

Transcript of the Testimony of

JUAN AGUIRRE

Date: August 21, 2009

U.S. Bank, N.A.

v.

Mamie Robinson

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION COUNTY SUPERIOR COURT

U.S. BANK, N.A., as)
Trustee,)
Plaintiff,)
)
vs.)
) Cause No.
MAMIE ROBINSON,) 49D06-0703-MF-013045
Individually and as)
Personal Representative)
to Jessie Robinson,)
Defendant.)

The telephonic deposition upon oral examination of JUAN AGUIRRE, a witness produced and sworn before me, Judy K. Moore, CSR, Notary Public, in and for the County of Marion, State of Indiana, taken on behalf of Plaintiff, at the law offices of Wooden & McLaughlin, L.L.P., One Indiana Square, Indianapolis, Indiana, on August 21, 2009, at 8:30 a.m., pursuant to all applicable rules.

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1 A P P E A R A N C E S

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1 JUAN AGUIRRE,
2 having first been duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. JACKSON:

7 Q Hi, Juan. This is Chris Jackson, and I'm
8 representing Mamie Robinson in the lawsuit. Can
9 you still hear me?

10 A Yes, I can.

11 Q Super. I'd like to get just a little bit of
12 background information from you. Can you please
13 explain to me your employment history.

14 A With GMAC?

15 Q Yes. When did you start to work with GMAC?

16 A I started with GMAC November of 2006. I started in
17 the Loss Mitigation Department as a portfolio
18 specialist, and then I moved up to my position now
19 as a senior litigation analyst, and I've been doing
20 this for about a year and a half now.

21 Q And what did you do before you became an employee
22 of GMAC?

23 A I used to work for Brice, Vander Linden & Wernick.
24 That was a bankruptcy law firm here in Dallas.

25 Q And what did you do there?

1 A I was also kind of like a portfolio specialist. We
2 would assist our customers in -- like, my group
3 worked with Wells Fargo Bank. We would help them
4 with the bankruptcies. If one of their customers
5 filed bankruptcy, we would be -- help, you know,
6 filing the motions for release and any documents
7 that needed filed, proof of claims to the Court and
8 stuff like that.

9 Q And how long were you in that position?

10 A About two years.

11 Q And what did you do prior to that?

12 A Before that, I worked for the Chapter 13 Trustee's
13 Office here in Dallas.

14 Q And prior to that?

15 A I worked for Countrywide Home Loans.

16 Q And what was your title there?

17 A I worked in the Work-Out Department, which it's
18 just like the Loss Mitigation Department here in
19 this office. I assisted customers with short sales
20 in lieu of foreclosure, modifications, et cetera.

21 Q And what did you do before that?

22 A I worked for Frito Lay.

23 Q All right.

24 A A lot to eat.

25 Q And where did you go to school?

1 A I went to school in Visalia, California.

2 Q Can you spell that, please?

3 A Sure. V-I-S-A-L-I-A.

4 Q And what's the highest education level you
5 achieved?

6 A I got my AA in liberal arts, and I did go one year
7 at Fresno State University, but that wasn't a full
8 semester.

9 Q Okay. And could you pronounce and spell your last
10 name, please, Juan?

11 A Sure. It's Aguirre, and it's spelled
12 A-G-U-I-R-R-E.

13 Q Thank you.

14 A You're welcome.

15 Q Last week you were faxed several deposition
16 exhibits. Do you have them in front of you?

17 A Yes, I do.

18 Q I'd like you to look at Deposition Exhibit No. 1.

19 A Okay.

20 Q And can you explain to me in general what this
21 document is?

22 MR. BOYERS: And before you answer, just for
23 the record, Deposition Exhibit 1 is Bates stamped
24 U.S. Bank Number 1 through U.S. Bank 25. Is that
25 what you have?

1 THE WITNESS: That's correct.

2 MR. BOYERS: Okay. Sorry.

3 Q (By Ms. Jackson) Again, can you explain to me what
4 this document is?

5 A Sure. This is the payment history from our system
6 here in the office from the date of December 23rd,
7 2005, through December 18th of 2007.

8 Q Okay. If you look at the first page, which says,
9 "U.S. Bank 0001," there is a line that begins,
10 "December 23rd, 2005," under "Post Date"?

11 A Yes. I see that.

12 Q Can you explain to me what that line represents?

13 A That line represents with the transaction code of
14 RP, which is a regular payment received, and then
15 was applied to the -- actually, the November 1 of
16 '05 payment, and it shows where we applied it to
17 principal and to the interest, the amount.

18 Q Okay. And on that line it says that the due date
19 is December 1st, 2005, correct?

20 A That is the next due date, correct.

21 Q But you just said that you applied it to the
22 November 1st, 2005, payment.

23 A My understanding with the payment history is that
24 when a payment is applied, they roll the date over.
25 So the November payment was due which we received

1 in December, and the next due date is December 1st
2 of '05.

3 Q Was this, the payment represented by this line
4 transaction here, was that late, considered late?

5 A If it was the November payment, yes, it would be
6 considered late.

7 Q So is there any... Can you explain to me again how
8 I would know that?

9 A Sure. A late payment is anything -- it all depends
10 on the note. On the note, sometimes they give the
11 -- you know, they have 15 days from the date of the
12 due date. If their due date is the 1st of the
13 month, of any month, they have 15 days without
14 being considered late. After that time, they're
15 considered -- it would be considered late. So if
16 the payment came in on 12/23 of '05 and it was for
17 a November payment, obviously they were a month and
18 a half behind there. So that's how the payments
19 go.

20 Q Can you tell from that notation if the Robinsons
21 were charged a late fee for the November payment?

22 A On this one, it doesn't look like a late charge was
23 assessed.

24 Q Okay. And if you go one, two, three, four lines
25 down, there's a transaction line that begins

1 "March 10th, 2006." Do you see that line?

2 A Yes. The one that -- there are several lines. Are
3 you talking four from 12/23 or the fourth line down
4 from the top?

5 Q Fourth line from the top, counting the 12/23/05.
6 So it would be the very first entry for March 10th,
7 2006.

8 A Okay.

9 Q And as you indicated, there are several entries
10 there, and I was wondering if you could explain to
11 me what each of those lines represent that happened
12 on that day.

13 A Sure. UF is unapplied funds, meaning that they
14 weren't applied yet. So what happened, we received
15 a \$500 check which, of course, was not enough to
16 make a full payment, so what happens, it was rolled
17 over to the suspense account where it sits until we
18 have enough for another payment -- I mean for a
19 full payment. But on the same day we also received
20 a \$38.50 check which was moved over and put into
21 the suspense account, which is under the escrow
22 paid line -- that's basically the suspense that's
23 been sitting there -- which is enough for one full
24 payment. And if you notice, then, on 3/10 -- if
25 you go over a couple of lines after that, it does

1 show where a regular payment -- where we applied it
2 and rolled the due date over.

3 Q Okay. Can you tell me, I see where, let's see,
4 starting with the first transaction line for March
5 10, 2006, one, two, three, four, five, six, seven,
6 the seventh line appears to be where the regular
7 payment was credited?

8 A Correct.

9 Q Can you explain to me what... Unapplied Funds --
10 the line right above it, the transaction code is
11 AA. What does that -- it has all zeros. Can you
12 tell me what that represents?

13 A Honestly, I cannot tell you what the AA represents.
14 I would have to look at the payment code to see
15 what AA means.

16 MR. BOYERS: If you flip to U.S. Bank Page
17 Number 9.

18 THE WITNESS: Oh. So the codes are right
19 here.

20 A According to U.S. Bank 0009 where it has the
21 payment codes, AA is an administrative adjustment.
22 The only thing I can think of at that point is
23 because it shows where we applied -- we put the 500
24 in suspense, we put the 38.50 in suspense, and then
25 we withdrew 530.58, and I just think that's a line

1 showing that we've withdrawn those monies from the
2 suspense account to make a payment. So it's an
3 adjustment that we've made from one bucket to
4 another to make that payment.

5 Q Okay. And then if you start from the regular
6 payment transaction code and go one line down, it
7 has an unapplied funds notation. Can you tell me
8 what happened to that \$7.92?

9 A I see that there was 7.92. They withdrew that from
10 the suspense account, and CT -- it looks like they
11 applied it towards the principal. CT is, like,
12 curtailment, I think. Let me check real quick.
13 But they applied it to, yeah, curtailment, which
14 they applied it to the principal to reduce the
15 principal by \$7.92.

16 Q Does the curtailment code always mean that they're
17 reducing principal?

18 A Yes. That would be to reduce the principal.

19 Q Okay. And then I'm going to -- this is still on
20 Page 1. I'm going to count up from the bottom
21 transaction line.

