

1 IN THE CIRCUIT COURT
2 OF THE FIFTEENTH JUDICIAL CIRCUIT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA
4 CASE NO.: 2009 CA 007764

5 GMAC MORTGAGE, LLC,
6 Plaintiff,

7 Vs.

8 GENEL ALEXIDA,
9 Defendant.
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12

13 _____/

14 * * * * *

15 DEPOSITION OF MARLIN KNAPP

16 TAKEN AT THE INSTANCE OF THE DEFENDANT

17 * * * * *

18
19 DATE: February 23, 2011

20 PLACE: 2041 Vista Parkway

21 Suite 102

22 West Palm Beach, Florida 33411

23 TIME: 10:05 - 11:43 o'clock a.m.
24
25

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 FLORIDA DEFAULT LAW GROUP, PL 3 9119 Corporate Lake Drive 4 Suite 300 5 Tampa, FL 33634 6 813-342-2200; fax 813-251-1541 7 Attorneys for the Plaintiff(s) 8 BY: ELIZABETH A. WULFF, ESQUIRE 9 Ewulff@defaultlawfl.com 10 11 JOSEPH MANCILLA, ESQUIRE 12 Jmancilla@defaultlawfl.com 13 14 KORTE & WORTMAN 15 2041 Vista Parkway 16 Suite 102 17 West Palm Beach, FL 33411 18 561-228-6200; fax 561-228-6202 19 Attorney for the Defendant(s) 20 BY: BRIAN KORTE, ESQUIRE 21 Bkorte@briankortepl.com 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 The deposition of MARLIN KNAPP, witness, was taken 2 before me, Rachele Cibula, Notary Public, State of 3 Florida at large, 2041 Vista Parkway, Suite 102, in the 4 City of West Palm Beach, County of Palm Beach, State of 5 Florida, pursuant to notice in said cause for the 6 purpose of taking said deposition at the instance of the 7 Defendant in the above-styled action pending in the 8 above-named Court. 9 THEREUPON, 10 MARLIN KNAPP, 11 being by me first duly sworn to testify the whole truth 12 as is hereinafter certified, testifies as follows: 13 DIRECT EXAMINATION 14 BY MR. KORTE: 15 Q. Sir, my name is Brian Korte. 16 Will you give me the benefit of your first name 17 and last name, spelling your last. 18 A. First name, Marlin, M-a-r-l-i-n. Last name is 19 Knapp, K-n-a-p-p. 20 Q. Mr. Knapp, you're here in the case of GMAC 21 Mortgage versus Alexida, A-l-e-x-i-d-a. This is a 22 foreclosure pending in Palm Beach County. You were 23 asked to come here today as the person with the most 24 knowledge from GMAC regarding the trust agreement, 25 transfer of the note, calculation of damages, affidavit</p>
<p style="text-align: right;">Page 3</p> <p>1 MARLIN KNAPP 2 DIRECT EXAMINATION BY MR. KORTE 4 3 CROSS EXAMINATION BY MS. WULFF 48 4 Defendant's Exhibit No. 1 marked for 12 5 identification 6 Plaintiff's Exhibit No. 2 marked for 14 7 identification 8 Defendant's Exhibit No. 3 marked for 23 9 identification 10 Defendant's Exhibit No. 4 marked for 31 11 identification 12 Defendant's Exhibit No. 5 marked for 41 13 identification 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 of amounts due and owing and lost note circumstances. 2 Is that your understanding of why you're here today? 3 A. Yes. 4 Q. Who designated you at GMAC to come here today? 5 A. My manager, Juan Aguirre. 6 Q. Can you spell Mr. Aguirre's last name? 7 A. A-g-u-i-r-r-e. 8 Q. Let's back up. Can you give me the benefit of 9 your educational background starting after you left high 10 school going forward? 11 A. Attended the University of Central Oklahoma. 12 Received a political Science degree. 13 Q. When did you enter the University of Oklahoma? 14 A. '94. 15 Q. When did you graduate? 16 A. '98. 17 Q. What did you do next, if anything, in education? 18 A. Went to the University of Oklahoma and received a 19 Juris Doctor. 20 Q. When did you enter the University of Oklahoma JD 21 program? 22 A. '98. 23 Q. When did you exit? 24 A. '01. 25 Q. Did you take the Oklahoma Bar?</p>

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1 A. Yes.
 2 Q. Did you pass?
 3 A. Yes.
 4 Q. Are you still licensed in Oklahoma to practice
 5 law?
 6 A. Yes, I am.
 7 Q. Are you licensed to practice law in any other
 8 jurisdictions?
 9 A. Texas.
 10 Q. Sir, where do you work right now?
 11 A. Dallas, Texas.
 12 Q. What --
 13 A. GMAC Mortgage.
 14 Q. Starting from high school or from the time you --
 15 starting from the time of you left the University of
 16 Oklahoma law program, where did you have employment?
 17 A. Worked at the Law Firm of Vera Aktensal.
 18 Q. Where else?
 19 A. Law firm of Morgan and Associates, Beal Bank,
 20 B-e-a-l.
 21 Q. Thanks.
 22 A. No problem.
 23 Q. Where else?
 24 A. Homecomings Financial slash GMAC Mortgage.
 25 Q. When did you join Homecomings slash GMAC?

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1 A. December of '03.
 2 Q. You say, Homecomings slash GMAC. Why do you say
 3 slash?
 4 A. The two companies merged in 2007.
 5 Q. Let's start with the easy part. Where did you
 6 work first? Homecomings or GMAC?
 7 A. Homecomings.
 8 Q. You joined Homecomings in 2003?
 9 A. Yes.
 10 Q. In what capacity did you join Homecomings?
 11 A. Loss mitigation specialist.
 12 Q. How long did you hold that position at
 13 Homecomings?
 14 A. Until January '09.
 15 Q. What happened in January of '09?
 16 A. Transitioned to the bankruptcy loss mitigation
 17 department.
 18 Q. Is that the position you currently hold?
 19 A. No.
 20 Q. What position did you hold next after the
 21 bankruptcy mitigation?
 22 A. My title now is senior mitigation analyst.
 23 Q. Did you hold a position after that?
 24 A. No.
 25 Q. When did Homecomings merge with GMAC?

