

| <p style="text-align: center;">IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA CASE No.: 50 2008 CA 018165 XXXX MB</p> <p>INDYMAC BANK, F.S.B.,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>-vs-</p> <p>GALINA MALERMAN; UNKNOWN SPOUSE OF GALINA MALERMAN; UNKNOWN TENANT(S) IN POSSESSION OF THE SUBJECT PROPERTY; NATIONAL CITY BANK; 610 CLEMATIS CONDOMINIUM ASSOCIATION, INC.,</p> <p style="padding-left: 40px;">Defendants.</p> <hr/> <p style="text-align: center;">DEPOSITION OF ERICA A. JOHNSON-SECK</p> <p style="text-align: center;">Thursday, February 5, 2009 1:03 - 4:24 p.m.</p> <p style="text-align: center;">1655 Palm Beach Lakes Boulevard Suite 500 West Palm Beach, Florida 33401</p> <p>Reported By: Kristina McCollum Notary Public, State of Florida J. Consor & Associates 1655 Palm Beach Lakes Boulevard, Suite 500 West Palm Beach, Florida 33401 Phone: 561-682-0905</p> | <p style="text-align: right;">Page 3</p> <p>1 - - -</p> <p style="text-align: center;">E X H I B I T S</p> <p>2 - - -</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">3 NUMBER</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr><td>4 DEFENDANT'S EX. A</td><td style="text-align: right;">31</td></tr> <tr><td>5 DEFENDANT'S EX. B</td><td style="text-align: right;">34</td></tr> <tr><td>6 DEFENDANT'S EX. C</td><td style="text-align: right;">37</td></tr> <tr><td>7 DEFENDANT'S EX. D</td><td style="text-align: right;">41</td></tr> <tr><td>8 DEFENDANT'S EX. E</td><td style="text-align: right;">42</td></tr> <tr><td>9 DEFENDANT'S EX. F</td><td style="text-align: right;">43</td></tr> <tr><td>10 DEFENDANT'S EX. G</td><td style="text-align: right;">45</td></tr> <tr><td>11 DEFENDANT'S EX. H</td><td style="text-align: right;">49</td></tr> <tr><td>12 DEFENDANT'S EX. I</td><td style="text-align: right;">50</td></tr> <tr><td>13 DEFENDANT'S EX. J</td><td style="text-align: right;">51</td></tr> <tr><td>14 DEFENDANT'S EX. K</td><td style="text-align: right;">71</td></tr> <tr><td>15 DEFENDANT'S EX. L</td><td style="text-align: right;">71</td></tr> <tr><td>16 DEFENDANT'S EX. M</td><td style="text-align: right;">76</td></tr> <tr><td>17 DEFENDANT'S EX. N</td><td style="text-align: right;">82</td></tr> <tr><td>18 DEFENDANT'S EX. O</td><td style="text-align: right;">84</td></tr> <tr><td>19 DEFENDANT'S EX. P</td><td style="text-align: right;">85</td></tr> <tr><td>20 DEFENDANT'S EX. Q</td><td style="text-align: right;">91</td></tr> <tr><td>21 DEFENDANT'S EX. R</td><td style="text-align: right;">92</td></tr> </tbody> </table> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | 3 NUMBER | PAGE | 4 DEFENDANT'S EX. A | 31 | 5 DEFENDANT'S EX. B | 34 | 6 DEFENDANT'S EX. C | 37 | 7 DEFENDANT'S EX. D | 41 | 8 DEFENDANT'S EX. E | 42 | 9 DEFENDANT'S EX. F | 43 | 10 DEFENDANT'S EX. G | 45 | 11 DEFENDANT'S EX. H | 49 | 12 DEFENDANT'S EX. I | 50 | 13 DEFENDANT'S EX. J | 51 | 14 DEFENDANT'S EX. K | 71 | 15 DEFENDANT'S EX. L | 71 | 16 DEFENDANT'S EX. M | 76 | 17 DEFENDANT'S EX. N | 82 | 18 DEFENDANT'S EX. O | 84 | 19 DEFENDANT'S EX. P | 85 | 20 DEFENDANT'S EX. Q | 91 | 21 DEFENDANT'S EX. R | 92 |
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| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Defendant:</p> <p>3 THOMAS E. ICE, ESQ.</p> <p>4 ICE LEGAL, P.A.</p> <p>5 1975 Sansburys Way</p> <p>6 Suite 115</p> <p>7 West Palm Beach, Florida 33411</p> <p>8 561-793-5658</p> <p>9 On behalf of the Plaintiff:</p> <p>10 LAURA M. CARBO, ESQ.</p> <p>11 KAHANE & ASSOCIATES, P.A.</p> <p>12 1815 Griffin Road</p> <p>13 Suite 104</p> <p>14 Dania, Florida 33004</p> <p>15 954-920-4000</p> <p>16 - - -</p> <p>17 I N D E X</p> <p>18 - - -</p> <p>19 WITNESS: DIRECT CROSS REDIRECT RECROSS</p> <p>20 ERICA A. JOHNSON-SECK</p> <p>21 BY MR. ICE: 4</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 - - -</p> <p>3 Deposition taken before Kristina McCollum,</p> <p>4 Professional Reporter and Notary Public in and for the</p> <p>5 State of Florida at Large, in the above cause.</p> <p>6 - - -</p> <p>7 Thereupon,</p> <p>8 (ERICA A. JOHNSON-SECK)</p> <p>9 having been first duly sworn or affirmed, was examined</p> <p>10 and testified as follows:</p> <p>11 THE WITNESS: Yes.</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. ICE:</p> <p>14 Q. Can you state your full name for the record,</p> <p>15 please?</p> <p>16 A. Erica Antoinette Johnson-Seck.</p> <p>17 Q. And what is your business address?</p> <p>18 A. 7700 West Palmer Lane, building D; Austin,</p> <p>19 Texas 7829.</p> <p>20 Q. What is your business telephone number?</p> <p>21 A. (512)250-3721.</p> <p>22 Q. What business is at that address?</p> <p>23 A. Indymac Federal Bank Servicing; late-stage</p> <p>24 servicing, default servicing site.</p> <p>25 Q. And you are an employee of Indymac Federal</p> |
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| <p>1 Bank?</p> <p>2 A. Yes.</p> <p>3 Q. And your title is vice president of the</p> <p>4 bankruptcy and foreclosure department?</p> <p>5 A. Yes.</p> <p>6 Q. Indymac Bank, FSB ceased to exit on July 11th</p> <p>7 of last year?</p> <p>8 A. That's correct.</p> <p>9 Q. It was taken over by the FDIC and a new</p> <p>10 corporation took over all the assets, correct?</p> <p>11 A. Not a new corporation. The FDIC took over all</p> <p>12 the assets.</p> <p>13 Q. Well, they set up a new corporation called</p> <p>14 Indymac Federal Bank, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And they received all the assets from the old</p> <p>17 Indymac?</p> <p>18 A. Yes.</p> <p>19 Q. So would you agree with me that the Plaintiff</p> <p>20 in this case, which is just Indymac Bank, no longer</p> <p>21 exists?</p> <p>22 A. That's true.</p> <p>23 Q. What are your job duties as vice president?</p> <p>24 A. I don't know where to start. Let's see, I</p> <p>25 manage both the bankruptcy and the foreclosure</p> | <p>1 Q. I didn't mean to cut you off.</p> <p>2 A. It's okay.</p> <p>3 Q. Did you finish your answer?</p> <p>4 A. Sure.</p> <p>5 Q. Okay. When you say vendors, what do the</p> <p>6 vendors do?</p> <p>7 A. We use an outsource vendor to help us with the</p> <p>8 foreclosure/bankruptcy process. Any type of decisioning</p> <p>9 happens inhouse with my staff. So the decision of when</p> <p>10 to send a breach letter to a borrower happens inhouse.</p> <p>11 A decision on whether or not a loan is okay to refer to</p> <p>12 foreclosure, it happens inhouse. And what that team</p> <p>13 looks for is to ensure that all lost mitigation efforts</p> <p>14 have been offered to the borrower; there was no stone</p> <p>15 unturned. I don't manage the collection and the lost</p> <p>16 mit department so the referral team is key -- they're</p> <p>17 the gatekeepers, you know.</p> <p>18 If anything doesn't look like it should</p> <p>19 proceed on the foreclosure, they kick the loan back.</p> <p>20 And the collections department has special dialing</p> <p>21 campaigns for loans that we kick back because we feel</p> <p>22 like, maybe, there wasn't enough contact or we didn't</p> <p>23 see notes that any skip tracing had been done. But,</p> <p>24 generally, the borrowers are getting lots of phone calls</p> <p>25 with Indymac Federal Bank. So once that referral</p> |
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| <p>1 departments. The operation relocated from the Pasadena</p> <p>2 office, Pasadena, California, April of 2007 which is</p> <p>3 when I was hired. So a large part of my job for the</p> <p>4 first year of employment was to build a staff and train</p> <p>5 the staff, get the systems in place, and work with our</p> <p>6 outside counsel with the way we were going to run the</p> <p>7 process.</p> <p>8 So a lot of what I did day-to-day was just</p> <p>9 getting organized and making sure that we had controls</p> <p>10 in place, quality control type things in place,</p> <p>11 internally auditing ourselves. I originally came from</p> <p>12 Fannie Mae so I brought with me that sort of thing;</p> <p>13 making sure that we were doing everything according to</p> <p>14 investor guidelines, according to whatever the business</p> <p>15 decision -- or that, you know, Indymac Bank had in</p> <p>16 place.</p> <p>17 I would say over the last year we've been fine</p> <p>18 tuning things that were put in place as we changed our</p> <p>19 outsource vendor. We used to use First American and now</p> <p>20 we use LPS, Lender Processing Services. So with</p> <p>21 changing vendors, again, building relationships,</p> <p>22 building controls, figuring out who is going to do what</p> <p>23 part of the process, and then how we manage our vendor</p> <p>24 as well as our firms. So I have three direct reports</p> <p>25 and 52 employees and --</p> | <p>1 specialist feels confident that all of the Ts were</p> <p>2 crossed and all the Is were dotted, the loan is referred</p> <p>3 to an attorney to begin the foreclosure or the</p> <p>4 bankruptcy process.</p> <p>5 That's really where LPS gets involved. They</p> <p>6 help us with the communication systematically between</p> <p>7 us, the attorney. If docs are missing, bird dogging, to</p> <p>8 find the docs; coordinating things like this. So LPS</p> <p>9 helps us from a procedural standpoint with the process</p> <p>10 but, also, with the relationship that we have with our</p> <p>11 outside counsel.</p> <p>12 Q. Are they the ones that actually hire the</p> <p>13 outside counsel?</p> <p>14 A. We do.</p> <p>15 Q. Okay.</p> <p>16 A. I do.</p> <p>17 Q. When you say "we", okay, your department</p> <p>18 chooses who they are?</p> <p>19 A. I personally manage the attorney network.</p> <p>20 Q. Okay. Do they execute any of the documents</p> <p>21 that need to be executed for foreclosure?</p> <p>22 MS. CARBO: Objection.</p> <p>23 BY MR. ICE:</p> <p>24 Q. They being the outside vendors.</p> <p>25 A. They -- some of them have signing authority.</p> |

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| <p>1 Recently that was changed so that anything, transferring</p> <p>2 a deed from one entity to another, they no longer sign</p> <p>3 for those. And, in fact, now they don't sign any of our</p> <p>4 documents.</p> <p>5 Q. Okay.</p> <p>6 A. But when we first got into this relationship</p> <p>7 with them, a group of them did have signing authority.</p> <p>8 Q. Is one of your job duties signing documents?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. How much of your time is spent signing</p> <p>11 documents?</p> <p>12 A. An hour a day.</p> <p>13 Q. Okay. And by documents that would include</p> <p>14 assignments of mortgage, lost note affidavits, deeds,</p> <p>15 correct?</p> <p>16 A. Anything relating to the foreclosure, sure.</p> <p>17 Q. Are you an officer of any other corporation?</p> <p>18 A. No.</p> <p>19 Q. Are you an officer of Bank United, FSB?</p> <p>20 A. No.</p> <p>21 Q. Are you an officer of Mortgage Electronic</p> <p>22 Registration Systems?</p> <p>23 A. I am an approved signer; no. I'm not and</p> <p>24 officer.</p> <p>25 Q. And an approved signer means it's MERS as</p> | <p>1 of Deutsche, like a vice president?</p> <p>2 A. I don't know.</p> <p>3 Q. As part of your job, how often do you have to</p> <p>4 give depositions?</p> <p>5 A. Often, lately. Once or twice a day, actually.</p> <p>6 Q. Really?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Do you have to fly around the country to do</p> <p>9 that?</p> <p>10 A. Most of the time we work it out so I can do it</p> <p>11 telephonically.</p> <p>12 Q. Well, I appreciate you coming down.</p> <p>13 MS. CARBO: She didn't have any choice.</p> <p>14 BY MR. ICE:</p> <p>15 Q. As part of your job, are you a principal</p> <p>16 signer for deeds to Fannie Mae and Freddie Mac and</p> <p>17 assignments including MERS?</p> <p>18 A. Yes.</p> <p>19 Q. Are you the principal signer authorized to</p> <p>20 execute documents and instruments relating to</p> <p>21 foreclosure actions?</p> <p>22 A. Yes.</p> <p>23 Q. You are an alternate signer to attest mortgage</p> <p>24 lending, loan servicing and master servicing</p> <p>25 instruments, correct?</p> |
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| <p>1 certified you to sign on their behalf, correct?</p> <p>2 A. Yes.</p> <p>3 Q. When you sign on their behalf you sign as an</p> <p>4 officer of MERS, correct?</p> <p>5 A. I'm going to assume -- yeah, yes. I had to</p> <p>6 think about that for a minute; sorry.</p> <p>7 Q. Do you have signing authority from any other</p> <p>8 corporation to sign as an officer of that corporation?</p> <p>9 A. Yes. I have powers of attorney for a few</p> <p>10 other corporations, Deutsche.</p> <p>11 Q. Anyone else?</p> <p>12 A. We have lots of investors. I can't name them</p> <p>13 all off the top of my head.</p> <p>14 Q. And when you say powers of attorney, that</p> <p>15 means that you can -- you can sign their documents as</p> <p>16 the attorney in fact, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Does the power of attorney allow you to sign</p> <p>19 as an officer of Deutsche?</p> <p>20 A. It depends on which entity within Deutsche.</p> <p>21 We have some that Deutsche has given us that authority</p> <p>22 to sign on their behalf, and we have others where an</p> <p>23 officer in our office signs it and I countersign.</p> <p>24 Q. But the authority they've given you is a</p> <p>25 corporate resolution allowing you to sign as an officer</p> | <p>1 A. I was. With the new delegation, I don't</p> <p>2 believe I am anymore.</p> <p>3 Q. How many others at Indymac share that signing</p> <p>4 authority?</p> <p>5 MS. CARBO: Objection to the form.</p> <p>6 MR. ICE: What was the ...</p> <p>7 MS. CARBO: You mentioned several signing</p> <p>8 authorities. I don't know which one you're</p> <p>9 referring to.</p> <p>10 BY MR. ICE:</p> <p>11 Q. In total, of all the signing authority that</p> <p>12 you have, do you share that with other persons in the</p> <p>13 office?</p> <p>14 A. Yes.</p> <p>15 Q. How many other persons do you share that with?</p> <p>16 A. Me personally?</p> <p>17 Q. Meaning you're not the only one who has to</p> <p>18 sign all these documents at Indymac, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. There are other people who would also sign as</p> <p>21 vice president or senior vice president?</p> <p>22 A. Yes.</p> <p>23 Q. How many other of those people are there?</p> <p>24 A. I have to count. Can I do that?</p> <p>25 Q. Sure.</p> |