22 A Okay.

23 Q So counting -- and counting the last line, one,
24 two, three, four. The date is May 30th, 2006.

25 A Okay.

1 Q And can you explain to me what that line shows?

2 A That line shows that we received a regular payment
3 for the amount of 557.11 where we applied 37.84 to
4 the principal, 492.74 to the interest. And then
5 there was a late charge -- it looks like there was
6 a late charge assessed because the payment was late
7 and -- for 26.53. And if you add the regular
8 payment plus the 26.53, it adds up to the 557.11.
9 So that payment includes a late charge, or they
10 went ahead and paid their late charge on that line.

11 Q So can you tell from this payment history which
12 month this late charge was for?

13 A Not by just looking at the payment history. I
14 don't know what month that they charged it for.

15 Q Am I correct that when we started this payment
16 history, you indicated that the very first payment
17 that was due in November of 2005 was late?

18 A Correct.

19 Q Do you know why there doesn't seem to be a late
20 charge applied until May 30th, 2006?

21 A No, I don't know the reason why the charges weren't
22 assessed at that time.

23 Q And then if you turn to the second page, on the
24 bottom it will say, "U.S. Bank 0002."

25 A Okay.

1 Q From the top, if we count the first line, one, two,
2 three, there's a notation that starts, "August 1st,
3 2006." Can you explain to me what that represents?

4 A That is an entry for Forest Place Insurance for
5 \$803. Fire, or hazard insurance as it's called.

6 Q And then moving down from the top again, counting
7 the first line, one, two, three, four, five, six,
8 seven, eight, nine, ten, the 11th line...

9 A Okay.

10 Q It starts, "May 23rd, 2007." Can you explain to me
11 what that line is?

12 A That is a fee that was assessed to the loan for a
13 property inspection.

14 Q Do you know what a property inspection fee is?

15 A That is usually when we have one of our inspectors
16 or our vendor who does our property inspections to
17 go out and see if the property is still occupied,
18 is it vacant due to delinquency on the loan. So

19 when a home falls into delinquency, we just need to
20 make sure because we're trying to protect the
21 interest of the property to make sure that it is
22 occupied; and if it is vacant, we need to take the
23 steps necessary at that point to fix the property
24 if needed and anything else with the property.

25 Q Is any distinction made if the borrower is

Aguirre/
Homecoming's
infer their property
inspector can
assess a property
as "vacant" based
on inspection
while the loan is
"delinquent".
These routine
inspections
involve breaking
and entering of
properties while
homeowners are
at work, etc. This
"delinquent"
status is the result
of servicer holding
homeowner's
funds in Suspense
account.
The Suspense
Account is NOT
regulated or
audited.

1 represented by an attorney as far as charging a
2 property inspection fee?

3 A I don't know anything about a property inspection
4 fee not being assessed if they're being represented
5 by an attorney. We get billed for the property
6 inspection due to the delinquency, and all I know
7 is it gets assessed to the loan.

8 Q All right. We are done with Exhibit 1, so we can
9 set that aside.

10 A Okay.

11 Q And we're going to go on to Exhibit 2. Do you have
12 that exhibit in front of you?

13 A Yes, I do.

14 Q Can you explain to me what that exhibit is?

15 MR. BOYERS: And, for the record, Exhibit 2
16 should be U.S. Bank 39 to U.S. Bank Page 40, a
17 two-page document.

18 THE WITNESS: Okay.

19 A Yes. This is basically a letter sent to the
20 borrower thanking them for contacting Homecomings
21 Financial. They were requesting looks like
22 reinstatement figures of their delinquency, and
23 that's what was provided with the letter.

24 Q (By Ms. Jackson) Okay. If you flip to the second
25 page, which should reflect U.S. Bank 0040 on the

1 bottom...

2 A Okay.

3 Q And can you run through the principal -- in the
4 center there we've got the loan number, their names
5 and their addresses, and then we have a list of
6 charges. I can figure out the first three, they're
7 self-explanatory, but if you count down to the
8 fourth item on that list, if you could explain to
9 me from that item down what each of these line
10 items represents.

11 A Sure. The BPO advance, that is because we had a --
12 which is a broker price opinion, which is like an
13 appraisal done by a broker, a licensed broker,
14 instead of an appraiser to get a value on the
15 property.

16 Trustee sale advance, my understanding is
17 that's when it's going through the foreclosure
18 process, those are monies that have been advanced
19 for the sale of the property, I would think for the
20 foreclosure attorney or the trustee selling the
21 property.

22 Other fees, I would think those are, like, the
23 inspection fees, any other fees that have been
24 assessed to the property. Inspections are the ones
25 that I can think of by looking at the payment

1 history.

2 And P&I installment future, that's just
3 showing what the payment is in the future, this is
4 what your monthly payment is. And the late charge
5 for the future of 26.53. And then there would be
6 foreclosure advances. Those are fees and costs to
7 our foreclosure attorney for filing the paperwork
8 to proceed with the foreclosure process on the
9 loan.

10 Q Okay. Can you distinguish between the last two
11 items on the list that's a foreclosure
12 advance/credit and the sixth line from the top that
13 looks like it's got ATTY F/C?

14 A The difference there is we've already advanced the
15 750 and the 191. Those are fees that have already
16 been paid out. When we do reinstatement figures,
17 we'll contact the foreclosure attorney and say,
18 we're going to get reinstatement figures, what do
19 we still owe you as of right now. And they will
20 say, for example, here they must have told the
21 individual who was creating this statement there's
22 still a balance of \$164 owed. And so they add that
23 onto the reinstatement figure to give a more
24 accurate figure to our borrower, let them know how
25 much they really owe.

1 Q And then the line right above it says, "Trustee
2 Sale Advance." Can you be more specific on what
3 trustee we're talking about?

4 A Honestly, I couldn't break that down for you. It's
5 my understanding that's for the sale of the
6 property, the foreclosure sale of the property. I
7 don't know if it went through the foreclosure
8 process at that point or not, but that is my
9 understanding from the reinstatement figures is
10 that for the individual who goes forward to sell
11 the property or for the -- you know, the sale of
12 the property when it's going through the -- after
13 the foreclosure part of it.

14 Q So at the very bottom it says in capital letters,
15 "AMOUNT DUE AS OF MARCH 1ST, 2007"?

16 A Uh-huh.

17 Q And there's a figure there of \$5,708.18. Can you
18 explain to me what that figure represents?

19 A Usually what they do when they do a reinstatement
20 figure is they like to go, like, 60 days out or,
21 like, 30 days out in the future to give the
22 borrower a better idea. If you can pay it today,
23 that's fine, but if you need time to pay this, you
24 know, as of, you know, March 1st, this is how much
25 the reinstatement figure is going to be.

1 So if a borrower needs 30, 60 days to get the
2 reinstatement money in, they should submit the
3 correct amount and not submit, like, for example,
4 the 5,107 and then be considered still delinquent.
5 So we're letting them know in advance that up to
6 this date this is the amount that's going to be due
7 in case you need that extra time to find the money
8 or get the money to submit to us.

9 Q Okay. So if the borrowers in this case had paid
10 \$5,708.18 before March 1st, 2007, that would have
11 brought them current?

12 A Correct.

13 Q Okay. We're moving to Exhibit 3.

14 A All right.

15 Q And can you explain to me what Exhibit 3 is?

16 A Exhibit 3 is our -- basically our note history out
17 of our system. So these are notes that are entered
18 into the borrower's loan.

19 MR. BOYERS: And, for the record, the
20 Exhibit 3 you're looking at, Juan, is that U.S.
21 Bank 224 to U.S. Bank 230?

22 THE WITNESS: Yes.

23 MR. BOYERS: Okay.

24 Q (By Ms. Jackson) And then similar to the payment
25 history, we've got in the center some columns that

1 are named, and the first transaction line looks
2 like it begins November 8, 2005?

3 A Yes.

4 Q Counting down from that line one, two, three, four,
5 five, the fifth line down, it's December 10th,
6 2005?

7 A Yes, ma'am.

8 Q Can you explain to me what that entry is
9 describing?

10 A Let me see. That is a -- DM is a delinquency
11 message for the delinquency on the loan. All I can
12 think of is a call was made out to the borrower
13 informing them that they were delinquent on their
14 loan.

15 Q The comments out to the right...

16 A Okay.

17 Q It says, "You for new loan set-up" and then -- do
18 you see that line?

19 A I do see it.

20 Q And then the next line down, at the very end it
21 says, "Added to ATS." What does ATS represent?

22 A I don't know what the abbreviation ATS is.

23 Q Okay. And then it looks like when you flip the
24 next page -- on the bottom it should say U.S. Bank
25 225.

1 A Okay.

2 Q Down on the very bottom of the page again, counting
3 up from the bottom line one, two, three, four,
4 five, the fifth line, March 10th, 2006?

