

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

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

Defendants.

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

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

REPORTED BY:  
Deborah H. Rodgers, CSR  
Conсор & Associates Reporting & Transcription  
1655 Palm Beach Lakes Boulevard, Suite 500  
West Palm Beach, Florida 33401  
Phone: 561.682.0905

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1 APPEARANCES:  
2 On behalf of the Plaintiff:  
3 JOSEPH MANCILLA, JR., ESQ.  
4 Florida Default Law Group, P.L.  
5 9119 Corporate Lake Drive  
6 Suite 300  
7 Tampa, Florida 33634  
8 On behalf of the Defendants:  
9 THOMAS E. ICE, ESQ.  
10 DUSTIN A. ZACKS, ESQ.  
11 Ice legal, P.A.  
12 1975 Sansburys Way, Suite 104  
13 West Palm Beach, Florida 33411  
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1 THEREUPON,  
2 (Thereupon, Defendants' Exhibits No. A  
3 through Q were marked for identification.)  
4 THEREUPON,  
5 ERICA A. JOHNSON-SECK,  
6 was called as a witness herein, and after being first  
7 duly sworn, testified as follows:  
8 THE WITNESS: Yes.  
9 DIRECT EXAMINATION  
10 BY MR. ICE:  
11 Q. Could you state your full name for the  
12 record, please.  
13 A. Erica Antoinette Johnson-Seck.  
14 Q. And what is your business address?  
15 A. 7700 West Parmer Lane, P-A-R-M-E-R, Building  
16 D, Austin, Texas, 78729.  
17 Q. And who is your employer?  
18 A. OneWest Bank.  
19 Q. How long have you been employed by OneWest  
20 Bank?  
21 A. Since March 19th, 2009.  
22 Q. Prior to that you were employed by IndyMac  
23 Federal Bank, FSB?  
24 A. Yes.  
25 Q. And prior to that you were employed by

1 IndyMac Bank, FSB?  
2 A. Yes.  
3 Q. Your title with OneWest Bank is what?  
4 A. Vice president, bankruptcy and foreclosure.  
5 Q. That hasn't changed in all the various  
6 IndyMac carnations -- incarnations, I should say?  
7 A. No.  
8 Q. Now, the IndyMac Bank, FSB ceased to exist  
9 July 11th of last year, correct?  
10 A. Yes.  
11 Q. That was taken over by the FDIC, correct?  
12 A. Yes.  
13 Q. And that's when IndyMac Federal Bank, Federal  
14 Bank, FSB took over?  
15 A. Yes.  
16 Q. And then as of March 19th of this year,  
17 OneWest came in and purchased the assets of IndyMac  
18 Federal Bank?  
19 A. Yes.  
20 Q. Now, the plaintiff in this case is IndyMac  
21 Federal Bank, FSB, correct?  
22 A. Yes.  
23 Q. When I say this case, I know we're scheduled  
24 for two depositions. I don't know if you know we're  
25 starting with the Machado case.

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

1 A. Okay.  
2 Q. Would you agree with me that the plaintiff in  
3 this case, the Machado case, no longer exists?  
4 A. Yes.  
5 Q. Are you also an officer of Mortgage  
6 Electronic Registration Systems?  
7 A. No.  
8 Q. You have signing authority to sign on behalf  
9 of Mortgage Electronic Registration Systems as a vice  
10 president, correct?  
11 A. Yes.  
12 Q. Are you an officer of any other corporation?  
13 A. No.  
14 Q. Do you have signing authority for any other  
15 corporation?  
16 A. Yes.  
17 Q. What corporations are those?  
18 A. IndyMac Federal Bank, IndyMac Bank, FSB, FDIC  
19 as receiver for IndyMac Bank, FDIC as conservator for  
20 IndyMac, Deutsche Bank, Bank of New York, U.S. Bank.  
21 And that's all I can think of off the top of my head.  
22 Q. What was the one before U.S. Bank of New  
23 York?  
24 A. Bank of New York.  
25 Q. Bank of New York. Is that Bank of New York

1 47 people with 17 openings.  
2 Q. Openings meaning you're looking for someone  
3 to fill those positions?  
4 A. Yes.  
5 Q. Are you in charge of the loss mit department?  
6 A. No.  
7 Q. Who is?  
8 A. Karen Mastro is the senior vice president of  
9 loss mit.  
10 Q. Can you spell the last name, please?  
11 A. M-A-S-T-R-O. Oh, I'm sorry. She is the  
12 first vice president.  
13 Q. Is she nevertheless in charge of the loss mit  
14 department?  
15 A. Yes.  
16 Q. Do you have the authority to settle any  
17 foreclosure case?  
18 A. Up to a certain dollar amount of loss, yes.  
19 Q. How is that dollar amount of loss determined?  
20 A. It depends on what the settlement offer looks  
21 like. Are you asking me how -- I mean, it depends.  
22 Q. Who sets the dollar amount?  
23 A. The senior executive committee.  
24 Q. Of IndyMac?  
25 A. Of IndyMac, but it was adopted by IndyMac

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

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

1 one of very many things that they do -- were at fault  
2 for a reason why we can't claim for the advances;  
3 taxes, let's say.  
4 Q. So when you say high loss, you're referring  
5 to the losses that OneWest is experiencing versus the  
6 investor that you're doing the work for?  
7 A. That's another facet of what's managed in  
8 that group. That example I gave you is not necessarily  
9 a high-loss example. High loss is anything with a loss  
10 between the total debt and the current value of 250 or  
11 more. So those loans, whether it is owned by the bank  
12 or owned by an investor, are scrutinized because the  
13 losses are large.  
14 Q. And you said that's losses greater than  
15 250,000?  
16 A. Yes.  
17 Q. If a property goes to foreclosure and the  
18 ultimate recovery is more than \$250,000 of the debt on  
19 that property, is that something that the forensic  
20 default group would study?  
21 A. Not from that perspective.  
22 Q. In other words, they're not concerned about  
23 losses due to property values going down?  
24 A. That's economic, so it's baked into the  
25 equation of what they would review, but an economic

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

1 Q. Okay. How is the decision made as to who  
2 will sign what documents?  
3 A. There really is not a matrix. Only so many  
4 of us can sign Lost Note Affidavits. I happen to be  
5 the only one in my department, besides my boss, that  
6 can sign a Lost Note Affidavit, so all those would come  
7 to me. Other than that, there's not a -- I think they  
8 just try to make it even.  
9 Q. Just distribute them evenly?  
10 A. Yes.  
11 Q. Okay. How many documents would you say that  
12 you sign on a week on average, in a week on average?  
13 A. I could have given you that number if you had  
14 that question in there because I would have brought the  
15 report. However, I'm going to guess, today I saw an  
16 e-mail that 1,073 docs are in the office for signing.  
17 So if we just -- and there's about that a day. So  
18 let's say 6,000 a week and I do probably -- let's see.  
19 There's eight of us signing documents, so what's the  
20 math?  
21 Q. Six thousand divided by eight, that gives me  
22 750.  
23 A. That sounds, that sounds about right.  
24 Q. Okay. That would be a reasonable estimate of  
25 how many you sign, you personally sign per week?

1 you're signing?  
2 A. Not, it's not clear that I don't check  
3 anything. The figures I don't, I do not check. We  
4 have a QC process around that used to be a 100 percent  
5 of the Affidavits of Debts and any figures for loans  
6 and bankruptcy, that have now been reduced to 10  
7 percent because the errors were relatively low. Now I  
8 pay, what I pay most attention to is the jurat and what  
9 entity I'm signing for, which is why I said 30 seconds  
10 instead of two seconds.  
11 Q. Right. Now, when you say 10 percent, that  
12 means that they're spot checking 10 percent of the  
13 documents to make sure that they're accurate?  
14 A. The outsource or our outsource vendor checks  
15 the document completely. I'm QCing my outsource vendor  
16 with the 10 percent, yes.  
17 Q. When you say outsource vendor, you're talking  
18 about LPS?  
19 A. Yes.  
20 Q. Does LPS put the figures in the affidavit?  
21 A. No.  
22 Q. Who puts the figures in the affidavit?  
23 A. It depends on what relationship we have with  
24 our firms. Usually we download the information through  
25 process management, the system we use to communicate

1 A. Yes.  
2 Q. And that would include Lost Note Affidavits,  
3 Affidavits of Debt?  
4 A. Yes.  
5 Q. What other kind of documents would be  
6 included in that?  
7 A. Assignments, declarations. I can sign  
8 anything related to a bankruptcy or a foreclosure.  
9 Q. How long do you spend executing each  
10 document?  
11 A. I have changed my signature considerably.  
12 It's just an E now. So not more than 30 seconds.  
13 Q. Is it true that you don't read each document  
14 before you sign it?  
15 A. That's true.  
16 Q. The procedure that we talked about last time,  
17 and I will go over it again to see if that's still the  
18 procedure, before you would sign an Affidavit of  
19 Debt --  
20 A. Yes.  
21 Q. -- it goes to your foreclosure specialist who  
22 makes sure that the information is correct?  
23 A. The figures are correct, yes.  
24 Q. It is fair to say that you don't personally  
25 check the accuracy of anything in the documents that

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

1 you're talking about your own staff when the documents  
2 arrive?  
3 A. No, we have LPS on site.  
4 Q. In Austin?  
5 A. Yes.  
6 Q. Take me through the procedure for getting  
7 your actual signature on the documents once they've  
8 gone through this quality control process.  
9 A. The documents are delivered to me for  
10 signature and I do a quick purview to make sure that  
11 I'm not signing for an entity that I cannot sign for.  
12 And I sign the document and I hand it to the Notary,  
13 who notarizes it, who then hands it back to LPS, who  
14 uploads the document so that the firms know it's  
15 available and they send an original.  
16 Q. "They" being LPS?  
17 A. LPS, yes.  
18 Q. Are all the documents physically, that you  
19 were supposed to sign, are they physically on your  
20 desk?  
21 A. Yes.  
22 Q. In your office?  
23 A. Yes.  
24 Q. You don't go somewhere else to sign  
25 documents?

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

1 A. No.  
2 Q. When you sign them, there's no one else in  
3 your office?  
4 A. Sometimes.  
5 Q. Well, the Notaries are not in your office,  
6 correct?  
7 A. They don't sit in my office, no.  
8 Q. And the witnesses who, if you need witnesses  
9 on the document, are not sitting in your office?  
10 A. That's right.  
11 Q. So you take your ten minutes and you sign  
12 them and then you give them to the supervisor of the  
13 Notaries, correct?  
14 A. I supervise the Notaries, so I just give them  
15 to a Notary.  
16 Q. You give all, you give the whole group that  
17 you just signed to one Notary?  
18 A. Yes.  
19 Q. Last time we talked about that there were a  
20 group of Notaries and that you had a supervisor that  
21 manages a group of loans and passes them out to the  
22 different Notaries. Has that changed?  
23 A. It used to go to -- well, a little bit. It  
24 used to go -- and that's with the shift of people  
25 leaving and people coming with everything that's been

1 Q. I'm mostly interested in how long it takes  
2 for the Notary to notarize your signature.  
3 A. I can't say categorically because the Notary,  
4 that's not the only job they do, so.  
5 Q. In any event, it doesn't have to be the same  
6 day?  
7 A. No.  
8 Q. When they notarize it and they put a date  
9 that they're notarizing, is it the date that you signed  
10 or is it the date that they're notarizing?  
11 A. I don't know.  
12 Q. When you execute a sworn document, do you  
13 make any kind of a verbal acknowledgment or oath to  
14 anyone?  
15 A. I don't know if I know what you're talking  
16 about. What's a sworn document?  
17 Q. Well, an affidavit.  
18 A. Oh. No.  
19 Q. In any event, there's no Notary in the room  
20 for you to --  
21 A. Right.  
22 Q. -- take an oath with you, correct?  
23 A. No, there is not.  
24 Q. In fact, the Notaries can't see you sign the  
25 documents; is that correct?