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| <p>1 A. And you said Indymac Bank or Indymac Federal 2 Bank? 3 Q. Indymac Federal Bank. 4 A. Okay. 5 Thirteen for the first one you asked me about. 6 And ten for the second when you asked me about the 7 foreclosure actions. 8 Q. Okay. That was the list I was using when I 9 asked those questions. 10 MS. CARBO: Do you have a copy of this? 11 MR. ICE: I'm not sure if I brought it. But I 12 do have a copy of that. 13 BY MR. ICE: 14 Q. How many lost note affidavits do you sign on 15 average per week? 16 A. Five or six. 17 Q. How long do you spend executing each one? 18 A. The time it takes for me to sign my name. 19 Q. How many affidavits of indebtedness do you 20 sign on average per week? 21 A. A thousand. 22 Q. And you spend about, you said, about an hour a 23 day signing documents, correct? 24 A. Uh-huh. 25 Q. Is that a yes?</p> | <p>1 For affidavits of debt, those documents go to 2 my foreclosure or bankruptcy specialist, depending on 3 which area we're talking about, and they QC to make sure 4 that the debt is as it should be as of the date that the 5 affidavit reads or, you know, depending on what the 6 situation is. And then it comes to me to sign. 7 Q. When you say QC, you mean quality control? 8 A. Yes. 9 Q. So is it fair to say that you don't personally 10 check the accuracy of anything in these documents that 11 you're signing? 12 A. Yes. 13 Q. And back to my original question. 14 Despite all that QC that happens before you 15 sign it, have you ever started signing something and 16 say, no, this is wrong, I can't sign it like this, I 17 gotta reject this? 18 A. Early on in our relationship with LPS, that 19 would happen frequently until we got the process down, 20 until they got the process down, yes. 21 Q. Okay. And when that happened, would you -- 22 again, I understand I'm talking generalities here. But 23 I just want to understand the process. 24 Would the procedure normally be to cross out 25 what was wrong and write in what was right or would you</p> |
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| <p>1 A. Yes; sorry. 2 Q. So that'd be about five hours a week to sign 3 about -- 4 A. Roughly. 5 Q. -- about a thousand documents? 6 A. No. Because I sign more than affidavits of 7 debt. So probably, in a week, I can very easily sign a 8 thousand to 1,500 documents. 9 Q. Okay. How often do you find an error in one 10 of those documents? 11 A. The document. 12 Q. That you're signing. 13 A. They are prepped before they get to me, 14 looking for errors and those sorts of things, before I 15 sign. 16 Q. Okay. 17 A. I won't sign unless it's a document that it's 18 okay for me to sign. 19 Q. Who does that preparation? 20 A. Part of it happens with some of the LPS folks. 21 It's some of what they do. So if a document comes over 22 with an entity on it that I cannot assign -- they, you 23 know, know who I can sign for and who I can't. Then the 24 document gets rejected and sent back to the firm because 25 I can't sign.</p> | <p>1 send it back to be corrected? 2 A. I would cross through the entire document so 3 it didn't accidentally go on someone else's desk to sign 4 and send it back for it to be corrected. 5 Q. Okay. 6 A. There have been times, again, early on in the 7 process where if I wasn't at my desk and someone 8 preprinted my name on it someone may scratch through my 9 name and put my boss' name, Eric Friedman, so that he 10 can sign. So we stopped that practice because it just 11 didn't look nice and -- so whenever that happened they 12 would have to redo the document. So some of what you're 13 saying has happened early on. 14 Q. Okay. On average, now that you've got these 15 kinks worked out, how many do you have to send back in 16 an average week as something wrong with them? 17 A. I haven't sent anything back. 18 Q. Okay. I know I asked you before if you travel 19 a lot for your depositions. 20 But apart from depositions, do you have to 21 travel a lot for your job? 22 A. No. 23 Q. So your signing, then, is not done on the 24 road? 25 A. No.</p> |

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| <p>1 Q. You didn't bring documents with you today to 2 get signed? 3 A. No. I wish I could. 4 Q. So you sign them in your office? 5 A. Yes. 6 Q. When you sign these, where are the witnesses 7 that also sign the documents? 8 A. In the office. 9 Q. Okay. In your office? 10 A. No. But right outside my office. 11 Q. Are they able to see you from where they're 12 sitting? 13 A. Yes. 14 Q. Okay. And where does the Notary sit? 15 A. In that same area outside my office. 16 Q. And the Notary is able to see you sign these 17 documents? 18 A. No, probably not. 19 Q. And, in fact, there's more than one Notary 20 there, correct? 21 A. Yes. 22 Q. Do they all sit in the same office -- strike 23 that. 24 How many Notaries do you have there that sign 25 documents, notarize documents; sorry?</p> | <p>1 handles that functionality knows when she's looking at 2 the loan, and it's an original document state like 3 Florida is and it requires an original, she knows which 4 custodian to go to based on who the investor is. 5 Q. And the title of that person is a document 6 specialist? 7 A. Yes. 8 Q. And is there only one there? 9 A. Three and a supervisor. 10 Q. And who are they, please? 11 A. Sylvia Carballo(phonetic). Her supervisor is 12 Luis Tenna(phonetic). And I don't remember the two 13 temps they just hired. And they are LPS employees. 14 Q. Okay. All the ones you just mentioned 15 including the supervisor? 16 A. Yes. 17 Q. And do they work in your office or do they 18 work in another location? 19 A. They work in the Pasadena office. I believe 20 the supervisor, Luis Tenna, works in LPS's office. I'm 21 not sure if it's the Florida office or the Minnesota 22 office. But the staff work in the Pasadena office. 23 Q. Do you know enough about how they perform 24 their jobs to take me through the steps of what they do 25 to determine who the owner of the note is?</p> |
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| <p>1 A. We just added some more. We have five or 2 three Notaries on the way. 3 Q. So explain to me the process again. 4 Do they take turns notarizing or are they all 5 in the same room and they each have their individual 6 stacks to notarize or how does -- how is the 7 determination made of which Notary signs which document? 8 A. One of the supervisors manages the group of 9 loans that need to be notarized and passes them out to 10 all of the Notaries, and they have to return them back 11 to her within 24 hours. 12 Q. Okay. Now I'd like for you to take me through 13 the process of a lost note affidavit. And the first 14 step, I would imagine, correct me if I'm wrong, would 15 be, if you're looking for a note, would be to determine 16 who is the owner of the note; is that correct? 17 A. Not by the time it becomes a foreclosure 18 action. The first thing is checking to see who has -- 19 who is a custodian of the note. 20 Q. Right. And how do you determine who is the 21 custodian of the note? 22 A. Well, we have one main custodian, 23 Deutsche Bank, where most of our documents are housed. 24 And some of them are investors like Wells Fargo, for 25 example, have their own office. So the specialist that</p> | <p>1 A. Who the owner is? 2 Q. We'll call it the investor; who the investor 3 is. 4 A. Yes. 5 Q. Who the custodian is. 6 A. Yes. 7 MS. CARBO: Objection. 8 BY MR. ICE: 9 Q. I'll go with custodian. 10 Do you know enough about their job to be able 11 to tell me how they determine who the custodian is? 12 A. Yes. So the process works like this: We have 13 a loan that's in foreclosure. It's an original document 14 state like Florida. Her job -- when these loans are 15 triggered at LPS to refer to the attorney, these loans 16 call in a queue for Sylvia to work because all loans in 17 Florida -- because we know what the original document 18 states are, the loans will automatically fall into her 19 queue based on the state. 20 She takes a look at the loan number. She 21 pulls it up on MSP Fidelity, our system of records. On 22 MSP Fidelity, on MAS1 INV1, it's a screen. It says who 23 the investor is. Based on that information, she pulls 24 together a list every day of all the loans that need to 25 be retrieved from the document custodian. She e-mails</p> |

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| <p>1 me a copy of this list because I have to approve it 2 before the custodian will release the records. The 3 custodian releases the records and sends them back to 4 Sylvia, or Sylvia's team. Someone on Sylvia's team. 5 They go through what they receive from the 6 custodian and send the original documents with the 7 bailee letter to our counsel. If the note is not there, 8 they follow up ten days from the original time the 9 request was made. That happens three times. By the 10 21st day, if the document custodian can't find the note 11 or claims to not have the note or claims that it was 12 withdrawn in the past, she starts the process for the 13 lost note affidavit. And she does that by entering a 14 request that goes to the firm that says can you prepare 15 a lost note affidavit because we don't have a copy of 16 the note. 17 Q. Okay. When you say firm, you're talking about 18 the law firm? 19 A. Our foreclosure counsel. 20 Q. Okay. Keep mentioning Sylvia. 21 Is she the one that's, sort of, in charge of 22 Florida or is there a reason why you mention her among 23 all the others? 24 A. She was the only one doing this job. So she's 25 the one -- she's in Pasadena and I'm in Austin. So</p> | <p>1 didn't write it down, populated at the time of 2 origination I think you said; is that correct? 3 A. Yes. 4 Q. Who is it that does that? 5 A. The same group that makes the changes. 6 Q. Okay. 7 A. Actually, when a loan boards onto the system, 8 that's part of the loan boarding information that's 9 required before the loan can go off into, you know, the 10 real world to be serviced. 11 Q. Are these the same folks who would update the 12 MERS tracking information? 13 A. No. 14 Q. Who does that? 15 A. That happens within MERS, the organization of 16 MERS. 17 Q. As I understand it, the servicers are all 18 members of MERS; isn't that correct? 19 A. There are some of us that can get into the 20 MERS system and take a look at the group of assignments 21 that are within MERS, yes. 22 Q. And Indymac Federal Bank is a member of MERS? 23 A. Yes. 24 Q. And there are certain folks who work at 25 Indymac Federal Bank who have the ability to sign onto</p> |
| Page 22 | Page 24 |
| <p>1 she's the one I developed a relationship with. They 2 just put a supervisor over that group. So I barely met 3 Luis Tenna two or three weeks ago. So she's my go-to. 4 Q. Now you mentioned MSP Fidelity. 5 Is that a computer program? 6 A. It is our system of record, yes. Not a 7 program. It's the entire servicing system. 8 Q. Is it a database of sort that keeps track of 9 all this information for you? 10 A. Yes. 11 Q. And you mentioned MAS and then I wrote done 12 INV1. 13 Did I get that, correct? 14 A. Uh-huh. It's a screen within MSP Fidelity 15 that the user goes to see who the investor is. That 16 information is populated at origination. 17 Q. Is it updated as the loan changes hands? 18 A. If it changes investors, yes. 19 Q. And who does that updating? 20 A. It doesn't happen in default. It happens -- 21 so many things have changed now since the feds took 22 over. I can't remember the name of their group anymore. 23 I don't remember the name of the group. It doesn't 24 happen in default. 25 Q. Okay. And when you say it's populated, I</p> | <p>1 the MERS system and see the information that's there, 2 correct? 3 A. Yes. 4 Q. And some who actually have the authority to 5 change the information that's there, correct? 6 A. That I don't know. 7 Q. Okay. You're not one of those? 8 A. I'm not one of those. 9 Q. You have the authority to, at least, see the 10 information that's there? 11 A. I don't or if I do I've never done it. 12 Q. Do you know how many people use this, when I 13 say people, how many servicers, banking institutions, 14 use this MSP Fidelity? 15 A. Most of the large ones. So Wells Fargo's on 16 it. I can't remember if Bank of America is. But mid to 17 large-size servicers use it. 18 Q. So if, at least with Indymac Federal Bank, if 19 I wanted to see for myself who the investor was, I could 20 ask for a printout of that screen, the MAS INV1? 21 A. If you had authorization to get a copy of the 22 screen, yes. 23 Q. The question being: Is that the right thing 24 to ask for so that I would see who the investor was? 25 Whether I'm entitled to it or not is up to the judge.</p> |