5 A Uh-huh.

6 Q It looks like we have another **unapplied funds** code.
7 Are those cross-listed between the payment history
8 and this call log?

9 A Yeah. What happened when they printed this history
10 of account or note history, they printed them all
11 together. You can print them separately.

12 Q Okay.

13 A So that way you just have the notes and you have
14 the payment, but what happened when they printed
15 this history, they must have clicked "All" and it
16 printed all the note and the payments that were
17 being received, you know, so that's everything in
18 between the notes. They did it all in one on this
19 one.

20 Q Okay. And if you could turn to Page 227, on the
21 bottom.

22 A 227, okay.

23 Q And start with counting the first transaction line
24 as one, one, two, three, four, five?

25 A Uh-huh.

1 Q The entry date is May 11th, 2006. Can you just
2 explain to me what that paragraph indicates there
3 to the right?

4 MR. BOYERS: And I'll just note an objection
5 for the record to the extent that the entry speaks
6 for itself. He can't change the meaning of the
7 entry by his testimony. You can answer.

8 THE WITNESS: Okay. I'm just reading the
9 abbreviations and trying to figure them out.

10 A What I'm understanding is that the payment will go
11 up, something about taxes being included in the
12 payment. Advised that payment is P&I only.
13 Advise... Let's see. That might have been a call
14 in from the borrower and they were being advised
15 that this was a no escrow account but that if there
16 was no insurance on the property, we would place
17 insurance and that their payments would go up.
18 That's what I'm getting from this note.

19 Q (By Ms. Jackson) Is there a standard list of
20 abbreviations that are used by the individuals who
21 complete the description entries in these call
22 logs, or is it something that each person
23 abbreviates as they wish?

24 MR. BOYERS: And when you're referring to
25 description entries, you're meaning the typed

1 portion on the right side of the document?

2 MS. JACKSON: Yes.

3 A We don't have a set list of abbreviations. It --
4 as a person is typing the note, they abbreviate
5 words that might sound like the word they're trying
6 to explain or to come across, but we do not have a
7 set list of abbreviations.

8 Q (By Ms. Jackson) Okay. Let's move on to
9 Exhibit 4.

10 A All right.

11 Q It's kind of fat.

12 A Got it.

13 Q All right. Can you look at that -- the first page
14 of Exhibit 4 and explain to me what that page
15 represents or what it is?

16 MR. BOYERS: And just for the record, I'm
17 going to note a couple of things, but first, this
18 exhibit is Bates stamped at the bottom beginning
19 with 000183, and it appears to be numbered
20 consecutively through 000220, which is the Bates
21 stamp placed upon it by counsel for Robinson.

22 Another note is that counsel for Robinson and
23 I had discussions about this being beyond the
24 details of the qualified written request response
25 being beyond what was set forth in the deposition

1 notice. We've agreed to cover some topics within
2 that, specifically where certain documents would
3 have been obtained from. You can answer to the
4 extent you are able.

5 THE WITNESS: Sure.

6 A This letter is, obviously, to you, Ms. Jackson,
7 just informing you that we were providing you
8 copies of our transaction codes, the payment
9 history and a copy of the original note and
10 security instrument. And that's about all I know
11 about the letter.

12 Q (By Ms. Jackson) Okay. If you turn back to the
13 document Bates stamped 191 and through 193...

14 A Okay.

15 Q Can you tell me, first of all, do you recognize
16 what this document -- the type of document this is?

17 A Yes. It's a payment history from our system that
18 we had back in 2006, LSAM.

19 Q Is that why the appearance is different from
20 Exhibit 1 that we looked at?

21 A Yes.

22 Q And would the same information have been captured
23 in the old system to the new system?

24 A Some of the old information was transferred over to
25 the new system, not all of it. I know that I can

1 go -- in the far system I can go back to a certain
2 date, but then if I need information further back,
3 only certain individuals in the company will have
4 access to this system and I would have to go to
5 them and say, hey, can you please print out, for
6 example, a payment history from this date going
7 forward to the date that I have in the new system,
8 and they will do that and print out a copy for me.

9 Q Okay. If you go and look at the last page, which
10 is Bates stamped 193, the very last entry on that
11 page, it looks like they were consecutively
12 numbered, so it would be Entry Number 40?

13 A What was that number, 19...

14 Q 193.

15 A 3, okay. There we go. I got it.

16 Q And then if you look along the left-hand side, it
17 looks like in this system each transaction was
18 consecutively numbered?

19 A Yes.

20 Q Okay. So for Transaction Number 40 could you
21 please explain to me what that represents?

22 A It's a \$25 charge. The only thing I can think of,
23 they either requested a payoff statement, it's
24 talking about a statement, or some sort of
25 statement had to be generated for a fee to be

1 assessed onto the loan. That's the only thing I
2 can think of.

3 Q Okay. And in the same document, starting with
4 Bates stamp 194 through 199, I noticed in going
5 through my review this is a different account, so I
6 believe it was given to us in error, so I just want
7 to skip over those.

8 A Correct. Okay. Yes.

9 MR. BOYERS: No objection to that, Counsel.

10 Q (By Ms. Jackson) And so now we're looking at --
11 let's go to the one that's Bates stamped 201 on the
12 bottom.

13 A 201. Okay. I got that.

14 Q And can you describe to me what this document is?

15 A It's a payoff statement.

16 Q And in the middle of the payoff statement there is
17 a paragraph that starts, "CURRENT LOAN
18 INFORMATION," and it's all in caps?

19 A Okay.

20 Q From that, counting that as line one, one, two,
21 three, four, five, six, seven, if you could go down
22 to the seventh line and describe to me what that
23 is.

24 A The pre-payment penalty?

25 Q Uh-huh.

1 A Pre-payment penalty would be when someone could
2 have paid their loan before a certain date. On the
3 notes or the mortgage there's usually -- on some
4 loans they have an agreement that they won't pay
5 off their loan for a certain amount of years. If
6 they were to pay their loan prior to that date,
7 they would have a penalty, a pre-payment penalty.

8 And they added that here if -- to let the
9 borrower know, here's your payoff date, and if
10 you're going to pay before your payment date on
11 your note or your mortgage, this is what the fee
12 is, and just give them an idea what the total
13 payoff would be if they choose to pay it off at
14 that point.

15 Q Okay. And from that pre-payment penalty line, if
16 that's Line 7, then we have that indented line I'm
17 going to count as 8.

18 A Okay.

19 Q 9, the amount to satisfy the note. Going down to
20 Line 10 and Line 11, can you explain to me what
21 each of those are?

22 A That's a recording fee and a fee to expedite the
23 payoff statement. That's \$25 for the payoff
24 statement, to get the payoff statement to the
25 borrowers per their request.

1 And the recording fee, I don't know what the
2 recording fee is for. I'm sure they need to record
3 maybe the payoff of the loan, some sort of
4 recording fee that needs to be done at that point.

5 Q Okay. We're going to move forward to the document
6 that's Bates stamped 2004 through --

7 A Okay.

8 Q And we're going to go all the way through... Hang
9 on here. 215.

10 MR. BOYERS: 204 to 215.

11 A Okay.

12 Q (By Ms. Jackson) Have you had a chance to review
13 those pages?

14 A I've kind of scanned through them. Not in full
15 detail.

16 Q Well, no problem. Can you just tell me generally
17 what these pages represent or what they are?

18 A These pages are the mortgage on the property for
19 Mamie Robinson and Jessie J. Robinson showing when
20 they got the loan, when their first payment was
21 due, the amount of the loan, who the lender was,
22 and it's just the information regarding their loan
23 and their agreement to pay back the loan.

24 Q If you look at these pages, it looks like the
25 mortgage was printed on letterhead for Homecomings

1 Financial. Do you know why that would be?

2 A The only thing I can think of is that when they
3 were printing these copies, there was letterhead in
4 the copy machine, because I personally printed my
5 own when I looked at files, and it didn't come out
6 with that letterhead on there. So the only thing I
7 can think of is they had letterhead in there, they
8 printed it and they just sent it out.

9 Q Okay. And then if you could look now at Pages 216
10 through 220.

11 A 216 to 220. Okay.

12 Q And could you just please tell me what those pages
13 represent.

14 A This is the note on the mortgage, again, stating
15 the amount of the loan, the lender on the loan, the
16 interest rate, when their first payment is due, the
17 amount of their payment, and it gives them an
18 explanation of, like, the late charges and the
19 information regarding their loan.

20 Q If you turn to the last page, which is Bates
21 stamped 220...

22 A Okay.

23 Q Could you tell me what that page represents?

24 A It's named Allonge Addendum to the Note. I
25 couldn't tell you exactly what it is. My

1 understanding is that's just to show that -- I
2 guess the note is going to be transferred to
3 somebody, and it's just an amendment to the note
4 that it looks like Mercantile Mortgage Company
5 generated at one point.