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1 A. 2007.
 2 Q. Did Homecomings cease to exist in 2007, or did
 3 GMAC cease to exist in 2007?
 4 A. I think it still existed, but Homecomings
 5 Financial wasn't a functioning company after that point
 6 or business after that point.
 7 Q. How did that happen, if you know? If you have a
 8 merger, essentially, you have one company buying the
 9 other company. They become one. Or was this an asset
 10 purchase that happened in 2007, if you know?
 11 A. I'm not sure.
 12 Q. Have you seen documents with regards to the
 13 merger?
 14 A. Can you be more specific what documents you're
 15 referring to?
 16 Q. Have you ever seen any document relating to a
 17 merger of the two companies?
 18 A. I have read e-mails.
 19 Q. Other than -- I'm sorry. I didn't mean to
 20 interrupt.
 21 A. No. I just noticed from the company.
 22 Q. Have you ever seen a merger document that would
 23 have been filed with the secretary of any state?
 24 A. No.
 25 Q. Any document filed with the SEC regarding a

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1 merger?
 2 A. No.
 3 Q. Have you seen any proof that a merger actually
 4 occurred other than internal e-mails at
 5 GMAC/Homecomings?
 6 A. No.
 7 Q. You testified a little while ago that you thought
 8 Homecomings continued to exist in some capacity; is that
 9 correct?
 10 A. Yes.
 11 Q. Is that your testimony and your belief that you
 12 believe Homecomings still exists in some capacity?
 13 A. It's my understanding they have not ended that
 14 business. I believe they still exist.
 15 Q. Whether they transacted business or not, do you
 16 believe they exist?
 17 A. I believe so.
 18 Q. Well, let's go and start a little bit with your
 19 knowledge in this particular case of GMAC Mortgage
 20 versus Genel Alexida. Was this note ever the subject of
 21 a trust or pool, to your knowledge?
 22 A. I don't believe there was one.
 23 Q. What's your belief based upon?
 24 A. The fact that we filed under GMAC Mortgage in our
 25 pleading, in our complaint.

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<p>1 Q. Just so that I understand where you're coming 2 from, the fact that GMAC Mortgage Company -- Mortgage, 3 LLC, filed this complaint leads you to believe that it's 4 not a part of a trust? 5 A. Yes. 6 Q. Is there anything else that leads you to believe 7 that it's not a part of a trust? 8 A. Not that I recall at this point. 9 Q. Have you ever known GMAC Mortgage to be a 10 servicer of a note? 11 A. Yes. 12 Q. Have you ever known GMAC Mortgage, LLC, to be a 13 servicer of notes that are contained in a pool? 14 A. Yes. 15 Q. Have you ever known GMAC Mortgage, LLC, to file 16 in the name of the servicer when filing on behalf of a 17 pool? 18 A. I wouldn't expect them to do that. 19 Q. Have you ever seen it happen where GMAC Mortgage, 20 LLC, filed as the servicer when it was the -- not the 21 true owner but, in fact, the pool was? 22 A. Well, I'm not aware of an instance where that 23 happened. 24 Q. Fair enough. Who is servicing this loan, if you 25 know?</p>	<p>1 A. The complaint. 2 Q. What about the complaint, specifically? 3 A. Ultimately, the style of the complaint. 4 Q. Anything else? 5 A. I don't recall the specifics. 6 Q. Did you have an opportunity to review the 7 complaint before coming here today? 8 A. Yes. 9 (Defendant's Exhibit No. 1 marked for identification.) 10 BY MR. KORTE: 11 Q. Sir, I'm going to hand you what's been marked as 12 Defendant's 1. Can you tell me what that document is? 13 A. It is the foreclosure complaint. 14 Q. Can you review that document and tell me, in 15 regards to my previous question, as to what sections of 16 the complaint you were relying upon for your prior 17 testimony? 18 A. Ultimately, the GMAC Mortgage, LLC, as Plaintiff. 19 Q. While you have it in your hand, let me ask you. 20 You testified previously, I think, that you said you 21 weren't aware as to who actually owned the note, 22 correct? 23 A. At this point, I don't recall. 24 Q. Well, is there any document that would refresh 25 your recollection?</p>
<p>1 A. GMAC Mortgage. 2 Q. Who's the owner of the note, if you know? 3 A. I don't recall. 4 Q. You don't know who actually owns this physical 5 note? 6 A. No, I don't. 7 Q. If GMAC is the servicer of the note but isn't the 8 owner, how is GMAC filing a lawsuit in its own name? 9 A. I suspect they're the owner. But I don't -- I 10 don't recall specifically on this one, so I didn't want 11 to testify to that. 12 Q. Well, let's start with what you're here to talk 13 about today. Today you're here as a person with the 14 most knowledge regarding the trust agreement as it 15 applies to this note, correct? 16 A. If there is one. 17 Q. Is there one? 18 A. I don't believe so. 19 Q. Well, I'm asking do you know if there is one? 20 A. I don't think so. 21 Q. That's based upon what review of what documents? 22 A. It's based on the pleadings and the information 23 contained on our system. 24 Q. Specifically, what pleadings are you referring 25 to?</p>	<p>1 A. Possibly the promissory note and mortgage. 2 Q. Can you do me a favor while I'm looking for the 3 promissory note and document so I can hand it to you and 4 give it to you, can you tell me what section and 5 specifically what line in that complaint says GMAC is 6 not the owner of the note but, in fact, just servicing? 7 A. Well, there's a provision number -- let me make 8 sure this is -- I believe number four under Count One. 9 Q. What does that say, sir? 10 A. Plaintiff as servicer for the owner and acting on 11 behalf of the owner with authority to do so is the 12 present designated holder of the note and mortgage with 13 authority to pursue the present action. 14 Q. Does that refresh your recollection as to who the 15 true owner of the note is? 16 A. I would actually need to see a copy of the note 17 and the mortgage. 18 Q. I got ya. Is one attached to the complaint? Is 19 there one? 20 A. There's a mortgage attached. 21 Q. There's no note attached? 22 A. I don't see one. 23 MR. KORTE: Off the record. 24 (Recess.) 25 MR. KORTE: I'm going to mark this as 2.</p>