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| <p>1 But is that what I should ask for?</p> <p>2 A. Someone would think that you had inside</p> <p>3 information if you asked for that. Normally someone</p> <p>4 asks for proof of who the investor is and someone would</p> <p>5 make a screen shot of that screen.</p> <p>6 Q. Is that something you've ever been involved in</p> <p>7 is making a screen shot of that screen and providing it</p> <p>8 to somebody who's asked for it?</p> <p>9 A. No. Not at Indymac Bank, no. My specialist</p> <p>10 probably has.</p> <p>11 Q. Okay. Have you ever done that when you</p> <p>12 were -- you said you were with Fannie Mae?</p> <p>13 A. Yes. But Fannie Mae does not work off of</p> <p>14 MSP Fidelity.</p> <p>15 Q. When the document specialists contacts the</p> <p>16 correct custodian, is that by e-mail, a letter, or how</p> <p>17 do they do that?</p> <p>18 A. By e-mail.</p> <p>19 Q. E-mail. And does a response, then, come back</p> <p>20 from the custodian by e-mail?</p> <p>21 A. Only if they cannot find a record or there are</p> <p>22 some records that require another officer in the bank to</p> <p>23 sign for them on top of my signature. Then that is a</p> <p>24 response that comes back. Otherwise, when that -- when</p> <p>25 she sends me the list and I approve it and send it to</p> | <p>1 some sort of, you just alluded to it, some sort of</p> <p>2 checkout procedure that people can't just come in and</p> <p>3 take a note without signing out for it?</p> <p>4 A. Yes.</p> <p>5 Q. Is that correct?</p> <p>6 A. That's right.</p> <p>7 Q. Do they keep those records in normal course of</p> <p>8 business?</p> <p>9 A. The document custodian?</p> <p>10 Q. Yes.</p> <p>11 A. To my knowledge, yes.</p> <p>12 Q. Now in this particular case, have you seen the</p> <p>13 information that came back from the custodian about the</p> <p>14 search for the note?</p> <p>15 A. Yes.</p> <p>16 Q. And what did that information say?</p> <p>17 A. It said that Sylvia requested the information</p> <p>18 from Deutsche but the note was actually at Wells Fargo.</p> <p>19 Q. Was there an explanation of why it was at</p> <p>20 Wells Fargo?</p> <p>21 A. I'm sure there is. I don't recall.</p> <p>22 Q. You still have that -- was that information</p> <p>23 delivered by e-mail?</p> <p>24 A. Yes.</p> <p>25 Q. Do you still have that e-mail?</p> |
| Page 26 | Page 28 |
| <p>1 the custodian, our expectation is that the documents are</p> <p>2 on their way.</p> <p>3 Q. Okay. Does the -- does Indymac have any</p> <p>4 knowledge of what the custodian does to look for the</p> <p>5 lost note?</p> <p>6 A. To the extent that if a lost note can't be</p> <p>7 found and they go back to the custodian, we are looking</p> <p>8 for some evidence of the fact that -- it has to be more</p> <p>9 than they couldn't find it. We like for them to come</p> <p>10 back and tell us someone checked it out in 2002 and</p> <p>11 never returned it. So to that extent, yes. But we</p> <p>12 don't know interworkings of what's happening within the</p> <p>13 custodians.</p> <p>14 Q. All right. You don't know if they keep them</p> <p>15 in a special vault or a drawer or you don't really know</p> <p>16 where, exactly, they keep these?</p> <p>17 A. Well, to be a custodian, the bank is required</p> <p>18 to keep them in a special, fireproof, locked vault.</p> <p>19 Otherwise, they wouldn't be allowed to be document</p> <p>20 custodians. So some of that you're taking for granted,</p> <p>21 yes.</p> <p>22 Q. And that's all spelled out in the pooling</p> <p>23 service agreement?</p> <p>24 A. Yes.</p> <p>25 Q. And do the document custodians formally have</p> | <p>1 A. I'm sure I do.</p> <p>2 Q. Did you bring it with you today?</p> <p>3 A. No. But I can make a phone call and get</p> <p>4 someone to get that to me.</p> <p>5 Q. One of the things you just mentioned is that</p> <p>6 the custodian is Deutsche for this particular case?</p> <p>7 A. She thought it was Deutsche. She requested it</p> <p>8 from Deutsche. But the note was at Wells. So, I mean,</p> <p>9 that -- can I speculate on that?</p> <p>10 MS. CARBO: I don't know. He's asking if you</p> <p>11 know.</p> <p>12 BY MR. ICE:</p> <p>13 Q. I don't want you to guess.</p> <p>14 A. My speculation -- after being in this business</p> <p>15 for 17 years, my educated guess is the original note,</p> <p>16 because we got this loan from Bank United, could have</p> <p>17 been at Deutsche. And then when the loan transferred or</p> <p>18 when Indymac bought it, that could be how it ended up in</p> <p>19 a different custodian's name and -- because Sylvia would</p> <p>20 have gone by what was on MAS1 INV1 to order it.</p> <p>21 Q. Do you know, as you're sitting here today, who</p> <p>22 the investor is on this loan?</p> <p>23 A. I can't remember. I can't remember.</p> <p>24 Q. Is it safe to assume it's either Deutsche or</p> <p>25 Wells Fargo?</p> |

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| <p>1 A. Yes.</p> <p>2 Q. Now I noticed, in this power of attorney that</p> <p>3 was filed by Kahane and Associates, that Indymac, then</p> <p>4 Indymac Bank -- I think this was before the switchover.</p> <p>5 MS. CARBO: Where was that filed? It wasn't</p> <p>6 in this case, was it?</p> <p>7 MR. ICE: No. By filed, it was recorded in</p> <p>8 Palm Beach County on July 31, 2008. So, actually,</p> <p>9 it was after Indymac Federal Bank was the proper</p> <p>10 entity.</p> <p>11 BY MR. ICE:</p> <p>12 Q. But it points Indymac Bank as a servicer and</p> <p>13 power of attorney from Deutsche Bank. The point being,</p> <p>14 the exhibit here shows there's about 214, if I counted</p> <p>15 correctly, trusts that Deutsche Bank was the investor</p> <p>16 for, the trustee for, and all of those, through this</p> <p>17 document, gave Indymac Bank the power of attorney to</p> <p>18 represent those.</p> <p>19 Does that sound about right, about 214 or so</p> <p>20 different trusts that Deutsche Bank would be -- that any</p> <p>21 particular loan could be in one of those?</p> <p>22 A. That's a part of it.</p> <p>23 Q. Okay.</p> <p>24 A. There's thousands with Deutsche.</p> <p>25 Q. Okay.</p> | <p>1 provide the information if you need to.</p> <p>2 THE WITNESS: I'll do that because I don't</p> <p>3 want to guess.</p> <p>4 BY MR. ICE:</p> <p>5 Q. Okay. I'm going to go ahead and mark this as</p> <p>6 Exhibit A. You've now been given what's been marked</p> <p>7 Exhibit A to your deposition. I'm going to ask you if</p> <p>8 you can identify that document.</p> <p>9 (Defendant's Exhibit A was marked for</p> <p>10 identification.)</p> <p>11 A. Identify it meaning have I seen it before?</p> <p>12 Q. Have you seen that or whatever information</p> <p>13 this article is based on?</p> <p>14 A. I've seen the information the article is based</p> <p>15 on.</p> <p>16 Q. Okay. I highlighted, down at the bottom,</p> <p>17 where it says, soon after it took over Indymac the FDIC</p> <p>18 said it was freezing foreclosures on the almost 40,000</p> <p>19 loans still owned by the thrift. Those loans amount to</p> <p>20 six percent of the 637,000 existing Indymac service</p> <p>21 mortgages at the end of July.</p> <p>22 Are you familiar with that --</p> <p>23 A. Yes.</p> <p>24 Q. -- statistic?</p> <p>25 A. Yes.</p> |
| Page 30 | Page 32 |
| <p>1 A. So those are the ones, though, that we have</p> <p>2 the power of attorney for while some other Deutsche</p> <p>3 nontrust related items the officers of Indymac Bank can</p> <p>4 sign for. Anything that falls into those trusts require</p> <p>5 that power of attorney.</p> <p>6 Q. Okay. And there's, I presume, similar</p> <p>7 documents for other banks that Indymac is the servicer</p> <p>8 for like La Salle which would have a similar number of</p> <p>9 trusts, correct?</p> <p>10 A. I don't know that.</p> <p>11 Q. Okay. But is it your testimony that there's</p> <p>12 thousands of trusts out there that Indymac is a servicer</p> <p>13 for?</p> <p>14 A. I'm going to say there's hundreds of trusts</p> <p>15 that Indymac is a servicer for.</p> <p>16 Q. Fair enough. And as we're sitting here right</p> <p>17 now, we don't know which of those trusts this particular</p> <p>18 loan is in?</p> <p>19 A. Not as we're sitting here right now.</p> <p>20 Q. But we can be very confident that Indymac is</p> <p>21 not the owner of this particular loan, it is merely the</p> <p>22 servicer?</p> <p>23 A. No. I can't be comfortable with that.</p> <p>24 Can I look at those screen prints I sent?</p> <p>25 MS. CARBO: You can always leave it blank and</p> | <p>1 Q. So if the loan in this case is owned by</p> <p>2 Indymac, rather than just serviced by Indymac, it would</p> <p>3 have to fall within that six-percent figure?</p> <p>4 A. Yes.</p> <p>5 Q. And you have no reason to dispute that</p> <p>6 six percent?</p> <p>7 A. I don't have any reason to dispute that.</p> <p>8 Q. Okay.</p> <p>9 A. And this moratorium is no longer.</p> <p>10 Q. Okay. Going back to when the document</p> <p>11 specialist has to figure out who the custodian is, does</p> <p>12 it make a difference if it's a Freddie Mac or a</p> <p>13 Fannie Mae loan?</p> <p>14 A. Yes. Because Fannie -- well, yes, it does.</p> <p>15 Q. Okay. Does it make a difference in the sense</p> <p>16 that it means that there's a different custodian?</p> <p>17 A. Yes, could be.</p> <p>18 Q. And who could the custodian be?</p> <p>19 A. If it's a cash loan the custodian could be</p> <p>20 Fannie or Freddie. But Fannie and Freddie do delegate</p> <p>21 their servicers to choose their own document custodian</p> <p>22 so long as they meet the requirements of a real document</p> <p>23 custodian.</p> <p>24 Q. For those loans that fall into that category,</p> <p>25 who does Indymac designate as the custodian on behalf of</p> |

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| <p>1 Freddie Mac and Fannie Mae? 2 A. I don't know. I don't know enough about that 3 to be categoric in nature. 4 Q. Do you know if it's more than one? Are there 5 different custodians depending on the different loans? 6 A. If they're Fannie or Freddie? 7 Q. Yes. 8 A. There could be because we have relationships 9 with, I believe, about six different document 10 custodians. 11 Q. Does Indymac serve as its own document 12 custodian? Do they have a vault somewhere they keep 13 notes? 14 A. No. 15 Q. Other than the ones they own, do they keep 16 their own loans in a document -- in a vault somewhere? 17 A. I don't believe so. 18 Q. Okay. 19 A. I believe they're at Deutsche. 20 Q. Other than the e-mails that we've been talking 21 about between the document specialist and the custodian 22 talking about what they've done to search for the note, 23 are there any other documents or checklists or anything 24 that's generated as a part of this search? 25 A. They have an access database that they keep</p> | <p>1 line of the affidavit, correct? 2 A. Yes. 3 Q. And I think you might have mentioned before 4 that this actual document is prepared by counsel, 5 correct? 6 A. Yes. 7 Q. And one of the reasons we know is because 8 counsel's file number is down at the bottom of that 9 document, correct? 10 A. Yes. 11 Q. So when they prepared this they don't know 12 who's going to be signing the affidavit of lost note? 13 A. That's right. 14 Q. It's left blank? 15 A. Yes. 16 Q. Who fills that in? 17 A. The doc specialists that -- they see the docs 18 before they come to myself or one of the other signers. 19 Q. How do they make a determination about who is 20 going to sign which affidavit? 21 A. Generally, I sign everything unless I'm out of 22 the office, and I let them know in advance, and so then 23 that's where my alternate signers come into place. If a 24 document requires two officers, then it'll always be me 25 first and my boss second.</p> |
| Page 34 | Page 36 |
| <p>1 with correspondence back and forth, as well as the 2 system that LPS uses, called process management; tracks 3 the request for lost note affidavit and when it's 4 received. 5 Q. Okay. Well, that's tracking the lost note 6 affidavit. 7 What about the lost note itself? Are there 8 any other documents generated in the search for the 9 note? 10 A. I don't believe that document is generated 11 other than e-mails that go back and forth searching for 12 it. 13 Q. Okay. Let's get to why we're here. I hand 14 you now what's been marked as Exhibit B to your 15 deposition. 16 Do you recognize that document? 17 (Defendant's Exhibit B was marked for 18 identification.) 19 A. Yes. 20 Q. Or at least the one that's attached which is 21 the affidavit of lost note. 22 A. Yes. 23 Q. Filed in this case. 24 A. Yes. 25 Q. Your name appears handwritten in the first</p> | <p>1 Q. Okay. This particular document only required 2 your signature, right? 3 A. Uh-huh. 4 Q. Is that a yes? 5 A. Yes. 6 Q. Now -- so the handwriting here where we filled 7 in Texas and Williamson and your name, that's not your 8 handwriting, correct? 9 A. That's right. 10 Q. The handwriting underneath your name where 11 your name is printed, underneath your signature I should 12 say, is that your handwriting? 13 A. It is not. 14 Q. Where it says vice president, is that your 15 handwriting? 16 A. It is not. 17 Q. Is the signature your signature? 18 A. Yes. 19 Q. Is it a signature or is it a stamp? 20 A. It's a signature. 21 Q. Okay. I imagine you wish you had a shorter 22 name? 23 A. Yes, I do. Next time I get to do this again 24 it's going to be an E with a line. 25 Q. I'll show you what's been marked as Exhibit C</p> |

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| <p>1 to your deposition and ask you if you recognize that 2 document. 3 (Defendant's Exhibit C was marked for 4 identification.) 5 A. Yes -- wait. Well, yes. Yes, I remember. 6 Q. Okay. This is an e-mail from the Evan Wagner 7 who is the vice president of corporate communications -- 8 A. Yes. 9 Q. -- of Indymac, correct? 10 A. Yes. 11 Q. And it was to all employees, correct? 12 A. Yes. 13 Q. Did you receive this as an e-mail? 14 A. I did. 15 Q. I want to draw your attention to the part that 16 I highlighted down there where it talked about the FDIC 17 takeover and that this, being July 11th, was the last 18 day of business for Indymac Bank, correct? 19 A. That's right. 20 Q. Okay. Now that was a Friday? 21 A. Uh-huh; yes. 22 Q. The following Monday is when you signed the 23 affidavit of lost note, correct? 24 A. Yes. 25 Q. And you signed as an officer of Indymac Bank,</p> | <p>1 back to the 14th allowing you, among others, to sign 2 documents on behalf of the conservatorship. 3 Do you recall that? 4 A. Yes. 5 Q. There's two problems here. Not only did 6 Indymac Bank cease to exist, Indymac Federal Bank was in 7 conservatorship, correct? 8 A. Yes. 9 Q. Which means you didn't have authority on the 10 14th to sign on behalf of Indymac Bank or 11 Indymac Federal Bank, correct? 12 A. I don't know that to be correct. 13 Q. When they did this retroactive approval giving 14 you signing powers, did they not say that when you sign 15 you have to sign as the attorney in fact for either the 16 FDIC as conservator or Indymac Federal Bank? 17 A. No. 18 Q. How did they tell you you could sign? 19 A. In some states we do sign attorney in fact 20 because of the way the nature of the foreclosure is. In 21 other states we signed Indymac Federal Bank, FSB. 22 Q. Okay. 23 A. After substitution was filed. 24 Q. Well, my question is really directed to the 25 14th because this is the Monday after Indymac Bank</p> |
| Page 38 | Page 40 |
| <p>1 correct? 2 A. Yes. 3 Q. Which, at that time, was out of business? 4 A. Yes. 5 Q. Okay. 6 A. But -- 7 Q. Go ahead. 8 A. But the FDIC told us that things that were in 9 process for a certain number of days would still happen 10 business as usual in Indymac Federal Bank until they can 11 get the new delegation of authority out which happened 12 after the 14th. 13 Q. It happened about a week later, correct? 14 A. Yes. 15 Q. Or so, when the FDIC appointed -- maybe you 16 recall the name of whoever became the CEO. 17 A. Yes. 18 Q. Who was that, Roy-Somebody? 19 A. It's on the tip of my tongue. Do you need 20 that information? It's on the tip of my tongue; sorry. 21 I can't think of it. I can't think of it. 22 Q. And I apologize. I didn't bring that 23 particular document with me. 24 Well, the point I wanted to make was when they 25 did that they did a retroactive corporate resolution</p> | <p>1 ceased to exist, correct? 2 A. Yes. 3 Q. And when you went to work Monday morning, who 4 did you work for? 5 A. The FDIC. 6 Q. And it was your understanding when you went to 7 work and you signed this some time that day that you 8 were permitted to go ahead and sign on behalf of, as an 9 officer, of a corporation that no longer existed? 10 A. Yes. I was -- we were told that business as 11 usual until the new corporate resolution came out. And 12 the feds, FDIC, did not want us to have hiccups in the 13 foreclosure or the bankruptcy process while they were 14 getting prepared or getting organized. 15 Q. Do you have the authority today to sign on 16 behalf of Indymac Bank as opposed to Indymac Federal 17 Bank? 18 A. I don't know. 19 Q. Do you continue to sign -- since the 14th, 20 have you continued to sign on behalf of Indymac Bank? 21 A. I may have on the 14th and through 'till -- we 22 had to give the attorneys, our foreclosure and 23 bankruptcy attorneys, an amount of time, I want to say 24 it was 30 days, to make sure that it was -- we were 25 signing documents in the name of Indymac Federal Bank.</p> |

