trusts may possibly own Ms. Congress's
2 loan, Mr. Adams. I'm sorry, Mr. Adams. I'll let
3 he you finish reading that.
4 That's all right. Go ahead.
5 A I'm a little unclear what that sentence is
6 referring to since it refers back to
7 indemnification reference in a prior sentence which
8 is most of the page.
9 Q Most of the page.
10 Okay. It's a pretty long page, isn't it?
11 A It's a long paragraph.
12 Q A long paragraph.
13 Is it fair to say that as we sit here now you
14 really couldn't say one way or the other as far as
15 the indemnity issue, whether you could put a loan
16 into the date after indemnity because you haven't
17 fully reviewed that paragraph?
18 That was a horrible question, by the way.
19 A No. I mean, the prior sentence is talking
20 about an adverse REMIC events. So again, it's --
21 Q Okay.
22 A I believe that's what I was referring to. If
23 certain parties agreed in this agreement that they
24 could indemnify under certain circumstances, it's
25 possible.

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1 Q Okay. So it is --
2 A But still, somebody taking the tax consequence
3 or the tax liability.
4 Q Right. If someone is willing to take the tax
5 consequence or liability, you can actually put?
6 loans into the trust?
7 A But it's not -- it is possible.
8 Q It's possible. Okay.
9 I hate to beat a dead horse. I want to talk
10 about this one more time. The collateral file --
11 and I'll show you the original collateral file.
12 A Yes.
13 Q We talked about some of these scanned image
14 pages, I believe. Do you remember this?
15 A Yes.
16 Q And I just wanted to make sure we have this
17 clear. This first one here says, notes included,
18 correct?
19 A Uh-huh.
20 Q And it has a copy date up here of 8-29-07?
21 A Okay. I haven't seen that before. Okay.
22 Q And that's why I wasn't sure if we had gone
23 through this. So that's 8-29-07. And behind that
24 is a copy of the note with endorsements. This one
25 has the blank endorsement. The next one is a, says

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1 MTGR document. It too has an 8-29-07 date, right?
2 A Yes.
3 Q And behind that looks like the mortgage. Looks
4 like it's got a sticker from Probate, doesn't it?
5 A Uh-huh.
6 Q And the next one after that we have TPOL
7 documents included type of policy. And that has
8 date up here, once again, of 8-29-07?
9 A Yes.
10 Q And after that it looks like we have what
11 appears to be a title closing. We then have one
12 here that says MTGU documents included. Once
13 again, and it says security instrument, mortgage
14 and recording. And it has a date up here, once
15 again of 8-29-07, right?
16 A Yes.
17 Q And it looks like another copy of the mortgage.
18 And then this one SIRO security instrument writer
19 and it has a date up here of 8-29-07?
20 A Yes.
21 Q And there is an adjustable rate writer?
22 A Yes.
23 Q And the next one says, NALG documents included
24 allonge. And it too has the 8-29-07 date, right?
25 A Yes.

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1 Q So all the scanned pages in here, including the
2 actual note and the allonge all have the same scan
3 date, right?
4 A Yes.
5 Q I want to go back one more time. We were
6 talking about Exhibit 2, Defendant's Exhibit 2,
7 that other pool that we previously identified the
8 prospectus as to whether or not it could include
9 Ms. Congress's loan?
10 A Yes.
11 Q Do you remember this?
12 A Yes.
13 Q And specifically, I want to focus on behind
14 here on Page -- we have this second tab. I want to
15 go one, two -- I want to go three pages, okay?
16 Right above the before the actual mortgage loan
17 pool here. Do you see the mortgage loan pool?
18 A Uh-huh.
19 Q It has the loan number and all those terms.
20 Here, and correct me if I'm wrong, and I know it
21 cuts off here at the end, so, please, bear with me.
22 It says mortgage pool information in this free
23 writing prospectus was derived from a preliminary
24 -- and all I have is P there -- not representative
25 of the mortgage loans that will comprise the final

