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(Witness sworn.)

Q. BY MS. LIM: Good afternoon. My name is Julie Lim. I represent the plaintiff, along with Timothy McCandless, in this case. Can you please state your full name and spell it for the record.

A. Yes. It is Joffrey, JOFFREY. Guy, GUY. Last name Long, LONG.

Q. Okay. Before we start, I'm going to go over some ground rules.

A. Okay.

Q. Even though we are in an informal setting, your testimony holds to it, everything that you are testifying, as if you were in a court of law, under penalty of perjury. I am entitled to your best testimony today. Is there anything that if you are taking, drank any alcohol or take any drugs, to prevent you from providing your best testimony today?

A. I have not.

Q. Okay. And have you taken -- has -- has your deposition been taken before?

A. Yes.

Q. Approximately how many times?

A. Approximately 30 times.

Q. Okay. Within how long of a period?

1 A. Within the last 12 years.

2 Q. Okay. So as you know, the court reporter or the
3 reporter to my left will be transcribing everything into a
4 booklet, so it is important that we don't talk over one
5 another. Your attorney will be making objections. And if
6 you could just proceed to answer after he makes his
7 objections for the record. This isn't a marathon. I'm
8 not here to trick you or ask you any trick questions. I'm
9 just entitled to your opinion for which you are hired to
10 offer today. So you do know the difference between a
11 guess and an estimate?

12 A. Yes.

13 Q. I'm not asking for your guesses today. However,
14 if I do ask you a question and you need to take a break, I
15 do ask that you respond before taking a break.

16 A. Okay.

17 Q. Okay.

18 MR. GUZZETTA: Can we go off the record for just
19 a second?

20 MS. LIM: Sure.

21 (Off the record.)

22 MR. GUZZETTA: Back on the record.

23 Q. BY MS. LIM: Okay. So I don't have to admonish
24 you as to the difference between a guess and an estimate,
25 correct?

1 A. No, you don't.

2 Q. Okay. I'll give you this Notice.

3 (Exhibit 1 marked for identification.)

4 Q. BY MS. LIM: Have you seen that document?

5 A. Yes, I have.

6 Q. Okay. And when was the first time you saw this
7 document?

8 A. When it was provided to me by retaining counsel.

9 Q. And when?

10 A. I don't recall the exact date. It was sometime
11 prior to the first scheduled deposition date of October
12 30th.

13 Q. Okay.

14 A. But I don't recall how many days before.

15 Q. And it was provided to you by Mr. Guzzetta, your
16 attorney?

17 A. Either Mr. Guzzetta or Mr. Ladi.

18 Q. Okay.

19 A. I don't recall which one of them sent it to me.

20 Q. Okay. We will attach this as Exhibit No. 1. I'm
21 going to show you another. Before we start, when were you
22 first retained for this case?

23 A. I believe it was sometime -- I don't have the
24 exact date. You were provided with some billing records
25 that would show on there when I first started -- oh, I

1 apologize. I have my retainer agreement. I am so sorry,
2 I apologize. I can give you the exact date. I mean, the
3 date we signed the retainer would be the date. So and
4 this is my original. So if you want a copy, you are
5 welcome to, but I do need it back.

6 Q. So according to this agreement, it was October
7 17th, 2017, is when you signed it, correct?

8 A. Correct.

9 Q. Okay.

10 MR. McCANDLESS: I'll make a copy. I'll be right
11 back.

12 Q. BY MS. LIM: And what was your assignment for
13 this case?

14 A. The assignment was to review various documents
15 and information about the case and to form opinions.

16 Q. And what are the areas that you are prepared to
17 testify about?

18 A. I have different areas, different opinions that
19 I've formed. If your question was, what are the areas?
20 Do you want me to break them down into areas?

21 Q. Sure. I mean you are expected to testify about
22 certain areas involving this case, correct?

23 A. That's correct.

24 Q. And what are those areas?

25 A. The areas are whether or not a complete

1 application for loan modification existed at certain
2 points in time. Whether or not the loan servicer ever met
3 the standard of care. And these are not my exact
4 opinions. Again, you asked for areas.

5 Q. I'm just asking for areas at this point.

6 A. Another area would be a generalized overview of
7 how loan servicing works. Another area would be a
8 generalized overview of how bankruptcy affects
9 foreclosure. Excuse me, if I ever speak too fast or I
10 mumble, just tell me, because I tend after time to do
11 that.

12 Q. Me too.

13 MR. GUZZETTA: He is much worse. I'm kidding.

14 Q. BY MS. LIM: I don't know about that.

15 A. The next area would be the area of the borrower's
16 actions in interacting with the loan servicer and going
17 through the modification process, or attempting to go
18 through modification process. And then I think that --
19 those areas I think all my opinions would fit into one of
20 those areas that I gave you.