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| <p>1 So for, at least, 30 days I was, most likely, signing 2 Indymac Bank. 3 Q. Is it your understanding, then, that after 4 August, mid August, that you should be signing 5 everything as an officer of Indymac Federal Bank? 6 A. Yes. 7 Q. I'm going to hand you and your counsel what 8 has been marked Exhibit D to your deposition and ask you 9 if you are the Erica Johnson-Seck who signed that 10 document? 11 (Defendant's Exhibit D was marked for 12 identification.) 13 A. This isn't this case, right? 14 Q. No. 15 A. Yes, that's me. 16 Q. And that was signed December 15th? 17 A. 2008, yes. 18 Q. You know, actually, I should probably clarify. 19 It was notarized on the 15th, correct? 20 A. Yes. 21 Q. Nothing in here to indicate when you signed it 22 except for the notarization, correct? 23 A. No. 24 Q. Is it your practice to have these notarized 25 the same day that you sign it?</p> | <p>1 November 9, 2008, correct? 2 A. Correct. 3 Q. And in it you represent yourself as 4 Erica A. Johnson-Seck of Indymac Bank as the affiant and 5 then, simply, vice president underneath your signature, 6 correct? 7 A. Correct. 8 Q. I'm handing you what's been marked as 9 Exhibit F to your deposition. 10 Do you recognize your signature on that 11 document? 12 (Defendant's Exhibit F was marked for 13 identification.) 14 A. I do. 15 Q. And that was notarized December 8, 2008, 16 correct? 17 A. Yes. 18 Q. And in this document it purports to be an 19 assignment of mortgage from Bank United to 20 Indymac Federal Bank which is your employer, right? 21 A. That's right. 22 Q. And in this document you were signing as the 23 vice president of Bank United, FSB; is that correct? 24 A. I am, yes. 25 Q. And my understanding, from your testimony</p> |
| Page 42 | Page 44 |
| <p>1 A. A day, yes. 2 Q. Within a day? 3 A. Uh-huh. 4 Q. Is that a yes? 5 A. Yes. 6 Q. So the earliest this could have been signed is 7 December 14th? 8 A. Yes. 9 Q. And in it you say, under oath, that you are 10 the vice president of Indymac Bank? 11 A. That's right. 12 Q. Handing you now what's been marked as 13 Exhibit E to your deposition which is also not this 14 case, despite the similarity in the name. 15 (Defendant's Exhibit E was marked for 16 identification.) 17 A. Oh. 18 Q. And ask you if you are the Erica Johnson-Seck 19 who signed this affidavit? 20 A. I am. 21 Q. And it is notarized on the 10th of November of 22 last year, correct? 23 A. Correct. 24 Q. And from what you stated before, the earliest 25 this could have been signed by you would be</p> | <p>1 before, is that you were not an officer of Bank United, 2 FSB. 3 Is that understanding, correct? 4 A. No. I'm not an officer of Indymac Bank. But 5 if I'm given this document it's because I have power of 6 attorney to sign for Indymac Bank. 7 Q. When you say Indymac, do you mean Bank United? 8 A. I'm sorry; Bank United. 9 Q. So it's your testimony that you have a power 10 of attorney to sign on behalf of Bank United, FSB? 11 A. It is my testimony that when I signed this 12 document that was placed in front of me I had signing 13 authority for Bank United. 14 Q. Okay. But did you have signing authority to 15 sign as the vice president of Bank United or as the 16 attorney in fact for Bank United? 17 A. I don't know. 18 MS. CARBO: Just for the record, is this in 19 this case, this assignment of mortgage? 20 MR. ICE: No. 21 BY MR. ICE: 22 Q. Would you be willing to admit that this is an 23 error? 24 A. What part, that I signed it or that I signed 25 it as vice president?</p> |

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| <p>1 Q. That you signed it as vice president of 2 Bank United, FSB. 3 A. I don't know. 4 Q. Okay. 5 A. But I'm wanting to not sign any more 6 documents. 7 Q. Handing you now what's been marked as 8 Exhibit G which is, actually, a compilation or a 9 composite, I should say, of three different assignments 10 of mortgage all of which are signed by you, correct? 11 (Defendant's Exhibit G was marked for 12 identification.) 13 A. Yes. 14 Q. Notably, on the first one you signed as -- on 15 behalf of MERS as nominee for Indymac Bank and you 16 signed as a vice president of that corporation, that 17 institution, correct? 18 A. Yes. 19 Q. And you have a corporate resolution, no doubt, 20 from MERS permitting you to sign on MERS's behalf as a 21 vice president, correct? 22 A. This is where I start to get foggy. I have 23 signing authority to sign for MERS. The 24 as-a-vice-president piece is what's throwing me in all 25 of the questions.</p> | <p>1 authority is how I'm signing. 2 Q. Okay. So it's your testimony when it says 3 title, vice president, and above your signature says 4 Mortgage Electronic Registration Systems, Inc., folks 5 should know that that means vice president of 6 Indymac Federal Bank rather than MERS? 7 A. Yes. Because of the first paragraph and who 8 I'm signing for, what it's referring to, Indymac Federal 9 Bank. 10 Q. Was Indymac Federal Bank mentioned in this 11 document? 12 A. Yes. 13 Q. They're the ones receiving the assignment of 14 mortgage, correct? 15 A. Yes. 16 Q. So on behalf of MERS you're assigning this 17 mortgage over to your own company, correct? 18 A. Yes. 19 Q. The next -- before we go, though, that was 20 also notarized by a different Notary on 21 December 8, 2008? 22 A. Yes. 23 Q. Okay. Next document is also an assignment of 24 mortgage signed by yourself, correct? 25 A. Yes.</p> |
| Page 46 | Page 48 |
| <p>1 Q. Okay. The assignment of mortgage that we're 2 talking about was just like the last one for Bank United 3 was signed on December 8, 2008 or at least notarized on 4 that date, correct? 5 A. Are we on this exhibit, G? 6 Q. Yeah. The first page of G there. 7 A. Okay; yes. 8 Q. And the Notary on that one was Mai Thao? 9 A. Uh-huh. 10 Q. Is that a yes? 11 A. Yes. 12 Q. Is that a man or a woman? 13 A. A woman. 14 Q. You know her? 15 A. Yes. 16 Q. The second assignment in this package has your 17 signature on it, correct? 18 A. Yes. 19 Q. And in this one you signed on behalf of MERS, 20 not as nominee for anyone, just plain MERS, correct? 21 A. Yes. 22 Q. And you signed as the vice president of MERS? 23 A. I don't know if I'm signing as the vice -- I 24 don't believe I'm signing as the vice president of these 25 entities but as a vice president having signing</p> | <p>1 Q. It was also notarized on December 8, 2008, 2 correct? 3 A. Yes. 4 Q. By, yet, a different Notary? 5 A. Uh-huh. 6 Q. Correct? 7 A. Yes. 8 Q. This one is Vicky ... 9 A. Brizendine. 10 Q. I take it you know her? 11 A. Yes. 12 Q. And you knew Michael ... 13 A. Arce, yes. 14 Q. And in this last one, of the group of 15 Exhibit G, you signed, again, as a vice president, 16 correct? 17 A. Yes. 18 Q. And above your name is Mortgage Electronic 19 Registration Systems, Incorporated as nominee for 20 Indymac Bank, FSB, correct? 21 A. Yes. 22 Q. I hand you now what's been marked as Exhibit H 23 to your deposition. 24 Can you identify that document? 25</p> |

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| <p>1 (Defendant's Exhibit H was marked for 2 identification.) 3 A. It's an assignment of mortgage. 4 Q. And who is it signed by? 5 A. Myself and my boss. 6 Q. And in this particular case, once again, your 7 title is given as vice president, correct? 8 A. Yes. 9 Q. And above your name it says Bank United, FSB, 10 correct? 11 A. That's correct. 12 Q. This was notarized the day following the other 13 affidavits we were just looking at, correct? 14 A. Yes. 15 Q. December 9, 2008? 16 A. Yes. 17 Q. In this particular document, despite signing, 18 somehow, on behalf of Bank United, whether it be by 19 power of attorney or by being a vice president, the 20 assignment of mortgage is from Washington Mutual; is 21 that correct? 22 A. That's correct. 23 Q. Do you have any explanation how you signing as 24 vice president, either of or somehow on behalf of 25 Bank United, could transfer a mortgage held by</p> | <p>1 your deposition. I will represent to you, because you 2 may not have seen this, actually, but it is a printout 3 of an opinion or a ruling by the 4 Honorable Arthur M. Schack from the Supreme Court of the 5 State of New York on January 31st of last year, 2008. 6 Are you familiar with this decision? 7 (Defendant's Exhibit J was marked for 8 identification.) 9 A. Yes. She ... 10 MS. CARBO: Counsel. 11 THE WITNESS: I'm sorry. 12 MS. CARBO: That's okay. 13 THE WITNESS: Counsel provided this 14 information to me when your request for the 15 deposition came up. I hadn't seen it. 16 BY MR. ICE: 17 Q. Okay. Had you learned about it some other way 18 before it was brought to your attention in this case? 19 A. No. 20 Q. Have you had an opportunity to review it 21 before today? 22 A. I sent it to our inhouse counsel, Chris Moore, 23 and he is reviewing it and going to prepare -- 24 MS. CARBO: Don't waive any client-attorney 25 privilege.</p> |
| Page 50 | Page 52 |
| <p>1 Washington Mutual? 2 A. I don't. This is, obviously, a gross error. 3 Q. I hand you now what's been marked as Exhibit I 4 to your deposition. 5 Can you recognize or identify that document, 6 please? 7 (Defendant's Exhibit I was marked for 8 identification.) 9 A. An assignment of mortgage. 10 Q. Okay. And did you sign that assignment of 11 mortgage? 12 A. Yes, I did. 13 Q. And did you sign it as vice president of 14 Deutsche Bank National Trust Company as trustee under 15 the pooling and servicing agreement series 16 ITFSPMD2004-C? 17 A. This is that gray area again. My title as a 18 vice president. But I have authority to sign for 19 Deutsche. Whether I can do that as a vice president of 20 Deutsche or if that means that, I don't know. But it's 21 one of the very first things I'm gonna research. 22 Q. It's safe to say that you're not a vice 23 president of Deutsche Bank? 24 A. That's right. 25 Q. Hand you what's been marked as Exhibit J to</p> | <p>1 THE WITNESS: Scare me. 2 MS. CARBO: I'm sorry. The fact that you sent 3 it to him is enough testimony. 4 THE WITNESS: Sorry. 5 BY MR. ICE: 6 Q. I'm sorry. In all that I forgot the actual 7 answer. 8 Had you read it before today? 9 A. I did read it before today, yes. 10 Q. So you're familiar with the fact that it talks 11 about you, correct? 12 A. Yes. 13 Q. And the judge mentioned that there was an 14 assignment on behalf of Indymac that was executed by 15 Erica Johnson-Seck, vice president of MERS, correct? I 16 highlighted that so you can follow along. 17 A. Yes. 18 Q. You don't have any reason to dispute that 19 that's the case, correct, that there was an assignment 20 signed by you like that? 21 A. The only thing that I dispute is the vice 22 president of MERS. 23 Q. Okay. The next paragraph. It says, 28 days 24 later, on July 31, 2007, the same Erica Johnson-Seck -- 25 I guess I should stop there.</p> |

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| <p>1 You don't have any reason to believe it's not 2 talking about you, correct? 3 A. Correct. 4 Q. Executed Plaintiff's affidavit submitted in 5 support of the instant application for a default 6 judgment. Mrs. Johnson-Seck, in her affidavit, states 7 that she is an officer of Deutsche Bank National Trust 8 Company as trustee, under a pooling and servicing 9 agreement, et cetera. 10 Do you have any reason to believe that that's 11 not true? 12 A. No. 13 Q. Okay. Have you gone back and looked at that 14 affidavit that the judge is referring to? 15 A. Yes. 16 Q. And is that what it said? 17 A. Yes. 18 Q. And as we established before, you are not an 19 officer of Deutsche Bank National Trust Company, 20 correct? 21 A. That's right. But in signing it was my -- I 22 was not signing as a vice president of Deutsche. Just 23 as a signer for Deutsche. 24 Q. Okay. But did the document indicate that you 25 were, and just as the court says, he's quoting here, an</p> | <p>1 A. I never knew this document existed. So I had 2 no idea I needed to do an affidavit. 3 Q. Okay. And to this day no affidavit of your 4 employment history for the past three years has been 5 executed by you? 6 A. Yes, that's correct. 7 Q. Yes, there's no affidavit, correct? 8 A. That's correct. 9 Q. One of the things I asked for you to bring 10 with you today was that affidavit. And, of course, 11 since it doesn't exist you weren't able to bring that; 12 is that correct? 13 A. That's correct. But I did bring my resumé. 14 It's not in an affidavit form. 15 Q. Okay. We're going to be getting to that soon. 16 Let's go back to Exhibit B which is the affidavit of 17 lost note in this case. 18 In this affidavit you state that you're an 19 officer of Indymac Bank, and we've talked about whether 20 it was Indymac Bank or Indymac Federal Bank on that 21 particular date. 22 But that's what you state, correct? 23 A. Yes. 24 Q. And that you're personally familiar with the 25 loan which is owned by Plaintiff and is the subject</p> |
| Page 54 | Page 56 |
| <p>1 officer of Deutsche Bank National Trust? Is that what 2 the document said? 3 A. I don't recall. It looked more like 4 Exhibit One of your exhibits here. 5 Q. Okay. Well, given that the court is using 6 quotations, do you have any reason to believe that he's 7 misquoting you? 8 A. I just don't recall. 9 Q. Okay. The court went on to say that he had 10 some concern that you were engaging in self-dealing by 11 wearing two corporate hats, correct? 12 A. Yes. 13 Q. And that he was concerned that there might be 14 fraud on the part of Deutsche Bank, correct? 15 A. Yes. 16 Q. And as a result of that he ordered that a new 17 affidavit be supplied to him from you describing your 18 employment history for the past three years, correct? 19 A. Yes. 20 Q. Do you remember when that happened having to 21 draft up an affidavit of your employment history? 22 A. I never saw this until a couple weeks ago. 23 Q. So it's your testimony that you never, for 24 whatever reason, you never had to draft such an 25 affidavit?</p> | <p>1 matter of this action, correct? 2 A. Are you reading number two? 3 Q. Number one. 4 A. Yes. 5 Q. Now we've already established that, in fact, 6 the loan was not owned by the Plaintiff, correct? 7 A. We haven't established that yet. I need to 8 check to see who the investor is. 9 Q. Okay. But aren't you checking if it's either 10 Deutsche Bank or Wells Fargo? 11 A. I'm speculating it's one or the other. 12 Q. Maybe we do need to get that e-mail that we 13 talked about. 14 A. Of who the investor is? 15 Q. Yes. 16 (A recess was taken.) 17 BY MR. ICE: 18 Q. Did you get the e-mail you needed? 19 A. I know Wells Fargo is the investor. 20 Q. Okay. Returning from the break, have you now 21 received the information needed to be able to tell us 22 who the investor is for the loan that is the subject of 23 this case? 24 A. Yes. 25 Q. And who is that?</p> |