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

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

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

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

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

1 as soon as the loan is referred to foreclosure because  
2 the foreclosure attorney can't do what they need to do  
3 without it.  
4 Q. So on the day that it's referred to LPS,  
5 OneWest begins the process of getting a hold of the  
6 original note?  
7 A. So what happens is it gets referred, and a  
8 state like Florida, a loan in Florida goes to a queue.  
9 It's also an LPS employee that's on site. She's on  
10 site in Pasadena, Sylvia Carballo. It goes in her  
11 queue and she begins ordering the original documents,  
12 wherever they may be. And she manages that process of  
13 receiving the original documents, preparing the bailee  
14 letters, getting them sent to the firms, and sending  
15 that all to the firms.  
16 Q. At the point that OneWest is referring the  
17 loan to LPS for foreclosure, is any kind of  
18 representation made to LPS about whether the original  
19 note cannot be found?  
20 A. Say that one more time.  
21 Q. Does OneWest tell LPS, when it's referring  
22 the case for foreclosure, anything about the status of  
23 the original note?  
24 A. No, it's the other way around. So if Sylvia  
25 learns that the original note cannot be found, that the

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

1 doc custodian does not have record of the original  
2 note, or it might be that there was a previous  
3 foreclosure and the original note never made it back,  
4 she is informed and she logs into a database.  
5 Q. Sylvia is that LPS on-site person?  
6 A. Yes.  
7 Q. And it's on site, but not on your site?  
8 A. She's in Pasadena, right.  
9 Q. OneWest has one main custodian, Deutsche  
10 Bank?  
11 A. One bigger -- one of our biggest is Deutsche  
12 Bank, yes.  
13 Q. That's where most of One --  
14 A. Yes.  
15 Q. -- West documents are housed?  
16 A. Yes.  
17 Q. And would that be the custodian for any  
18 documents where Deutsche Bank and National Trust  
19 Company is the investor?  
20 A. Not necessarily.  
21 Q. Is it the most probable custodian?  
22 A. Yes.  
23 Q. When Wells Fargo is the investor, there might  
24 be a different custodian?  
25 A. Wells Fargo is a good example. It could be

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

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

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

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



1 Q. And do you -- you, OneWest -- keep records of  
2 that tracking?  
3 A. Yes.  
4 Q. Do you keep the records even if it's safely  
5 made it from the custodian to OneWest?  
6 A. Yes.  
7 Q. How are those kept?  
8 A. In that database I mentioned.  
9 Q. So it's a computer record of it?  
10 A. Yes.  
11 Q. How does that record get into the database?  
12 A. Sylvia entered -- well, Sylvia or one of the  
13 three people that work with her enters the information  
14 in the database.  
15 Q. You mentioned that she gets -- wants to turn  
16 around and get it out with the bailee letter to the  
17 attorneys.  
18 A. Yes.  
19 Q. I imagine she also sends it in a way that it  
20 can be tracked?  
21 A. Yes.  
22 Q. Is it UPS?  
23 A. UPS.  
24 Q. Okay. The custodians can choose, use the UPS  
25 or Fed Ex; is that right?

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

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

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

1 person didn't pull the right document and we ended up  
2 getting the document. So I don't think it's unusual.  
3 One of the things, though, from the last time we  
4 spoke till now, I noticed a gap in our procedure. I  
5 think we were very aggressive at requesting a Lost Note  
6 Affidavit at day ten, seven or ten, and with the  
7 volumes happening all over the country, we probably  
8 should have taken it out to 21 days a while ago because  
9 the notes are there. It just was they hadn't found it  
10 by the time we already shot off the request to the  
11 firms.  
12 Q. Well, when you say found it, it's not that it  
13 was lost, you just hadn't got it transferred from --  
14 A. That's right.  
15 Q. -- the custodian to OneWest, correct?  
16 A. Yes.  
17 Q. I'm still trying to get a sense of how often  
18 this happens, though. Is it something that happens  
19 every day at OneWest or --  
20 A. No. No, but it happened more as we were  
21 going through our transition with the feds taking over  
22 and losing a significant amount of staff. Now that we  
23 are OneWest Bank, I can't even remember the last time I  
24 saw a Lost Note Affidavit, honestly.  
25 Q. Over the last year, let's say, what

1 in foreclosure. How many in foreclosure, how many new  
2 ones in foreclosure each week?  
3 A. Today?  
4 Q. Yes.  
5 A. It depends on the time of the month because  
6 of the investor guidelines with referrals, but I can  
7 tell you that overall, across the nation, we referred  
8 12,000 loans into foreclosure for the month of June.  
9 California is our largest footprint, so 40 percent of  
10 those were in California.  
11 Q. Now, some of those you wouldn't know whether  
12 they needed a Lost Note Affidavit yet?  
13 A. That's right.  
14 Q. But so far, what your testimony is, is that  
15 of the ones that you would know about, none have  
16 requested a Lost Note Affidavit?  
17 A. It's been a long while.  
18 Q. More than a month?  
19 A. Yes, more than a month.  
20 Q. And it's certainly safe to say that it would  
21 be untrue that a 100 percent of the loans that you have  
22 in foreclosure had any lost original note?  
23 A. Right, that would be untrue.  
24 Q. The custodian normally has some sort of  
25 checkout procedure that people can't just come in and

1 percentage of the loans that you've been involved in  
2 started out with being unable to find the original  
3 note?  
4 A. What do you mean by involved in?  
5 Q. In your department.  
6 A. I don't know.  
7 Q. Do you have any sense? Is it 1 percent, 5  
8 percent, 10 percent?  
9 A. I don't know. There was a time, before we,  
10 you know, became less aggressive with our procedure to  
11 do the Lost Note Affidavit, assuming that Deutsche Bank  
12 couldn't locate it, that I signed Lost Note Affidavits  
13 more frequently than I do now. And I think changing  
14 the procedure has made a big difference, because, like  
15 I said, I can't even remember the last time I signed  
16 one. Or it could be now when I get one, I won't sign  
17 it until I see that that custodian really can't find  
18 it, which is something that I wasn't necessarily doing  
19 before unless prompted to do so.  
20 So I don't know, out of 77,000 loans in  
21 foreclosure, well, then there was probably 60,000 loans  
22 in foreclosure, I did several a week, but now I can't  
23 even remember, I can't remember what that number is,  
24 and now I do zero.  
25 Q. Well, you're giving me a total of the loans

1 take a note, take out a note without signing for it?  
2 A. Yes.  
3 Q. Is there a certain time frame that a  
4 foreclosure suit must be filed after the borrower has  
5 defaulted?  
6 A. Are you talking about the first legal action  
7 in the foreclosure or what --  
8 Q. The filing, the actual filing of the suit, is  
9 there a time frame required?  
10 A. See, okay, I'm dealing with 50 states in my  
11 mind, so can you get more specific? Are you talking  
12 about the first legal action or --  
13 Q. Let's stick with Florida for right now.  
14 A. Okay.  
15 Q. But really the question is directed to your  
16 investors and what their guidelines are and what you're  
17 required to do. Are you required to get a case filed  
18 by 60 days, 120 days after default --  
19 A. I see what you're saying.  
20 Q. -- or you aren't complying with your job?  
21 A. Yes. That's true, yes.  
22 Q. And is that governed by the PSA?  
23 A. Usually, but it's Fannie and Freddie  
24 typically that have very strict guidelines about when a  
25 file should be in foreclosure and very specific

1 guidelines for exceptions to that.  
2 Q. But when you say in foreclosure, that means  
3 the actual filing of the lawsuit?  
4 A. It has to be referred, it just has to be  
5 referred to foreclosure.  
6 Q. Are there any that require actual filing of  
7 the lawsuit?  
8 A. No.  
9 Q. Does OneWest instruct its counsel to file a  
10 lost note count regardless of whether the note is  
11 actually lost?  
12 A. No.  
13 Q. It is true that the promissory note in this  
14 case was never lost, correct?  
15 A. What are we doing?  
16 Q. This is Machado.  
17 A. No.  
18 Q. No, that's not correct?  
19 A. It was never lost.  
20 Q. Were you aware that on November 21st, 2008,  
21 when this case was filed, your attorneys -- by your, I  
22 mean, OneWest -- attorneys hired by OneWest --  
23 A. Yes.  
24 Q. -- in the Machado case represented to the  
25 Court that the note had been lost?

1 did not have access to the original note?  
2 MR. MANCILLA: If you know. If you  
3 don't, say you don't.  
4 THE WITNESS: I'm trying to separate the  
5 cases in my mind. Sorry.  
6 MR. MANCILLA: That's all right. Is  
7 there anything that you have with you that  
8 you could look at?  
9 THE WITNESS: No, that's what I was  
10 thinking about.  
11 I don't, I don't know.  
12 BY MR. ICE:  
13 Q. Well, you just finished telling me that the  
14 note in this case was never lost at all, correct?  
15 MR. MANCILLA: She said it wasn't lost.  
16 THE WITNESS: It wasn't lost.  
17 MR. MANCILLA: Right.  
18 THE WITNESS: What I --  
19 MR. MANCILLA: Found ultimately.  
20 THE WITNESS: Yeah, because what I know  
21 is the original note is with the firm today,  
22 but --  
23 BY MR. ICE:  
24 Q. What -- let you finish. I'm sorry.  
25 A. But this was back when our procedure was,

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

1 when it was different. When we would have raised an  
2 issue for a lost note at day ten, I believe it was,  
3 because we hadn't had a response back from our doc  
4 custodian, we were more aggressive then and today we're  
5 not. We don't raise that issue, that request until day  
6 21.  
7 Q. Okay. Do you know if November 21st, 2008 was  
8 before or after the response from the custodian?  
9 A. We made -- those changes started -- we didn't  
10 have the -- the changes weren't confirmed where they  
11 were tested and airtight until this year, February of  
12 this year. We were still testing the process: What  
13 was the right point. Should it be 14 days and then  
14 open the issue. Should it be 21 days. Twenty-one days  
15 happened to be the magic number. So we were still  
16 tweaking the process.  
17 Q. Let's step back a little bit because I'm  
18 definitely confused. You say that ultimately the note  
19 was not lost in this case, correct?  
20 A. Right.  
21 Q. Did anyone at any time ever believe that the  
22 note was lost?  
23 A. I don't know.  
24 MR. MANCILLA: How could she testify as  
25 to anyone, what's in anyone's mind? I mean,

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

1 that the note couldn't be found.  
2 Q. When was it decided back then, under the  
3 rules back then, that the note couldn't be found?  
4 A. Just the initial didn't get a response from  
5 Deutsche Bank within seven or ten days.  
6 Q. You had mentioned the ten days in the last  
7 one.  
8 A. Is it ten days? Okay. I couldn't remember.  
9 Ten days. And as soon as she didn't get response on  
10 that tenth day, Sylvia was to raise the issue with the  
11 firm. Now, the process management is real time. So if  
12 Sylvia raises the issue at 10:00 o'clock, at  
13 11:00 o'clock in Florida -- well, she's in Pasadena at  
14 10:00. So at 12:00 o'clock in Florida they would have  
15 been able to see that the note couldn't be found.  
16 Q. Is there a field somewhere in the computer  
17 screen where she inputs that there's a problem finding  
18 the note?  
19 A. The process then -- that process is true  
20 today. The process then was she just raised the issue  
21 to the firm. And what the issue says is prepare a Lost  
22 Note Affidavit. So the assumption is we need to  
23 prepare this because we can't locate it.  
24 Q. So if I'm understanding your testimony, for  
25 this count to be in the complaint, someone would have

1 A. Excuse me. At that time the due and diligent  
2 search would have consisted of an e-mail request to the  
3 doc custodian, a time period for which to expect a  
4 response back. And at the conclusion of that time  
5 period, ten days, I believe -- I'm not sure if it's  
6 seven or ten days anymore -- that the assumption was  
7 then made that the note could not be found.  
8 Q. Okay. So what this is saying, then, is that  
9 because it's after the due and diligent search, that  
10 means all of that had been completed by the time the  
11 attorney filed this on November 21st, 2008?  
12 A. Yes.  
13 Q. And your testimony is, as of that time, the  
14 custodian was reporting that it was lost?  
15 A. Can I just look at the time line?  
16 Q. Sure.  
17 A. I'm sorry. I want to check before I say I  
18 don't know. This complaint was filed on November --  
19 Q. Twenty-first.  
20 A. -- 21st. Well, they breached this loan on  
21 September 30th. I have to do the math. Florida is a  
22 30-day breach state, so we wouldn't have had it in  
23 foreclosure anytime sooner than October 30th. And it's  
24 possible, as we still have 21 days of play, and we were  
25 too aggressive before with raising the issue to say

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

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

1 process and better follow-up and follow-through.  
2 Q. What does the attorney see of that to know  
3 that there's a lost note?  
4 A. Today, nothing. What we're working on,  
5 however, we're just not quite there yet, is an overlay  
6 of the back and forths, or whatever communication  
7 Sylvia has to the firms, so that they know how many  
8 attempts we made and, you know, ultimately where the  
9 document is. And it would probably -- the idea is to  
10 upload this into process management, this document into  
11 process management.  
12 Q. Okay. What I'm understanding from you, then,  
13 correct me if I'm wrong, the only time the attorney  
14 would know that there's a lost note, either the way the  
15 system was then or even the way it is today, is that  
16 someone requests a Lost Note Affidavit?  
17 A. Yes.  
18 Q. Look back at paragraph 4 of the complaint.  
19 It says: Plaintiff is now the holder of the mortgage  
20 note and mortgage and/or is entitled to enforce the  
21 mortgage note and mortgage. Do you see that?  
22 A. Yes.  
23 Q. Do you know which of those options it is,  
24 whether it's they're the holder and entitled to enforce  
25 the mortgage note and mortgage, or they're the holder