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<p>1 (Plaintiff's Exhibit No. 2 marked for identification.) 2 BY MR. KORTE: 3 Q. Sir, I've handed you what's been marked as 4 Defendant's 2. Do you recognize that document? 5 A. Yes. 6 Q. What is the document? 7 A. It's the promissory note. 8 Q. You told me earlier that you had -- if you had 9 the promissory note, you could tell me who the true 10 owner of the note was. 11 A. Yes, I believe so. 12 Q. Who's the true owner of the note? 13 A. Should be GMAC Mortgage. 14 Q. How do you know that? 15 A. That's based on the endorsements on the 16 promissory note. 17 Q. Well, how many endorsements are on the promissory 18 note? 19 A. I count a total of four. 20 Q. Can you tell me which one was first? 21 A. No. 22 Q. Can you tell me which one was placed second? 23 A. No. 24 Q. Can you tell me which one was placed in any 25 order?</p>	<p>1 MR. KORTE: Is that an objection, sir? 2 MR. MANCILLA: It's just a statement of an 3 interpretation. 4 MR. KORTE: Absolutely. It's a statement 5 and an interpretation of a person who is not a deponent. 6 It's strictly prohibited under the Rules of Civil 7 Procedure. 8 MS. WULFF: Objection. The question calls 9 for a legal conclusion. 10 MR. KORTE: Please don't do it, again. 11 MR. MANCILLA: I'll do whatever I feel like 12 doing. I'm just saying that that -- 13 MR. KORTE: Let's take a recess. Let's get 14 a judge on the phone. Let's get a protective order 15 right now. We're not going to have speaking objections 16 on the record. Okay? 17 MR. MANCILLA: Go ahead. 18 (Recess.) 19 BY MR. KORTE: 20 Q. Sir, my previous question is still pending. How 21 is the Defendant supposed to figure out whether you're 22 the servicer or the owner? 23 MR. MANCILLA: Calls for a legal conclusion. 24 THE WITNESS: I'm not sure. 25 BY MR. KORTE:</p>
<p>1 A. No. 2 Q. How do you come up with the testimony that GMAC 3 Mortgage is the owner of the note? 4 A. Well, Premium Funding Corporation, that appears 5 to be a blank endorsement. And the loan was boarded on 6 a our system, and we have the original. 7 Q. Anything else? 8 A. No. 9 Q. You testified that GMAC Mortgage Company was 10 servicing the note earlier. And now you've seen the 11 note with the endorsements. Now you're certain that 12 GMAC Mortgage is the owner also? 13 A. I believe -- I believe we are. 14 Q. Then why, in paragraph four of the complaint 15 which is Exhibit 1, did you write you're the servicer 16 and holding it for somebody else? 17 A. I don't know. 18 Q. Let me ask you. How would a Defendant know if 19 you can't figure it out? 20 MR. MANCILLA: I don't know if it says that. 21 It says, Plaintiff as servicer to the owner and acting 22 on behalf of the owner with authority to do so is the 23 present designated holder of the note and mortgage 24 with...so the Plaintiff could be the owner and could be 25 the servicer at the same time, it seems to me.</p>	<p>1 Q. Since you have the note in front of you today, 2 sir, can you tell me what day GMAC purchased this note? 3 A. We loaded it onto your system on July 18, 2005. 4 Q. That's not my question, sir. My question was: 5 What date was it purchased? 6 A. I don't know, specifically. 7 Q. Can you tell me who it was purchased from? 8 A. The endorsement would suggest it was purchased 9 from Premium Funding Corporation. 10 Q. Do you have any independent knowledge other than 11 the endorsement on the note that you bought it from 12 Premium Funding Corporation? 13 A. No. 14 Q. What did you look at before coming here today to 15 determine what date the note was transferred to GMAC? 16 A. The mortgage serve application. 17 Q. What's the mortgage serve application? 18 A. That is our system of record. 19 Q. System of record of what? 20 A. Of practically everything relating to the loan. 21 Q. What did it say? 22 A. It listed the date that we boarded the loan as 23 July 18, 2005. 24 Q. What does board the loan mean? 25 A. That is entering the relevant information onto</p>

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<p>1 the mortgage serve system.</p> <p>2 Q. What precisely is done when you do an entry onto</p> <p>3 the mortgage serve system?</p> <p>4 A. I'm sorry?</p> <p>5 Q. What precisely is done when you make an entry on</p> <p>6 the mortgage serve system?</p> <p>7 A. When you say, "entry," are you referring to</p> <p>8 boarding a loan onto the mortgage serve system?</p> <p>9 Q. I'm using your words. You said entered on the</p> <p>10 mortgage serve system.</p> <p>11 A. Information; name, address, contact information,</p> <p>12 loan balances.</p> <p>13 Q. Anything else?</p> <p>14 A. Not that I can think of.</p> <p>15 Q. Where do you get the information from?</p> <p>16 A. It's my understanding the information was</p> <p>17 provided by the prior owner.</p> <p>18 Q. How is it provided?</p> <p>19 A. I don't know the specifics.</p> <p>20 Q. In this case, how was it provided?</p> <p>21 A. Well, I don't know.</p> <p>22 Q. Specifically, what information was entered in</p> <p>23 this case onto the mortgage loan system?</p> <p>24 A. Borrower's name, mailing address, property</p> <p>25 address, contact information and the loan balances.</p>	<p>1 information transferred to it from its source that it</p> <p>2 does not know?</p> <p>3 A. Not necessarily.</p> <p>4 Q. In what way is GMAC not relying upon sources that</p> <p>5 it doesn't know the information from?</p> <p>6 A. I'm at a bit of a disadvantage answering the</p> <p>7 specifics of this question because I've never personally</p> <p>8 boarded a loan into the system. So I don't know the</p> <p>9 specific process.</p> <p>10 Q. Do you have any way of determining, as we sit</p> <p>11 here today, whether or not this loan was ever in a trust</p> <p>12 or a pool?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Do you have any way of determining that it was or</p> <p>15 it wasn't?</p> <p>16 A. I don't believe it was.</p> <p>17 Q. Why don't you believe that it was?</p> <p>18 A. Essentially because I -- I don't remember seeing</p> <p>19 any information that it had ever been placed in a trust.</p> <p>20 Q. What information were you looking at?</p> <p>21 A. Anything that might indicate the name of a trust</p> <p>22 associated with this loan.</p> <p>23 Q. Let's attack this from a different direction</p> <p>24 then. Who was the originator of the loan, if you know?</p> <p>25 A. That should be Premium Funding Corporation.</p>
<p data-bbox="704 1054 808 1083">Page 19</p> <p>1 Q. Anything else?</p> <p>2 A. None that I can think of.</p> <p>3 Q. Can you specifically tell me where you got the</p> <p>4 information from?</p> <p>5 A. Not specifically.</p> <p>6 Q. You've indicated there are four endorsements on</p> <p>7 that note, correct?</p> <p>8 A. Yes.</p> <p>9 Q. One of the endorsements is in blank, is it not?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me today how many times this note</p> <p>12 has been transferred and negotiated before being</p> <p>13 delivered to GMAC?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Can you tell me how every prior owner got their</p> <p>16 information relative to the loan balances of this</p> <p>17 account?</p> <p>18 A. No.</p> <p>19 Q. Was this loan or has this loan always been</p> <p>20 serviced by GMAC?</p> <p>21 A. Can you repeat?</p> <p>22 Q. Can you tell me how any of the prior owners</p> <p>23 transferred their information to the subsequent owner?</p> <p>24 A. I wouldn't know.</p> <p>25 Q. Would it be fair to say that GMAC is relying upon</p>	<p data-bbox="1419 1054 1516 1083">Page 21</p> <p>1 Q. Who would Premium Funding sell it to, if you</p> <p>2 know?</p> <p>3 A. I assume they sold it to us.</p> <p>4 Q. Directly?</p> <p>5 A. I believe so.</p> <p>6 Q. Premium Funding made the loan and sold it to you?</p> <p>7 A. Yeah. I would -- I believe they sold it to a</p> <p>8 GMAC company.</p> <p>9 Q. Specifically, who did they sell it to?</p> <p>10 A. I don't have that information in front of me.</p> <p>11 Q. Well, there are four endorsements on that note,</p> <p>12 one of which is blank, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Can you testify from personal knowledge that</p> <p>15 Premium Funding sold this loan to GMAC?</p> <p>16 A. Based on the endorsements, it appears that they</p> <p>17 did.</p> <p>18 Q. What are the rest of the endorsements for?</p> <p>19 A. I'm sorry. Can you rephrase?</p> <p>20 Q. There are four endorsements on the document,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. You just testified that it was a direct sale from</p> <p>24 Premium Funding to GMAC, correct?</p> <p>25 A. Yes.</p>