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1 mortgage loan pool, period. I'm guessing that's
2 preliminary. P-r-e-l-i, and then it cuts off. --
3 represents only a portion of the final mortgage
4 loan pool and mortgage loans that are included int
5 he -- and it starts with a P. That may or may not
6 beef pool. -- may be moved from the final mortgage
7 loan pool, period. Was expected that the
8 characteristics of the -- then F -- differ and may
9 differ materially from the characteristics of the
10 preliminary pool of mortgage loans. Then it cuts
11 off again. And then it says, characteristics of
12 the final mortgage loan pool are expected to be
13 similar to the characteristics of -- another T --
14 cuts off again -- in the free writing prospectus,
15 they are not expected to conform in all material
16 respects.
17 So the prospectus, if I understand,
18 contemplates that mortgage loans may not actually
19 go into the final PSA that's in that loan pool. Is
20 that fair?
21 A It says preliminary, yes.
22 Q Okay. Now, as we currently sit here today, do
23 you have any information if there is any other
24 mortgage loan pool or plaintiff trying to foreclose
25 or eject Ms. Congress other than the plaintiff in

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1 this case?
2 A No, I don't have any information.
3 Q Did you review her -- the transcript from the
4 first trial?
5 A Parts of it.
6 Q Parts of it. Let me ask you this: Did you
7 read in there that she was in default?
8 A Yes.
9 Q Okay. And if somebody was in default for a
10 couple of years, would you not expect if they were
11 owed the money that they would come looking for the
12 money through foreclosure or otherwise?
13 A It's possible.
14 Q It's possible. But you're not aware of anybody
15 else other than the plaintiff in this case making
16 that claim, are you?
17 A No.
18 MR. WOOTEN: Objection, Your Honor. He's
19 not here about what's going on with somebody else
20 that can collect a debt.
21 THE COURT: Overrule.
22 Q And as we sit here today you know that
23 Ms. Congress's loan was included in the mortgage
24 loan schedule for the Plaintiff's trust in
25 question, right?

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1 A Yes.
2 Q Okay. But you don't know of any final trust,
3 that other trust we're talking about, you have not
4 seen any document showing that she was in the final
5 PSA, do you?
6 A I don't have that.
7 MR. RAMEY: Give me a moment to confer.
8 THE COURT: Yes, sir.
9 Q (BY MR. RAMEY:) Do you remember we were
10 talking about the mortgage assignment, the
11 documents out of the mortgage assignment?
12 A Yes.
13 Q You were saying you would expect that mortgage
14 assignment would have been done a lot earlier than
15 it was?
16 A Yes.
17 Q I understand you're a attorney licensed in
18 New York?
19 A Yes.
20 Q Never been licensed in Alabama, have you?
21 A No.
22 Q Have you ever practiced in Alabama?
23 A No.
24 Q Ever practiced foreclosure law?
25 A No.

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1 Q And you never have practiced foreclosure law in
2 Alabama?
3 A That's right.
4 Q So you don't know the standards or what
5 procedures they go through in foreclosing and
6 assigning documents, do you?
7 A That's right.
8 Q Now, with respect to the mortgage assignment,
9 did Ms. Congress's mortgage even have to be
10 assigned to this trust?
11 A There was a -- I would have to check those
12 provisions.
13 Q Okay. Well, have you ever heard the concept of
14 -- are you familiar with the company called MERS?
15 A Yes.
16 Q Have you ever heard the concept of a MOM, a
17 mortgage?
18 A Yes.
19 Q MERS as original mortgagee?
20 A Yes.
21 Q And I know we've looked through a lot of
22 documents, but do you know if MERS was the original
23 mortgagee of the mortgage in question?
24 A I believe it was.
25 Q Let's go ahead and look at PSA again. Let's go

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1 to my favorite Section 2.01. You may be looking
2 offer 2.01 with me, or be looking it over.
3 Do you see if it's a MERS as original mortgagee
4 or a MOM, does the pool require that the mortgage
5 actually be assigned to the trust or just the note?
6 A Sorry. Are you referring to subparagraph 2?
7 Q I believe that's about right.
8 A I'm sorry. Could you ask the question again?
9 I'm not sure what you're asking.
10 Q Sure. Sure. You understand -- it's my
11 understanding certain steps have to take place in
12 order to transfer the various pieces of
13 Ms. Congress's mortgage loan into the trust?
14 A Yes.
15 Q One of those is you have to assign the note or
16 provide -- you need to provide the note.
17 A Yes.
18 Q Convey the note. If it's a MERS as original
19 mortgagee, do you have to convey or assign the
20 mortgage?
21 A The -- I understand the question. I'm not
22 seeing the -- I've got you the provision. I see
23 reference to MERS in Paragraph 4.
24 Q That's fine. It's not --
25 A Are you referring to --