1 Q. And what's that system called?  
2 A. It's an access database. It's not called  
3 anything. It's just an access database that one of my  
4 analysts -- it was created by someone else. One of my  
5 analysts tweaked it and -- one of the analysts that  
6 report directly to me tweaked it so that it's more  
7 meaningful and has the controls in place that we  
8 needed.  
9 So now what it does, like I said, is it takes a  
10 lot of the manual-ness out of it. Sylvia doesn't have  
11 to go TO MAS1 INV1. The system looks at our, the  
12 mainframe -- okay, I'm not a systems person, so, you  
13 know -- where all the data is and it's scrubbing, based  
14 on the loan number, to pull in who the doc custodian is  
15 and then it creates the list. Now, Sylvia doesn't have  
16 to create a spreadsheet. It creates a list that is  
17 attached to the e-mail that Sandy approves that then  
18 goes to the doc custodian to get the documents back.  
19 And when the documents come in, there is a, like a  
20 gun thing that they hook up to the computer, and so  
21 from the bar codes from the Fed Ex or UPS or however  
22 the doc, they can scan it and it puts the tracking  
23 number on the system. And she does the same thing when  
24 she gets ready to send the document out. So now we are  
25 keeping track of, we have much better controls over the

1 or entitled to enforce the mortgage note and mortgage?  
2 A. I'm going to read this. Okay.  
3 In this case it is, or is entitled to enforce the  
4 mortgage note and mortgage.  
5 Q. And why do you say that?  
6 A. Because Deutsche is the investor and we're  
7 servicing, the servicing agent.  
8 Q. Right. OneWest is not the holder of the  
9 mortgage note and mortgage?  
10 A. Right.  
11 Q. And even if it was, it couldn't be the holder  
12 of the mortgage note because the mortgage note was  
13 lost?  
14 A. Is that a question?  
15 Q. Would you agree with that?  
16 MR. MANCILLA: No, the mortgage note  
17 wasn't ultimately lost. It may have been  
18 missing or it may not have been found at the  
19 time the complaint was filed, but it was  
20 ultimately found.  
21 BY MR. ICE:  
22 Q. My question is as of the time that the  
23 attorney penned his name onto this complaint and made  
24 these allegations to the Court, made factual  
25 representations to the Court, as an officer of the

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

1 A. Yes.  
2 Q. Are there any terms of that particular PSA --  
3 and for the benefit of the judge or a jury, whoever may  
4 end up reading this, PSA stands for the Pooling and  
5 Servicing Agreement?  
6 A. Yes.  
7 Q. Are there any terms of the Pooling and  
8 Servicing Agreement that restrict the manner or amount  
9 that a loan, that this loan may be modified?  
10 A. I don't know. I don't know because I didn't  
11 read the PSA for this loan.  
12 Q. Do you have it with you today?  
13 A. I don't. Did you ask me to bring that?  
14 MR. MANCILLA: No.  
15 BY MR. ICE:  
16 Q. Please, many times I'll ask you if you have  
17 something because I see you have things in front of  
18 you. It's not intended to suggest that you were  
19 supposed to bring anything with you. I'm just, just  
20 out of curiosity do you have it?  
21 A. I don't.  
22 Q. Okay.  
23 A. And -- well --  
24 Q. I'm sorry, do you have something to add to  
25 your answer?

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

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

1 A. Obama's HAMP program, and also the FDIC loss  
2 mit program, but I'm not the subject matter expert on  
3 any of those. I just know that those now govern what  
4 and how loans can be modified.  
5 Q. Do you have a general idea of what those  
6 programs do?  
7 A. Yes.  
8 Q. Can you take me through the Obama one?  
9 A. This is rough, because I've already admitted  
10 that's not my area of expertise. So the HAMP program  
11 that is administered by Fannie and Freddie, and it's on  
12 those two investors that we are required to behave a  
13 certain way, but for other investors, other investors  
14 can opt in. Of course, the President wants all the  
15 loans to be looked at under his plan. And so if there  
16 is a -- let me try to get this right.  
17 The DTI, debt to income, has to be 31 percent.  
18 I'm probably about to get into trouble because I'm  
19 trying to go somewhere that I don't know categorically.  
20 And if it is and the borrower has, you know, the reason  
21 for a default is catastrophic, or it doesn't have to be  
22 catastrophic, but, you know, loss of income, divorce,  
23 those such things, the borrower is put on a three-month  
24 payment plan. The payment may or may not be a full  
25 payment. It might be less than a full payment. If the

1 always. Possible.  
2 Q. It's possible.  
3 A. Okay.  
4 Q. I think you told me last time Sheila Bair was  
5 very much against principal reduction?  
6 A. And still is, yes.  
7 Q. But she doesn't call the shots at OneWest  
8 anymore?  
9 A. She does not.  
10 Q. When it comes to principal reductions, or a  
11 principal reduction in this case, ultimately that would  
12 fall to Deutsche Bank to decide whether they want to do  
13 that, correct?  
14 A. Well, since Deutsche Bank has, and the PSA  
15 told us to service this loan diligently as we would our  
16 own loans, then they are delegating that authority to  
17 OneWest Bank. Today a Deutsche Bank loan would go  
18 through an FDIC model. It would not go through a HAMP  
19 model because today it's just the Fannies and Freddie's  
20 that are requiring that it is happening on. That will  
21 change. It's just they're not there yet.  
22 Q. So it's safe to say that today OneWest is not  
23 doing any modifications that involve principal  
24 reductions?  
25 A. I didn't say that.

1 borrower does that for three months, then their loan is  
2 modified to a lower interest rate. And there's a range  
3 for that lower interest rate, and I don't know exactly  
4 what that range is.  
5 And in some cases some of the principal balance is  
6 not forgiven, but a separate loan is made out of it  
7 that the borrower doesn't have to pay unless they sell  
8 their home. I'm foggy on that. I'm foggy.  
9 The FDIC modification plan I know less about, but  
10 it is what Sheila Bair came out with when the FDIC took  
11 over IndyMac Federal Bank. It has the same general  
12 idea. The borrower has to meet this criteria of debt  
13 to income, but the outcome is the same, without the  
14 principal reduction.  
15 The HAMP program, I'm going back to the other one,  
16 also has an area that a borrower doesn't have to be  
17 delinquent to qualify for it as long as the borrower  
18 can show that they will become delinquent, severely  
19 delinquent in the future because they just lost their  
20 job yesterday. So they don't have to be delinquent to  
21 be approved.  
22 Q. Did I understand you correctly to say that to  
23 your understanding the Obama program can involve  
24 principal reductions, but the FDIC program does not?  
25 A. Yes. And you said can. You didn't say

1 Q. Well, that's why I asked.  
2 A. I have seen loans in the HAMP program where  
3 borrowers have received -- or they were offered. I  
4 don't know if one actually accepted, accepts the plan,  
5 but they were offered one that had the principal. And  
6 it's not really a principal forgiveness. It's there.  
7 It's kind of just the borrower is making a payment, of  
8 course, on a less, you know, their payment is much --  
9 is greatly reduced because that piece of the principal  
10 balance, that's not necessarily forgiven. It's kind of  
11 just moved into the shadows.  
12 Q. It's capitalized into the loan?  
13 A. No, it's not even capitalized into the loan.  
14 It's like a second loan. And if the borrower ever pays  
15 their loan off, they have to pay back that money, but  
16 if they're just going to live in the house forever,  
17 they would always be making that lower payment. That's  
18 my understanding. That's my loose understanding.  
19 Q. Is that an option for any loan owned by  
20 Deutsche Bank?  
21 A. Today, no, but it could change tomorrow. I'm  
22 going into uncharted waters again. When Obama came  
23 out with this plan, the HAMP plan, it was required that  
24 any Fannie and Freddie investor loan, it had to abide  
25 by these rules. It has taken time for the other

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

1 A. I want to say Aaron Wade, but I'm not sure if  
2 he's there anymore. It's in Pasadena. I'm too busy  
3 with all my foreclosures and bankruptcies.  
4 MR. ICE: I don't know if you, I'm about  
5 to move to another exhibit, I don't know if  
6 anybody wants to take a break?  
7 MR. MANCILLA: I'm all right.  
8 THE WITNESS: I'm okay.  
9 MR. ICE: Keep going.  
10 BY MR. ICE:  
11 Q. Okay. Take a look at Exhibit B to your  
12 deposition. Do you recognize that document?  
13 A. Yes.  
14 Q. What is it?  
15 A. It is the Affidavit of Debt in the Machado  
16 loan, on the Machado loan.  
17 Q. Is that your signature on the final page?  
18 When I say final, there's a service list that's  
19 attached to my copy, but the final page of the  
20 affidavit?  
21 A. Yes.  
22 Q. And that's the long form signature?  
23 A. Yes.  
24 Q. The old way you signed your name?  
25 A. Yes.

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

1 Q. Do you still use this old form of signature  
2 for anything?  
3 A. No.  
4 Q. Okay. Do you know who prepared this  
5 affidavit?  
6 A. Someone at the firm.  
7 Q. The law firm?  
8 A. The law firm, yes.  
9 Q. In this case it would be Florida Default?  
10 A. Yes.  
11 Q. How do you know that?  
12 A. Because I'm sitting here with Joe and I know  
13 I didn't transfer a file in the middle of a  
14 foreclosure.  
15 Q. Okay. And you see down at the bottom the  
16 file number --  
17 A. Yes.  
18 Q. -- and the doc ID number?  
19 Are you familiar enough with these documents to  
20 recognize that as a Florida Default doc number, a file  
21 number?  
22 A. No.  
23 Q. You don't know one way or the other?  
24 A. No.  
25 Q. Do you know why the numbers are treated there



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

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

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

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

1 A. No.  
2 Q. Then the computer is programmed to, as  
3 payments are made and logged into the computer, to  
4 deduct principal --  
5 A. Yes.  
6 Q. -- from the original principal?  
7 A. Yes.  
8 Q. Which requires someone else to physically  
9 type in when a payment is made, correct?  
10 A. Yes.  
11 Q. Are there any, like if it's an electronic  
12 payment or something, does it go automatically into the  
13 computer from the bank where the borrower is paying  
14 from?  
15 A. I believe so.  
16 Q. The interest rate, again the -- or the  
17 interest per diem that's calculated, the number here of  
18 \$16,088.21, is computed from the original terms of the  
19 loan, correct?  
20 A. Well, the interest would be, in that  
21 equation, it would be the unpaid principal balance, not  
22 the original principal balance.  
23 Q. Right. But at some point, someone had to put  
24 in what the rate was going to be?  
25 A. Yes.

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

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

1 numbers are correct?  
2 A. There will be a sticky on it, on this. And  
3 what I have is okay to sign by the foreclosure  
4 specialist that owns this digit. And based on that, I  
5 won't double check the numbers.  
6 Q. Do you ever double check any of the numbers?  
7 A. No, because our QC process that used to be a  
8 100 percent that's now 10 percent, it has really zero  
9 level of error because the numbers are really coming  
10 right off of -- no one's manually doing this. So I  
11 just look for that sticky so that I know that the  
12 person I charged with checking it is doing what I'm  
13 expecting them to do.  
14 Q. So when the firm prepares this, is this  
15 somehow drawing from the bank's computer system to put  
16 these numbers in here or is there a paralegal somewhere  
17 and typing these in?  
18 A. I don't know. I don't know, which is why I  
19 have a specialist double check to make sure. I mean,  
20 they're to look at this and say, if I was doing this  
21 all from the beginning, would I come up with the same  
22 number. That's why we have that double check.  
23 But I don't want to represent that errors aren't  
24 made and errors aren't caught and we don't take losses  
25 because of errors.

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

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

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

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

1 Q. So what you're talking about is the computer  
2 programs that we have been discussing?

3 A. Yes.

4 Q. It says that you have examined all the books,  
5 records, and documents kept at IndyMac Bank, FSB  
6 concerning the transactions alleged in the complaint,  
7 correct?

8 A. Yes.

9 Q. Again, IndyMac Bank didn't have any books,  
10 records, or documents at that time, correct?

11 A. Correct.

12 Q. Secondly, you didn't examine anything? It  
13 was somewhere else?

14 A. Someone that reports to me, yes.

15 Q. When you say, all the transactions alleged in  
16 the complaint, when you signed this, did you know what  
17 transactions were alleged in the complaint?

18 A. I know when I sign an Affidavit to Amounts  
19 Due and Owing what I'm signing, so. And I'm signing  
20 that as of the date that this is referring to, that is  
21 what the borrower owed.