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<p>1 Q. Can you tell me why the rest of the endorsements 2 are on that document?</p> <p>3 A. Are you referring to the title of the companies 4 in association with the endorsements, or what are --</p> <p>5 Q. Anything you're referring to to tell me why the 6 rest of those documents are endorsed?</p> <p>7 A. Endorsement in blank. And here is an endorsement 8 for GMAC Mortgage.</p> <p>9 Q. I see you're indicating with your hand starting 10 at the top of the page moving to the bottom of the page. 11 Does that mean you are referring to some order of 12 insertion of those endorsements on the document?</p> <p>13 A. Not necessarily.</p> <p>14 Q. I asked you earlier -- and I'm going to give you 15 another opportunity to tell me in what order those 16 endorsements were placed upon that document.</p> <p>17 A. I'm not sure.</p> <p>18 Q. You are sure that you had a direct endorsement 19 from the maker to GMAC?</p> <p>20 A. There was a blank endorsement from Premium 21 Funding Corporation.</p> <p>22 Q. You can't tell me who that note went to after it 23 left Premium, can you?</p> <p>24 A. Not at the moment.</p> <p>25 Q. Well, let me ask the question and give you</p>	<p>1 Q. Can you tell me what it is?</p> <p>2 A. It is the affidavit as to amounts due and owing.</p> <p>3 Q. Are there any inaccuracies in that document that 4 you're aware of?</p> <p>5 A. I did not compare it to my numbers.</p> <p>6 Q. Can you review it quickly and tell me if there's 7 any inaccuracies in that document?</p> <p>8 A. Well, that's going to be difficult.</p> <p>9 Q. Why?</p> <p>10 A. Well, this was done in December; and I did my 11 calculations based on the amount owing now.</p> <p>12 Q. What would be different between the numbers that 13 you did and the numbers that were presented in court 14 under an affidavit of amounts due and owing?</p> <p>15 A. Specifically, per diem interest.</p> <p>16 Q. Anything else?</p> <p>17 A. Escrow -- well, escrow.</p> <p>18 Q. Anything else?</p> <p>19 A. The property inspection amount seems to have 20 increased. And I've also included the fees relating to 21 the foreclosure action.</p> <p>22 Q. Let's start at the top. Let's start with the 23 principle number.</p> <p>24 A. Okay.</p> <p>25 Q. How was that number calculated?</p>
<p>1 another opportunity to answer it. Who did GMAC buy the 2 note from?</p> <p>3 A. I'm not sure.</p> <p>4 Q. You're the person with the most knowledge as to 5 the transfer of the note to GMAC, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Let's move on from there and discuss the 8 calculation of damages. Okay?</p> <p>9 A. All right.</p> <p>10 Q. Are you the person with the most knowledge of the 11 calculation of damages in this particular case?</p> <p>12 A. Yes.</p> <p>13 Q. Can you tell me how GMAC calculated its damages 14 in this particular case?</p> <p>15 A. Well, I did it myself. We could review the 16 numbers, if you'd like.</p> <p>17 Q. I'm just asking how you did it, just generally 18 speaking?</p> <p>19 A. We referred to our mortgage serve application.</p> <p>20 MR. KORTE: I'm going to mark this as 21 Exhibit 3. 22 (Defendant's Exhibit No. 3 marked for identification.) 23 BY MR. KORTE: 24 Q. Sir, have you seen that document before? 25 A. Yes.</p>	<p>1 A. There's a screen in the mortgage serve 2 application.</p> <p>3 Q. What does that say?</p> <p>4 A. Well, with the number on there, that number was 5 one hundred and thirty-eight thousand three hundred and 6 fifty-three dollars and thirty-six cents.</p> <p>7 Q. You didn't make the calculation yourself? You're 8 just relying upon the computer screen?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell me how the computer calculates it?</p> <p>11 A. We start with the original principle amount. 12 And, as we received payments, the principle portion of 13 those payments would reduce the unpaid principle 14 balance.</p> <p>15 Q. I understand how it's done. I'm asking if you 16 know how the computer calculates it?</p> <p>17 A. Not specifically, no.</p> <p>18 Q. Let's talk about the interest charges. How much 19 interest do you believe is owed in this case?</p> <p>20 A. Today, twenty-one thousand nine hundred 21 forty-five dollars and twenty-two cents.</p> <p>22 Q. How was that calculated, sir?</p> <p>23 A. It's at a per diem of twenty-two dollars and 24 seventy-four cents from the due date.</p> <p>25 Q. Can you tell me what the rate was?</p>