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<p>1 Q In paragraph B -- 2 A B. 3 Q Paragraph B, there is a subsection 2 that says 4 with respect to Mom loans? 5 A Correct. 6 Q Do you see that? 7 A Uh-huh. 8 Q With respect to Mom loans you have to deliver 9 and deposit with the trustee or the custodian of 10 the duly appointed agent of the trustee for such 11 purpose, the documents, or instruments described in 12 the MERS -- 13 A Enclosing one and five -- 14 Q One and five below, correct? 15 A Uh-huh. 16 Q All right. And the assignment that you were 17 talking about, a mortgage assignment is listed as 18 3, right, little i 3? 19 A Yes. 20 Q So that's not one of the things if it's a MOM 21 you have to deliver? 22 A That's right. 23 Q Right. You have to deliver one number, the 24 original mortgage note? 25 A Uh-huh.</p>	<p>1 Q No. 2 A Because I have -- 3 Q No, it's my understanding you testified here a 4 few minutes ago that the assignment of mortgage was 5 too late. 6 A No, I don't think I said anything about the 7 assignment of mortgage. 8 Q Okay. 9 A I did in the affidavit. I could be wrong. But 10 I believe in the affidavit I referred to the -- 11 THE COURT: Your point is that there 12 doesn't need to be an assignment of the mortgage? 13 Q Per the PSA, yes. Is that right? 14 A In my affidavit, I was referring to the 15 assignment of mortgage as being the evidence of the 16 transfer. 17 Q Evidence of the transfer? 18 A In the absence of any information on the note. 19 Q Right. Thank you. 20 A I don't believe I said anything -- correct me 21 if I'm wrong. I don't believe I said anything 22 about -- 23 Q So your problem with the mortgage assignment 24 was you saw that as some kind of evidence of the 25 transfer of the note, and because it was after the</p>
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<p>1 Q And you have to deliver five? 2 A Yes. 3 Q The original with each modification. But 4 there's no requirement if it's a MOM for you to 5 actually have to deliver an assignment of mortgage 6 to the trust. 7 All right. So the mortgage assignment we are 8 talking about, there's nothing wrong with it being 9 assigned much later than the closing date per the 10 PSA, is there? 11 A There's nothing wrong with it being assigned. 12 Q Let me back up. I think I lost you on that. 13 That's fine. 14 The mortgage assignment, the problem you had 15 with it was it was after the closing date -- 16 A Yes. 17 Q -- of the trust, correct? 18 A Uh-huh. 19 Q The mortgage assignment, correct? 20 A Yes. 21 Q And the PSA language we just talked about 22 doesn't say you have to deliver any assignment, 23 does it, if it's a MERS as original mortgagee, 24 which Ms. Congress's mortgage was. 25 A Well, are you referring to my affidavit?</p>	<p>1 closing date it was too late? 2 A That's right. 3 Q Okay. This was, of course, before you had seen 4 Plaintiff's Exhibit -- I think it is 15? 5 A Yes, that's right. 6 Q The allonges. Okay. And did you listen to 7 Ms. McCullough's testimony here previously today? 8 A Most of it. 9 Q Did you hear her tell why the mortgage 10 assignment document is prepared? 11 A Yes. 12 Q And have you heard anyone from our side today 13 ever state that the note was transferred through 14 that document entitled Mortgage Assignment? 15 A I heard questions discussing it. 16 Q Well -- 17 A Yes, I have heard -- I heard her say that she 18 didn't believe that's what happened; is that 19 correct. 20 Q Well, I'm not sure who her was. Let me ask a 21 better question. 22 A Ms. McCullough. 23 Q In your affidavit you said you were told that 24 the plaintiff took the position that the mortgage 25 note was transferred. And I think it was July of</p>