6 Q Okay. We'll put that one aside and we're going to
7 move on to Exhibit No. 5.

8 A Okay.

9 Q And can you explain to me what this is?

10 A Exhibit No. 5, right?

11 Q Uh-huh.

12 A This is a letter to the Robinsons informing them
13 that there's going to be a new sub-servicer of
14 their loan. There's going to be a new person
15 servicing which is going to be GMAC Mortgage now
16 and not Homecomings Financial.

17 Q And, again, are you familiar with the system that
18 generates this letter?

19 A Not with the system that generates this letter, no,
20 ma'am.

21 Q Okay. Moving on to Exhibit 6...

22 A Okay.

23 Q Looking at this document, can you describe to me
24 what it is?

25 MR. BOYERS: And just for the record, Exhibit

1 No. 6 is Pages 1 through 9 of Plaintiff U.S. Bank's
2 Responses to Defendant's First Set of
3 Interrogatories and Request for Production of
4 Documents to Plaintiff. It only attaches the
5 answers to interrogatories and does not include the
6 remaining portion of the document that was served
7 on counsel for Robinson. Is that consistent with
8 the copy that you have?

9 THE WITNESS: I have 1 through 9.

10 MR. BOYERS: Okay.

11 Q (By Ms. Jackson) Looking at the first page on the
12 third line down, it says that the Plaintiff is U.S.
13 Bank, N.A., as Trustee. You said you worked for
14 Homecomings Financial. What is the relationship
15 between Homecomings Financial and U.S. Bank, N.A.,
16 as Trustee?

17 MR. BOYERS: I'll just object to the extent
18 that the term relationship is vague and it may call
19 for a legal conclusion. You can testify as to your
20 personal knowledge.

21 A My understanding is Homecomings Financial was the
22 sub-servicer for U.S. Bank where we serviced the
23 loan. So we were just a sub-servicer.

24 Q (By Ms. Jackson) What does a sub-servicer do?

25 A A sub-servicer, we accept the payments, we apply

1 the payments to the loan, we send out delinquency
2 notices if a loan is delinquent. If it's not
3 cured, we send it out for foreclosure. We work
4 loss mitigation options, like modification, short
5 sales in lieu of foreclosure. And, again, if the
6 situation is not cured and the property is
7 foreclosed on, we also -- it will go into our REO
8 Department, which is our Real Estate Owned
9 Department, to market the property and sell it for,
10 for example, here U.S. Bank. So we basically are a
11 servicer of the loan.

12 Q Okay. Is U.S. Bank, N.A., as Trustee the only
13 entity that Homecomings services loans for?

14 A No.

15 Q Are there different procedures depending on who is
16 the trustee?

17 MR. BOYERS: She's going to restate that
18 question.

19 THE WITNESS: Okay.

20 Q (By Ms. Jackson) Does each different Trust have
21 different accounting procedures?

22 MR. BOYERS: I'm going to object to the form
23 because that's vague and it also, I think, assumes
24 that they only do servicing work for Trusts which
25 is a fact not in evidence, but you can answer.

1 A My understanding is we -- accounting procedures are
2 in the same system, so funds that come in are
3 received and applied in our system. Regarding if
4 there's certain rules or regulations that they
5 might have, different companies might have, that's
6 something that is agreed upon by the people who
7 agreed to the servicing of the loans, but our
8 accounting system is the same for all. As the
9 payments come in, we apply the payments, and it's
10 the same system for all our people we service the
11 loans for.

12 Q Does Homecomings Financial have operating
13 procedures or written manuals that describe to its
14 employees how to enter payments or apply payments?

15 A Our Cashiering Department is the department that's
16 up in our Iowa office. Yes, all our departments
17 have manuals and procedures on how to do the
18 specific job. So that would be up in our Cash
19 Operations Department up in Iowa.

20 Q Okay. And then I'm still on Deposition Exhibit No.
21 6. I'm going to turn to Page 2. Well, in fact,
22 first of all, let us go all the way back to Page 9.

23 A Page 9?

24 Q Yeah.

25 A Okay.

1 Q And is that your signature?

2 A Yes, it is.

3 Q And can you describe to me your involvement in
4 preparing the responses to these interrogatories?

5 MR. BOYERS: I'm going to object to the extent
6 the question may touch on communications with
7 attorneys and/or Legal Department employees because
8 those would be attorney/client privileged. So you
9 are not to testify about those types of
10 communications.

11 THE WITNESS: Okay.

12 A What I do to prepare -- I mean, I go into our
13 system, I look at the loan. Again, as my attorney
14 stated, information -- I discuss some information
15 with the Legal Department. At that point I go
16 ahead and execute this for filing or whatever needs
17 to be done with the interrogatories at that point.

18 Q (By Ms. Jackson) Okay. If we go back to Page
19 Number 2...

20 A Okay.

21 Q If you look at Answer Number 1, are you included
22 there?

23 A Oh, you mean my name?

24 Q Right.

25 A No. No, my name is not on there.

1 Q Did you answer or participate in answering these
2 interrogatories?

3 MR. BOYERS: Well, I'm going to object to that
4 question because I think the document speaks for
5 itself. He executed it, so by definition he
6 participated in the creation of the final product.
7 You can answer to the extent your answer doesn't
8 invade the attorney/client privilege.

9 A When I signed this, I did discuss with the Legal
10 Department and, again, I looked into the system
11 with Kendall at that point.

12 Q (By Ms. Jackson) And who is Kendall Sanders?

13 A Kendall Sanders was my supervisor at that time.

14 Q And what was his department? What department did
15 he work for?

16 A Kendall was the portfolio manager for the Legal and
17 Bankruptcy Loss Mitigation Department.

18 Q If you could turn to Page 4.

19 A Okay.

20 Q Interrogatory Number 4. Can you review that and
21 tell me what information you reviewed or what
22 documents you looked at to answer that
23 interrogatory?

24 MR. BOYERS: And I'll just note an objection.
25 These interrogatories are speaking to corporate

1 knowledge, so you can go ahead and answer, but the
2 question is asked as to his specific review, and he
3 can answer to that, but interrogatory answers are
4 provided on behalf of a corporation and reflect
5 corporate knowledge. You can answer.

6 A The information that just through our network
7 system, through our system is where the
8 information -- just to look at some of that
9 information in our system.


10 Q (By Ms. Jackson) When you say, "system," you're
11 talking about a computer system?

12 A Yes.

13 Q Does it have a specific name?

14 A Yes. We have -- there's Mortgage Serve, there's
15 Looking Glass. We used to have LSAM which I don't
16 have access to anymore. So that's where I go and
17 get my information.

18 Q What did Looking Glass record? What types of
19 information did Looking Glass record?

20 A Looking Glass is our imaging system. So if I need 
21 to go get, like, a copy of a mortgage or a note or
22 a letter that was maybe sent out to the borrower, I
23 can go to Looking Glass and pull that up, kind of
24 review just to get a better understanding of what
25 I'm looking at.

1 Q For an individual loan, what type of documents
2 would be imaged into Looking Glass?

3 A What images are --

4 MR. BOYERS: Wait, Juan. Wait one second.

5 MS. JACKSON: Hang on.

6 MR. BOYERS: I think he can testify about what
7 he's observed on Looking Glass, but if you're
8 asking for how the process of doing the imaging is
9 handled, that's beyond the scope. So if your
10 question is limited to what he's observed on it, I
11 have no objection. Is that what you intended?

12 MS. JACKSON: Yes.

13 MR. BOYERS: Okay. Go ahead, Juan. Sorry.

14 A Okay. What images, the information like the note
15 or the mortgage or the deed of trust, sometimes the
16 HUD might be in -- there's a HUD 1. Some of the
17 origination file might be in there. Not all the
18 loans have everything. It all depends what is
19 provided to us by maybe the previous servicer or
20 the lender when we take on the servicing agreement.
21 We image that in there. Some letters that maybe
22 went out to the borrower will get imaged and
23 information like that.

24 Q (By Ms. Jackson) How is it referenced within the
25 system, by loan number or...

1 A Yes. I would go into Looking Glass, type in the
2 loan number, and the loan number -- whatever is
3 imaged in that loan itself will come up.
4 Whatever's been imaged to that loan will come up in
5 that box, and then I can click on that image and
6 then I can look at it.

7 Q Okay. And then still on Page 4, looking down at
8 Interrogatory Number 6...

9 A Okay.

See p. 65, esp.
bottom

10 Q Can you tell me what you reviewed to answer that
11 interrogatory?

12 MR. BOYERS: And, again, same objection from
13 earlier. That speaks to corporate knowledge he
14 verified on behalf of the corporation. You can go
15 ahead and answer.