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<p>1 A. I didn't write that down.</p> <p>2 Q. Did you do the calculation yourself, or did</p> <p>3 someone else do the calculation?</p> <p>4 A. The system will provide a calculation for the</p> <p>5 interest owed.</p> <p>6 Q. Do you know if the system uses a</p> <p>7 three-hundred-and-sixty-day year or three-sixty-five-day</p> <p>8 year or a three-hundred-and-fifty-day year?</p> <p>9 A. I don't specifically know which one was used on</p> <p>10 this one.</p> <p>11 Q. Can you tell me if there was a default rate of</p> <p>12 interest was applied and when it was applied?</p> <p>13 A. I would anticipate that this -- the interest is</p> <p>14 still being calculated at the six percent interest rate.</p> <p>15 Q. Do you know that, or are you just guessing?</p> <p>16 A. I don't have my system in front of me.</p> <p>17 Q. Would you calculate it yourself, or would</p> <p>18 somebody else calculate that number for you?</p> <p>19 A. The interest rate?</p> <p>20 Q. Yes, sir.</p> <p>21 A. It's on a screen on our system.</p> <p>22 Q. Would it be fair to say that the system uses the</p> <p>23 boarded number that was made when you did the first</p> <p>24 entry?</p> <p>25 A. Not necessarily.</p>	<p>1 A. I believe that's an accurate statement.</p> <p>2 Q. The next line item that I have on the affidavit</p> <p>3 is pre-acceleration late charges. Can you tell me what</p> <p>4 those are?</p> <p>5 A. Those are the late charges up to the acceleration</p> <p>6 date.</p> <p>7 Q. How are they calculated?</p> <p>8 A. It's my understanding the promissory note would</p> <p>9 control how we administer or assess late fees.</p> <p>10 Q. I'm just asking you how you came up with eight</p> <p>11 hundred and nineteen dollars and eight cents?</p> <p>12 A. I apologize. I did not write the late fee down,</p> <p>13 but there's going to be an amount that is assessed each</p> <p>14 month. And you can take that sum; and, since the loan</p> <p>15 has a due date of August 1, 2008, basically just add the</p> <p>16 number of months multiplied by whatever the monthly late</p> <p>17 charge is. That's how that is calculated.</p> <p>18 Q. Is that number compounded on top of the principle</p> <p>19 balance before the calculation of interest?</p> <p>20 A. I'm not sure I follow.</p> <p>21 Q. There is some pre-acceleration late charges that</p> <p>22 is being charged, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Is that number added to the principle balance</p> <p>25 before your calculation of overdue interest or not?</p>
<p>1 Q. How did it do it?</p> <p>2 A. If it's a fixed rate, then, most likely, it would</p> <p>3 use the boarded interest rate. If it's an</p> <p>4 adjustable-rate mortgage, then, obviously, that amount</p> <p>5 would change.</p> <p>6 Q. Is this a fixed rate or is this an adjustable</p> <p>7 rate?</p> <p>8 A. This looks like a fixed rate.</p> <p>9 Q. Let me ask my question. I probably asked it</p> <p>10 unartfully.</p> <p>11 A. Sorry.</p> <p>12 Q. The amount of interest being charged bares some</p> <p>13 relationship to the amount of the principle balance,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. The principle balance used in this particular</p> <p>17 case used the boarded number as a starting place,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Is that true for today's calculation of interest</p> <p>21 damages?</p> <p>22 A. I'm sorry. What was your question? Whether we</p> <p>23 used the original boarded principle amount to make the</p> <p>24 calculations?</p> <p>25 Q. Yes, sir.</p>	<p>1 A. I'm not entirely sure I follow. But I -- it -- I</p> <p>2 don't believe it's factored into any of the other</p> <p>3 numbers or influences any of the other numbers. I</p> <p>4 believe what the answer to your question is it's added</p> <p>5 at the end.</p> <p>6 Q. Let me just ask this question. There was an</p> <p>7 interest charge you gave me of approximately twenty-one</p> <p>8 thousand nine hundred and forty-five dollars and</p> <p>9 twenty-two cents, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You told me that was based upon a principle</p> <p>12 amount at six percent interest; is that correct?</p> <p>13 A. It's my understanding it's six percent.</p> <p>14 Q. Do you know whether or not that principle amount</p> <p>15 contains any other charges other than principle, such</p> <p>16 as, pre-acceleration late charges?</p> <p>17 A. It would not.</p> <p>18 Q. Do you know that from personal experience?</p> <p>19 You've done the calculation yourself?</p> <p>20 A. I haven't specifically done the calculation</p> <p>21 myself.</p> <p>22 Q. Do you know how the computer does the</p> <p>23 calculation, specifically?</p> <p>24 A. I don't have the form in front of me.</p> <p>25 Q. To your personal knowledge, you can't say with</p>

Page 30	Page 32
<p>1 certainty whether or not anything is added back into 2 principle before the application of interest? 3 A. It's my understanding it's not. 4 Q. Take me through this phase. A person has a 5 principle balance of about a hundred and thirty-eight 6 thousand dollars and they're late by a month, what 7 happens to that late charge if it's unpaid? 8 A. It falls to an uncollected late fee column. 9 Q. Does that uncollected late fee bare interest? 10 A. It's my understanding, it does not. 11 Q. Is the late fee a fixed amount? 12 A. I believe this one would be. 13 Q. How much is that fixed-amount late fee? 14 A. According to the promissory note, the amount of 15 the charge will be five percent of any overdue payment 16 of principle and interest. 17 Q. That was applied from what period of time? Until 18 when did it stop? When was the first late fee you 19 charged? 20 A. The late fees? Well, it's safe to say at least 21 from August 1st of 2008. 22 Q. When did they stop? 23 A. It's difficult to give you an exact number 24 without having the payment history because I don't know 25 which payments were made within the month but made after</p>	<p>1 Q. Can you tell me when you started calculating late 2 charges? 3 A. There would have been a late fee -- or late 4 charge assessed in May of '07. 5 Q. Is that part of the calculation for damages you 6 used in this particular case, sir? 7 A. I would have to check my system to see 8 specifically what was used in that calculation. 9 Q. As you sit here today with the pay history, you 10 can't tell me what was used in the calculation, given 11 the pay history? 12 A. No, no. What I'm saying is I can reconstruct the 13 late fees. But I don't know what was -- what was used 14 in this. I didn't participate in the preparation of 15 this affidavit. I can only testify to what I see on the 16 paper here. 17 Q. Did you calculate late charges before you came 18 here today, personally? 19 A. Not personally, no. 20 Q. Someone else calculated it for you? 21 A. Insofar as the indebtedness affidavit. 22 Q. Then let me go back. Were you asked to come here 23 today as the person with the most knowledge on the 24 affidavit of the -- of the amount due and owing? 25 A. Yes.</p>
<p>1 the 15th. 2 MR. KORTE: Can I mark this as 4 then. 3 (Defendant's Exhibit No. 4 marked for identification.) 4 BY MR. KORTE: 5 Q. Sir, do you recognize the document you were just 6 handed as Defendant's 4? 7 A. Yes. 8 Q. It's, in fact, a compound or a multi-page 9 document. It contains two, as I understand. One to be 10 the payment history and one to be the demand letter. Do 11 you see both those documents there? 12 A. Okay. 13 Q. Do you see both those documents there? 14 A. Looks to be three independent documents. 15 Q. What are the three documents, sir? 16 A. I'm sorry. Correction. Two documents. 17 Q. Can you tell me what the two documents are? 18 A. First document is a complete payment history. 19 The second document is what I refer to as the breach 20 letter. 21 Q. Let's start with the first document. Is this the 22 payment history you were requesting in your prior 23 testimony to give me an accurate answer as to when we 24 calculated late charges? 25 A. Yes.</p>	<p>1 Q. Is that the affidavit of the amounts due and 2 owing, the affidavit we talked about as, I believe, 3, 3 correct? Defendant's 3? 4 MR. MANCILLA: Object to the form. It 5 wasn't attached to the notice of deposition. I don't 6 know what affidavit you're referring to. 7 MR. KORTE: Okay. 8 BY MR. KORTE: 9 Q. Defendant's 3, is that the affidavit of amounts 10 due and owing that's filed in this case? 11 A. I'm not sure. 12 Q. Are you aware of any others that were filed in 13 this case? 14 A. Not specifically. 15 Q. As you sit here today, can you give me the exact 16 calculations that's done under any of those line items? 17 A. Yes. 18 Q. Which ones, specifically? 19 A. Specifically, principle, interest, per diem, 20 property inspection, escrow. 21 Q. Anything else? 22 A. No. 23 Q. Let's go back to the interest discussion which we 24 had a few minutes ago. Can you tell me what was 25 included in the interest calculation contained in</p>
Page 31	Page 33