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1 2008 by virtue of the mortgage assignment, correct?
2 A I believe that sounds accurate.
3 Q That sounds accurate. Were you told that by
4 your attorneys?
5 A Yes.
6 Q You weren't told that by anyone associated with
7 the trust?
8 A No.
9 Q Or anything like that? You didn't see that
10 testimony in the prior trial, did you?
11 A No.
12 Q Okay. When you gave your first opinion, it was
13 originally based on the note that was endorsed on
14 blank?
15 A Yes.
16 Q And per that opinion based on that document it
17 was your opinion that this trust never owned the
18 mortgage note?
19 A Right.
20 Q Right. Okay. Since that time -- and when
21 making that opinion you had never reviewed the
22 original of the mortgage note?
23 A That's right.
24 Q Since that time you have now seen the original
25 note with the endorsement, the blank endorsement

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1 filled in as well as the allonge, correct?
2 A Yes.
3 Q And you told us today that those endorsements
4 comply with PSA.
5 A I'm sorry. The allonge?
6 Q Yes.
7 A The information on the allonge --
8 Q Yes.
9 A -- shows the chain of title to the trustee.
10 Q All right. Shows the accurate per the PSA, as
11 required by the PSA?
12 A It says it.
13 Q Okay. And you stated earlier during direct
14 that you -- that gave you some kind of pause but
15 you couldn't be certain if the plaintiff her
16 actually owned the mortgage loan?
17 A That's right.
18 Q Right. And also, in your opinion, you talked
19 about the fact that you looked at two mortgage loan
20 schedules, both of which related to two different
21 trusts, both of which pertained to listing
22 Ms. Congress's loan, correct?
23 A Yes.
24 Q And when you gave that opinion, the only
25 evidence you saw in that one trust of her mortgage

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1 loan was in a prospectus, correct?
2 A That's correct.
3 Q It was not in the final PSA?
4 A That's correct.
5 Q So as we sit here today, now, the only evidence
6 you have seen of her mortgage loan is in the
7 plaintiff's trust, doesn't it?
8 A Through the mortgage loan schedule, yes.
9 Q Yes. So when you gave your opinion earlier,
10 you gave an opinion earlier that you still didn't
11 believe that the mortgage loan in question was
12 owned by the plaintiff's -- of the plaintiff's
13 trust because you thought another trust might own
14 it?
15 A Yes. That's right.
16 Q Now that you have no evidence that that other
17 one owns it, do you still have that same opinion?
18 A I have no evidence that the other one owns it?
19 Q Yes. You saw her name only on the prospectus,
20 correct?
21 A Isn't that evidence that another one owns it?
22 Q That the preliminary document --
23 A Well, isn't that evidence? It seems to me that
24 it is.
25 Q Okay.

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1 THE COURT: That is what you base that
2 opinion on is the prospectus?
3 THE WITNESS: Yes.
4 Q Thank you. And so at best, as it currently
5 stands, you don't know at best which of these two,
6 if any, own it?
7 A There is -- yes, there's conflicting
8 information.
9 Q Okay. Let me ask this: Is it your opinion
10 that the plaintiff does not own it?
11 A There is -- it's my opinion that I can't tell
12 if the plaintiff owns this mortgage.
13 Q It is your opinion that you can't tell. Okay.
14 MR. RAMEY: That's it, Your Honor.
15 THE COURT: All right.
16 REDIRECT EXAMINATION
17 BY MR. WOOTEN:
18 Q Tom, with respect to the documents, pull out
19 Exhibit 1 and Exhibit 15, which are the two copies
20 of the note, and pull out 13, please.
21 THE COURT: I would like to say that I
22 would like to vote. The polls close at seven,
23 so --
24 MR. WOOTEN: Yes, sir.
25 THE COURT: Do you think we can wrap it up