22 Q. Did you have a copy of the complaint there to  
23 review to know what transactions were being alleged in  
24 the complaint?

25 A. I don't need to have -- no, I didn't.

1 A. My staff, when they check the figures,  
2 they're going to do it based on the effective dates  
3 shown here as a check and balance that as of that time,  
4 as of, in this case, February 9th, 2009, that's what  
5 the principal balance was and that's what the interest  
6 rate was.

7 Q. Well, I'm focused on the idea that the  
8 entries into this computer system you say are made by,  
9 or from information transmitted by, persons with  
10 personal knowledge of the facts. You know, we've  
11 already talked about some of the entries, some of the  
12 data comes from tape. Do you know in this particular  
13 case, did this come from tape or somebody who typed it  
14 into the computer?

15 A. I don't know.

16 Q. You don't know -- because you don't know  
17 that, you don't know whether it was made at or near the  
18 time that the records came to be, right?

19 A. I do know that working for a bank we are  
20 strongly regulated and that this is the normal course  
21 of business, and because of reg A and B and other regs,  
22 we wouldn't, as a business, OneWest Bank wouldn't  
23 represent that we're doing these things if it weren't  
24 happening in the normal course of business.

25 Q. Well, IndyMac was the original lender,

1 Q. Do you know whether or not it had a lost note  
2 count in it at the time you signed this?

3 A. No.

4 Q. Continuing on in paragraph 2: All of these  
5 books, records, and documents are kept by IndyMac Bank,  
6 FSB in the regular course of its business as servicer  
7 of the loan transaction and are made at or near the  
8 time by, and from information transmitted by, persons  
9 with personal knowledge of the facts such as your  
10 affiant.

11 What personal knowledge do you have that the books  
12 and records and documents that are kept by, should be  
13 IndyMac Federal Bank at that time, are in the regular  
14 course of its business?

15 A. Because as a servicer and as a bank, the  
16 records are customary. The financial records are  
17 customary. Did I get that -- maybe I didn't understand  
18 the question. Let me read it.

19 Yes, as a bank and as a servicer, it is customary  
20 to keep financial records and customer logs and copies  
21 of documents.

22 Q. How did you confirm that the records that you  
23 were looking at were made at or near the time by, and  
24 from information transmitted by, persons with personal  
25 knowledge?

1 correct?

2 A. Yes.

3 Q. But it was probably done through some sort of  
4 a mortgage broker?

5 A. Yes.

6 Q. Do you have any way of knowing today who that  
7 was?

8 A. I looked at that. I don't know if I brought  
9 it with me. I can't remember. It wasn't a name that's  
10 standing out for me, either. I didn't print it. I  
11 don't know for sure.

12 Q. So sitting here today, you don't know who  
13 that was that sat down with my client and signed the  
14 loan?

15 A. Well, let me just double check. I don't  
16 know.

17 Q. I presume there would have been an  
18 underwriter at IndyMac who would have approved what the  
19 mortgage broker was doing?

20 A. That's not my area of expertise. I'm not  
21 sure what the requirements are when they -- I don't  
22 know. I don't know.

23 Q. Okay. Among the folks I've talked about so  
24 far, the mortgage broker, whoever at IndyMac was  
25 overseeing that process, did any of them, were any of

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

1 A. Yes.  
2 Q. And this is the one you use from now on on  
3 everything?  
4 A. Yes, except for my checkbook.  
5 Q. And on these interrogatories you signed as  
6 attorney-in-fact. Do you see that?  
7 A. Yes.  
8 Q. Who are you the attorney-in-fact for?  
9 A. IndyMac Federal Bank.  
10 Q. Why did you not sign as the vice president of  
11 IndyMac Federal Bank?  
12 A. At the time that I signed this -- does that  
13 say May 29th, 2009?  
14 Q. I think so.  
15 A. As of March 19th, I could only do  
16 attorney-in-fact for IndyMac, IndyMac Federal, and FDIC  
17 as receiver, and FDIC as conservator.  
18 Q. But at that time it had already become  
19 OneWest, correct?  
20 A. Yes, but since the action -- yes. But since  
21 the action, the plaintiff in the action was IndyMac  
22 Federal, I can still sign for IndyMac Federal as  
23 attorney-in-fact until 2010.  
24 Q. Who granted you the power of attorney to sign  
25 for a nonexistent entity?

1 A. I guess it depends on how you interpret that  
2 word "owed." As the servicing agent for Deutsche Bank,  
3 OneWest Bank would be collecting the funds.  
4 Q. For Deutsche Bank?  
5 A. To pass through to Deutsche Bank.  
6 Q. And it's really the same for this foreclosure  
7 action, too. IndyMac is the plaintiff, but if you win  
8 this lawsuit, it's Deutsche Bank that collects the  
9 proceeds or the house at the end of the day, correct?  
10 A. Yes.  
11 Q. Okay. Let's just see what's been marked as  
12 Exhibit C to your deposition, ask you if you recognize  
13 that document?  
14 A. Yes.  
15 Q. What is it?  
16 A. The responses to the interrogatories.  
17 Q. Do you recognize the signature on that  
18 document?  
19 A. That's my new signature.  
20 Q. The new and improved?  
21 MR. MANCILLA: The new and shortened,  
22 anyway.  
23 BY MR. ICE:  
24 Q. Are those the only two signatures that you  
25 use?

1 A. FDIC.  
2 Q. Do you have that power of attorney with you?  
3 A. I do. I brought it just for you.  
4 Q. Thank you.  
5 A. Hold on. I'm trying to make sure I give you  
6 the right one. Hold on. I'm sorry.  
7 THE WITNESS: Are we going to break  
8 right now?  
9 MR. MANCILLA: Yes.  
10 MR. ICE: Okay.  
11 (Thereupon, there was a brief pause in  
12 the proceedings, beginning at 2:59 p.m.,  
13 resuming at 3:14 p.m.)  
14 (Continued at Volume II)  
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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 50 2008 CA 037322XXXX MB AW  
INDYMAC FEDERAL BANK, FSB,  
Plaintiff,

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

Defendants.

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

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

REPORTED BY:  
Deborah H. Rodgers, CSR  
Consor & Associates Reporting & Transcription  
1655 Palm Beach Lakes Boulevard, Suite 500  
West Palm Beach, Florida 33401  
Phone: 561.682.0905

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1 APPEARANCES:  
2 On behalf of the Plaintiff:  
3 JOSEPH MANCILLA, JR., ESQ.  
4 Florida Default Law Group, P.L.  
5 9119 Corporate Lake Drive  
6 Suite 300  
7 Tampa, Florida 33634  
8 On behalf of the Defendants:  
9 THOMAS E. ICE, ESQ.  
10 DUSTIN A. ZACKS, ESQ.  
11 Ice legal, P.A.  
12 1975 Sansburys Way, Suite 104  
13 West Palm Beach, Florida 33411  
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1 THEREUPON,  
2 (Witness hands document.)  
3 MR. ICE: Thank you. Could I get a copy  
4 of this so we can attach it as an exhibit?  
5 THE WITNESS: That's yours.  
6 BY MR. ICE:  
7 Q. Oh, you brought this for me, just for me?  
8 A. Just for you.  
9 MR. ICE: Let's go ahead and mark this,  
10 I guess we're going to have to mark it at the  
11 end since these are all premarked, R, Exhibit  
12 R.  
13 (Thereupon, Defendants' Exhibit No. R  
14 was marked for identification.)  
15 BY MR. ICE:  
16 Q. I'm going to hand you what's been marked as  
17 Exhibit R to your deposition and ask you if you can  
18 identify that document for me, please.  
19 A. This is the LPOA giving me and a few others  
20 signing authority to sign on behalf of the FDIC.  
21 Q. Is it -- well, giving you authority to sign  
22 on behalf of, as an attorney-in-fact, for IndyMac  
23 Federal Bank?  
24 A. Yes, and IndyMac Bank.  
25 Q. Is it your testimony that that provides you

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

1 you, correct?  
2 A. Yes.  
3 Q. Other than signing this document, did you  
4 participate in the answering of these interrogatories?  
5 A. Not personally, because an interrogatory is  
6 something else that I'm going to give to the  
7 foreclosure specialist that's handling the case to  
8 answer specific questions that are usually about the  
9 file itself.  
10 Q. You personally did not provide any of the  
11 answers in this document; is that correct?  
12 A. Not me personally.  
13 Q. And is this true, as with the Affidavits of  
14 Indebtedness, that you do not read the questions and  
15 answers before you sign your name to this document?  
16 A. Not if I have a seal of approval from one of  
17 my specialists that they have read each question and  
18 answer before I sign it.  
19 Q. Is that a process that's different than your  
20 Affidavit of Indebtedness?  
21 A. No.  
22 Q. What is this seal of approval? Is it a  
23 sticky or something?  
24 A. Yes, it's a sticky with their okay to sign.  
25 Q. Every document you sign has some sort of

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

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

1 mortgage. Answer: IndyMac Federal Bank, FSB.  
2 From everything you have said so far in this  
3 deposition, that is incorrect, correct?  
4 A. No, it's not incorrect. It's just not the  
5 complete answer. It should say Indymac Federal Bank  
6 and Deutsche Bank.  
7 Q. Well, IndyMac Federal Bank is not, when this  
8 was signed, was not the current legal owner of the  
9 promissory note?  
10 A. No.  
11 Q. Deutsche Bank was the current legal owner of  
12 the promissory note?  
13 A. Yes.  
14 Q. And still is today?  
15 A. Yes.  
16 Q. IndyMac Bank, as opposed to IndyMac Federal  
17 Bank, was the mortgagee at the time this document was  
18 filed -- was signed?  
19 A. OneWest Bank?  
20 Q. I'm sorry?  
21 A. What was your question? What did you say?  
22 IndyMac Bank was the mortgagee?  
23 Q. Yes.  
24 A. At the time the document was --  
25 Q. Yes.

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

1 A. Indymac Federal Bank.  
2 Q. Right. IndyMac Federal Bank was the  
3 mortgagee as of the time that this was executed by  
4 virtue of an assignment that you yourself signed,  
5 correct?  
6 A. I don't know.  
7 THE WITNESS: Did I sign an assignment?  
8 MR. MANCILLA: I don't know. If you  
9 didn't, if you don't remember signing one,  
10 say so.  
11 THE WITNESS: I don't think -- I think  
12 the action started with IndyMac Federal Bank.  
13 So I wouldn't have completed an assignment  
14 from IndyMac Bank. I don't know.  
15 BY MR. ICE:  
16 Q. Well, I corrected my question. I want to  
17 make sure that we're on the same page here.  
18 My question is that at the time that this was  
19 signed, IndyMac Federal Bank, FSB was the mortgagee by  
20 virtue of an assignment that you yourself signed?  
21 MR. MANCILLA: She says she doesn't  
22 remember.  
23 MR. ICE: Well, I just want to make  
24 sure.  
25 THE WITNESS: I don't remember.

1 Q. Have you ever seen it before?  
2 A. I don't know.  
3 Q. So when you say you recognize it, you just  
4 mean it's a kind of a document that you see all the  
5 time?  
6 A. Yes.  
7 MR. MANCILLA: It's not signed, by the  
8 way.  
9 MR. ICE: It's not signed because it's  
10 not -- there are no answers.  
11 BY MR. ICE:  
12 Q. Those are, I'll represent to you, those are  
13 the questions from which we've been reading in  
14 Exhibit -- what's the exhibit? C? Exhibit C.  
15 As you can see from that document, there were some  
16 definitions and instructions that went with those  
17 interrogatories.  
18 Have you ever seen those instructions and  
19 definitions before?  
20 A. D is for this case?  
21 Q. IndyMac Federal Bank versus Machado.  
22 A. No.  
23 Q. Do you see the definition in No. 8?  
24 A. Yes.  
25 Q. Definition for these answers to

1 interrogatories of a "beneficial or equitable interest"  
2 means that ownership interest in the promissory note  
3 which entitles the holder of that interest, be it an  
4 investor, lender, or other person and/or entity, to  
5 keep the proceeds of the promissory note or any  
6 recovery in this case, without any requirement to  
7 forward such proceeds to another person or entity. It  
8 excludes any agent or other entity that is acting on  
9 behalf of another person or entity which is ultimately  
10 entitled to the proceeds.  
11 Q. Were you aware of that, that when this question  
12 was asked, that's what that question meant?  
13 A. No.  
14 Q. Now knowing that that's what the question  
15 meant, would you still agree with the answer?  
16 A. I'm just going to read it again.  
17 Q. Okay.  
18 A. For any recovery in this case? My answer  
19 stays the same.  
20 Q. It's your testimony that IndyMac Federal Bank  
21 would get to keep all the proceeds from this  
22 foreclosure action?  
23 A. No. The or any recovery in this case.  
24 Q. Right. What would they get to keep from the  
25 recovery in this case?