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| <p>1 A. Wells Fargo.</p> <p>2 Q. Okay. So going back to my initial question on</p> <p>3 paragraph one where it says that you are personally</p> <p>4 familiar with the loan which is owned by the Plaintiff,</p> <p>5 the Plaintiff being Indymac Bank, that would be</p> <p>6 incorrect; is that true?</p> <p>7 A. Mostly. There are some investors are</p> <p>8 reconstituted deals or loans that are a part of</p> <p>9 reconstituted deals where we own the loan but they were</p> <p>10 pooled together under an investor, and I don't know if</p> <p>11 that's true about this case. But I'll go on record and</p> <p>12 say I believe this to be incorrect.</p> <p>13 Q. Okay. And when you say this, you mean the</p> <p>14 statement that it's owned by the Plaintiff?</p> <p>15 A. Number one, yes.</p> <p>16 Q. Going to paragraph two, you state that the</p> <p>17 original note which was executed and delivered by</p> <p>18 Galina Malerman on February 15, 2006 has been lost or</p> <p>19 destroyed. We've discussed, already, that your</p> <p>20 information about it being lost or destroyed came from</p> <p>21 the document ...</p> <p>22 A. Specialist.</p> <p>23 Q. Specialist, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Did you have any personal knowledge that the</p> | <p>1 me, true, correct and substantial copy of the lost or</p> <p>2 destroyed note, correct?</p> <p>3 A. Correct.</p> <p>4 Q. When you signed this, did you have in front of</p> <p>5 you the note that was attached to the complaint?</p> <p>6 A. Yes.</p> <p>7 Q. How did you get that in front of you?</p> <p>8 A. The copy of the note?</p> <p>9 Q. That was attached to the complaint.</p> <p>10 A. From the doc specialist.</p> <p>11 Q. Okay. So when this affidavit of lost note</p> <p>12 comes across your desk, with it is the complaint,</p> <p>13 correct?</p> <p>14 A. With it is a copy of the note.</p> <p>15 Q. Copy of the note.</p> <p>16 How do you know that's the note that was</p> <p>17 attached to the complaint?</p> <p>18 A. I don't know, exactly. I'm assuming they're</p> <p>19 the same.</p> <p>20 Q. When you look at the note, that's the copy of</p> <p>21 the note I should say, that is with this affidavit of</p> <p>22 lost note, how do you know it's a true, correct and</p> <p>23 substantial copy of the lost note?</p> <p>24 A. Can you, kind of, rephrase that question?</p> <p>25 Q. Well, is there something that you compare it</p> |
| Page 58 | Page 60 |
| <p>1 note had been lost or destroyed, by personal knowledge,</p> <p>2 I mean apart from what you were told by the document</p> <p>3 specialist?</p> <p>4 A. No.</p> <p>5 Q. Next you said it is not presently in the</p> <p>6 custody or control of the Plaintiff or any of</p> <p>7 Plaintiff's agents.</p> <p>8 Did you make any independent determination</p> <p>9 that that statement was true?</p> <p>10 A. Personally?</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. Affiant is unaware of the time or</p> <p>14 circumstances surrounding the loss or destruction of</p> <p>15 said note. Since you said you're unaware -- I think</p> <p>16 you're pretty safe on that one, correct?</p> <p>17 A. Yes.</p> <p>18 Q. You were unaware, then, and you're unaware</p> <p>19 now, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Especially since it turns out it was not lost</p> <p>22 or destroyed, correct?</p> <p>23 A. That's right.</p> <p>24 Q. The next sentence says the copy of said note</p> <p>25 attached to the complaint is a true and correct, excuse</p> | <p>1 to to say, gosh, this is really a true and correct copy</p> <p>2 of the note that's lost?</p> <p>3 A. I don't do that. But as part of the procedure</p> <p>4 of the LPS folks, the doc specialists make sure that</p> <p>5 they pull the right copy of the note that they attach to</p> <p>6 the lawsuit of affidavit.</p> <p>7 Q. Where is that copy kept?</p> <p>8 A. In imaging.</p> <p>9 Q. Is there a computer program or database in</p> <p>10 which all these images are kept?</p> <p>11 A. Yes.</p> <p>12 Q. What's that called?</p> <p>13 A. WebX.</p> <p>14 Q. When does that image get into WebX?</p> <p>15 A. It depends. As loans are originated the</p> <p>16 documents go to a file room where they mass image all of</p> <p>17 the origination documents. But it's my understanding,</p> <p>18 prior to my employment at Indymac Bank, that WebX was</p> <p>19 new and there was a backlog in documents that had to be</p> <p>20 imaged. So the process should work that, as loans are</p> <p>21 originated, they're imaged or as we buy loans they're</p> <p>22 imaged.</p> <p>23 Q. Okay. The image is soon enough after</p> <p>24 origination that it would not have any endorsements on</p> <p>25 it? Let me rephrase the question.</p> |

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| <p>1 A. Okay.</p> <p>2 Q. The note, that is, the copy of the note that</p> <p>3 is kept in WebX, does that copy have any endorsements on</p> <p>4 it? I'm speaking, generally, when you look at WebX.</p> <p>5 Are those notes already endorsed?</p> <p>6 A. I'm assuming mostly. I'm sure there's</p> <p>7 exceptions.</p> <p>8 Q. I want to make sure my question is clear.</p> <p>9 When I see endorsed, I mean that they are endorsed from</p> <p>10 the originator to either some other bank or --</p> <p>11 A. Okay.</p> <p>12 Q. -- in blank.</p> <p>13 A. They're usually blank.</p> <p>14 Q. Meaning that they are endorsed in blank?</p> <p>15 A. Endorsed in blank.</p> <p>16 Q. Yeah.</p> <p>17 A. I don't understand what that means. I don't</p> <p>18 know specifically in this case. But in general, if we</p> <p>19 buy a loan of a wholesaler, if Indymac Bank buys the</p> <p>20 loan from a wholesaler, that wholesaler is not sure who</p> <p>21 they're going to sell that loan to yet. So it usually</p> <p>22 comes over blank. And assignments come over the same.</p> <p>23 They'll come over blank or they come over in MERS to be</p> <p>24 recorded accurately. So I think any of the above is</p> <p>25 true.</p> | <p>1 access to it, yes. They did.</p> <p>2 Q. Do counsel have access to that?</p> <p>3 A. No. But -- you talking about foreclosure and</p> <p>4 bankruptcy counsel?</p> <p>5 Q. Yes.</p> <p>6 A. When we refer the loan to foreclosure and</p> <p>7 bankruptcy counsel, we upload the image documents into</p> <p>8 processing management so that the firm has copies of</p> <p>9 what they need to start their process.</p> <p>10 Q. What is process management?</p> <p>11 A. It is the system that LPS uses to manage</p> <p>12 its -- can I get this? I can ask them about the e-mail.</p> <p>13 Q. Sure.</p> <p>14 (Discussion held off the record.)</p> <p>15 BY MR. ICE:</p> <p>16 Q. Let's go back to statement one in your</p> <p>17 affidavit since you've now received some additional</p> <p>18 information.</p> <p>19 MS. CARBO: Speaking of Exhibit B?</p> <p>20 MR. ICE: Yes.</p> <p>21 BY MR. ICE:</p> <p>22 Q. Your affidavit of lost note in this case.</p> <p>23 And the question on the table was, the second</p> <p>24 part of that sentence, where you're personally familiar</p> <p>25 with the loan which is owned by the Plaintiff, Plaintiff</p> |
| Page 62 | Page 64 |
| <p>1 Q. I just want to make sure we're talking the</p> <p>2 same language about in blank. When I talk about an</p> <p>3 endorsement in blank it's a legal term that means it's</p> <p>4 now a bearer instrument, and it says paid to the order</p> <p>5 of blank and then it's signed by the originator.</p> <p>6 The documents that are in WebX, do they have</p> <p>7 that kind of endorsement on them?</p> <p>8 A. I'm going to go with my first answer; mostly.</p> <p>9 I'm sure there are exceptions.</p> <p>10 Q. The company that's doing the imaging, is that</p> <p>11 Indymac?</p> <p>12 A. Yes.</p> <p>13 Q. Is that a special department there?</p> <p>14 A. It's in the records management department.</p> <p>15 And I believe they do outsource some imaging if the</p> <p>16 volume is too great.</p> <p>17 Q. Okay. Who all has access to WebX to look at</p> <p>18 these images?</p> <p>19 A. I would say everyone in servicing if it was</p> <p>20 their business to have access to it. If they're working</p> <p>21 with the loans and they have access to MSP, then they,</p> <p>22 most likely, have access to the image documents.</p> <p>23 Q. Would that include the vendors, LPS and First</p> <p>24 American?</p> <p>25 A. LPS for sure. By the time they -- they had</p> | <p>1 being Indymac Bank, which as of the date of this</p> <p>2 affidavit didn't exist, correct?</p> <p>3 A. Yes.</p> <p>4 Q. So the question on the table is: Was it owned</p> <p>5 by Indymac Federal Bank?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. The information you have is that, now,</p> <p>8 is that Indymac bought it wholesale from the originator,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Who was Bank United?</p> <p>12 A. Yes.</p> <p>13 Q. And yet Wells Fargo is the investor, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know what that means?</p> <p>16 A. What do you mean do I know what it means?</p> <p>17 Q. Well, my understanding, and correct me if I'm</p> <p>18 wrong, is when there is an investor involved it means</p> <p>19 the loan has been securitized?</p> <p>20 A. Yes.</p> <p>21 Q. That means there is a trust sitting out there</p> <p>22 somewhere, whose number we don't know at this moment,</p> <p>23 who is the true owner of the loan, correct?</p> <p>24 A. I don't know. I can't say yes or no because</p> <p>25 every loan is different. I want him to send me, from</p> |

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| <p>1 SBO, how this loan -- what this loan really looks like.</p> <p>2 Q. Okay. By definition, if a loan has been</p> <p>3 securitized that means it's been sold, actually, about</p> <p>4 two or three times depending on the pooling and</p> <p>5 servicing agreement, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Because the object is to get the loan -- to</p> <p>8 get the mortgage and the note into a bankruptcy remote</p> <p>9 entity so that they can sell certificates to people who</p> <p>10 want to buy -- want to invest in these certificates?</p> <p>11 A. Yes.</p> <p>12 Q. The investor, in the banking industry, the</p> <p>13 investor is the trustee of that trust, correct?</p> <p>14 A. This is where -- and the reason is because of</p> <p>15 our relationship with Deutsche. We have some that are</p> <p>16 tied to Deutsche as the trust and we have some that are</p> <p>17 not tied to Deutsche as the trust. I think we have just</p> <p>18 a very unique, in some cases, animal. And I will go on</p> <p>19 the record to say that without researching each one I</p> <p>20 hate to make a blanket statement across the board.</p> <p>21 Q. Okay.</p> <p>22 A. Because we've already found where, you know,</p> <p>23 by the time it gets this far down into the delinquency</p> <p>24 we're expecting that the loans were QC'ed and they're</p> <p>25 set up on the system. And it's not until we get here</p> | <p>1 have is identical and actually printed out from WebX,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And that the one that was attached to the</p> <p>5 complaint was also one that was printed out from WebX?</p> <p>6 A. Yes.</p> <p>7 Q. Because you don't have the complaint in front</p> <p>8 of you, or a copy of the complaint, you have to trust</p> <p>9 that that's the one that was attached to the real</p> <p>10 complaint that was filed in the courtroom?</p> <p>11 A. Yes.</p> <p>12 Q. In number three you say Plaintiff, again, that</p> <p>13 would be Indymac Bank, was in possession of the subject</p> <p>14 note and was entitled to enforce it when loss of</p> <p>15 possession occurred.</p> <p>16 What did you do to determine that Indymac was</p> <p>17 in possession of the note when loss of possession</p> <p>18 occurred?</p> <p>19 A. Personally?</p> <p>20 Q. Yes.</p> <p>21 A. I didn't do anything personally.</p> <p>22 Q. What was your understanding of how that was</p> <p>23 determined?</p> <p>24 A. My understanding is that if it's in our book</p> <p>25 of business to service that we, in fact, do have</p> |
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| <p>1 that we see there is an issue if there is any.</p> <p>2 Q. We'll return to that issue later when we get</p> <p>3 to the California case.</p> <p>4 A. Okay.</p> <p>5 Q. But for now, let's continue on with your</p> <p>6 affidavit of lost note.</p> <p>7 And we were talking about the complaint that</p> <p>8 was imaged and is in WebX, correct?</p> <p>9 A. The note?</p> <p>10 Q. I'm sorry, the note. I'm getting tired.</p> <p>11 The note that was imaged and in WebX, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Now the reason you were able to say that the</p> <p>14 copy that came with the affidavit of lost note was the</p> <p>15 one attached to the complaint is because, typically, the</p> <p>16 one that is attached to the complaint is the one printed</p> <p>17 out from WebX, correct?</p> <p>18 A. Typically, yes.</p> <p>19 Q. Do you make a personal determination of the</p> <p>20 one that's attached when you sign this affidavit of lost</p> <p>21 note, the one that comes with the affidavit, is the same</p> <p>22 as the one that's in WebX?</p> <p>23 A. I don't personally. I'm trusting that the</p> <p>24 staff is doing as they are instructed to do.</p> <p>25 Q. Okay. So you're trusting that the copy you</p> | <p>1 possession of the note and when required to call upon it</p> <p>2 we can get it from the custodian.</p> <p>3 Q. Okay. How do you square having possession of</p> <p>4 the note with the idea that certain custodians who are</p> <p>5 not Indymac actually hold the note?</p> <p>6 MS. CARBO: Objection to the term "hold the</p> <p>7 note".</p> <p>8 MR. ICE: I was trying to think of another</p> <p>9 word besides possession.</p> <p>10 BY MR. ICE:</p> <p>11 Q. It was your testimony earlier, was it not,</p> <p>12 that custodians have possession of the -- physical</p> <p>13 possession of the notes, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And those custodians, if it's in a trust, are</p> <p>16 not Indymac, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And even if it is Indymac you have your own</p> <p>19 custodians apart from Indymac who have physical custody</p> <p>20 and possession of the note?</p> <p>21 A. Yes.</p> <p>22 Q. So how do you square that with the Plaintiff</p> <p>23 was in possession of the subject note when loss of</p> <p>24 possession occurred?</p> <p>25 A. My understanding of this is that because we</p> |