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<p>1 within the next half hour or so? 2 MR. WOOTEN: Sure. 3 Q Thirteen which was the assignment. You have 4 got a small stack, don't you. Here, let's move 5 some of this stuff out of the way. This document 6 and this document. 7 A 13. Okay. I've got it. 8 Q When you look at 13 and 1, Tom, which was the 9 evidence admitted in the previous case. Can you 10 read those documents together? 11 A Yes, sir. 12 Q This chart shows a conveyance to the trust by 13 MERS as nominated for MLN on July 29th, '08. Is 14 that an agreement with what Exhibit 13 says? 15 A Yes, it is. 16 Q And does Exhibit 13 say it is also a conveyance 17 of the note and the indebtedness? 18 A Yes, it does. 19 Q And that was a notarized document filed in the 20 probate records of Jefferson County by an attorney 21 acting as an officer of MERS, right? 22 A That's my understanding. 23 Q This was from the testimony of the previous 24 trial, the assignment they relied upon to 25 foreclose, right?</p>	<p>1 trust owns that loan, right? 2 A That's right. 3 Q And what your testimony is with the -- if you 4 consider 15, which is the document with the 5 allonge, is that it's unclear now because U.S. Bank 6 as trustee is on the allonge, right? 7 A That's right. 8 Q But we have shown fifteen different series 9 trust that in all those exhibits we've marked on 10 the floor, that have the same parties with the same 11 requirements for endorsement to the trustee, that 12 the time pattern fits, any of those could be the 13 owner, right? 14 A That's right. 15 Q The mortgage loan schedule, when we showed you 16 the mortgage loan schedule for EMX9, the 2006 17 Trust, we never said that was the final schedule, 18 did we? 19 A No. 20 Q We said it was a prospectus that that showed up 21 in, right? 22 A That's right. 23 Q And prospectuses do talk about the 24 characteristics and contents of a particular deed, 25 correct?</p>
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<p>1 A That's my understanding, yes. 2 Q And there are no other mortgage assignments, 3 correct? 4 A That's right. 5 Q And what we talked about earlier about the 6 problem with the timing of the assignment, not the 7 note, but the assignment. was that if an 8 assignment was necessary, it should have been 9 prepared by the parties of the securitization prior 10 to the closing date, right? 11 A That's right. 12 Q And that did not happen? 13 A Correct. 14 Q So the testimony is, it's a superfluous 15 document that means nothing, in other words. 16 That's the question being asked, a superfluous 17 document means nothing. It's quick claim deed. 18 The assignment of mortgage is not a quick claim 19 of MERS interest to the trust, is it? It says 20 assignment of mortgage. It doesn't say quick claim 21 of MERS interest to the trust. 22 A That's right. 23 Q If you look at the promissory note that was 24 presented in the previous trial, there is no 25 evidence on the face of that document that this</p>	<p>1 A That's right. 2 Q In your mind, why was it not important to go 3 and look at what they said about what loans they 4 believed were in the trust as far as the giant loan 5 -- mortgage loan schedule, nine hundred pages? 6 A Why -- 7 Q We looked at the individual loan documents in 8 the case, was there any evidence of conveyance to 9 the trust? 10 A To this trust? No, I didn't see any evidence. 11 Q So either there was conveyance to the trustee, 12 it's not specific enough to identify the owner, 13 right? 14 A That's right. 15 Q So even if they thought they conveyed to this 16 trust, and even if they meant to convey to this 17 trust, there is no conveyance to identify the 18 trust, right? 19 A That's right. The language does not identify 20 this trust. 21 Q Okay. So when you say a specific endorsement, 22 even though the document says, "endorsement to the 23 trustee," well, the trustee in this case -- what is 24 the name of the trustee in this case? Is it not 25 trustee for RASC Series 2007-EMX1? Is that the</p>