<p style="text-align: right;">Page 34</p> <p>1 Defendant's 3, exactly how was it calculated?</p> <p>2 A. It's my understanding it's based on principle</p> <p>3 amount of one hundred thirty-eight thousand three</p> <p>4 hundred fifty-three dollars and thirty-six cents.</p> <p>5 Q. What about it?</p> <p>6 A. Well, you multiply that by the interest rate and</p> <p>7 divide it by three hundred and sixty; and that's your</p> <p>8 per diem.</p> <p>9 Q. Why do you divide by three-sixty?</p> <p>10 A. Three hundred and sixty-five. I'm sorry.</p> <p>11 Q. Is it a three-hundred-and-sixty-five-day year, or</p> <p>12 three-hundred-sixty-day year or three-hundred-fifty-day</p> <p>13 year?</p> <p>14 A. It was a three-hundred-and-sixty-five-day year.</p> <p>15 Q. How was the per diem calculated?</p> <p>16 A. That's how we calculate the per diem.</p> <p>17 Q. You're sure?</p> <p>18 A. I believe so.</p> <p>19 Q. Did you do the calculation yourself?</p> <p>20 A. Yes, I did. Well, I did the per diem calculation</p> <p>21 myself, yes.</p> <p>22 Q. What per diem calculation did you come up with?</p> <p>23 A. Twenty-two seventy-four.</p> <p>24 Q. Using a three-hundred-and-sixty-five-day year?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Can you tell me what company mailed it out?</p> <p>2 A. GMAC Mortgage.</p> <p>3 Q. How do you know GMAC Mortgage mailed it out?</p> <p>4 A. I recognize this letter as a default letter we</p> <p>5 produce.</p> <p>6 Q. Can you me show me on this letter where it says</p> <p>7 GMAC Mortgage?</p> <p>8 A. I don't see that on the letter.</p> <p>9 Q. How would anybody receiving this letter</p> <p>10 understand it's from GMAC?</p> <p>11 A. Because we've been servicing the loan since July</p> <p>12 of 2005.</p> <p>13 Q. Anybody who opened this letter up in the mail, if</p> <p>14 they actually got it, how would they know this is from</p> <p>15 GMAC?</p> <p>16 A. Well, by the account number.</p> <p>17 Q. Is that the only way?</p> <p>18 A. By the property address.</p> <p>19 Q. Any other way?</p> <p>20 A. I'm not sure what was sent with this letter.</p> <p>21 But--</p> <p>22 Q. Well, let me ask you. Does GMAC normally send</p> <p>23 documents without their name on them out to borrowers?</p> <p>24 A. Well, I would anticipate there's more included in</p> <p>25 the envelope that we mailed than just this letter alone.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Do you know what the note calls for? Is it a</p> <p>2 three-sixty year or three-sixty-five or three-fifty, if</p> <p>3 you know?</p> <p>4 A. I don't know.</p> <p>5 Q. How can you do a per diem calculation if you</p> <p>6 don't know how many days are supposed to be calculated</p> <p>7 in the year?</p> <p>8 A. There are three hundred and sixty-five days in</p> <p>9 the year.</p> <p>10 Q. That's not my question. My question was: How</p> <p>11 can you calculate a per diem amount if you don't know</p> <p>12 which calculation you're supposed to use; three hundred</p> <p>13 and sixty, three-fifty or three-sixty-five?</p> <p>14 A. I'm not certain how that determination is made.</p> <p>15 Q. Let's go to the second page -- the second set of</p> <p>16 documents contained in that composite exhibit, if you</p> <p>17 would. That's the demand letter. Composite Exhibit 4,</p> <p>18 I believe. There's also one that's been produced to us</p> <p>19 in Defendant's 1 attached to the complaint. If you</p> <p>20 would do me a favor and turn to Composite Exhibit 1 and</p> <p>21 compare the two. On Composite Exhibit 4, can you tell</p> <p>22 me the day that letter was mailed out?</p> <p>23 A. January 15, 2009.</p> <p>24 Q. Do you know who mailed it out?</p> <p>25 A. Not specifically.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. As you sit here today, do you have any personal</p> <p>2 knowledge that more than this document, Composite</p> <p>3 Exhibit 4, was mailed to the homeowner?</p> <p>4 A. No.</p> <p>5 Q. Is it GMAC's business practice, if you know, to</p> <p>6 mail documents without a GMAC header on them?</p> <p>7 A. I'm not sure.</p> <p>8 Q. Did you review this document in anticipation of</p> <p>9 coming here today?</p> <p>10 A. I believe I glanced at it, yes.</p> <p>11 Q. Is this document kept in the ordinary course and</p> <p>12 scope of the business?</p> <p>13 A. Yes.</p> <p>14 Q. Is this the only document that's sent out as a</p> <p>15 breach letter that you're aware of?</p> <p>16 A. I don't recall if there were additional breaches.</p> <p>17 This is the only one that I'm aware of right now.</p> <p>18 Q. Well, then let me ask a different question and</p> <p>19 see if maybe we can get to the bottom of this thing. Do</p> <p>20 you know who mailed this letter out?</p> <p>21 A. Well, generally, GMAC Mortgage did.</p> <p>22 Q. I'm going to look for some very specific answers.</p> <p>23 Do you know who actually -- the person's name who mailed</p> <p>24 the letter?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Do you know which department would have mailed 2 this letter?</p> <p>3 A. It would be generated in our foreclosure 4 department. I think they refer to them as default.</p> <p>5 Q. Foreclosure department would have generated the 6 letter. Is there any indication as to how this letter 7 was actually sent out? Was it sent out certified mail 8 or by Fedex or something?</p> <p>9 A. Well, I don't see a designation on the letter 10 itself.</p> <p>11 Q. Did you see one at your office before you came 12 here today?</p> <p>13 A. No, I didn't.</p> <p>14 Q. Do you have any personal knowledge whether this 15 letter was actually mailed or if it was just produced 16 and never mailed?</p> <p>17 A. The process of mailing the letter is almost 18 automatic with the generation of the letter.</p> <p>19 Q. Have you ever seen a document generated at GMAC 20 that doesn't have GMAC's letterhead on it?</p> <p>21 A. Yes.</p> <p>22 Q. Have you ever seen a document that was designed 23 to go out to a client or borrower that doesn't bare 24 GMAC's header on a GMAC-serviced loan?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. I don't think I read this.</p> <p>2 Q. Have you seen it before, though?</p> <p>3 A. I don't recall. It didn't make an impression, if 4 I did.</p> <p>5 Q. Sir, do you know who MERS is? M-E-R-S.</p> <p>6 A. Yes.</p> <p>7 Q. Who are they?</p> <p>8 A. A company called Mortgage Electronic Registration 9 Services -- or Systems. I'm sorry.</p> <p>10 Q. Do you know if they have any relationship to GMAC 11 as far as this litigation is concerned?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Did GMAC get an assignment of mortgage in this 14 particular case, if you're aware?</p> <p>15 A. I don't recall, specifically.</p> <p>16 Q. Do you recall reviewing one at anytime?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who received the mortgage, the 19 assignment?</p> <p>20 A. I don't recall, specifically.</p> <p>21 Q. Do you know who gave the assignment?</p> <p>22 A. Not specifically.</p> <p>23 Q. Do you know if anybody at GMAC asked MERS to make 24 an assignment of mortgage to GMAC from any third party 25 in regards to this case?</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Is that the ordinary course and scope of the 2 business?</p> <p>3 A. We send out many letters. I'm not sure which 4 ones would have the letterhead and which ones would not 5 have the letterhead.</p> <p>6 Q. In and around January 15, 2009, was it the custom 7 of GMAC Mortgage, LLC, to send out letters to borrowers 8 that didn't contain their name or letterhead?</p> <p>9 A. Yes.</p> <p>10 Q. Yes, it was a custom to send out letters without 11 letterhead?</p> <p>12 A. Well, let me just clarify by saying that I 13 recognize this document as a breach letter.</p> <p>14 Q. This is a standard business letter that goes out 15 with no letterhead, no name on it?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 THE WITNESS: Can we take a break?</p> <p>19 MR. KORTE: Sure.</p> <p>20 (Recess)</p> <p>21 BY MR. KORTE:</p> <p>22 Q. We're back on. I'm going to ask you to turn to 23 Defendant's 1, again, which is the complaint composite 24 exhibit. There's a letter attached to that complaint. 25 Have you ever seen this letter before?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. I can't recall seeing a request from GMAC 2 Mortgage to MERS.</p> <p>3 MR. KORTE: We'll mark this as 5. 4 (Defendant's Exhibit No. 5 marked for identification.) 5 BY MR. KORTE:</p> <p>6 Q. Sir, I'm going to ask you to turn to this 7 composite exhibit and if you can locate the assignment 8 of mortgage contained in it?</p> <p>9 A. Okay.</p> <p>10 Q. Do you recognize this document, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Does this refresh your recollection if anybody at 13 GMAC asked anybody at MERS to prepare a mortgage?</p> <p>14 A. Still, I don't recall seeing anywhere where we 15 specifically requested a document.</p> <p>16 Q. Well, then let me ask it a different way. How 17 did GMAC Mortgage come into possession of this 18 assignment of mortgage, if you know?</p> <p>19 A. I don't know.</p> <p>20 Q. Can you tell me the date the document was 21 executed?</p> <p>22 A. I believe that's July 23rd of 2009.</p> <p>23 Q. I believe you testified earlier that this loan 24 was boarded to your system on or around July 18, 2005; 25 is that correct?</p>