16 A That information, of course, I discussed with the
17 Legal Department, and information provided to me by
18 the Legal Department, I wouldn't be able to answer
19 that.

20 Q (By Ms. Jackson) And when you say, "Legal
21 Department," did you talk to a specific attorney in
22 your Legal Department?

23 A When I say the Legal Department, it's our
24 paralegals who work with our counsel, and
25 information like this is provided to me by, like,

1 the paralegals, and they provide me whatever
2 information I need to look at for me to execute
3 interrogatories and affidavits and anything else
4 like that.

5 Q Are these paralegals located in Dallas?

6 MR. BOYERS: I'm going to --

7 A We have paralegals located in three of our offices.

8 MR. BOYERS: Wait, Juan. I just want to note
9 an objection.

10 THE WITNESS: Okay. I'm sorry.

11 MR. BOYERS: I object to the question because
12 I don't think it's reasonably designed to lead to
13 the discovery of admissible evidence. Where the
14 paralegals are doesn't seem at all relevant to this
15 matter. So you can go ahead and answer. I'm sure
16 that the court reporter had trouble taking down
17 what you were saying as I was trying to communicate
18 my objection.

19 THE WITNESS: It does get difficult when we
20 all talk. I apologize.

21 MR. BOYERS: That's okay.

22 A Like I say, we do have paralegals, like I was
23 saying, in three of our offices. We have
24 paralegals in our Dallas office, in our Minnesota
25 office and in our Pennsylvania office.

1 Q (By Ms. Jackson) And do you know what office you
2 specifically contacted for information regarding
3 your responses to these interrogatories?

4 MR. BOYERS: Same objection.

5 Q (By Ms. Jackson) You can answer.

6 A Okay. On this one, this was provided to me from
7 our Minnesota office.

8 Q Okay.

9 THE WITNESS: Can I take a little break to go
10 get something to drink?

11 MS. JACKSON: Oh, absolutely.

12 MR. BOYERS: Yeah. Let's plan on taking a --
13 let's do a ten-minute break.

14 THE WITNESS: Okay.

15 MR. BOYERS: So we'll put this on hold.

16 THE WITNESS: I'll put it on mute on this end.

17 (Brief recess.)

18 Q (By Ms. Jackson) Okay. We're back on the record,
19 Juan.

20 A All right.

21 Q We are talking about Deposition Exhibit No. 6, and
22 I'd like you to turn to Page Number 5.

23 A Okay.

24 MR. BOYERS: We can definitely hear that
25 you're flipping the page. That's good.

1 THE WITNESS: No, I've got all this memorized.
2 Go ahead.

3 Q (By Ms. Jackson) For this specific interrogatory,
4 do you recall any specific facts or input that you
5 contributed to this answer?

6 MR. BOYERS: Just for the record, you told him
7 to turn to the page, but I didn't hear you specify
8 a specific interrogatory.

9 MS. JACKSON: Oh, interrogatory?

10 Q (By Ms. Jackson) Interrogatory Number 7.

11 A On this one, we're the sub-servicer and that's what
12 we are, so when I discussed this type of
13 information, you know, that's what we are, we're
14 just a sub-servicer, and I would have gone into the
15 system and looked at the information.

16 Q Okay. I think we might be done with this one. And
17 then if we turn to Page 9.

18 A Page 9, okay.

19 Q And we're talking about your signature block here,
20 and it says, "Homecomings Financial, L.L.C.,
21 signing on behalf of U.S. Bank, N.A., as Trustee."
22 Have you seen any documentation or have you been
23 provided any information that would allow you to
24 explain to me in what capacity Homecomings
25 Financial can speak on behalf of U.S. Bank, N.A.,

1 as Trustee?

2 MR. BOYERS: Juan, before you answer, I'm
3 going to note an objection for the record that
4 you're calling upon him to provide a legal
5 conclusion about those authorizations, and he's not
6 a lawyer to be able to provide that kind of
7 explanation. He can testify as to his
8 understanding of the basis, but to the extent
9 you're calling for a legal conclusion, he can't
10 offer one, he's not here as an expert, et cetera.
11 You can answer.

12 A My understanding is we are the sub-servicer on this
13 loan regarding any sort of agreements or -- that
14 are made between the higher-ups within the company.
15 I have nothing to do with that. I just have, like
16 I said, access to our computer system, our systems
17 that show that we're servicing that loan.

18 Q (By Ms. Jackson) In your capacity as a portfolio
19 specialist with Homecomings Financial, can you give
20 me an estimate of how many, let's just say
21 interrogatories you would be signing on behalf of
22 U.S. Bank as Trustee, like, during any given month?

23 MR. BOYERS: I'm going to object on two
24 fronts. First, you're calling for speculation.
25 Two, you're saying any given month, but you're not

1 saying during what time period. So it's vague and
2 it's calling for speculation.

3 Q (By Ms. Jackson) But during the time that you were
4 a portfolio specialist.

5 MR. BOYERS: Same objection. You can answer.

6 A Honestly, I don't know how many I signed. I'm a
7 signing officer for the company, so there are
8 certain individuals who have the capacity of
9 signing. Not all portfolio specialists have that
10 ability. Not everyone does. So, honestly, I
11 couldn't tell you how many I've signed for U.S.
12 Bank at any time or point.

13 Q (By Ms. Jackson) How many portfolio specialists
14 have signing authority?

15 MR. BOYERS: During the time period he was a
16 portfolio specialist?

17 MS. JACKSON: Sure. We'll start with then.

18 Q (By Ms. Jackson) This is, like, January 30th,
19 2008.

20 MR. BOYERS: You can answer to the extent you
21 know.

22 A The answer is I don't know.

23 Q (By Ms. Jackson) And then how did you... When
24 were you designated as a portfolio specialist who
25 had signing authority?

1 A I'm trying to think back. I think I was given
2 signing authority sometime in 2007. I can't give
3 you the exact date. I was asked and I filled out
4 the paperwork for them, and they gave me the
5 authority.

6 Q What kind of paperwork did they have you fill out?

7 A It's just paperwork with my name and my position.
8 It's just a company piece of paper for them to get
9 manager's approvals and VP approvals and stuff like
10 that to make sure that it's okay to put another
11 person in that capacity. It's just an
12 interoffice --

13 Q It sounds like to me that you're describing
14 something that you applied for, like you applied to
15 have signing authority; is that correct?

16 A No, I did not apply for it. They asked if I could
17 do that, I said sure. They gave me -- they
18 e-mailed me the document to get approval, because
19 not just anyone is given approval to do this. They
20 want to make sure that, you know, you have a
21 certain understanding, I mean -- I'll give you this
22 as an example: Because of working with loss
23 mitigation and working, you know, with our Legal
24 Department, I have a little better understanding of
25 what's going on with certain loans, when certain

1 documents need to be maybe executed. They don't
2 just give that to anybody. They asked me, and I
3 said, sure, if you need me to do that, that's fine.

4 Q And for each of, let's say responses to
5 interrogatories that -- when the responses to the
6 interrogatories come to you for signature, can you
7 explain to me what process you use, or do you
8 review them, do you check the data?

9 MR. BOYERS: Is your question complete?

10 MS. JACKSON: No.

11 Q (By Ms. Jackson) Can you explain to me, Juan,
12 what -- you had told us before that you pulled
13 documents that were requested to answer these
14 interrogatories. When the interrogatories are
15 complete in the form that we have right now for
16 Pages 1 through 9, what does your review involve
17 before you sign the document?

18 MR. BOYERS: I'm going to object to the form
19 of the question because I think he's -- it's asked
20 and answered. He's already testified about his
21 process. I think it also mischaracterizes his
22 earlier testimony. I think he said he reviewed
23 information on the system and reviewed documents on
24 the Looking Glass system. You can answer to the
25 extent you understood the question.

1 A I didn't understand it all that well, but like my
2 counsel stated, I've reviewed the information in
3 our system in Looking Glass and in Mortgage Serve.
4 And like I also stated earlier, you know, discussed
5 some information with the paralegal that's asking
6 me to review these for her -- or him.

7 Q (By Ms. Jackson) When you sign the interrogatories
8 on behalf of U.S. Bank, do you review the entire
9 interrogatory or are you just completing, like,
10 Page 9?

11 A I review it and I will complete Page 9, for
12 example, on this one. If I have any questions
13 within the document, again, I will ask my Legal
14 Department for any information that's needed at
15 that point.

16 Q Okay. So do you draft or write the responses to
17 these interrogatories?

18 MR. BOYERS: Object to the question. It
19 doesn't seek admissible evidence. It's not seeking
20 anything that's relevant. He's testified he
21 reviewed the answers and executed them. You can go
22 ahead and answer.