1 the name of Deutsche Bank?  
2 A. That's correct.  
3 Q. In fact, one of the things that's commonly  
4 done is there's a transfer of bid after the judgment --  
5 A. Yes.  
6 Q. -- over to the real owner of the note,  
7 correct?  
8 A. Yes.  
9 Q. So when the attorney filled this out, drafted  
10 this for you, he knew that at the end of the day the  
11 proceeds of the note, whether that be money or house,  
12 is going to go to Deutsche Bank; isn't that right?  
13 A. Yes.  
14 Q. Let's look at No. 4. If you contend that you  
15 are the current legal and/or beneficial owner of the  
16 promissory note, please identify with sufficient  
17 specificity for a Request for Production, the current  
18 accounting statements or other documents that list the  
19 promissory note debt as an asset on the books of the  
20 company.  
21 Your attorney objected to that question, but the  
22 truth of the matter is, the promissory note is not a  
23 debt on the assets of the books -- on the asset books  
24 of IndyMac Federal Bank, FSB?  
25 A. I don't know that to categorically be true.

1 A. Well, I mean, I don't know because we're  
2 talking -- we haven't gotten to that point, but my  
3 understanding of this definition and of that question  
4 is that we wouldn't keep the proceeds of the promissory  
5 note, but we may be entitled to recovery in this case,  
6 whatever that may be, that's outside of the proceeds  
7 from the promissory note.  
8 Q. Well, let's talk about that, because when you  
9 transferred this case to your attorneys, you  
10 specifically instruct them that the title of the  
11 property, when judgment is issued eventually at the end  
12 of the case where you're successful, the title of the  
13 property is put in the name of Deutsche Bank National  
14 Trust Company; isn't that right?  
15 A. At the conclusion of the foreclosure?  
16 Q. Yes.  
17 A. Yes.  
18 Q. Yes. So from the very beginning, before this  
19 case ever starts, you know, the attorneys know,  
20 everyone knows that the entity that's going to get the  
21 house at the end of the day is Deutsche Bank National  
22 Trust Company, not OneWest, right?  
23 A. The house or the proceeds from the sale of  
24 the REO.  
25 Q. The house, title of the house is going into

1 Q. Is the note an asset of Deutsche Bank  
2 National Trust Company or of OneWest?  
3 A. But I'm not sure of what the terms of the  
4 Pooling and Servicing Agreement is for this loan or  
5 even if the loan was reconstituted into another deal or  
6 I don't know without researching it that that's true.  
7 In theory, that's correct, but I don't know  
8 specifically that that's true in this case.  
9 Q. Are you saying that as you're sitting here  
10 today, after having signed these interrogatories and  
11 signing the Affidavit of Debt, you don't know who  
12 really owns this loan?  
13 A. I know who owns this loan.  
14 Q. And that's Deutsche Bank?  
15 A. That's Deutsche Bank.  
16 Q. Not OneWest?  
17 A. Not OneWest.  
18 Q. If it's an asset on the books of any company,  
19 it's going to be Deutsche Bank National Trust Company?  
20 MR. MANCILLA: Well, that isn't what she  
21 said. She doesn't know, you know, who has it  
22 on the books.  
23 THE WITNESS: I don't, yeah, that part I  
24 just don't know a 100 percent.  
25 BY MR. ICE:



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

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

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

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

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

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

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

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

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

1 been marked as Exhibit E to your deposition?  
2 A. Yes.  
3 Q. What is that document?  
4 A. The assignment from MERS to IndyMac Federal  
5 Bank.  
6 Q. Does this refresh your recollection that you  
7 in fact signed the mortgage from MERS to your own  
8 company in this case?  
9 A. Yes.  
10 Q. Okay. And in doing so, you signed it as the  
11 vice president, not of OneWest, not of IndyMac, not of  
12 IndyMac Federal, but of Mortgage Electronic  
13 Registrations Systems, Inc., right?  
14 A. Right.  
15 Q. As you said earlier, you are not an officer  
16 of MERS, correct?  
17 A. No.  
18 Q. You have what you call signing authority to  
19 sign as an officer of MERS?  
20 A. I have signing authority as an officer of  
21 OneWest Bank to sign for MERS.  
22 Q. But when you signed this, you signed vice  
23 president, and in doing so, you represented to the  
24 world that you were the vice president of Mortgage  
25 Electronic Registration Systems, Inc., correct?

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

1 A. When I signed this document, my understanding  
2 was that I will sign as the vice president of IndyMac  
3 Federal Bank and not, I was not representing myself as  
4 a vice president of MERS.  
5 Q. Well, is that your signature there where it  
6 says by?  
7 A. Yes.  
8 Q. Okay. And directly above that it says  
9 Mortgage Electronic Registration Systems, Inc., for  
10 IndyMac Bank, FSB, a Federally Chartered Savings Bank?  
11 A. Yes.  
12 Q. It doesn't say OneWest there or IndyMac or  
13 IndyMac Federal, right?  
14 A. No, for IndyMac Bank.  
15 Q. So isn't your representation there that you  
16 are the vice president of that company?  
17 A. IndyMac Bank.  
18 Q. It's your testimony that that signature under  
19 Mortgage Electronic Registration Systems, Inc. is not a  
20 representation that you are the vice president of MERS?  
21 A. That is my understanding when I signed this  
22 document.  
23 Q. Okay. Do you have the signing authority for  
24 MERS?  
25 A. I do. And that is your copy.

1 Q. Thank you.  
2 MR. ICE: Before we get to that, I'm  
3 going to have this marked as Exhibit S.  
4 (Thereupon, Defendants' Exhibit No. S  
5 was marked for identification.)  
6 BY MR. ICE:  
7 Q. I'm going to hand you what's been marked as  
8 Exhibit S to your deposition in the Machado case. Do  
9 you recognize that document?  
10 A. Yes.  
11 Q. What is it?  
12 A. It's an Assignment of Mortgage from MERS to  
13 IndyMac Federal Bank.  
14 Q. And who signed that?  
15 A. I did.  
16 Q. That's your long signature again?  
17 A. Yes.  
18 Q. Once again, you, under your name, it says  
19 vice president, correct?  
20 A. Yes.  
21 Q. And above your name, it says Mortgage  
22 Electronic Registration Systems, Inc., as nominee for  
23 Aegis Wholesale Corporation, correct?  
24 A. Yes.  
25 Q. So in this particular case, and I'll

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

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

1 On the second page your name is one of the certifying  
2 officers, correct?  
3 A. Yes.  
4 Q. Now, given our last exchange, I'm sure you  
5 will agree that you are not a vice president of MERS in  
6 any sense of the word other than being authorized to  
7 sign as one?  
8 A. Yes.  
9 Q. You are not --  
10 A. Sorry.  
11 Q. That's all right. You are not paid by MERS?  
12 A. No.  
13 Q. You have no job duties as a vice president of  
14 MERS?  
15 A. No.  
16 Q. You don't attend any board meetings of MERS?  
17 A. No.  
18 Q. You don't attend any meetings at all of MERS?  
19 A. No.  
20 Q. You don't report to the president of MERS?  
21 A. No.  
22 Q. Who is the president of MERS?  
23 A. I have no idea.  
24 Q. You're not involved in any governance of  
25 MERS?

1 A. No.  
2 Q. The authority you have also says that you can  
3 be an assistant secretary, right?  
4 A. Yes.  
5 Q. And yet you don't report to the secretary --  
6 A. No.  
7 Q. -- of MERS?  
8 You don't have any MERS' employees who report to  
9 you?  
10 A. No.  
11 Q. You don't have any vote or say in any  
12 corporate decisions of MERS?  
13 A. No.  
14 Q. Do you know where the MERS' offices are  
15 located?  
16 A. No.  
17 Q. Do you know how many offices they have?  
18 A. No.  
19 Q. Do you know where they're headquartered?  
20 A. No.  
21 Q. I take it then you've never been to their  
22 headquarters?  
23 A. No.  
24 Q. Do you know how many employees they have?  
25 A. No.

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

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

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

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

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

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

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

1 Bank?  
2 A. No.  
3 Q. You don't have the authority to see the  
4 information that's in the MERS' tracking records,  
5 right?  
6 A. Not me personally.  
7 Q. Did you ask anyone else to take a look at  
8 that information for you?  
9 A. In this case?  
10 Q. Yes.  
11 A. No.  
12 Q. In any case?  
13 A. Yes.  
14 Q. You've asked for that in other cases?  
15 A. I've had to, yes. Well, not because it was  
16 contested, just because someone had a question about it  
17 so I had someone pull information for me.  
18 Q. I want you to look at the date that's now up  
19 at the top in the first line where it says, For value  
20 received on or before November 14th, 2008.  
21 A. Where am I?  
22 Q. You're on Exhibit E.  
23 A. On the top line. Yes.  
24 Q. For value received.  
25 A. Yes.

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

1 Q. And there's a date there, November 14th,  
2 2008. Who put that date in there?  
3 MR. MANCILLA: If you know.  
4 THE WITNESS: I don't know.  
5 BY MR. ICE:  
6 Q. If you know.  
7 A. I don't know.  
8 Q. Is it most likely the Florida Default Law  
9 Group that prepared this?  
10 A. I don't know. That sounds reasonable.  
11 Q. What happened on November 14th, 2008?  
12 A. I don't know.  
13 Q. Do you know how that date was determined?  
14 A. I don't.  
15 Q. Did any physical transfer of the mortgage  
16 take place on that date?  
17 A. Physical transfer of the mortgage. The  
18 actual mortgage document?  
19 Q. Yes.  
20 A. No.  
21 Q. What value did MERS receive for transferring  
22 the mortgage to IndyMac Federal Bank, FSB on  
23 November 14th, 2008?  
24 MR. MANCILLA: If you know.  
25 THE WITNESS: I don't know.

1 November 21st, 2008?  
2 A. Hold on. Hold on. When did you say?  
3 Q. November 21st, 2008. If this is of any help,  
4 you can now look at this very --  
5 A. Thank you.  
6 Q. -- damp Exhibit A to your deposition.  
7 A. Okay. Yes, that's true.  
8 Q. So the effective date -- scratch that.  
9 So the date that's on the top, where it says, on  
10 or before, at the top of the Assignment of Mortgage,  
11 the date of November 14th, 2008, is one week before  
12 this case was filed?  
13 A. Yes.  
14 Q. And isn't it true that the plaintiff, IndyMac  
15 Federal Bank, needed to be the mortgagee on that date  
16 in order to bring this action?  
17 A. No.  
18 Q. Isn't it true that the date of November 14th,  
19 2008 was chosen in order to retroactively create a  
20 cause of action for plaintiff?  
21 A. No, I don't believe so.  
22 Q. But you have no explanation for that date?  
23 A. I don't have an explanation for that.  
24 Q. Further on down, right after the legal  
25 description, do you see where it says that the mortgage

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

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

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

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



1 don't believe that LPS would have made the connection.  
2 To them, it's just a document. It's just a document  
3 that they're trying to prep for signature.  
4 Q. I'd like you to take a look at Exhibit G to  
5 your deposition, ask you if you have ever seen those  
6 before?  
7 A. They look like the other document we saw  
8 earlier.  
9 Q. I will represent to you that those are the  
10 interrogatories that Exhibit -- which was, the last one  
11 was -- Exhibit F were intended to respond to.  
12 A. Okay.  
13 Q. I give you that because if you look at  
14 question 3 on Exhibit F and question 3 on Exhibit G,  
15 you'll see there's a slight difference.  
16 MR. MANCILLA: She said she never saw  
17 this before so she can't answer that.  
18 BY MR. ICE:  
19 Q. Do you see what the difference is?  
20 A. Yes.  
21 Q. The date has been left out of the answer,  
22 right?  
23 A. Yes.  
24 Q. And the date that was left out is the  
25 November 14th of 2008, which is the date on the

1 Q. The answer that was just read was prepared by  
2 Florida Default Law Group, correct?  
3 A. I don't know. I'm assuming so. I don't  
4 know.  
5 Q. Well, it has their very recognizable file  
6 number and doc ID number at the bottom, correct?  
7 A. Oh, okay. So what was your question again?  
8 Q. Well, this document, it's called Plaintiff's  
9 Response to Defendants' Request for Interrogatories,  
10 it's marked as Exhibit F to your deposition, has at the  
11 bottom the traditional file number and doc ID number of  
12 Florida Default.  
13 A. Yes.  
14 Q. And if you look on the last page, it was  
15 served on me -- well, actually it doesn't say it's  
16 served on anyone. It just says it was furnished by  
17 mail to blank dated May 12th, 2009 and signed by James  
18 Spanolios, correct?  
19 A. Yes.  
20 Q. And James Spanolios is with Florida Default  
21 Law Group?  
22 A. Correct.  
23 Q. So it's also true that Florida Default Law  
24 Group not only prepared the assignment that you signed,  
25 which is Exhibit E to this deposition, they also

1 assignment that we've been talking about, correct?  
2 A. Yes.  
3 Q. So this was my effort to get some information  
4 about the assignment that we're getting today but  
5 didn't get with those answers to interrogatories.  
6 I'd like for you to read the -- well, I'll read  
7 the question and answer. Question was: Please  
8 describe the reason the date, should say November 14th,  
9 2008, appears in the Assignment of Mortgage attached to  
10 the Amended Complaint in this case, including but not  
11 limited to, all events that occurred on that date with  
12 respect to the transfer of the subject promissory note  
13 and mortgage. Some of the same questions I asked you  
14 earlier.  
15 Answer: Plaintiff is without knowledge as to this  
16 interrogatory as the Assignment of Mortgage was not  
17 executed by the plaintiff.  
18 Are you comfortable with that answer?  
19 A. No.  
20 Q. Because the Assignment of Mortgage was  
21 executed by you?  
22 A. Right.  
23 Q. And you are the vice president of the  
24 plaintiff?  
25 A. Yes.