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| <p>1 are contractually obligated with the custodian they are 2 the custodian for Indymac Bank and then holding the 3 note. So, technically, it's not within the four walls 4 of Indymac Bank. But we're contractually obligated with 5 the custodian to keep these as agreed. 6 Q. Plaintiff cannot reasonably obtain possession 7 of the subject note because its whereabouts cannot be 8 determined. 9 Once again, you made no personal determination 10 that the whereabouts of the note could not be 11 determined, correct? 12 A. That's right. 13 Q. And lastly, in paragraph four, you say 14 Plaintiff, the nonexistent corporation, hereby 15 indemnifies the obligee under the subject note for any 16 loss they may sustain by virtue of the loss and 17 possession of the original note. Speaking slowly for 18 the court reporter. Not for dramatic effect. 19 A. Are you sure? 20 Q. What is your understanding of what you're 21 promising to do there on behalf of the company? 22 A. Make -- if we can't find the note, to make 23 good on, you know, the fact that a note was created for 24 this loan and still obligated by it. 25 Q. Let me suggest to you that the reason that's</p> | <p>1 pulled out specifically in the delegation of authority. 2 Q. Hand you now what's been marked as Exhibit K 3 to your deposition and is ask you if you recognize that 4 document? 5 (Defendant's Exhibit K was marked for 6 identification.) 7 A. Yes. 8 Q. What is it? 9 MS. CARBO: For the record, I don't believe 10 it's a complete document. But you can answer the 11 question. 12 THE WITNESS: A copy of an incomplete copy of 13 the note. 14 BY MR. ICE: 15 Q. Okay. Do you recognize Exhibit L? 16 (Defendant's Exhibit L was marked for 17 identification.) 18 A. I believe this is a complete copy of the note. 19 Q. Okay. Can you tell me, by looking at them, 20 which one, or if both, are imaged and on WebX? 21 A. I can't tell by looking at them. 22 Q. Can you tell by looking at Exhibit K and 23 Exhibit L which one came with your affidavit, your lost 24 note affidavit? 25 A. I can't tell by looking at it like this.</p> |
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| <p>1 there is to protect my clients in the event that you are 2 able to foreclose, you re-establish the note for your 3 lost note affidavit, you foreclose, you take their 4 house, and then the real owner of the note shows up and 5 tries to enforce it and that you're promising to protect 6 my clients from that. 7 Does that comport with your understanding of 8 what you're doing there? 9 MS. CARBO: Objection to the term "real 10 owner". But other than that ... 11 THE WITNESS: Yes. 12 BY MR. ICE: 13 Q. Someone else -- I'm willing to say someone 14 else who claims to be the owner, because the note has 15 been lost, now shows up with it and tries to enforce it 16 against my client. And your answer is yes? 17 A. That Indymac Bank is obligated to defend the 18 borrower. 19 Q. Yes. Is that ... 20 A. Yes. 21 Q. In your position as vice president of Indymac 22 Federal Bank, do you have the authority to make that 23 kind of a commitment for the bank that's in a 24 conservatorship? 25 A. I do. Because the lost note affidavit is</p> | <p>1 Q. When you said the copy of said note attached 2 to complaint is true, correct and substantial copy of 3 the lost note, do you know whether you were referring to 4 what's now attached to your deposition as Exhibit L or 5 Exhibit K? 6 A. I would have been signing that under the 7 impression that I was signing for Exhibit L. 8 Q. Well, what is the difference between Exhibit L 9 and Exhibit K? 10 A. L has a copy of the Allonge. 11 Q. Okay. Do you know whether or not the Allonge 12 is imaged in WebX? 13 A. It has an additional page. 14 I don't know -- I can find out. I don't know 15 sitting here. 16 Q. So the record's clear, there's two differences 17 between Exhibit K and Exhibit L, correct? 18 A. Yes. 19 Q. One is an addendum to the note? 20 A. Yes. 21 Q. And the other is an Allonge, correct? 22 A. Yes. 23 Q. And the Allonge purports to be signed by an 24 assistant vice president of Bank United, FSB by the name 25 of Mireya Foster, correct?</p> |

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| <p>1 A. Yes.</p> <p>2 Q. Do you know whether or not she's a real</p> <p>3 assistant vice president of Bank United?</p> <p>4 A. I don't know that personally at all.</p> <p>5 Q. Do you know when this Allonge was executed?</p> <p>6 A. I don't.</p> <p>7 Q. Do you have any way of looking in WebX or any</p> <p>8 of the other programs that we've been talking about, the</p> <p>9 databases that we've talked about today, to determine</p> <p>10 when the Allonge was executed?</p> <p>11 A. I don't know if it would be in a database.</p> <p>12 But -- I don't know, actually. It may or may not be in</p> <p>13 WebX and that would be the only place that it would be,</p> <p>14 to my knowledge.</p> <p>15 Q. Imaged?</p> <p>16 A. Imaged.</p> <p>17 Q. Right.</p> <p>18 A. Or with the original note itself.</p> <p>19 Q. Right. Because I'll tell you now, I'll</p> <p>20 represent to you now, that Exhibit K is what was alleged</p> <p>21 to be the copy of the original note that was attached to</p> <p>22 the complaint.</p> <p>23 A. Yes.</p> <p>24 Q. I printed this out from my very own imaging</p> <p>25 system when I imaged the complaint and the note that was</p> | <p>1 to the complaint, your statement that this is a true and</p> <p>2 correct copy of the original note is incorrect? I want</p> <p>3 you to assume for purposes of my question that what I've</p> <p>4 represented to you that a copy without any addendum or</p> <p>5 Allonge was attached to the complaint.</p> <p>6 A. Okay.</p> <p>7 Q. Then your statement that Exhibit K, the one</p> <p>8 without the Allonge or the addendum, is a true, correct</p> <p>9 and substantial copy of the note would be incorrect?</p> <p>10 A. I have to ask a question.</p> <p>11 Do the addendums in the Allonge count as the</p> <p>12 note? It says true and exact copy of the note. There</p> <p>13 are addendums to the note but it's not the note.</p> <p>14 Q. Okay. Would you agree with me that you really</p> <p>15 need what's the full complement of the note which is</p> <p>16 Exhibit L, including the Allonge, so that you can show</p> <p>17 that it's been endorsed in blank, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Without this endorsement this note which is</p> <p>20 Exhibit K still belongs to Bank United, correct?</p> <p>21 MS. CARBO: I object. You're asking for a</p> <p>22 legal conclusion. I don't know if she knows.</p> <p>23 BY MR. ICE:</p> <p>24 Q. If you know.</p> <p>25 A. I don't.</p> |
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| <p>1 attached.</p> <p>2 A. Okay.</p> <p>3 Q. So I'll represent to you that the one attached</p> <p>4 to the complaint in this case has neither the addendum</p> <p>5 to the note nor the Allonge, okay?</p> <p>6 A. Okay.</p> <p>7 Q. At least the one that was delivered to my</p> <p>8 client. I can't say what was filed in the court. I</p> <p>9 haven't looked there.</p> <p>10 From your testimony about how copies of the</p> <p>11 note get attached to the complaint, would you agree with</p> <p>12 me that Exhibit K that does not have the addendum or the</p> <p>13 Allonge is the one that's in WebX?</p> <p>14 A. I can't say because I'm not looking at WebX.</p> <p>15 To agree would just be taking your word for it. I don't</p> <p>16 know.</p> <p>17 Do you know?</p> <p>18 MR. ICE: Did you bring a copy of the</p> <p>19 complaint with you today?</p> <p>20 MS. CARBO: I don't know. I don't want to</p> <p>21 make a representation. We'd have to look in the</p> <p>22 court.</p> <p>23 BY MR. ICE:</p> <p>24 Q. Well, suffice it to say, if Exhibit K is, as I</p> <p>25 represented to you, a copy of the copy that was attached</p> | <p>1 Q. Okay.</p> <p>2 A. I know what you mean by endorse in blank now.</p> <p>3 Q. I hand you now what's been marked as Exhibit M</p> <p>4 to your deposition which is a filing in this case.</p> <p>5 Do you recognize that document?</p> <p>6 (Defendant's Exhibit M was marked for</p> <p>7 identification.)</p> <p>8 A. Yes.</p> <p>9 Q. Do you recognize the signature on that</p> <p>10 document?</p> <p>11 A. Yes.</p> <p>12 Q. And who is it?</p> <p>13 A. Myself.</p> <p>14 Q. Okay. Is that signature by hand or by stamp?</p> <p>15 A. All my signatures are by hand.</p> <p>16 Q. Okay. So these answers to interrogatories is</p> <p>17 what you signed here, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And by signing these you're taking an oath</p> <p>20 that the answers in here are true and correct to the</p> <p>21 best of your knowledge?</p> <p>22 A. Yes.</p> <p>23 Q. The -- and you're doing that on behalf, not of</p> <p>24 yourself, but on behalf of your employer?</p> <p>25 A. Yes.</p> |

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| <p>1 Q. Which in this case, I shouldn't say case, it's</p> <p>2 the same case as our case, but in this instance you</p> <p>3 signed as Indymac Federal Bank, the vice president of</p> <p>4 Indymac Federal Bank, FSB, successor and interest to</p> <p>5 Indymac Bank, FSB, correct?</p> <p>6 A. Yes.</p> <p>7 Q. When we were talking earlier about all the</p> <p>8 assignments and affidavits of lost notes and affidavits</p> <p>9 of indebtedness that you sign on a daily basis, did that</p> <p>10 also include some of the things you sign are answers to</p> <p>11 interrogatories?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Like the other documents that we talked</p> <p>14 about, do you personally verify the answers that you are</p> <p>15 signing for here?</p> <p>16 A. For the interrogatories, yes.</p> <p>17 Q. So what do you do, you read them before you</p> <p>18 sign them?</p> <p>19 A. Yes.</p> <p>20 Q. These answers indicate that you were assisted</p> <p>21 by counsel, Laura M. Carbo, correct?</p> <p>22 A. Yes.</p> <p>23 Q. The first question asks you about what you did</p> <p>24 to look for the lost note, correct?</p> <p>25 A. Yes.</p> | <p>1 Q. Okay. Not Indymac Federal Bank?</p> <p>2 A. I don't know. It may have been blank.</p> <p>3 Q. The assignment?</p> <p>4 A. The assignment may have been blank.</p> <p>5 Q. Have you seen the assignment in this case?</p> <p>6 A. I think so.</p> <p>7 Did I see the assignment from Bank United to</p> <p>8 Indymac Bank?</p> <p>9 MS. CARBO: I don't know.</p> <p>10 THE WITNESS: I've definitely seen a blank one</p> <p>11 because I'm remembering something.</p> <p>12 BY MR. ICE:</p> <p>13 Q. Okay. Did you bring anything with you today</p> <p>14 regarding an assignment?</p> <p>15 A. I did bring some stuff with me but not that.</p> <p>16 Q. You are stating under oath that the system</p> <p>17 notes indicate something, and system notes are what?</p> <p>18 A. That is referring to what we talked about in</p> <p>19 the beginning about when the loans are boarded on the</p> <p>20 system.</p> <p>21 Q. Is that the MSP Fidelity system?</p> <p>22 A. MSP Fidelity system. It is the -- anyone who</p> <p>23 looks at this loan is working under the assumption that</p> <p>24 all of the origination docs are now in our possession</p> <p>25 because we now are servicing or own the loan.</p> |
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| <p>1 Q. Things that we've talked about today, correct?</p> <p>2 A. Yes.</p> <p>3 Q. That one, however, is objected to.</p> <p>4 You did not answer this question in the</p> <p>5 answers to interrogatories, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. In number three, in answer to interrogatory</p> <p>8 number three, there are some objections that were posed</p> <p>9 there. But you go on to say, notwithstanding such</p> <p>10 objections, at the time the original complaint was filed</p> <p>11 the Plaintiff was unable the locate the physical,</p> <p>12 original note. Although the system notes confirmed that</p> <p>13 the original note was in the possession of the Plaintiff</p> <p>14 from the time of the assignment of the loan from the</p> <p>15 originating lender, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Let's talk about that.</p> <p>18 Originating lender was Bank United, correct?</p> <p>19 A. Yes.</p> <p>20 Q. You're saying that there was an assignment of</p> <p>21 that loan from the originating lender?</p> <p>22 A. Yes.</p> <p>23 Q. And that assignment would have been to</p> <p>24 Indymac?</p> <p>25 A. Indymac Bank.</p> | <p>1 Q. Okay. So when you say the assumption that</p> <p>2 they're in Indymac's possession, that includes physical</p> <p>3 possession by custodians who are not Indymac?</p> <p>4 A. Yes, yes.</p> <p>5 Q. What is MSP stand for in the system?</p> <p>6 A. I don't know. Fidelity is the name of the</p> <p>7 system. I always say MSP because LPS used to also be</p> <p>8 called Fidelity. So I don't know what that stands for,</p> <p>9 Mortgage Servicing -- I don't know.</p> <p>10 Q. It's the name of the program, though?</p> <p>11 A. The entire servicing system. It's the name of</p> <p>12 the entire system.</p> <p>13 Q. Okay. When you sit down at a terminal, is</p> <p>14 that what it says on the screen, MSP Fidelity?</p> <p>15 A. No. Actually, I think now it says director.</p> <p>16 It says director.</p> <p>17 Q. Okay.</p> <p>18 A. Its real name is Fidelity. I say MSP because</p> <p>19 it used to be -- it's evolved in the business.</p> <p>20 I did get a response from my boss on</p> <p>21 Wells Fargo. It's still, kind of, in general, though.</p> <p>22 It's kind of like what I told you. But it comes from my</p> <p>23 boss so you might like that answer better.</p> <p>24 Q. I just want the right answer. I don't care</p> <p>25 who gives that to me.</p> |