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Page 325	1 name of the trustee for this plaintiff? 2 A One moment. I would assume that that actually 3 shows up as a defined term in the pooling and 4 servicing agreement. I don't have the pooling and 5 servicing agreement. 6 Q Okay. Here. That's the preamble identified? 7 A Yes. It says U.S. Bank, National Association 8 or banking association organized under the laws of 9 the United States as trustee and supplemental 10 interest trustee. 11 Q Okay. And who are they trustee for in that 12 agreement? 13 A For the trust created by Series 2007-EMX1. 14 Q So in that document, when you say endorsement 15 to the trustee, it means endorsement to the trustee 16 for this trust; is that right? 17 A That's right. 18 Q So when you say endorse it to the trustee, if 19 you endorse it to U.S. Bank as trustee for RASC 20 Series 2007-EMX1, I can go back and do car wrecks, 21 can't I? 22 A I'm sorry. Can you say that again? 23 Q That was for their benefit. 24 If this was endorsed to U.S. Bank as trustee 25 for Asset-Backed Pass-Through Certificate Series	Page 327	1 collateral file -- flip through the collateral file 2 for me. It says Exhibit 18, I believe. It should 3 be right here. 4 On the first page, does it say down at the 5 bottom of that first page what the date of delivery 6 is? Right there? 7 A It says cover sheet printed 10-18-2006. 8 Q Okay. Looking at this information, you see on 9 the rest of the page, does it give you any 10 information to tell you where that loan is or -- 11 A No, it doesn't identify a trust. 12 Q Then there is next one. Is it dated later down 13 at the bottom? 14 A Yes, 12-21-06. 15 Q Does it identify a trust name? 16 A No, it doesn't. 17 Q Okay. And does this one identify the third 18 page? Is it dated in 2007? 19 A Yes, 4-20-2007. 20 Q Does it identify a trust name? 21 A No, it doesn't. 22 Q And I asked for the scanned sheets that we went 23 through that had the dates across the top of them. 24 A Those are dates. 25 Q The date was August of '07; is that right?
Page 326	1 2007-EMX1, we don't have fifteen PSAs on floor that 2 have dates and parties that would work for this 3 document, do we? 4 A No. 5 Q We don't have questions about dates and times 6 and places because you can look at the face of the 7 document and see that it's this trust, right? 8 A Right. 9 Q And if the promissory note that was presented 10 to this Court in the previous case were filled in 11 as was required on Page 32 of the PSA, if that note 12 were filled in, that blank endorsement would have 13 said U.S. Bank as trustee based on the documents 14 you were given on Exhibit 1? 15 A If this -- I'm sorry -- Exhibit 1, if that were 16 filled in? 17 Q Based on requirements in Page 32, 117 delivery 18 of a blank note, wouldn't the depositor have filled 19 it in to the trustee? 20 A Yes, sir. 21 Q So if the steps were filled in for the trustee, 22 that blank note would have been filled in for the 23 trustee? 24 A Yes, that's right. 25 Q So, again, the point being having the	Page 328	1 A Yes. 2 Q What's the cutoff date for that trust that they 3 say is the plaintiff? Was that March 12th, '07? 4 A March 12th or February 1st. I'm not sure. 5 Q The closing date is March 12th. 6 A Yes. 7 Q That would have been the date delivery to the 8 trustee is certified by, right? 9 A That's right. 10 Q So, again, if all their dates are correct and 11 this is August of '07, that's when it was delivered 12 to the trustee, would that be delivery to the 13 trustee late? 14 A Well, based on -- 15 Q On that date that they were using? 16 A That date would not be an effective delivery 17 date to the trustee. 18 Q Because it says the delivery was -- it says 19 here, right? 20 A Yes. 21 Q It says, closing date March 12th. So if that's 22 the date they're relying on to say that the trustee 23 got it, that's when it was sent, that date's five 24 months after the time the trustee accepted the 25 asset, right?

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1 A Yes.
2 Q So that still wouldn't be an effective
3 conveyance to the trust from this case?
4 A That's right.
5 Q You know there's a hint here that this is a
6 self-inflicted wound, you know, and somehow
7 Ms. Congress might be unjustly enriched or
8 something like that.
9 But the issue is, again, no document they have
10 given you, me, or anybody else in this case proves
11 any trust owns this loan other than that loan
12 schedule that they filed in with this particular
13 one, right? And that's not proof, is it?
14 MR. RAGSDALE: Isn't that really for you
15 to decide.
16 THE COURT: Well, I'm going to let him ask
17 him.
18 Q I mean, mortgage loan schedules not filed
19 typically with the pool --
20 A Yes, there is nothing that indicates this
21 trust.
22 Q Okay. So if they thought they sold it to this
23 trust but they didn't convey it according to the
24 terms of the agreement it would still be exception,
25 still wouldn't be owned by this trust, right?