23 A Like I stated earlier, I review and I execute this,
24 and if I have any questions, I discuss it with the
25 individual in our Legal Department.

1 Q (By Ms. Jackson) Okay. Let's move on to
2 Deposition Exhibit 7.

3 A Okay. Let me get rid of this one.

4 Q Yeah.

5 A 7. All right. Got it.

6 Q And can you look at this and then tell me what this
7 document represents?

8 A This is the affidavit of Juan Aguirre, which is me,
9 which just gives an explanation of the loan, the
10 property address, the amount of the loan that's
11 owed. In this one it has the interest rate that
12 accrues that's like a per diem, per day, basically
13 what's on the loan itself.

Interest may accrue
daily, not interest
rates.

14 Q Do you recall signing this specific affidavit?

15 A Once I saw it again, yes, I did recall signing
16 this.

17 Q And how many affidavits do you sign each day?

18 MR. BOYERS: Object to the form of the
19 question because it assumes that every day is the
20 same, and to the extent it calls for speculation.
21 You can answer.

22 A I couldn't tell you how many every day. I can give
23 you an example. Maybe one, two, three, four a day.
24 I couldn't tell you an exact number.

25 Q (By Ms. Jackson) Let me back up and ask that a

1 little bit differently, then. Are you in the
2 office every day, or do you travel?

3 A I travel a lot.

4 Q And what do you do when you travel?

5 A I am -- I represent the company in hearings,
6 trials, mediations, depositions, small claims
7 hearings.

8 Q So how many days are you in the office a month?

9 MR. BOYERS: Again I'm going to object to the
10 extent that it calls for speculation and assumes
11 every month is the same. You can answer.

12 THE WITNESS: Do you want me to go ahead and
13 answer that?

14 MR. BOYERS: Yeah, go ahead.

15 Q (By Ms. Jackson) Yeah.

16 A I can't tell you how many days. It varies month to
17 month. It just depends when I'm needed to go out.

18 Q And did your travel start -- when you were a
19 portfolio specialist for Homecomings Financial, did
20 you have to travel?

21 A When I was doing that position, very minimal
22 travel. Maybe once a month, if at all.

23 Q And when you were a portfolio specialist, how many
24 affidavits did you sign, let's say on a weekly
25 basis?

1 MR. BOYERS: I'm going to object again because
2 it calls for speculation. You can answer.

3 A I couldn't tell you how many I was signing back in
4 January of 2008.

5 Q (By Ms. Jackson) More than 100 a week?

6 MR. BOYERS: Object. Calls for speculation.
7 You can answer.

8 A Not 100 a week, no.

9 Q (By Ms. Jackson) More than 50 a week?

10 MR. BOYERS: Again objection. Calls for
11 speculation. You can answer.

12 A Not that I can remember it being 50, no.

13 Q (By Ms. Jackson) More than 20 a week?

14 MR. BOYERS: Same objection. You can answer.

15 A I really don't know. They come -- when they come
16 in through my system, I will look at my affidavit,
17 go into our system and review, check the numbers to
18 make sure that they look right, and I will execute
19 it. I couldn't tell you a number, to be honest
20 with you.

21 Q (By Ms. Jackson) Okay.

22 A I couldn't give you a number.

23 Q You said they come into your system. What computer
24 system is that?

25 A They're sent to me as an attachment through my

1 e-mails.

2 Q Okay. If you could turn to Page 2 of Deposition
3 Exhibit 7.

4 A What page number? I'm sorry.

5 Q It's the second page, Page 2.

6 A Page 2? Okay.

7 Q If you look on the very bottom on the left-hand
8 side, there's some small numbers down on the
9 bottom. Do you know what they represent? It looks
10 like it says 278776?

11 A No, I don't know what those numbers represent.

12 Q And if you go back up to Paragraph Number 5...

13 A 5, okay.

14 Q It says, "I have reviewed business records
15 maintained in the ordinary course of its business
16 related to the payment history." Can you explain
17 to me what your understanding is of that sentence
18 in that paragraph, Paragraph 5?

19 A My understanding is the records maintained in the
20 ordinary course of business, what's in our computer
21 system, what I was able to pull up in our computer
22 system to show me payment information, loan
23 information.

24 Q Do you know who inputs that information?

25 MR. BOYERS: And when you say, "who," you're

1 meaning department?

2 MS. JACKSON: Job category, yeah.

3 A The payment history? That category?

4 Q (By Ms. Jackson) Yes.

5 A The payment history information is done in our
6 cashiering operation. So when payments come in,
7 they're the ones in our cashiering operations or
8 Cash Operations Department in Iowa, they're the
9 ones who do the payment history information.

10 Q And when we looked at the payment history, we saw
11 that there were some adjustments being made. Is
12 that also done in the Cash Operations Department,
13 or is it done by a different department?

14 A My understanding is that if an adjustment needs to
15 be made, they are addressed through the Cashiering
16 Department for adjustments to be subtracted or
17 added into the payment history. That's my
18 understanding.

19 Q Okay. And then if you turn to what is referenced
20 as Exhibit A in Deposition 7...

21 MR. BOYERS: Exhibit 7?

22 MS. JACKSON: Yeah. Deposition Exhibit 7,
23 Exhibit A.

24 MR. BOYERS: Gotcha.

25 A The payoff statement?

1 Q (By Ms. Jackson) Yeah.

2 A Okay. I have it in front of me.

3 Q All right. About a third of the way down there's,
4 like, three stars and there's a sentence that is in
5 all capital letters. Do you see that?

6 A Yes, I do.

7 Q And then on the bottom -- and there's a whole list
8 of figures. Then on the bottom, again we have
9 another three stars and capital letters that says,
10 "YOU ARE RESPONSIBLE FOR COMPLIANCE OF THIS
11 DOCUMENT." Can you explain to me what that -- who
12 is "you," and what is that referring to?

13 A I don't generate the payoff statement, so I don't
14 know who they're referring to as you, though...
15 The answer is I don't know on that bottom
16 statement.

17 MR. BOYERS: And just he answered before I got
18 my objection out.

19 THE WITNESS: Oh, I'm sorry.

20 MR. BOYERS: That's okay, but just for the
21 record, I'm going to state that the document speaks
22 for itself. And your answer was your answer, so we
23 can move on.

24 THE WITNESS: Okay.

25 Q (By Ms. Jackson) And if we look at the figures

1 that are listed in the middle, I'm going to start
2 with the first line item is "Principal." That will
3 be Line Number 1.

4 A Okay.

5 Q It's Line 11.

6 A "Other Fees and Costs"?

7 Q Yeah. It's got a combined number there of
8 \$1,908.25. Do you have the ability to determine
9 what specific fees make up that number in your
10 position?

11 A I would have to ask someone for a breakdown of
12 those figures.

13 Q And what department would have that information?

14 A It's all depending on -- if I'm correct, those
15 other fees and costs are attorney's fees and costs
16 probably for the foreclosure process. I would go
17 to the Foreclosure Department and see if they can
18 break them down for me.

19 Q So is there any general place in the computer
20 system where these type of fees would be logged?
21 Like, let's say if it was a foreclosure fee. How
22 would we determine...

23 MR. BOYERS: Well, I'm just going to object to
24 the form because I believe that other exhibits have
25 provided more detail on the other fees. So you can

1 go ahead and answer, because you're asking him
2 about what he can see from the payoff statement,
3 right, and where subtotals would be available?

4 MS. JACKSON: Where the subtotals would be
5 available.

6 A Like I stated, if I need a breakdown, I usually go
7 to another -- like, if it's a foreclosure -- if,
8 like, the loan's in foreclosure or something, I'll
9 go to the Foreclosure Department. If the loan's
10 litigated, I'll go to the Legal Department and have
11 them get me a breakdown of what those fees are if I
12 need to have them.

13 Q (By Ms. Jackson) So the specific department that
14 categorizes the status of the loan. So you said if
15 it was in litigation, you'd go to the Legal
16 Department. So for a litigation file your Legal
17 Department would have a breakdown of what the
18 specific expenses are?

19 MR. BOYERS: I'm going to object because I
20 think that misstates his testimony, but you can
21 answer.

22 A Whenever there's a loan that's in litigation and
23 I'm having to get some information, I go straight
24 to the Legal Department. If the loan isn't in
25 litigation, of course I would -- if it's in

1 foreclosure, I would go to the Foreclosure
2 Department. It just depends on where the status of
3 that specific loan is at to have someone break
4 certain information down for me. So if it's
5 needed, I can get it from them.