1 prepared the responses to the interrogatories, which is  
2 Exhibit F to your deposition?  
3 A. Yes.  
4 Q. So certainly they knew or should have known  
5 that you signed the Assignment of Mortgage?  
6 A. Yes.  
7 Q. Let's take a look at Exhibit H. Have you  
8 ever seen that document before?  
9 A. No.  
10 Q. Have you seen documents like it?  
11 A. Yes.  
12 Q. Do you recognize it to be a pleading or a  
13 response to discovery filed by your attorney in this  
14 case?  
15 A. Yes.  
16 Q. And that by your attorneys, I'm referring to  
17 Florida Default Law Group?  
18 A. Yes.  
19 Q. Have you ever seen documents like those that  
20 are attached to this --  
21 A. Yes, I have.  
22 Q. -- response?  
23 A. Yes.  
24 Q. And what are those?  
25 A. It shows the transfer of a file from MERS.

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

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

1 lender to another.  
2 Q. Do you have an understanding that MERS is a  
3 membership organization?  
4 A. Yes, yes.  
5 Q. And the members are --  
6 A. Yes.  
7 Q. -- banking entities such as OneWest?  
8 A. Yes.  
9 Q. In fact, OneWest is a member of MERS?  
10 A. Yes.  
11 Q. Is Deutsche Bank National Trust Company a  
12 member of MERS?  
13 A. I don't know.  
14 Q. Most of the major banking institutions in the  
15 United States, at least, are members of MERS, correct?  
16 A. That sounds right.  
17 Q. It's owned and operated by banking  
18 institutions?  
19 A. I'm not a big -- I don't, I don't know that  
20 much about the ins and outs of MERS. I'm sorry. I  
21 understand what it's for, but I don't know, I don't  
22 understand the nitty-gritty.  
23 Q. What is it for?  
24 A. To track the transfer of doc -- of interest  
25 from one entity to another. I know that it was

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

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

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

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

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

1 Q. Because I think you'll agree, MERS never  
2 physically transferred anything to anybody?  
3 A. That's true.  
4 Q. MERS never had the note, so it didn't  
5 physically transfer the note?  
6 A. True.  
7 Q. And as the signing officer of MERS, you know  
8 that the only thing that happened with respect to that  
9 mortgage is that you executed an assignment?  
10 A. Assignment, yes.  
11 Q. You didn't physically transfer the mortgage  
12 to anyone?  
13 A. No.  
14 Q. The MERS records that we just went through,  
15 they don't show the mortgage being physically  
16 transferred to anyone?  
17 A. No.  
18 Q. Can you come up with a reason why your  
19 company would deny that MERS did not physically  
20 transfer the subject note or mortgage?  
21 A. But this wasn't prepared by -- these are  
22 not -- okay. Wait.  
23 MR. MANCILLA: Maybe the lawyer didn't  
24 understand it. I don't understand it, so  
25 maybe he didn't.

1 Q. And yet it was denied?  
2 MR. MANCILLA: No, but it says here  
3 that, Admit that the plaintiff is not the  
4 entity identified as the investor in the  
5 MERS' system, and she's saying, and I agree  
6 that we're identified as the servicer.  
7 That's not the investor, so that's correct.  
8 MR. ICE: It's correct that it should  
9 have been admitted.  
10 MR. MANCILLA: No.  
11 MR. ICE: The plaintiff is not the  
12 entity, admit that plaintiff is not the  
13 entity.  
14 MR. MANCILLA: Okay, yeah. That's  
15 right, yeah.  
16 BY MR. ICE:  
17 Q. Okay. Would you agree that that should have  
18 been admitted?  
19 A. Normal language, please.  
20 MR. MANCILLA: These things are very  
21 confusing the way they're written. I would  
22 object to them all the way they're written,  
23 but --  
24 BY MR. ICE:  
25 Q. Let me ask the question this way, and let's

1 THE WITNESS: I -- I don't know. I  
2 wasn't there.  
3 MR. MANCILLA: Yeah. Well, if you don't  
4 know, you don't know.  
5 BY MR. ICE:  
6 Q. Okay. Well, you know, we can speculate that  
7 the lawyer misunderstood, but as you're sitting here  
8 today, can you provide a reason yourself why that  
9 should be denied?  
10 A. No.  
11 Q. No. 9 says: Admit that plaintiff is not the  
12 entity identified as the investor in the MERS' system.  
13 That was denied.  
14 MR. MANCILLA: Without knowledge.  
15 THE WITNESS: Without knowledge and  
16 therefore denied.  
17 BY MR. ICE:  
18 Q. Now, we just went over the MERS' records.  
19 That response is absolutely false, isn't it?  
20 A. Admit that plaintiff is not identified -- we  
21 are identified as the servicer.  
22 MR. MANCILLA: That's the investor.  
23 THE WITNESS: But not as the investor.  
24 MR. MANCILLA: Yeah, so that's correct.  
25 BY MR. ICE:

1 just say I'm asking this question in my deposition  
2 today --  
3 A. Okay.  
4 Q. -- Admit that plaintiff is not the entity  
5 identified as the investor in the MERS system. Do you  
6 admit or deny that?  
7 A. Mr. Ice, then I would say, can you please  
8 rephrase that question?  
9 Q. Is the plaintiff identified as the investor  
10 in the MERS' system records?  
11 A. No.  
12 Q. So you admit that plaintiff is not  
13 identified?  
14 A. Yes.  
15 Q. And you also admit that it should never have  
16 been denied?  
17 A. I don't see why it was denied.  
18 MR. MANCILLA: Except he maybe didn't  
19 understand it.  
20 THE WITNESS: Confusing question, yes.  
21 BY MR. ICE:  
22 Q. No. 10, admit that plaintiff did not acquire  
23 an interest in the mortgage prior to the filing of the  
24 complaint. Answer: Denied.  
25 A. Okay. I got it this time.

1 Q. Do you see that answer and response?  
2 A. Yes.  
3 Q. This response is also incorrect, isn't it?  
4 A. Yes.  
5 Q. Okay.  
6 A. Now that I understand the tone of the  
7 questions, I got it.  
8 Q. Okay. Let's look at Exhibits K and L  
9 together because, like the others, one is the answer  
10 and one is the response.  
11 For the record, Exhibit L is Defendants Israel  
12 Machado and Neena Machado's Request for Production  
13 Regarding the Assignment of Mortgage. K is Plaintiff's  
14 Response to Defendants' Request for Production  
15 regarding Assignment of Mortgage.  
16 Have you ever seen either of these documents  
17 before?  
18 A. I don't think so.  
19 Q. Did you participate in any way in providing  
20 the responses?  
21 A. I don't remember.  
22 Q. Do you think that you would remember if you  
23 had been asked?  
24 A. No.  
25 Q. Are you asked to help provide discovery in a

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

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

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

1 Q. So you would have no documents responsive to  
2 that?  
3 A. That's right.  
4 Q. Do you know of any documents that  
5 Mr. Spanolios has that he will be producing?  
6 A. No.  
7 Q. Do you know of any documents in your  
8 possession or Mr. Spanolios' position that are being  
9 withheld due to privilege, confidentiality, or work  
10 product objections?  
11 A. I can't answer for Mr. Spanolios, but I  
12 don't.  
13 Q. And you're not aware of any?  
14 A. And I'm not aware of anything.  
15 Q. Exhibit M is a document that you saw before  
16 in your last deposition, correct?  
17 A. Yes.  
18 Q. It's an opinion from Judge Schack up in New  
19 York --  
20 A. Yes.  
21 Q. -- correct?  
22 You're familiar with that?  
23 A. Yes.  
24 Q. In it, he says that you signed an Assignment  
25 of Mortgage as the vice president of MERS, correct --

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

1 A. Yes.  
2 Q. -- just as you did in this case?  
3 Judge Schack also says that you executed an  
4 affidavit as an officer of Deutsche Bank National Trust  
5 Company, correct?  
6 A. Yes.  
7 Q. And is that true, you executed an affidavit  
8 for Deutsche Bank in that case?  
9 A. That is not true.  
10 Q. You never executed a document as an officer  
11 of Deutsche Bank National Trust Company in that case,  
12 Judge Schack's case?  
13 A. Let me just read it so I can -- I have to  
14 refresh my memory completely.  
15 Q. Okay.  
16 A. I don't remember. Most likely.  
17 Q. That you did?  
18 A. It sounds reasonable that I may have. I  
19 don't remember, and since it's not attached, I can't  
20 say.  
21 Q. And as a result, Judge Schack wanted to know  
22 if you were engaged in self-dealing by wearing two  
23 corporate hats?  
24 A. Yes.  
25 Q. And the court was concerned that there may be

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

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

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

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

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

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

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

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

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



1 FSB concerning the transactions alleged in the  
2 complaint which you personally examined in the  
3 preparation of the Affidavit as to Amounts Due and  
4 Owing?  
5 A. No.  
6 Q. No. 6 is, All documents, computer entries,  
7 digital images, electronic correspondence or other  
8 written materials you personally reviewed in  
9 preparation for making the statement -- again, this is  
10 the statement in that affidavit -- "have personal  
11 knowledge of the facts regarding the sums of money  
12 which are due and owing to IndyMac Federal Bank."  
13 That's your affidavit in paragraph 3.  
14 A. I don't have personal knowledge, but the  
15 person who checked the figures did that works for me.  
16 Q. Okay. The only document that had the No. 6  
17 on here was the adjustable rate note.  
18 A. No, that's not right. Can I look through  
19 here to see if --  
20 Q. Yes.  
21 A. It would have been all this.  
22 Q. Those are the same screen prints that we were  
23 just talking about?  
24 A. Yes.  
25 Q. Okay. We'll get to that, but just for the

1 preparation for making the statement that the principal  
2 balance of the note is \$399,095.97.  
3 A. Again, I didn't personally review it, but my  
4 staff did.  
5 Q. And the computer screen that your staff would  
6 have looked at to verify the numbers that were already  
7 in the affidavit, right?  
8 A. (Hands document.)  
9 MR. ICE: Okay. Let's go ahead and mark  
10 this as the next exhibit.  
11 (Thereupon, Defendants' Exhibit No. V  
12 was marked for identification.)  
13 BY MR. ICE:  
14 Q. I hand you what's been marked as Exhibit V to  
15 your deposition and ask you to identify that.  
16 A. It is a screen shot on the Machado loan that  
17 shows the records on the account affecting the way the  
18 account looks since the last payment was made.  
19 Q. When is that screen shot made?  
20 A. I made this copy for myself this week. No,  
21 this is the one that I pulled that was given to the  
22 firms. I made a screen shot for myself, but then I  
23 thought you would ask me that question, so I used the  
24 same screen shots that were uploaded for the firms. So  
25 probably 8/13/08. Yes, that's the date.