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1 A. Yes.

2 Q. Can you tell me why GMAC waited four years to get

3 an assignment for a mortgage?

4 A. I'm not sure.

5 Q. Is the general business practice of GMAC to wait

6 four years to receive assignments of mortgage?

7 A. I'm not sure if it is or not.

8 Q. I'd like to draw your attention to the first

9 paragraph of this assignment of mortgage document. Can

10 you read just the bold word section out loud?

11 A. Four value received on or before February 20,

12 2009, the undersigned, Mortgage Electronic Registration

13 Systems, Incorporated, as nominee for GMAC Mortgage,

14 LLC.

15 Q. That's fine. Do you know when Mortgage

16 Electronic Registration Systems became a nominee for

17 GMAC Mortgage, LLC?

18 A. Not specifically.

19 Q. Do you have any knowledge whatsoever whether they

20 are the nominee for GMAC Mortgage, LLC?

21 A. Well, based on the assignment, it would lead me

22 to believe that they are the nominee for GMAC Mortgage,

23 LLC.

24 Q. Then can you tell me why GMAC Mortgage, LLC,

25 through its nominee transferred the mortgage to GMAC

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1 Mortgage, LLC?

2 A. It does appear to be an assignment from one

3 company to another, so...

4 Q. From which company is it coming from, sir,

5 according to you?

6 A. MERS.

7 Q. It's coming from MERS to?

8 A. GMAC Mortgage, LLC.

9 Q. Do you see where it says MERS as nominee for GMAC

10 Mortgage, LLC?

11 A. Yes.

12 Q. Is there any indication in your system that

13 you've seen before coming here today or any documents

14 that you've had so far that MERS was ever a nominee for

15 GMAC Mortgage?

16 A. I can't recall.

17 Q. Do you know when GMAC became the nominee for this

18 mortgage?

19 A. We boarded the loan on July 18, 2005.

20 Q. I'm asking you when GMAC -- if you know, when

21 they elected MERS to become their nominee for this

22 mortgage?

23 A. I don't specifically know.

24 Q. I'm going to take you back to Defendant's 2, if

25 you would, please. That's the note. Do you have it,

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1 sir?

2 A. Yes.

3 Q. Is that a substantial copy of the note that

4 you've seen in your system?

5 A. I believe it's very similar.

6 Q. What's different about the one you've seen and

7 the one I've given you?

8 A. Well, I'd want to compare the copy that I

9 referred to this before I started testifying to

10 differences.

11 Q. That's fair enough. Let me ask you, have you

12 seen the original note ever?

13 A. I've seen a copy of the original note.

14 Q. Have you ever seen the original?

15 A. No.

16 Q. When was the first time you saw a copy of the

17 original?

18 A. Yesterday.

19 Q. Do you know why GMAC chose to attach a separate

20 sheet of paper to affix endorsements instead of just

21 stamping on the front of the note?

22 A. No, I don't.

23 Q. Would you agree with me that, on page four of the

24 note, there's plenty of room to affix endorsements?

25 A. I would guess you could place an endorsement on

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1 there if you were inclined to.

2 Q. To your knowledge, do you know if this note was

3 ever misplaced or lost?