6 Q Okay. And Number 8, let's move on to Deposition
7 Exhibit No. 8.

8 A Okay. Got it.

9 Q Again let's turn first to... It's going to be the
10 very last page.

11 A Last page. Okay.

12 Q And actually it's marked Page 6. Are your pages in
13 order?

14 A Yes, they are. It's Page 6 on this one.

15 Q It's actually Page 6 on that one? Okay. Can you
16 look through this document for a few minutes here
17 and see what you can recall about your
18 participation in the preparation of this document?

19 MR. BOYERS: And just before you answer, I
20 want to note a couple of things about the document.
21 Can we go off the record for a second, Chris?

22 (Off the record.)

23 MR. BOYERS: All right. Let's go back on the
24 record. For the record, the copy of Deposition
25 Exhibit No. 8 has ten pages. It's numbered -- the

1 first page doesn't have a page number, and then
2 it's numbered 2 through 9, and then there is a Page
3 6 stapled to the back; is that correct?

4 THE WITNESS: Yes, that's correct.

5 MR. BOYERS: And the Page 6 stapled to the
6 back has your signature on it dated February 4th,
7 2008?

8 THE WITNESS: Yes.

9 MR. BOYERS: Okay. Now that we know we're
10 looking at the same thing, please ask your
11 questions, Counsel. Thank you.

12 Q (By Ms. Jackson) Looking at this document, can you
13 recall what your participation was in the
14 preparation of this document?

15 A I guess what I'm going to say here is now that I
16 don't see my signature on Page 5, I mean, I'm
17 questioning is that Page 6 at the end belongs to
18 this? I mean, I'm just stating this to you guys.

19 Q Yeah, that's what we're trying to figure out, too.

20 A Yeah. Because this was, you know, over a half a
21 year ago and, I mean, I remember the Robinson case,
22 but I -- I mean, not that I'm saying that I didn't
23 see these, but it doesn't have a signature, so I
24 don't know if I did or not, you know. So that's
25 what I'm -- just so I know there's a question out

1 there. I don't know if you guys --

2 Q But when you turn to the very last page that has
3 the number on the bottom of it, the number six?

4 A Yeah.

5 Q Is that your signature?

6 A That is my signature, yes.

7 Q Okay. And then looking at the pages that come
8 before it, do you recall having any input or
9 looking anything up or researching anything for the
10 preparation of these responses?

11 MR. BOYERS: And you're asking if he has a
12 present recollection of that?

13 MS. JACKSON: Right.

14 A Honestly, I'm questioning Exhibit 8 because my
15 signature is not on Number 5 and that last page has
16 a number six on it.

17 Q (By Ms. Jackson) Okay. Good enough. Let's move
18 to Exhibit No. 9.

19 A There's a 9?

20 MR. BOYERS: Number 9, Juan, is the amended
21 answer to Interrogatory Number 6 which I provided
22 to --

23 THE WITNESS: Okay. I thought, oops, no 9.
24 Got it.

25 MS. JACKSON: We decided to call that one

1 Number 9.

2 THE WITNESS: I'll take it.

3 MS. JACKSON: It doesn't have a pretty
4 sticker, so you'll just have to put EX 9 on it.

5 Q (By Ms. Jackson) Can you review that document?
6 Looks like it's two pages.

7 MR. BOYERS: Three pages.

8 A Three pages, correct.

9 Q (By Ms. Jackson) And can you tell me about your
10 participation in the preparation and response to
11 this interrogatory?

12 A On this interrogatory there was a correction, of
13 course, made. After investigating a little further
14 into this question and this answer that we
15 provided, it's a little different, so we, of
16 course, went ahead and corrected it to the correct
17 answer, a little I guess better answer than what
18 was on the last one.

19 Q Okay. Did you notice the error and did you
20 initiate the correction?

21 MR. BOYERS: I object to the form of the
22 question. Well, strike that. You can go ahead and
23 answer.

24 A I did not find the answer -- I mean, I didn't find
25 the mistake or the incorrect information. It was

1 after investigation, you know, we learned or my
2 Legal Department learned that the original answer
3 was not accurate, so of course we wanted to make it
4 correct, so there's an amended interrogatory to
5 correct that answer. That was back in 2008.

6 Q (By Ms. Jackson) Okay. And when did you sign this
7 document?

8 A If I'm correct, it was yesterday.

9 MR. BOYERS: It's dated, Counsel.

10 Q (By Ms. Jackson) Do you recall signing this
11 document?

12 A Yes, I do recall.

13 Q I notice that your employer has changed there. It
14 says you're now signing for GMAC Mortgage, L.L.C.,
15 sub-servicer. Have your job duties changed at all?

16 MR. BOYERS: I'll object to the extent that's
17 vague, but go ahead.

18 THE WITNESS: Okay.

19 A No, my job duties have not changed. It's just that
20 the name changed.

21 MS. JACKSON: Okay. I think I'm done, but I'd
22 like just a few minutes to go over everything to
23 ask my last questions.

24 MR. BOYERS: Sure. Let's go off the record
25 for a minute.

1 (Brief recess.)

2 MS. JACKSON: I am done, for now, depending on
3 what Jim asks.

4 MR. BOYERS: Sure.

5 CROSS EXAMINATION

6 QUESTIONS BY MR. BOYERS:

7 Q Juan, you were asked some questions about
8 Deposition Exhibit No. 1, and specifically you were
9 asked about what the due date meant. Do you
10 believe you need to correct anything that you said
11 about Deposition Exhibit 1 at the beginning of the
12 deposition?

13 A Yeah, there is a correction that I do need to make
14 on Exhibit 1.

15 Q And what is that?

16 A When I was looking at Exhibit 1, because of the
17 date of 2005, I went back to our old system of
18 LSAM, and LSAM, the payment history shows next due
19 date. So when a payment is made in old LSAM, it
20 shows the next due date. So it shows the rolled
21 over date. The new system, which is Mortgage
22 Serve, doesn't show the next due date. So on 12/23
23 of '05 it actually -- that payment went to the
24 12/1/05 payment, not the 11 of '05 like I stated
25 before. So there was a -- my brain went back to

Note: need to
compare LSAM
statements w/
Mortgage Serve
statements to see if

1 the old LSAM when I saw 2005 when I was looking at
2 the Mortgage Serve printout.

3 Q Okay. And the post date indicates the date the
4 payment was received on this?

5 A Correct. 12/23 is when the payment -- 12/23 of '05
6 is when the payment was received and applied to the
7 12/1 of '05 payment.

8 Q Got you. Okay. I'm going to flip to Exhibit --
9 well, one question, you mentioned the Looking Glass
10 system where you would obtain images. Do you
11 recall that testimony?

12 A Yes.

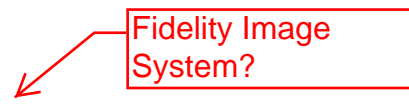
13 Q What was the name of that system before -- or the
14 predecessor to that system, what was the name of
15 it?

16 A It was called Fetch. And Fetch is F-I-S is what
17 I'm recalling. And I don't remember what the FIS
18 stands for, but we each called it Fetch.

19 Q Okay. And the -- when you would look at an image
20 of a note on Fetch or Looking Glass, would that be
21 as it was received by Homecomings or a related
22 company from the loan originator or the predecessor
23 in servicing the loans?

24 A Yes. They're imaged the way they're received from
25 either the previous servicer or the lender, whoever

Fidelity Image
System?



1 forwards that information to us, that's how it came
2 into the system, right then and there.

3 Q And so the notes that show up on Fetch don't
4 reflect any endorsements that may occur subsequent
5 to that original receipt of the document?

6 A No.

7 MR. BOYERS: Bear with me a second. I'm going
8 to flip through my notes one last time.

9 Q (By Mr. Boyers) You were asked a question about
10 the recording fee. When a loan is paid off, does a
11 release have to be recorded, to your knowledge?

12 A Yes, it does have to be recorded, yes.

13 MR. BOYERS: Okay. I don't have any further
14 questions.

15 MS. JACKSON: I just have a couple of
16 follow-ups, Juan, on the Looking Glass system and
17 Fetch.

18 REDIRECT EXAMINATION

19 QUESTIONS BY MS. JACKSON:

20 Q I'm just a little unclear of how the information
21 gets into the system.

22 A Okay.

23 Q So when Homecomings receives a loan file to
24 service, does it make an image of the file? Like
25 an employee of Homecomings, would they be the ones

1 preparing these images that go into Looking Glass
2 or Fetch?

3 MR. BOYERS: I'm going to --

4 A My understanding is when -- because it's not just
5 one loan that we receive. You know, my
6 understanding is --

7 MR. BOYERS: Juan, Juan, Juan, wait. I'm just
8 going to note an objection --

9 THE WITNESS: Okay. Sorry.

10 MR. BOYERS: -- for the record that he's not
11 identified himself as being in the Records
12 Maintenance Department. He can testify as to his
13 personal knowledge, but he's not testifying about
14 the record keeping process specifically on behalf
15 of the Plaintiff in this case. You can go ahead
16 and answer.