1 record, you were referring to Exhibits P8 -- turn this  
2 so you can see -- P8, P9, P10, and that's it, right?  
3 A. Yes. There might be a few missing, though.  
4 Q. P12, as well?  
5 A. Yes.  
6 Q. And --  
7 A. P14.  
8 Q. -- P14?  
9 A. That should be everything, but I have to go  
10 through them all.  
11 Q. No. 7 had to do with your statement that the  
12 foreclosure case was uncontested.  
13 A. Um-um.  
14 Q. I didn't see any documents produced with  
15 respect to that.  
16 A. Because it wasn't -- because we don't  
17 consider a case contested unless there are answers  
18 filed to our motion. And in this case, at the time  
19 that the -- as we're going through -- at the time that  
20 I signed the affidavit, it was uncontested.  
21 Q. Yeah, I think your affidavit predated our  
22 appearance at all, much less an answer.  
23 No. 8 was, All documents, computer entries,  
24 digital images, electronic correspondence or other  
25 written materials you personally reviewed in

1 Q. Okay. So this is the same image that would  
2 have been provided to your counsel when the case was  
3 transmitted for foreclosure?  
4 A. Yes.  
5 Q. Can you take me quickly through what these  
6 numbers mean and how to read this document?  
7 A. So at the top, on all the green screens,  
8 there will be the borrower's name, Social Security  
9 number. This says what kind of loan it is and what the  
10 interest rate is.  
11 Q. That stands for the conventional residential?  
12 A. Um-um. ARM. MAN code F. F means that the  
13 loan is in foreclosure. These are the numbers we have  
14 on the system.  
15 Q. Phone numbers?  
16 A. Phone numbers to call the borrower, property  
17 address. And then you get into these blocks of time.  
18 This is what the loan is due for, the August 1st, 2008  
19 payment. This is payment. The P's for taxes,  
20 insurance. There's a shortage for taxes. That's the  
21 total payment. This shows the last few transactions  
22 that were recorded on the account. So a check was paid  
23 for hazard -- there's forced placed hazard insurance on  
24 the account, and the last installment of taxes that  
25 were paid.

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

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

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

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

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

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

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

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

1 information, I can tell if it's been manipulated  
2 because I know the screens and I've been working in the  
3 same system for 18 years.  
4 Q. This one says that it's printed by, it has a  
5 code number at the bottom. Do you know who that code  
6 belongs to?  
7 A. Not off the top of my head, but it's one of  
8 my staff.  
9 Q. Okay. Do you know, what is the name of the  
10 program that this, all this data is kept in?  
11 A. MSP Fidelity. I think they may have just  
12 changed their name again to LPS, different from LPS  
13 Default Solutions, which is our outsource vendor.  
14 Q. A mere coincidence that the names are the  
15 same?  
16 A. No, no, they used to be the same. It was all  
17 the same company under MSP Fidelity, and the outsource  
18 vendor was Fidelity and the system was Fidelity, but we  
19 would refer to the system as MSP to differentiate. So  
20 I just get in the habit of not saying the full LPS  
21 Default Solutions is the outsource vendor and Lender  
22 Processing Services is our system of record.  
23 Q. Is this program owned by LPS, a third-party  
24 vendor?  
25 A. I think at one time it was the other way

1 Q. So because the principal and interest are  
2 projected forward and the late fees are not, you have  
3 to do two different type screens; is that right?  
4 A. Yes, but it's because of the way the  
5 affidavit reads. It reads that these are as of such  
6 and such date, but then it kind of says late charges  
7 are just as of.  
8 MR. ICE: Let's go ahead and mark this  
9 as the next exhibit.  
10 (Thereupon, Defendants' Exhibit No. X  
11 was marked for identification.)  
12 BY MR. ICE:  
13 Q. I'm going to hand you what's been marked as  
14 Exhibit X to your deposition and ask you to identify  
15 that document.  
16 A. This is another screen in the pay 4  
17 workstation that was used to get what the true late  
18 charge was as of November 14th, 2008.  
19 Q. I'm going to hand you what's been marked as  
20 Exhibit P10 to your deposition and ask you if that's --  
21 ask you to identify that document.  
22 A. This is a system -- I mean, a screen on the  
23 system that you can use to calculate late charges that  
24 have been assessed to the loan. The problem with using  
25 this for an Affidavit of Indebtedness is the system

1 around, the system owned Default Solutions.  
2 Q. The software company --  
3 A. Yes.  
4 Q. -- that developed the program --  
5 A. Yes.  
6 Q. -- owned the third-party vendor foreclosure  
7 services provider?  
8 A. At some point in the past but they're  
9 separate now.  
10 Q. And is that the company that wrote the  
11 program?  
12 A. I assume so.  
13 Q. Does IndyMac buy the program or they just  
14 license it --  
15 A. We're a licensed user.  
16 Q. -- to use it?  
17 A. OneWest Bank is a licensed user.  
18 Q. No. 10 was whatever you personally reviewed  
19 just to make the statement that the late charges due  
20 and owing were \$253.44.  
21 A. That's that same, the same printout. And you  
22 see that as of the date that was put in here, because  
23 the late charge -- if you -- in the affidavit it said  
24 that the late charges were as of November 14th, 2008,  
25 so that's how that number gets calculated.

1 only goes back so far and when there are other --  
2 there's only so much room on the screen. One of the  
3 issues with still using green screen, instead of a  
4 web-based type application. So you can't correctly  
5 depict to the penny what's due.  
6 The other thing is the borrower can make a payment  
7 and pay some to late charge. So if you're just going  
8 to pick up the raw, this is what was assessed to the  
9 loan, you would miss any credits that were paid to late  
10 charges, where this is a better representation of going  
11 back in history through a date.  
12 Q. How are the late charges computed?  
13 A. Did I print that? I think I have it on my  
14 desk. There's actually a screen that says what the  
15 percentage is for this loan and how it's computed. And  
16 I didn't, I didn't bring it with me, but I can -- I  
17 didn't bring it with me. I can show you that, though.  
18 We have it. It's another green screen. You put in the  
19 loan number and it says for this particular loan this  
20 is the calculation that's used, this is the percentage  
21 that's used for that payment to get this late charge.  
22 Q. And that information ultimately came from the  
23 original note and --  
24 A. Yes.  
25 Q. -- mortgage?

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

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

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

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

1 of inspection that was ordered. Let me see if I can  
2 just pick up that. No, I don't know. That could be  
3 the person that actually did the transaction. I don't  
4 know.  
5 Q. Let's take a look at P11 and ask if you can  
6 identify that document.  
7 A. That is the actual bill for the property  
8 inspection.  
9 Q. And that bill is from LPS Field Services?  
10 A. Yes.  
11 Q. According to this, there was a property  
12 inspection on March 18th of 2009?  
13 A. Yes.  
14 Q. The report was that it was occupied by name  
15 unknown, right?  
16 A. Yes.  
17 Q. And the description was property inspection,  
18 no contact inspection invoiced, right?  
19 A. Right.  
20 Q. What are they doing there?  
21 A. We have some -- the type of property  
22 inspections we order on loans and foreclosure and  
23 bankruptcy are the general no contact property  
24 inspection, meaning go to the house, make sure it's not  
25 burnt down, make sure the grass is not ten feet high,

1 Q. In the what department?  
2 A. Prop pres, property preservation.  
3 Q. How often are these ordered?  
4 A. We want a property inspection completed one  
5 every 30 days, but I believe the order cycle is sooner  
6 than that. It like orders -- I can't be for sure  
7 because I don't manage this process. I want to say the  
8 order goes out, it might, it can even be every 20 days.  
9 It's less than the 30-day threshold, to be sure that  
10 every month the property gets inspected. If the  
11 inspector sees that the property was just inspected,  
12 like if the orders overlapped for some strange reason,  
13 a short month or something like a February happened,  
14 then the property inspector won't inspect the property.  
15 The idea is to get one once a month.  
16 Q. Okay. No. 12 was the materials you reviewed  
17 in preparation for making the statement that the BPO  
18 cost \$145.  
19 A. That's here.  
20 Q. And "here," you're referring to an entry on  
21 Exhibit Y to your deposition?  
22 A. Yes.  
23 Q. I'm going to hand you what's been marked as  
24 Exhibit P12 to your deposition and ask you if you can  
25 identify that?

1 and bring us that information if it is, or if the  
2 property is for sale or if it's occupied and how you  
3 knew it was occupied, but don't knock on the door and  
4 contact the borrower.  
5 We have some campaigns where we do want the  
6 borrower contacted, some loss mit campaigns where  
7 they'll leave door knockers so that the borrower knows  
8 that we're trying to reach out to you some kind of loss  
9 mit. But a normal foreclosure or bankruptcy property  
10 inspection outside of the campaigns is just a don't  
11 knock on the door and, you know, get anyone upset, just  
12 inspect the property, make sure it's still there.  
13 Q. Does LPS have a local office where they have  
14 somebody that does this?  
15 A. I believe they contract out to, because it's  
16 Maintenance Nationwide, so I believe they have  
17 contractors. I don't, I don't manage the property  
18 preservation.  
19 Q. So from this, we don't know who actually  
20 drove by the property?  
21 A. No, there is something that tells -- oh, you  
22 see how this one on here says door hanger? That's what  
23 I was referring to. It's not on here, but there is  
24 something in the system because the folks in the credit  
25 prop pres department can always tell who did what.

1 A. This is the DDCH again. It's a cover, it's a  
2 cover to the difference between the one I provided you,  
3 and this one is that this was generated when the  
4 affidavit was done, and this was generated after lots  
5 of things happened. So we're paying attorneys fees and  
6 other things. Attached to it is the actual broker's  
7 price opinion, BPO.  
8 Q. Do you order a broker's price opinion in  
9 every foreclosure case?  
10 A. Yes. Well, we order a reconciled value on  
11 every foreclosure case. I'm trying to, I'm trying to  
12 say this simply. There are times when the broker comes  
13 back with a value where the variance here, where it  
14 says 24 percent? Okay. Can you read it?  
15 What actually was ordered on here was the  
16 reconciled value is this first grade, the second grade  
17 line, right?  
18 Q. Okay.  
19 A. And what that reconciled value is this  
20 desktop value, which is a desk appraiser value, and the  
21 BPO. So what we actually order is this reconciled  
22 value on every property and so it gives us a better  
23 indication of that market. It's not just one  
24 independent broker's opinion.  
25 Q. Well, the document that we have here with the

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

1 A. No.  
2 Q. No. 13 was asking for whatever you reviewed  
3 for making the statement that plaintiff has employed  
4 the services of Florida Default Law Group.  
5 A. The referral transmittal.  
6 Q. Okay. And that is Exhibit P13, correct?  
7 A. Yes.  
8 Q. The top of this form says FIS Desktop. That  
9 is referring to your outsource vendor?  
10 A. Yes, at that time. See, I pulled that in  
11 November. Now they are LPS. At this time they were  
12 FIS.  
13 Q. This is a document that's issued by FIS, now  
14 LPS, to the attorney?  
15 A. Yes.  
16 Q. An attorney in your approved network?  
17 A. Yes.  
18 Q. And this is what transmits the beginning of  
19 the case?  
20 A. Yes.  
21 Q. Okay. It tells them, your counsel, whose  
22 name to sue in, correct?  
23 A. Yes.  
24 Q. In this case, it instructed Florida Default  
25 Law Group to sue in the name of IndyMac Federal Bank,

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

1 FSB, correct?  
2 A. Yes.  
3 Q. And then it tells them to vest title in  
4 Deutsche Bank National Trust Company --  
5 A. Yes.  
6 Q. -- as trustee, et cetera, et cetera, correct?  
7 A. Yes.  
8 Q. What does that mean, to vest title in them?  
9 A. At the conclusion of the foreclosure action,  
10 to put the final deed in the name of Deutsche Bank  
11 National Trust.  
12 Q. The instruction, mortgage currently held by  
13 and foreclosure should be in the name of, is not  
14 correct because as of the date of this transfer, or  
15 transmittal package, the mortgage was still in the name  
16 of MERS, correct?  
17 A. But we can't, we can't do the action in the  
18 name of MERS, which is why a default's to IndyMac  
19 Federal Bank.  
20 Q. But the idea that the mortgage currently held  
21 by IndyMac is incorrect?  
22 A. Right, that shouldn't say "and." It probably  
23 should say "and/or."  
24 Q. Is there anything on this document that tells  
25 your counsel that the note is lost?

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

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

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

1 days. There's no reason for it to take longer than 120  
2 days because the state dictates that this is filed at  
3 this point and this is filed at this point and this is  
4 filed.  
5 So the idea isn't to get through the process as  
6 quickly as you can, unless if the property or the  
7 borrower has abandoned it, the borrower has told us  
8 they don't want the property; otherwise, IndyMac Bank,  
9 IndyMac Federal Bank, OneWest Bank's perspective is how  
10 do we keep the borrower in their home. So we don't  
11 look at time lines. They're there, they're a guide and  
12 it's the industry standard, but no one's being graded  
13 on time lines.  
14 Even the servicer isn't even being graded on time  
15 lines like we were in the past. Fannie Mae would say,  
16 Erica, what's going on in California because you're  
17 20 percent outside of time, time lines. So we don't  
18 have that same kind of oversight today.  
19 Q. Well, let's try to narrow it down to your  
20 Florida attorneys and how things run today.  
21 A. Okay.  
22 Q. Are the attorneys for the banks, for OneWest,  
23 scored on how quickly they get the foreclosure through  
24 the process?  
25 A. It's too broad of a question. No. Generally



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

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

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

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

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

3 A. Are we going back to the MERS?

4 Q. Yeah, the MERS' Assignment of Mortgage.

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

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

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

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

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

8 Q. How about file as quickly as they can?

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

16 Q. Right.

17 A. Just not all servicers, just OneWest.

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

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

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

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

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

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

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

8 A. Yes.

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

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

17 Q. The case was filed November 21st --

18 A. IndyMac Federal Bank.

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

20 A. And the MERS assignment?

21 Q. The MERS assignment was dated December 2nd,  
22 2008. By waiting one week, this could have been in  
23 place by the time the lawsuit was filed.