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| <p>1 A. It's just that some of these situations are</p> <p>2 unique. He says, on some deals Wells is the master and</p> <p>3 we are the sub. On other they are only the investor and</p> <p>4 we are the master. We own the servicing rights on some</p> <p>5 of these. He needs the loan number to be sure. But I</p> <p>6 already have one of my direct reports looking specific.</p> <p>7 Q. Okay.</p> <p>8 MR. ICE: I'm sure you'll be helpful in</p> <p>9 getting to the bottom of that at some point in this</p> <p>10 litigation.</p> <p>11 MS. CARBO: Sure.</p> <p>12 BY MR. ICE:</p> <p>13 Q. The assignment that you think you may have</p> <p>14 seen, did it purport to assign the note or the mortgage</p> <p>15 or both?</p> <p>16 A. I don't remember.</p> <p>17 Q. Is that something you can look for and get to</p> <p>18 me later?</p> <p>19 A. Yes.</p> <p>20 Q. Where did the note turn up?</p> <p>21 A. At Wells Fargo.</p> <p>22 Q. All right. We've already discussed that you</p> <p>23 have had the opportunity, if not the pleasure, of</p> <p>24 testifying in federal court, federal bankruptcy court,</p> <p>25 correct?</p> | <p>1 Q. Was this by phone or were you actually in</p> <p>2 California?</p> <p>3 A. In California.</p> <p>4 Q. Okay. Do you recall if the testimony was in</p> <p>5 the morning or the afternoon?</p> <p>6 A. Morning.</p> <p>7 Q. Did you fly out there that morning?</p> <p>8 A. That night.</p> <p>9 Q. So you were at work on July 14th?</p> <p>10 A. Yes.</p> <p>11 Q. Signing the affidavit of lost note in this</p> <p>12 case?</p> <p>13 A. Yes.</p> <p>14 Q. So when you're testifying before the judge,</p> <p>15 that was the day after the big FDIC takeover,</p> <p>16 essentially, two days after?</p> <p>17 A. A couple days, yes.</p> <p>18 Q. Is there another sale in the works right now</p> <p>19 for Indymac?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know what the status of that is?</p> <p>22 A. A notice of intent has been signed. But the</p> <p>23 deal has not yet closed.</p> <p>24 Q. And who is the buyer on that?</p> <p>25 A. The person who gave us the intent or gave</p> |
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| <p>1 A. Yes.</p> <p>2 Q. Out in California?</p> <p>3 A. Yes.</p> <p>4 Q. I'm going to hand you an opinion from that</p> <p>5 case. It's called Hwang, H-W-A-N-G, In Re: Hwang. It's</p> <p>6 a bankruptcy case. There was a decision</p> <p>7 September 29, 2008.</p> <p>8 Have you seen this opinion before?</p> <p>9 (Defendant's Exhibit N was marked for</p> <p>10 identification.)</p> <p>11 A. No. I have not.</p> <p>12 Q. Did the -- were you aware whether or not the</p> <p>13 judge in this opinion said that he disbelieved your</p> <p>14 testimony?</p> <p>15 A. Yes.</p> <p>16 Q. You had heard that before today?</p> <p>17 A. While I was on the stand, yes.</p> <p>18 Q. Okay.</p> <p>19 A. It wasn't my testimony so much as because</p> <p>20 Freddie Mac owns this loan he felt like I could not</p> <p>21 represent Freddie Mac who required me to attend the</p> <p>22 hearing as the owner of the loan.</p> <p>23 Q. Okay. The testimony that you gave was on</p> <p>24 July 15th, correct?</p> <p>25 A. Yes.</p> | <p>1 Indymac Bank, Dune Investments, and a consortium of</p> <p>2 hedge funds.</p> <p>3 Q. Did you receive a copy of your notice of</p> <p>4 deposition for today?</p> <p>5 A. Yes.</p> <p>6 Q. And you saw the documents that we asked for</p> <p>7 you to bring with you today?</p> <p>8 A. Yes.</p> <p>9 Q. Were you able to bring those documents with</p> <p>10 you?</p> <p>11 A. Yes. I provided them all to ...</p> <p>12 Q. I'm just going to read what they are.</p> <p>13 Exhibit A has the list of documents. The first one</p> <p>14 being the affidavit that was filed in that Judge Schack</p> <p>15 case in New York which I understand was not actually</p> <p>16 ever filed, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. So you didn't bring that because it</p> <p>19 doesn't exist?</p> <p>20 A. That's correct.</p> <p>21 Q. The deponent's, that would be you, most recent</p> <p>22 curriculum vitae.</p> <p>23 (Defendant's Exhibit O was marked for</p> <p>24 identification.)</p> <p>25 MS. CARBO: That's my only copy, if we could</p> |




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| <p>1 have it marked. And I'm going to request copies of</p> <p>2 everything that's been marked here today.</p> <p>3 BY MR. ICE:</p> <p>4 Q. The next document was the corporate resolution</p> <p>5 of other official action of Indymac Bank, FSB, directors</p> <p>6 making you a vice president.</p> <p>7 A. Making me a vice president?</p> <p>8 Q. Yes. Or authorizing you to sign as a vice</p> <p>9 president.</p> <p>10 A. Okay. Indymac Bank, right?</p> <p>11 MS. CARBO: Right.</p> <p>12 THE WITNESS: That's Indymac Bank.</p> <p>13 MR. ICE: Make this P.</p> <p>14 (Defendant's Exhibit P was marked for</p> <p>15 identification.)</p> <p>16 BY MR. ICE:</p> <p>17 Q. Okay. All documents, computer entries,</p> <p>18 digital images, electronic correspondence, or other</p> <p>19 written materials regarding the search for the lost note</p> <p>20 including, but not limited to, talks about location</p> <p>21 searched.</p> <p>22 And my feeling about this, this would include</p> <p>23 those e-mails that we've talked about?</p> <p>24 A. It really is only the e-mail traffic that went</p> <p>25 back and forth, yes.</p> | <p>1 transfer by Plaintiff or a lawful seizure, period, end</p> <p>2 quote.</p> <p>3 Did you bring any documents responsive to</p> <p>4 that?</p> <p>5 A. No. But I will.</p> <p>6 Q. Okay. That would be included in the e-mails?</p> <p>7 A. Yes.</p> <p>8 Q. Number seven is very similar but asks for</p> <p>9 those same kinds of documents relating to your</p> <p>10 statements -- your statement that the whereabouts of the</p> <p>11 note cannot be determined; same answer?</p> <p>12 A. Same answer.</p> <p>13 Q. All documents that you reviewed in preparation</p> <p>14 of the affidavit of lost note filed in this case.</p> <p>15 Did you bring --</p> <p>16 A. Same answer.</p> <p>17 Q. Well, the e-mails that you're talking about</p> <p>18 you didn't review in preparing the affidavit of lost</p> <p>19 note, correct?</p> <p>20 A. That's right.</p> <p>21 Q. Someone else may have reviewed those but you,</p> <p>22 personally, didn't review those?</p> <p>23 A. That's right.</p> <p>24 Q. However, you did personally review a copy of</p> <p>25 the note from WebX, correct?</p> |
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| <p>1 Q. Did you bring that with you today?</p> <p>2 A. I thought I had. I don't have it with me</p> <p>3 because I was checking through my stuff on the plane.</p> <p>4 But he's gonna send that. He hasn't yet.</p> <p>5 MS. CARBO: We'll return to that, hopefully,</p> <p>6 before we finish here today.</p> <p>7 MR. ICE: Okay. Well, I'm getting close to</p> <p>8 wrapping up.</p> <p>9 BY MR. ICE:</p> <p>10 Q. Number five, all documents, computer entries,</p> <p>11 digital images, electronic correspondence, that would be</p> <p>12 e-mail, or other written materials regarding the</p> <p>13 determination that Plaintiff was in possession of the</p> <p>14 subject note and entitled to enforce it when loss of</p> <p>15 possession occurred. That's in quotes. That's from</p> <p>16 your lost note.</p> <p>17 Did you bring any documents responsive to</p> <p>18 that?</p> <p>19 A. That'll be included in the ...</p> <p>20 Q. The e-mails?</p> <p>21 A. Yes.</p> <p>22 Q. Number six, all documents, computer entries,</p> <p>23 digital images, electronic correspondence, or other</p> <p>24 written materials regarding the determination that,</p> <p>25 quote, the loss of possession was not the result of a</p> | <p>1 A. No. It was attached. But I can't say I</p> <p>2 reviewed it before I signed it.</p> <p>3 Q. Okay. Did you review any documents that we</p> <p>4 haven't talked about yet in preparation for your</p> <p>5 deposition today?</p> <p>6 A. Yes.</p> <p>7 Q. What did you review?</p> <p>8 A. The system notes, the current status of the</p> <p>9 loan, if there'd been any lost mit efforts, and to just</p> <p>10 get a sense of the borrower.</p> <p>11 Q. Okay. Now when you say system notes, is there</p> <p>12 a particular page you call up to look at?</p> <p>13 A. There's several, yes.</p> <p>14 Q. What would those pages be?</p> <p>15 A. NOTS was a work station. The other is DLQ1.</p> <p>16 Most of the notes go to NOTS. But I always go to DLQ1</p> <p>17 because that's the collection comments and sometimes</p> <p>18 those notes may or may not make it to NOTS.</p> <p>19 Q. Now are both of these pages part of that</p> <p>20 Fidelity system?</p> <p>21 A. Yes.</p> <p>22 Q. What information is shown on NOTS?</p> <p>23 A. Any comment that a person has made to the loan</p> <p>24 there that's in the foreclosure work station, the</p> <p>25 bankruptcy work station, the tax work station, the</p> |

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| <p>1 insurance work station, they all roll up so that you 2 should only have one place to go to read all of the 3 notes no matter what department is working on the loan. 4 Q. Okay. I have seen produced in other cases 5 what I typically call, for lack of a better name, it 6 looks like, to me, a servicer log. There's comments in 7 there from the servers. Sometimes from the attorneys 8 themselves. Sometimes from these outside vendors. 9 Is that what you're talking about? 10 A. Huh-uh. In process management, there are 11 notes in process management. But they're not so much 12 pertaining to the loan outside of we could find the doc 13 or we couldn't find the doc or some of the communication 14 with our attorneys which, also, a lot of those notes map 15 to our system of record and would be in NOTS. 16 Q. Okay. Some of the comments in there were 17 actual phone calls to my client where they tried to -- 18 A. That would be DLQ1. 19 Q. Okay. Other times there are comments in there 20 about the note, original note, shipped to counsel and a 21 date. 22 A. That would be something that was in process 23 management. But it wouldn't be a note. It would be a 24 step that was completed. 25 Q. Okay. The printouts I'm thinking of have</p> | <p>1 related type -- let me look at one. 2 Q. Okay. 3 A. So it's really customer service type related. 4 So they're making a change to the system or they want 5 the world to know something. So in this case they're 6 saying that this loan has to be serviced a certain way 7 because of who the investor is. T-S-K stands for task. 8 So that would be requests going to and from different 9 groups. And that's how they're tracked, by tasks. 10 Q. Because the record's going to get kind of 11 confused here. Let's go back to Exhibit Q and get you 12 to, I know you said already, but let's get it on the 13 record, what Exhibit Q is. 14 (Defendant's Exhibit Q was marked for 15 identification.) 16 A. Exhibit Q a screen shot of DLQ1. And that 17 station within Fidelity MSP tracks all of the collection 18 calls to the borrower, dialer calls to the borrower. It 19 also will track if the borrower calls in. Even if the 20 loan is in foreclosure, it goes to a queue that works in 21 the customer service collection area and they track all 22 their conversations there. 23 Q. And this is a document you looked at before 24 being deposited today? 25 A. Yes.</p> |
| Page 90 | Page 92 |
| <p>1 dates on the left-hand side. 2 A. It depends on the servicing system. 3 Is it the same servicing system? 4 Q. I couldn't tell you. I've only seen two or 5 three of them, and they don't really say where they're 6 from. 7 A. Can I show him? 8 MS. CARBO: Just bear with me for a moment. 9 Just making sure there's no attorney/client 10 communication. 11 THE WITNESS: This is an example of DLQ1. 12 MS. CARBO: It's actually not an example. It 13 is the DLQ1 for this loan, right? 14 THE WITNESS: So that's a DLQ1 and that's, 15 kind of, a call log. This is the NOTS notes that I 16 was telling you about that will combine all the 17 different groups. And the way that you read this 18 is C-O-L is collections. If you see F-O-R, that's 19 foreclosure notes. If you see B-N-K, that's 20 bankruptcy notes. If you see H-A-Z-N, that's 21 hazard notes. If you see T-X-N here, that would be 22 tax notes. 23 BY MR. ICE: 24 Q. I do see S-E-R. 25 A. That's really system changes, customer service</p> | <p>1 Q. How do you normally search for this screen, is 2 it by loan number? 3 A. Yes. 4 Q. Can you look it up by borrower name? 5 A. Yes. 6 Q. Any other ways that you're able to pull this 7 up? 8 A. Property address, investor number. 9 Q. Min number? 10 A. I don't know if we can do that. Normally 11 we're going to hit it with -- let me think. Property 12 address and borrower are the main ways. I don't know. 13 I've never had to go to that extent because we usually 14 can get them. 15 Q. Okay. And this group of documents we can mark 16 as the next exhibit. This is all one thing. 17 (Defendant's Exhibit R was marked for 18 identification.) 19 A. Yes. 20 Q. Can you identify Exhibit R, for the record, 21 please? 22 A. It is also screen shots of all of the notes 23 for this particular loan. It's called NOTS. And any 24 group within the bank on the servicing system that 25 touched the loan, for any reason, would come -- will put</p> |

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| <p>1 notes in their work station. The foreclosure work 2 station is separate from the bankruptcy work station, 3 separate from the tax, separate from the hazard. NOTS 4 combines all those notes and collates them by date. So 5 the idea is you just have one place to go to get the 6 picture of what's going on. 7 Q. Did you personally print them out? 8 A. No. I asked someone that reports to me to 9 print them out. 10 Q. Whose initials are those? 11 A. She's just telling me that's the MSP, Fidelity 12 MSP. 13 Q. Okay. Was there anything in this document 14 that was significant for you today in what you testified 15 to today? 16 A. No. As it relates to lost note affidavit? 17 Q. As it relates to anything that you talked 18 about. 19 A. The only thing that struck me was the fact 20 that we offered the borrower a bulk modification and she 21 didn't respond to it. So usually in situations like -- 22 we want to work something out with the borrower. We 23 want her to keep her home. So to not have a response 24 from her but get to the point where we're having 25 depositions, kind of, you know, is, like, does she want</p> | <p>1 Q. Okay. And how is the determination whether a 2 case is being litigated? 3 A. This now is a litigated case. 4 Q. Okay. 5 A. Once -- and not everything would be considered 6 litigated. But the order that I received from the 7 New York case, once I received an order like that, if I 8 had gotten that order, that would be considered 9 litigated which I would send to inside counsel. When 10 this came up we sent it to our internal counsel. And 11 once we do that, all of the notes -- I mean, the 12 day-to-day bankruptcy or foreclosure notes will be on 13 the MSP Fidelity. But anything client privileged goes 14 into another system called Serengeti. 15 Q. So the mere fact that a foreclosure action is 16 filed, that's not considered litigation? 17 A. That's right. 18 Q. How about if an answer is filed in the case? 19 A. Then it starts to become litigated. It 20 depends on what that answer leads to. If it's satisfied 21 there it never gets set up in Serengeti. The lit team 22 never really gets involved in it. Once a file becomes 23 litigated -- I wonder if I can say this on the record. 24 Q. I don't want you to reveal any 25 attorney/client --</p> |
| Page 94 | Page 96 |
| <p>1 her home, because we want to keep her in her home. And 2 the best way that we can do that is to get in 3 communication with her or she respond some of the stuff 4 that we're mailing her. 5 Q. Can you tell by this whether it was mailed to 6 her directly or to her attorney? 7 A. I know that it was mailed to her directly 8 because there would have been a comment, then, 9 authorized third party requested the information and 10 that information was sent to the authorized third party. 11 Q. Did these notes track who the authorized third 12 parties are? 13 A. Yes. 14 Q. Am I in here somewhere? 15 A. I didn't -- no. I don't believe so. 16 Q. I'm not surprised. I often call and the bank 17 said I'm not going to talk to you because you're not 18 authorized. Not your bank but in general. 19 A. I don't have a bank. I work for one. 20 Q. If an attorney requests attorney contact only, 21 is that tracked in here? 22 A. If it's now -- if a case becomes litigated it 23 is no longer tracked in MSP. It's tracked in an 24 attorney/client privileged database that the litigation 25 team manages.</p> | <p>1 A. It's not attorney/client. 2 MS. CARBO: Or inhouse counsel. 3 THE WITNESS: No. It's not that. It's 4 more -- I manage the bankruptcy and foreclosure 5 department. So a lot of my job is to, if there's a 6 way to work out the default, to make sure that that 7 happens. It saddens me to get in a situation like 8 we are in today because the borrower's attorney 9 fees start racking up. If it becomes litigated the 10 file goes to a litigation attorney and then we move 11 away from a blanket with the foreclosure fees are 12 the most that we'll allow the firm to charge us and 13 it starts going hourly. And so now the chances of 14 helping the borrower stay in her home lessens 15 because of all the attorney fees. 16 So it doesn't move to the lit team unless it's 17 something that's really starting to turn ugly and 18 litigated. And then, of course, the attorney 19 fees -- we don't have any -- I shouldn't say we 20 don't have any control over them. We start getting 21 billed hourly where we have an industry standard of 22 how much the firms can charge us per state on an 23 unlitigated case. That goes out the door once we, 24 you know, get into litigation. 25</p> |