17 A Yeah, that's where I was going to. Thank you. I
18 don't know how it's actually imaged. I know that a
19 bunch of loans come when we're going to service,
20 it's not just one loan at a time, and there's a
21 department that either downloads the images or
22 scans them. I don't know exactly the process for
23 that.

24 Q (By Ms. Jackson) Okay. So by the time it comes
25 into -- let me back that up a second here. Is the

1 Looking Glass system and Fetch only used by
2 Homecomings Financial?

3 MR. BOYERS: And I'm objecting to the extent
4 that you're calling for speculation and it may go
5 beyond his personal knowledge about what other
6 entities may have access to. And, again, this is
7 beyond the scope of the topic. So you can go ahead
8 and answer.

9 A Again, I don't know who else uses this system. I
10 just know we do.

11 Q (By Ms. Jackson) For U.S. Bank, N.A., as Trustee,
12 do you know, is Homecomings' -- do you know who is
13 uploading the images or downloading the images for
14 the loan files associated with U.S. Bank as
15 Trustee?

16 MR. BOYERS: Again, I believe there's -- for
17 the record, there's already been testimony in
18 previous depositions addressing this topic, so
19 you're getting beyond what he was offered for. You
20 can answer to the extent you know.

21 A I don't know who does that.

22 Q (By Ms. Jackson) Okay. You said when Mr. Boyers
23 was asking you questions that the notes on Fetch or
24 Looking Glass do not reflect any endorsements
25 received on the documents. Can you --

1 MR. BOYERS: I'm going to object because I
2 think that misstates his testimony. Juan, I don't
3 think there has been any testimony about notes on
4 things that are imaged. I took your question to
5 mean handwritten notes on things that had been
6 imaged, and you asked it interchangeably between
7 the other system that maintains loan information
8 versus the image system. So I don't think that's
9 what he testified to. You can go ahead and answer.

10 THE WITNESS: I kind of got lost there because
11 you were breaking up. Jim, you were asking about
12 the notes in the system and, Ms. Jackson, you were
13 asking about the note itself? I lost myself there.

14 Q (By Ms. Jackson) The note in Homecomings' system,
15 so when we say, "system," I believe we're referring
16 to the Looking Glass system or the Fetch system, if
17 you're looking at an image note, correct?

18 A Oh, okay. Well, for this one, I pulled up the note
19 that we have imaged, and it was basically what they
20 call a blank note. It wasn't endorsed. So I'm
21 just going -- talking about this one right now.

22 Q Okay. Do you know why it was not endorsed?

23 MR. BOYERS: Object to the extent it's calling
24 for speculation or information beyond his personal
25 knowledge. You can answer.

1 A No, I don't know why this one isn't endorsed, no.

2 Q (By Ms. Jackson) And I believe you stated to
3 Mr. Boyers that none of the notes that you have
4 reviewed in the Homecomings' Looking Glass and/or
5 Fetch systems were endorsed?

6 MR. BOYERS: I object to the form of that
7 question. That misstates his testimony. He
8 testified that the notes that are received reflect
9 what they appeared to be at the time they were
10 received and they don't reflect subsequent
11 endorsements. That was his testimony, to my
12 recollection. You can answer.

13 A Exactly. I mean, what's received is what's imaged,
14 and that's what I see, so...

15 Q (By Ms. Jackson) Do you know, as far as the
16 mortgage notes that are on the file --

17 MR. BOYERS: Did you mean mortgages or notes?

18 MS. JACKSON: I'm sorry.

19 Q (By Ms. Jackson) The mortgage deeds, are there --
20 let me just rephrase that.

21 MR. BOYERS: Or do you mean mortgages?
22 Because deeds are different.

23 MS. JACKSON: Who knows?

24 Q (By Ms. Jackson) I think it was Exhibit 4, if we
25 go back to the pages marked Bates stamped on the

1 bottom 2004 --

2 MR. BOYERS: 204?

3 MS. JACKSON: 204. We missed a lot, didn't
4 we?

5 Q (By Ms. Jackson) All the way through, looks like
6 215.

7 A Okay.

8 Q I believe you identified this to us as a mortgage?

9 A Yes.

10 Q For the Robinsons. When you review mortgages on
11 the Looking Glass Fetch system, were there ever
12 assignments associated with the mortgages that were
13 recorded in Looking Glass and/or Fetch?

14 MR. BOYERS: And, for the record, you're just
15 asking generally?

16 MS. JACKSON: Uh-huh.

17 MR. BOYERS: That's a yes?

SeeTop
of page
36

18 MS. JACKSON: Oh, yes, I'm asking generally.

19 A There's some -- when I've looked into Looking Glass
20 for some loans, there are some assignments finished
21 in some of the loans. So generally, yes, some of
22 the loans have assignments, some of the loans might
23 not have assignments. What's imaged in there is
24 all I have access to.

25 MS. JACKSON: Okay. I'm done. Mr. Boyers'

1 done.

2 MR. BOYERS: I'm done.

3 MS. JACKSON: Everyone's done, Juan.

4 THE WITNESS: Wow. Painless.

5 MR. BOYERS: And just for the record, we will
6 review and sign.

7 THE REPORTER: And do you want a copy of the
8 deposition?

9 MR. BOYERS: (Nods.)

10 THE REPORTER: What size or format?

11 MR. BOYERS: I'll go condensed.

12 MS. JACKSON: Me, too, e-mailed.

13 MR. BOYERS: And disk.

14 (SIGNATURE RESERVED.)

15 (DEPOSITION CONCLUDED AT 11:02 A.M.)

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1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3
4 IN THE MARION COUNTY SUPERIOR COURT

5 U.S. BANK, N.A., as)
Trustee,)
Plaintiff,)
6 vs.) Cause No.
MAMIE ROBINSON,) 49D06-0703-MF-013045
7 Individually and as)
Personal Representative)
8 to Jessie Robinson,)
Defendant.)

9
10
11
12
13 Job No. 48509
14

15 I, JUAN AGUIRRE, state that I have read
16 the foregoing transcript of the testimony given by me at
my deposition on August 21, 2009, and that said
17 transcript constitutes a true and correct record of the
testimony given by me at said deposition except as I
18 have so indicated on the errata sheets provided herein.

19
20 _____
JUAN AGUIRRE
21

22
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25 (317) 237-3773

1 STATE OF INDIANA

2 COUNTY OF MARION

3 I, Judy K. Moore, a Notary Public in and for
4 said county and state, do hereby certify that the
5 deponent herein was by me first duly sworn to tell the
6 truth, the whole truth, and nothing but the truth in the
7 aforementioned matter;

8 That the foregoing deposition was taken on
9 behalf of the Defendant; that said deposition was taken
10 at the time and place heretofore mentioned between 8:30
11 a.m. and 11:02 a.m.;

12 That said deposition was taken down in
13 stenograph notes and afterwards reduced to typewriting
14 under my direction; and that the typewritten transcript
15 is a true record of the testimony given by said
16 deponent;

17 And thereafter presented to said witness for
18 signature; that this certificate does not purport to
19 acknowledge or verify the signature hereto of the
20 deponent.

21 I do further certify that I am a disinterested
22 person in this cause of action; that I am not a relative
23 of the attorneys for any of the parties.

24 IN WITNESS WHEREOF, I have hereunto set my hand
25 and affixed my notarial seal this _____ day of

1 _____, 2009.

2

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6

Judy K. Moore, Notary Public

7

8 My commission expires:
September 3, 2016

9

Job No. 48509

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1 Ms. Christine Jackson
Chris Jackson Law Office
2 8555 Cedar Place Drive, Suite 111-A
Indianapolis, IN 46240
3

4 NOTICE OF DEPOSITION SUBMISSION
JOB NO. 48509

5
6 In the Marion County Superior Court
Cause No. 49D06-0703-MF-013045
7 JUAN AGUIRRE, on behalf of himself and all others
similarly situated,

8 U.S. BANK, N.A., as Trustee,
Plaintiff(s),

9 vs.

10 MAMIE ROBINSON, Individually and as Personal
Representative to Jessie Robinson,
Defendant(s).
11

12
13 In compliance with Indiana Rules of Procedure,
Rules of the Industrial Board, or Federal Rules of Civil
14 Procedure, pursuant to the Indiana Supreme Court Order
dated 10/1/86, you are notified the signed original
15 deposition of JUAN AGUIRRE has been sealed and submitted
to the originating party.

16 -----
17 (Date of submission or mailing by certified mail)

18
19 cc: Mr. James M. Boyers
WOODEN & McLAUGHLIN, LLP
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