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1 THE COURT: I think that's more probably
2 argument than a question for this witness.
3 Q (BY MR. WOOTEN:) So Tom, let me just ask you
4 this. Mr. Ramey asked you about the
5 representations and warranties in the agreement.
6 And he said no one has challenged the
7 representations and the warranties in the agreement
8 about these steps, right?
9 A Yeah, I believe so.
10 Q Okay. The representations and warranties in
11 the agreement, what was your understanding as a
12 market participant about when all these steps were
13 being completed with respect to the dates of the
14 pooling and servicing agreement?
15 A That they would be completed prior to the
16 closing of the transaction.
17 Q So when the representations and warranties were
18 being made in the deal documents, was it your
19 expectation as a market participant, all of this
20 had already occurred?
21 A Yes.
22 Q And that was what you understood from those
23 representations and warranties?
24 A Yes, subject to certain completion steps, yes.
25 Q Right. But when you look at all the documents,

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1 the first note, the second note, they still do not
2 show compliance, the fundamental terms of this
3 trust with respect to the conveyance of these --
4 completion of these processes, right?
5 A The first -- I'm sorry. In pieces. The first
6 note that's endorsed in blank does not.
7 Q The second has the allonge that says U.S. Bank
8 as trustee?
9 A That's right.
10 Q The trustee for the plaintiff trust is
11 U.S. Bank as trustee for R-A-S-C, RASC Series
12 2007-EMX1, right?
13 A That's how they're identified in the pooling
14 and servicing agreement.
15 MR. WOOTEN: Tender the witness.
16 THE COURT: Any other questions?
17 MR. RAMEY: One question.
18 THE COURT: All right.
19 MR. RAMEY: Your Honor, I want to offer
20 Plaintiff's Exhibit 20, which is just another copy
21 of the pooling and servicing agreement. This was
22 actually taken from the SEC's website as shown by
23 the front page. Otherwise, it's pretty much
24 identical except it's missing a couple of pages
25 that are in there that aren't in this one. If you

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1 want to take a look at it.
2 MR. WOOTEN: Which one? What's it
3 different too?
4 MR. RAMEY: Well, this one is from the SEC
5 website. The one y'all got, I believe actually
6 came from --
7 MR. WOOTEN: Description site.
8 MR. RAMEY: That description site.
9 MR. WOOTEN: Or subscription site.
10 MR. RAMEY: Subscription site.
11 MR. WOOTEN: Are you saying there's a
12 difference in the documents, though.
13 MR. RAMEY: Just in the very beginning.
14 MR. WOOTEN: Which is what?
15 MR. RAMEY: Which is essentially this
16 first page with the RASC Series listing. I don't
17 think that's apart of the actual SEC filing.
18 MR. WOOTEN: And that's the AK.
19 MR. RAMEY: Yes. That document might be
20 in this first page, 1 of 117.
21 MR. WOOTEN: Why don't you show me.
22 MR. RAMEY: What I'm saying is I don't
23 believe that this first page is actually part of
24 what is filed officially with the SEC.
25 MR. WOOTEN: This is header for SEC info.

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<p style="text-align: right;">Page 333</p> <p>1 MR. RAMEY: Okay. 2 MR. WOOTEN: It shows the exhibit. 3 MR. RAMEY: I want to go ahead and admit 4 ours nevertheless, and I have just one other 5 question. 6 THE COURT: Any objection? All right. 7 It's in. Plaintiff's 20. 8 (Whereupon, Plaintiff's Exhibit 9 Number 20 was marked and received 10 into evidence.) 11 RE CROSS-EXAMINATION 12 BY MR. RAMEY: 13 Q And my only question is as far as you were 14 asking about who the trustee is and definitions, 15 and I want to direct yourself -- and I'm using you 16 all's version of PSA. A couple of pages into it 17 where it list all the parties. Do you see that? 18 A Uh-huh. 19 Q It says Residential Asset Securities 20 Corporation depositor. Defined as depositor? 21 A Yes. 22 Q Would you agree with me? Residential Funding 23 Company, LLC, defined as master servicer. Would 24 you agree with me? 25 A Yes.</p>	
<p style="text-align: right;">Page 334</p> <p>1 Q And it says U.S. Bank, National Association 2 defined as trustee. 3 A Yes. That's the way it was written in the 4 preamble. 5 MR. RAMEY: That's all the questions I 6 have, Your Honor. 7 THE COURT: All right. To get out of 8 here, you all will need to go down to the ground 9 floor and exit under the stairs on 21st Street, and 10 the same for in the morning. We'll start out at 11 7:30, and so y'all be here on time. Come through 12 that ground floor, and I'll tell them to let y'all 13 inside. 14 MR. WOOTEN: All right. Thank you, Your 15 Honor. 16 (Court in recess.) 17 5:45 p.m. 18 19 20 21 22 23 24 25</p>	

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