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| <p>1 BY MR. ICE:</p> <p>2 Q. And those are -- the unlitigated ones are flat</p> <p>3 fees?</p> <p>4 A. Yes, generally.</p> <p>5 Q. Is that a statewide flat fee?</p> <p>6 A. Generally.</p> <p>7 Q. Do you know what it is in Florida?</p> <p>8 A. Not off the top of my head. Not off the top</p> <p>9 of my head.</p> <p>10 Q. \$1,400?</p> <p>11 A. That sounds right.</p> <p>12 Q. When a case starts to get litigated that</p> <p>13 Indymac is servicing but not the owner, is there a fund</p> <p>14 of the owner that's set up by the owner that Indymac</p> <p>15 gets paid from for this litigation?</p> <p>16 A. It depends. It depends on who the -- for a</p> <p>17 Fannie Mae loan, if we have to litigate a file, we do</p> <p>18 not get reimbursed for that. It's out of pocket. Or if</p> <p>19 the borrower brings the loan current, of course, that</p> <p>20 cost is passed onto the borrower because those are</p> <p>21 recoverable fees and costs.</p> <p>22 Q. Let's take, for example, a Deutsche Bank, you</p> <p>23 know, one of these trusts.</p> <p>24 A. We would pass the cost onto the trust,</p> <p>25 absolutely.</p> | <p>1 lien on title or something like that, we would not</p> <p>2 pass -- we may or may not pass it onto the trust. So</p> <p>3 there's a bunch of factors that go into whether or not</p> <p>4 the costs are passed onto the trust. But it is the</p> <p>5 cost -- it's the true loss, nothing plus.</p> <p>6 Q. Okay. Before it goes into default Indymac</p> <p>7 gets paid, taking, for example, one of these Deutsche</p> <p>8 trusts, Indymac gets paid a percentage of the, to</p> <p>9 service that, a percentage of the entire loan, the pool</p> <p>10 of trusts, excuse me, the trust pool of mortgages?</p> <p>11 A. A servicing fee, yes, up to a certain point of</p> <p>12 delinquency.</p> <p>13 Q. Since I have it written here, I'm going to try</p> <p>14 it rephrase it so it actually makes sense. The</p> <p>15 servicing fee for Indymac for one of these trusts is a</p> <p>16 percentage of the outstanding balance of the securitized</p> <p>17 mortgage pool.</p> <p>18 A. Yes. Up to a certain time of delinquency.</p> <p>19 After that time, you reach that time, the bank no longer</p> <p>20 can collect a servicing fee.</p> <p>21 Q. Okay. Do you know what that percentage is or</p> <p>22 is it different for every trust?</p> <p>23 A. It depends on the PSA.</p> <p>24 Q. And, for the record, PSA is pooling servicing</p> <p>25 agreement?</p> |
| Page 98 | Page 100 |
| <p>1 Q. And there's a fund for that, correct?</p> <p>2 A. Yes.</p> <p>3 Q. In each trust?</p> <p>4 A. Yes.</p> <p>5 Q. And in addition to passing the cost on</p> <p>6 there's -- it's really cost plus, correct? In other</p> <p>7 words, you get a --</p> <p>8 A. Interest.</p> <p>9 Q. -- percentage over and above what you actually</p> <p>10 spend?</p> <p>11 A. No. It's real -- the interest is whatever the</p> <p>12 loss is for servicing the loan. But a decision is made</p> <p>13 whether or not the losses can be passed onto the trust.</p> <p>14 I also belong to a committee. You'll see that in my</p> <p>15 resumé. It's called the Trustee for Loan Loss</p> <p>16 Committee. And what we do each month is look at loans</p> <p>17 that made it through the entire pipeline, meaning they</p> <p>18 sold out of RAO, and we look at the whole loss and</p> <p>19 decide if this is something we can pass onto the trust</p> <p>20 or if we take the hit because, you know, there can be</p> <p>21 various reasons.</p> <p>22 Maybe there was a senior lien on title which,</p> <p>23 when we bought the loan, we're hoping that whoever</p> <p>24 originated the loan did that kind of homework. And if</p> <p>25 for any reason we had to pay attorney fees forcing a</p> | <p>1 A. Yes. The timing also depends on the PSA;</p> <p>2 generally, 90 to 120 days delinquent.</p> <p>3 Q. Does Indymac also make a float income between</p> <p>4 the time that the borrower pays its payment to Indymac</p> <p>5 to the time that you pass it along to the trust?</p> <p>6 A. I don't know.</p> <p>7 Q. Short of any questions that I might have based</p> <p>8 on the information that we're waiting for, I'm finished.</p> <p>9 I don't know if you want to wait for that, continue to</p> <p>10 wait for that, or I would be happy to just look at them</p> <p>11 later. If I have a question or two, I'm sure we can do</p> <p>12 it by phone or something.</p> <p>13 (A recess was taken.)</p> <p>14 BY MR. ICE:</p> <p>15 Q. We're back on the record. We, apparently,</p> <p>16 have some additional information about the ownership of</p> <p>17 the mortgage loan.</p> <p>18 What have you learned since we went on break?</p> <p>19 A. Okay. JC San Pedro, one of my direct reports,</p> <p>20 researched on this specific loan, who owns it and why,</p> <p>21 okay. So can I just read his message or do you want me</p> <p>22 to tell you what it means in general?</p> <p>23 Q. Whatever is easiest for you.</p> <p>24 A. We repurchased this loan from Freddie Mac on</p> <p>25 June 16, 2008 because the broker we bought it from was</p> |

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| <p>1 on Freddie's exclusionary list and, therefore, our sale 2 to Freddie Mac was invalid. Since it was, at one time, 3 with Freddie Mac the custodian of the file would have 4 been Deutsche. The loan originally closed on 5/31/07. 5 Part two to that is -- 6 MS. CARBO: I think that answers the question. 7 THE WITNESS: Okay. 8 BY MR. ICE: 9 Q. Well, but it raises another question which is: 10 Why was it with Wells Fargo? 11 A. Why was the original note with Wells Fargo, 12 okay. When Sylvia Carballo was requesting the note from 13 Wells Fargo in June 2008, because some of Wells Fargo 14 sale numbers are actually in custody of Deutsche Bank, 15 it was at the same time that Indymac Bank was in the 16 process of repurchasing the loan from Freddie Mac. So 17 that's where the confusion was with where the note, the 18 actual note, was. 19 Q. And I'm still confused. 20 A. You're still confused, okay. So she ordered 21 it from Deutsche because Deutsche is Freddie's 22 custodian. 23 Q. Okay. 24 A. We were in the process of repurchasing the 25 loan which is how the note got from Deutsche to</p> | <p>1 A. Yes. 2 Q. That's good news. 3 A. And in most cases we don't need the authority 4 of the trust. Fannie's and Freddie's, we most 5 definitely need their approval. Most investors, private 6 investors, allow us to manage the loan as we would our 7 own. 8 Q. I haven't looked at any PSAs particular to 9 Indymac. But my impression is that a lot of PSA 10 restrict the servicer from writing down the principal. 11 A. Yes. That is true. And 12 Sheila Barer(phonetic) was -- and, of course, I'm just 13 speak from my understanding. I'm not high enough on the 14 scale to know exactly what is in the minds of the FDIC. 15 But my understanding is at some point in the future she 16 may begin to look into the possibility of principal 17 reductions. But today they're not possible. 18 Q. Okay. With securitized loans? 19 A. She's speaking specifically for Indymac Bank 20 owned loans. 21 Q. So right now there is no potential in this 22 particular case for a write down of the principal? 23 A. Not today. Never know tomorrow. 24 Q. Okay. 25 MS. CARBO: For the record, there's other</p> |
| Page 102 | Page 104 |
| <p>1 Wells Fargo. 2 Q. Why would it go to Wells Fargo instead of back 3 to Indymac? 4 A. In this particular case, Wells Fargo is the 5 custodian for Indymac Bank. 6 Q. Okay. 7 A. We have, like we talked about earlier, several 8 doc custodians. And I may have even alluded to the 9 possibility of something like this happening where it 10 can go from one custodian to another. So this happens 11 to be a case like that. 12 Q. So as the loan is right now, it's not part of 13 a securitized pool? 14 A. That's right. It's Indymac. 15 Q. Indymac Federal Bank? 16 A. Owned. 17 Q. Owned? 18 A. Yes. 19 Q. Which means that the bank, Indymac Federal 20 Bank, has complete authority, ability to negotiate that 21 loan? 22 A. Yes. 23 Q. To settle this case? 24 A. Yes. 25 Q. Without having to consult a trust?</p> | <p>1 items that we can negotiate. 2 THE WITNESS: Yes. 3 MS. CARBO: So we're always open to 4 negotiation. 5 MR. ICE: I'll be happy to talk to you off the 6 record about it. 7 I am done. Thank you very much. 8 MS. CARBO: I have no questions. 9 MR. ICE: It was a pleasure. 10 MS. CARBO: Do you want to read this before it 11 can be used against you? I think that we want to 12 read. 13 (A recess was taken.) 14 MR. ICE: We have an agreement that there are 15 some e-mails generated at the time of the search 16 for the lost note that were not available to us 17 today. They're going to try to provide that to me 18 at which time I, hopefully, won't have any 19 questions. But if I do we'll talk about an 20 opportunity to ask some additional questions on 21 those. 22 MS. CARBO: Possibly telephonically. 23 MR. ICE: Yes. 24 MS. CARBO: If it can be done. 25 MR. ICE: Yes.</p> |

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| <p style="text-align: right;">Page 105</p> <p>1 MS. CARBO: Fine. 2 (Witness excused.) 3 (Deposition was concluded.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> | <p style="text-align: right;">Page 107</p> <p>1 CERTIFICATE 2 THE STATE OF FLORIDA 3 COUNTY OF PALM BEACH 4 5 I, Kristina McCollum, Florida Professional 6 Reporter and Notary Public in and for the State of 7 Florida at Large, do hereby certify that I was 8 authorized to and did stenographically report the 9 deposition of ERICA A. JOHNSON-SECK; that a review of 10 the transcript was requested; and that the foregoing 11 transcript, pages 1 through 110, is a true record of my 12 stenographic notes. 13 14 I further certify that said deposition was 15 taken at the time and place hereinabove set forth and 16 that the taking of said deposition was commenced and 17 completed as hereinabove set out. 18 I further certify that I am not a relative, 19 employee, or attorney, or counsel of any of the parties, 20 nor am I a relative or employee of any of the parties' 21 attorney or counsel connected with the action, nor am I 22 financially interested in the action. 23 The foregoing certification of this transcript 24 does not apply to any reproduction of the same by any 25 means unless under the direct control and/or direction of the certifying reporter. Signed this 10th day of February, 2009.  _____ KRISTINA MCCOLLUM 21 22 23 24 25</p> |
| <p style="text-align: right;">Page 106</p> <p>1 CERTIFICATE OF OATH 2 THE STATE OF FLORIDA 3 COUNTY OF PALM BEACH 4 5 I, Kristina McCollum, Florida Professional 6 Reporter, Notary Public, State of Florida, certify that 7 ERICA A. JOHNSON-SECK personally appeared before me on 8 5th of February, 2009 and was duly sworn. 9 10 Signed this 10th day of February, 2009. 11 12 13 14 15  _____ Kristina McCollum Notary Public-State of Florida 16 My Commission Expires: May 1, 2012 My Commission No.: #DD 774036 17 18 19 20 21 22 23 24 25</p>  | <p style="text-align: right;">Page 108</p> <p>DATE: February 10, 2009 TO: ERICA A. JOHNSON-SECK C/O LAURA M. CARBO KAHANE & ASSOCIATES, P.A. 1815 Griffin Road, Suite 104 Dania Beach, Florida 33004 IN RE: INDYMAC BANK V MALERMAN CASE NO.: 50 2008 CA 018165 XXXX MB Please take notice that on Thursday, the 5th of February, 2009, you gave your deposition in the above-referred matter. At that time, you did not waive signature. It is now necessary that you sign your deposition. Please call our office at the below-listed number to schedule an appointment between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, at our office. If you do not read and sign the deposition within a reasonable time, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court. If you wish to waive your signature, sign your name in the blank at the bottom of this letter and return it to us. Very truly yours, _____ Kristina McCollum J. Consor & Associates 1655 Palm Beach Lakes Blvd., Suite 500 West Palm Beach, Florida 33401 I do hereby waive my signature. _____ ERICA A. JOHNSON-SECK I do hereby waive my signature: cc: Via transcript: THOMAS E. ICE, ESQ. LAURA M. CARBO, ESQ. file copy</p> |

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1 C E R T I F I C A T E
 2 - - -
 3 THE STATE OF FLORIDA
 4 COUNTY OF PALM BEACH
 5 I hereby certify that I have read the
 6 foregoing deposition by me given, and that the
 7 statements contained herein are true and correct to the
 8 best of my knowledge and belief, with the exception of
 9 any corrections or notations made on the errata sheet,
 10 if one was executed.
 11
 12 Signed this ____ day of _____, 2009.
 13
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 15
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 17 _____
 18 ERICA A. JOHNSON-SECK
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1 E R R A T A S H E E T
 2 IN RE: INDYMAC V MALERMAN
 3 DEPOSITION OF: ERICA A. JOHNSON-SECK TAKEN: 2/5/09
 4 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE
 5 PAGE # LINE # CHANGE REASON
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 20 _____
 21 Please forward the original signed errata sheet to this
 22 office so that copies may be distributed to all parties.
 23 Under penalty of perjury, I declare that I have read my
 24 deposition and that it is true and correct subject to
 25 any changes in form or substance entered here.
 DATE: _____
 SIGNATURE OF DEPONENT: _____
 SIGNATURE OF DEPONENT: _____

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