4 A. No.

5 Q. Where is the original note normally kept?

6 A. With the note custodian.

7 Q. Who is the note custodian, if you know?

8 A. I don't know.

9 Q. Do you know where they are?

10 A. Not specifically.

11 Q. Do you know who I could talk to to find out who

12 they are or where they are?

13 A. Yes.

14 Q. Who would I talk to?

15 A. Person's name is Judy Faber.

16 Q. Where does she work?

17 A. GMAC Mortgage.

18 Q. Do you know what branch or office she works at?

19 A. Not specifically.

20 Q. If I sent you a request through your lawyer,

21 would you be able to identify -- give me a phone number

22 or address for this person?

23 A. Yes.

24 Q. One last line of questioning, and we're going to

25 break for lunch. I think we're done with the

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1 deposition.

2 You, personally, as far as your servicing of this

3 loan, do you service this loan yourself?

4 A. Collectively.

5 Q. Let me back up. Do you, personally? Are you

6 involved with the posting of payments?

7 A. No, I'm not.

8 Q. Are you involved with the disbursements of

9 escrows?

10 A. No.

11 Q. Are you involved in the day-to-day movement of

12 this loan through the system other than litigation?

13 A. I don't think so.

14 Q. Would it be fair to say that your involvement in

15 this particular loan began at the time that the

16 litigation was filed or thereafter?

17 A. Yes.

18 Q. Would it be fair to say that your entire

19 involvement in almost any notes at GMAC that you touch

20 are involved in litigation?

21 A. Yes.

22 Q. Would it be fair to say that you only deal in

23 contested matters?

24 A. Yes.

25 Q. Essentially, your job is to testify in contested

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1 matters or assist counsel in contested matters?

2 A. Yes.

3 Q. Do you prepare interrogatory answers?

4 A. With assistance of counsel.

5 Q. Did you prepare the interrogatory answers in this

6 case?

7 A. I don't think so.

8 Q. Did you assist in the response to the request for

9 production in this case?

10 A. I don't think so.

11 Q. Is that something you would normally do in a

12 case?

13 A. More or less.

14 Q. You're a lawyer. Ultimately, you're dealing with

15 the litigation department?

16 A. Yeah. I work in a support function.

17 Q. In litigation?

18 A. Right, yes.

19 Q. That's why they hired you? You're a lawyer?

20 A. Possibly.

21 Q. What I'm getting at is that you're really not

22 part of the servicing arm? You're really part of the

23 litigation arm; is that accurate?

24 A. I think that's accurate.

25 MR. KORTE: I have nothing further.

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1 MR. MANCILLA: No questions.

2 MS. WULFF: I just have, like, two I want to

3 ask.

4 CROSS EXAMINATION

5 BY MS. WULFF:

6 Q. This kind of goes on what we were just ending on.

7 Are you given training on how to read the business

8 records of GMAC Mortgage?

9 A. Yes.

10 Q. You're familiar with the servicing process of

11 GMAC Mortgage and how the servicing is done?

12 A. Yes.

13 Q. In regards to the -- I think it's Exhibit 3.

14 It's the composite one with the demand letter. In the

15 upper left-hand corner, do you see where it says DPLX?

16 A. Yes.

17 Q. Any idea what that is?

18 A. I believe it's just the tag that is placed on the

19 duplicate copy from our system.

20 Q. It's possible that this particular specific

21 document is a duplicate copy?

22 MR. KORTE: Form.

23 THE WITNESS: Yes, it is.

24 BY MS. WULFF:

25 Q. The one that went out to the borrower may have

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1 had something there?

2 MR. KORTE: Form.

3 THE WITNESS: Yes.

4 BY MS. WULFF:

5 Q. Of course, you're pulling this document from some

6 kind of imaging system, correct?

7 MR. KORTE: Form.

8 THE WITNESS: That's correct.

9 BY MS. WULFF:

10 Q. Let me refer you to -- I think it's No. 2 with

11 the note. I realize that that is a copy of the original

12 note. As you look at the copy -- and that's showing as

13 page four -- it's not -- at the bottom of the page, you

14 don't see any declamation that it's page four of four or

15 anything like that, right?

16 A. Not on my copy.

17 Q. It's possible that it's not a separate page but

18 it's the back of page three?

19 MR. KORTE: Form.

20 THE WITNESS: That's possible.

21 BY MR. WULFF:

22 Q. Obviously, if you had the original in front of

23 you, you would be able to discern that?

24 A. Yes.

25 MS. WULFF: I don't have anymore questions.

<p style="text-align: right;">Page 50</p> <p>1 MR. KORTE: Sir, you have the opportunity to 2 read or waive this deposition. If you read it -- if 3 it's typed up, you will be given an opportunity to 4 create an errata sheet which will clarify mistakes the 5 usually the court reporter made. Or you may waive that 6 right or have her type it up and submit it. Would you 7 prefer to read or waive? 8 THE WITNESS: Read. 9 (Proceedings concluded at 11:43 o'clock a.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 52</p> <p>1 C E R T I F I C A T E 2 3 THE STATE OF FLORIDA) COUNTY OF PALM BEACH) 4 5 I, Rachele Lynn Cibula, Notary Public, State of 6 Florida at Large, 7 DO HEREBY CERTIFY that I was authorized to and did 8 stenographically report the foregoing deposition; and 9 that the transcript is a true and correct transcription 10 of the testimony given by the witness. 11 I FURTHER CERTIFY that I am not a relative, employee, 12 attorney or counsel connected with the action, nor am I 13 financially interested in the action. 14 Dated this 1st day of March, 2011. 15 16 17 18 19 20 21 22 _____ RACHELE LYNN CIBULA, NOTARY PUBLIC 23 24 25</p>
<p style="text-align: right;">Page 51</p> <p>1 CERTIFICATE OF OATH 2 3 STATE OF FLORIDA 4 COUNTY OF PALM BEACH 5 6 I, Rachele L. Cibula, the undersigned authority, 7 certify that MARLIN KNAPP personally appeared before me 8 and was duly sworn. 9 10 Witness my hand and official seal this 1st day of 11 March, 2011. 12 13 14 15 16 17 18 19 20 _____ RACHELE CIBULA 21 Notary Public, State of Florida My Commission #DD Expires: December 3, 2011 22 23 24 25</p>	<p style="text-align: right;">Page 53</p> <p>1 RULE 1.310 FLORIDA RULES OF CIVIL PROCEDURE PROVIDES 2 3 (E) ANY CHANGES IN THE FORM OR SUBSTANCE WHICH THE 4 WITNESS DESIRES TO MAKE SHALL BE ENTERED UPON THE 5 DEPOSITION BY THE OFFICER WITH A STATEMENT OF THE 6 REASONS GIVEN BY THE WITNESS FOR MAKING THEM. 7 8 PAGE LINE CHANGE REASON 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>