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

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

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

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

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

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

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

5 MR. ICE: Joe's got the argument.

6 MR. MANCILLA: It will be argued.

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

23 BY MR. ICE:

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

1 MR. MANCILLA: No.

2 BY MR. ICE:

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

8 A. Yes, I agree.

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

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

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

15 BY MR. ICE:

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

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

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

25 A. It is, yes.

1 Q. And the investor indicated on there is  
2 Deutsche Bank?  
3 A. Yes.  
4 Q. What does HDR INDX stand for?  
5 A. I think that HDR means holder. And index is  
6 part of that full name. The system can't hold the full  
7 name, all of that.  
8 Q. And you say it's the full name of the trust.  
9 A. The trust. So that INDX is a piece of the  
10 full name.  
11 Q. Right. And so it's 2006-AR4?  
12 A. Yes.  
13 Q. What is the address that's underneath that?  
14 A. I believe that is when this PSA, at the time  
15 of the PSA of the loan that's under this agreement,  
16 that's the address in the PSA document for the bank,  
17 for Deutsche Bank.  
18 Q. Up at the top has MSP Loan Master Maintenance  
19 & Display. That's the name of this document or this  
20 print, this screen?  
21 A. Yes.  
22 Q. Below that, type 13, what does that stand  
23 for?  
24 A. It means that the first -- it kind of tells  
25 you right there. It's a first mortgage. A one means

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

1 first mortgage, three means conventional.  
2 Q. And W/O INS is without insurance?  
3 A. Yes.  
4 Q. Meaning it's not being escrowed for  
5 insurance?  
6 A. No, I think that means no MI.  
7 Q. Mortgage insurance?  
8 A. Yes.  
9 Q. ARM, meaning it's an adjustable rate  
10 mortgage?  
11 A. Yes.  
12 Q. What does group stand for?  
13 A. I don't know. I don't think it's something  
14 that we use, either.  
15 Q. What is INV1 on the next line?  
16 A. That is the sub-screen in the master  
17 workstation.  
18 Q. INV and then the line below that?  
19 A. That's the investor code. Right next to it  
20 is the category code. That is how, within the system,  
21 that is how the sales are tagged.  
22 Q. Does 753 stand for Deutsche Bank?  
23 A. Probably.  
24 Q. And do you know what 665 in the category  
25 stands for?

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

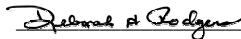
1 of those in two years -- that was off the record -- and  
2 they know Roger's going to sign, then it will get to  
3 the LPS folks with my name. They're going to reject it  
4 and tell the firm they need to put a different name in  
5 because I'm out of the office.  
6 Q. If you turn further back in the pages that  
7 are marked as Exhibit P15, do you see another copy of  
8 Exhibit A to your notice of deposition duces tecum?  
9 A. Yes.  
10 Q. Have you seen that version before?  
11 A. I don't know.  
12 Q. By version, I mean do you see that somebody  
13 made some markings on there?  
14 A. Okay. I don't think I've seen anything with  
15 markings on it before.  
16 Q. You didn't make those marks, correct?  
17 A. No.  
18 Q. And you don't know who did?  
19 A. No.  
20 Q. Do you know what NOD stands for?  
21 A. Notice of default.  
22 Q. Do you know why that's written next to No. 5?  
23 A. Whoever wrote it was probably thinking a  
24 complaint was a notice of default, and that terminology  
25 isn't true in the foreclosures in Florida, but in the

1 doesn't happen today.  
2 Q. Do you know why this was included in the  
3 materials that were --  
4 A. No.  
5 Q. -- produced for your deposition?  
6 A. I don't know, unless it was some reference to  
7 how the figures, how we come up with the figures.  
8 That's the only thing I can think of.  
9 Q. No. Q, please.  
10 A. Okay.  
11 Q. This should be very similar to the Limited  
12 Power of Attorney that you produced earlier --  
13 A. Yes.  
14 Q. -- giving IndyMac the right to sign on behalf  
15 of Deutsche Bank, correct?  
16 A. Okay.  
17 Q. This particular one was recorded by Kahane &  
18 Associates, not by Florida Default.  
19 A. Okay.  
20 Q. Can I see your version? Yeah. This one has  
21 the highlighting.  
22 I wanted to call your attention to the top of page  
23 4, and I've highlighted the words, Nothing contained  
24 herein shall, then it's a couple of things that jump to  
25 No. 2, be construed to grant the servicer the power to

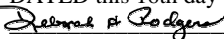
1 foreclosures in California.  
2 Q. Take a look at P16, please.  
3 A. Yes.  
4 Q. That was produced along with all the other  
5 documents?  
6 A. Yes.  
7 Q. Do you know what that is?  
8 A. Yes, this is the procedure, that I'm sure  
9 you've read it, like where it says, do a total payoff  
10 on pay 4, it's like the procedure of how to get the  
11 figures for the Affidavit of Indebtedness or judgment  
12 figures.  
13 Q. Is this instructions to your counsel?  
14 A. Oh, no, no, no. This is instructions to --  
15 it's not instructions to anyone. It's the procedure.  
16 It's saying, LPS, when we are ready for the firm to do  
17 a judgment, pull down these screen prints for the firm.  
18 I'm sorry. Not even pull them down because it's  
19 automatic.  
20 As soon as we refer it, these screens that I've  
21 given you automatically upload to LPS's system. So  
22 when is this dated? This is probably a long time ago  
23 before we automated that process. So at one point they  
24 may have been, maybe before my time, they may have been  
25 actually going in and printing the screens. That

1 initiate or defend any suit, litigation or proceeding  
2 in the name of Deutsche Bank National Trust Company  
3 except as specifically provided for herein.  
4 A. Okay. Yes.  
5 Q. Going back to my earlier question, does this  
6 refresh your recollection as to where the restriction  
7 is that keeps IndyMac from filing in the name of  
8 Deutsche Bank?  
9 A. Yes.  
10 Q. And that would be in the Limited Power of  
11 Attorney that Deutsche Bank gives to IndyMac, correct?  
12 A. Yes.  
13 Q. And then when I turn back to page 8, I've  
14 highlighted INDX 2006-AR4.  
15 A. Yeah, you see that category code, 665? Right  
16 here.  
17 Q. Right. So this trust that you've identified  
18 in your documents as being the owner, as being aware  
19 that a note is securitized, is among those trusts for  
20 which Deutsche Bank has given IndyMac Limited Power of  
21 Attorney?  
22 A. Yes.  
23 Q. And that's all shown in Exhibit Q, correct?  
24 A. Yes.  
25 MR. ICE: All right. May I confer with

1 my associate?  
 2 MR. MANCILLA: Sure.  
 3 MR. ICE: I think that's about it.  
 4 MR. MANCILLA: I want her to read and  
 5 sign. Do you want to enter into a  
 6 stipulation for the record?  
 7 MR. ICE: We have agreed, because of the  
 8 late hour today, that there was a second  
 9 deposition scheduled in the IndyMac Federal  
 10 Bank, FSB vs. Monica DeBenedetti and others,  
 11 a second deposition of our deponent here in  
 12 this case, we have agreed that the questions  
 13 and answers in this deposition can be used in  
 14 the DeBenedetti case, and for the specific  
 15 purpose of shortening the deposition, that we  
 16 will now agree to take by phone at a later  
 17 date.  
 18 MR. MANCILLA: Fine.  
 19 MR. ICE: We're not waiving the right to  
 20 take the deposition. We have some documents  
 21 that are specific to the DeBenedetti case,  
 22 but we will not ask all of the general  
 23 questions that were asked in this deposition  
 24 based on the stipulation that we'll be able  
 25 to use those in the DeBenendetti case.

1 CERTIFICATE OF OATH  
 2 STATE OF FLORIDA )  
 ) ss  
 3 COUNTY OF PALM BEACH )  
 4 I, the undersigned authority, certify that  
 5 ERICA A. JOHNSON-SECK personally appeared before me on  
 6 the 9th day of July, 2009 and was duly sworn.  
 7  
 8 WITNESS my hand and official seal this 16th  
 9 day of July, 2009.  
 10  
 11  
 12   
 13 DEBORAH H. RODGERS, CSR  
 Notary Public, State of Florida  
 My Commission DD496368 Expires 1/22/10

1 MR. MANCILLA: That's fine.  
 2 (Transcript order taken by Reporter.)  
 3 MR. ICE: No, we want this. Heck, she  
 4 came all the way down here, I want to see  
 5 every word.  
 6 MR. MANCILLA: Copy, no extra.  
 7 MR. ICE: All electronic. No, no extra  
 8 exhibits.  
 9 MR. MANCILLA: Yes, copy of exhibits.  
 10 (Thereupon, the foregoing proceedings  
 11 concluded at 6:45 p.m.)  
 12  
 13  
 14  
 15  
 16  
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 24  
 25

1 CERTIFICATE  
 2 STATE OF FLORIDA )  
 ) ss  
 3 COUNTY OF PALM BEACH )  
 4 I, Deborah H. Rodgers, Certified Court Reporter  
 5 and Notary Public in and for the State of Florida at  
 6 Large, do hereby certify that I was authorized to and  
 7 did stenographically report the deposition of ERICA A.  
 8 JOHNSON-SECK; that a review of the transcript was  
 9 requested; and that the foregoing pages numbered 1  
 10 through 220 inclusive are a true and correct  
 11 transcription of my stenographic notes of said  
 12 deposition.  
 13 I further certify that said deposition was taken  
 14 at the time and place hereinabove set forth and that  
 15 the taking of said deposition was commenced and  
 16 completed as hereinabove set out.  
 17 I further certify that I am not an attorney or  
 18 counsel of any of the parties, nor am I a relative or  
 19 employee of any attorney or counsel of party connected  
 20 with the action, nor am I financially interested in the  
 21 action.  
 22 DATED this 16th day of July, 2009.  
 23   
 24 DEBORAH H. RODGERS, CSR  
 Notary Public, State of Florida  
 My Commission DD496368 Expires 1/22/10  
 25

1 ERRATA SHEET  
2 Re: IndyMac Federal Bank, FSB vs.  
Israel A. Machado, et al., etc.  
3  
4 Witness: Erica A. Johnson-Seck  
5  
6 Date: July 9, 2009

7 Reporter: Deborah H. Rodgers, CSR

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22 \_\_\_\_\_  
Erica A. Johnson-Seck

1 July 16, 2009  
2 Ms. Erica A. Johnson-Seck  
c/o Joseph Mancilla, Jr., Esq.  
3 Florida Default Law Group, P.L.  
9119 Corporate Lake Drive, Suite 300  
4 Tampa, Florida 33634  
5 Re: IndyMac Federal Bank, FSB vs.  
Israel A. Machado, et al., etc.  
6

7 Dear Ms. Johnson-Seck:

8 Please take notice that on July 9th, 2009, you  
gave your deposition in the above-referred matter. At  
9 that time, you did not waive signature. It is now  
necessary that you sign your deposition.  
10 Please call our office at the below-listed number  
to schedule an appointment between the hours of 9 a.m.  
and 4:30 p.m., Monday through Friday.  
11 If you do not read and sign the deposition within  
a reasonable time, the original, which has already been  
12 forwarded to the ordering attorney, may be filed with  
the Clerk of the Court. If you wish to waive your  
13 signature, sign your name in the blank at the bottom of  
this letter and return it to us.

14 Very truly yours,

15 \_\_\_\_\_  
16 Deborah H. Rodgers, CSR  
Consort & Associates  
1655 Palm Beach Lakes Boulevard  
17 Suite 500  
West Palm Beach, Florida 33401  
18 561.682.0905

19 I do hereby waive my signature  
20 \_\_\_\_\_  
21 Erica A. Johnson-Seck  
22 cc via transcript: Thomas E. Ice, Esq.  
23 File copy  
24  
25

1 CERTIFICATE  
2 -----  
3 STATE OF FLORIDA )  
4 COUNTY OF PALM BEACH )  
5

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

12  
13 DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
14  
15

16 \_\_\_\_\_  
Erica A. Johnson-Seck

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