21 Q. Okay. And if additional areas pop up, just let
22 me know.

23 A. Definitely.

24 Q. Okay. All right. Let me show you --

25 A. And I guess I'll add one other area too. This

1 makes sense, in my opinion. That would be providing
2 opinions regarding other testimony that hasn't yet been
3 given such as the anticipated testimony of Thomas Tarter
4 or any other experts or other parties that give testimony
5 that I'm in some way qualified to render an opinion on.

6 Q. Okay. All right, very good. I'm going to show
7 you we will mark as Exhibit 2.

8 (Exhibit 2 marked for identification.)

9 Q. BY MS. LIM: Have you seen this document before?
10 -- oh why don't you take a look at it and look up when you
11 are ready.

12 A. Sure. I have seen this.

13 Q. Okay. And you know that this was attached to
14 Richard Penno's declaration in support of Wells Fargo's
15 motion for summary judgment?

16 A. I don't recall seeing it attached to that.

17 Q. Okay. Did this document in any way play a role
18 in your opinion, in any of the opinions that you have
19 formulated?

20 MR. GUZZETTA: Objection. Vague and ambiguous.

21 Q. BY MS. LIM: Do you understand the question?

22 A. I understand the question.

23 Q. Okay.

24 A. Which opinions are you asking if it relates to?

25 Q. Well, just in any of the opinions, did this

1 letter play a role in forming an opinion that you are
2 prepared to opine today? I'm not asking for a particular
3 topic or area but did this play a role?

4 A. Well, it was --

5 MR. GUZZETTA: Objection. Vague and ambiguous.
6 Go ahead, Joffrey.

7 THE WITNESS: It was one of many letters that
8 were provided to the borrower by the loan servicer. And
9 it is -- so it is part of the communications that were
10 necessary on the part of the -- it forms -- it is part of
11 the main communications that existed that occurred with
12 the borrower.

13 Q. BY MS. LIM: Okay. In the very first sentence,
14 it states, "We are responding to your recent request for
15 mortgage assistance. At this time, we are unable to move
16 forward with an evaluation of your current situation."
17 What does that mean to you?

18 MR. GUZZETTA: Objection. The document speaks
19 for itself.

20 THE WITNESS: What that's saying, taking it
21 sentence at a time, "We are responding for mortgage
22 assistance." So my interpretation of that is that when a
23 borrower has -- has sent in or provided a loan servicer
24 with a request for mortgage assistance, and the loan
25 servicer is at that point responding to that as opposed to

1 a communication about something else. What they are doing
2 is, with that sentence, they are saying that this letter
3 is being sent to you in response to that request for --
4 for assistance.

5 Q. BY MS. LIM: Okay. Based on this letter, can you
6 determine the reason for ASC being unable to move forward
7 with the evaluation of plaintiff's situation?

8 MR. GUZZETTA: Objection. Document speaks for
9 itself, calls for speculation.

10 THE WITNESS: I can't see from this letter
11 specific information as to why they can't move forward.

12 Q. BY MS. LIM: Okay. Would you deem this letter to
13 be a denial of plaintiff's loan modification application?

14 A. Actually, I am going to, before I answer that
15 question, I'd like to go back to my last answer and just
16 indicate that because they are saying, "We are responding
17 to your request for mortgage assistance," then saying
18 that, "At this time, we are unable to move forward," it is
19 clear that this letter is in response to that request for
20 mortgage assistance.

21 Q. Okay. But you don't know why they are unable to
22 move forward?

23 A. Not from this letter.

24 Q. Okay. So going to the follow-up question. Would
25 you deem this letter to be a denial of plaintiff's loan

1 modification application?

2 A. Your question assumes that there is a loan
3 modification application, because you said, would you deem
4 this letter -- and correct me if I'm wrong. I heard your
5 question as, "Would you deem this letter to be a denial of
6 plaintiff's loan modification application?" So, for me,
7 to answer that "yes" or "no," we would have to establish
8 whether or not -- we would have to establish that there
9 was a loan modification application, and I'm not seeing
10 anything indicating that there was one at that time.

11 Q. So based on your expertise, when ASC writes and
12 says that, "We are responding to your recent request for
13 mortgage assistance," what is it -- can you opine as to
14 what they were responding to?

15 A. I think it is -- it is clear, as I said before,
16 that they are responding to a request for mortgage
17 assistance.

18 Q. Okay. So in your expertise, does request for
19 mortgage assistance mean that they had filed a loan
20 modification application?

21 A. No.

22 Q. Okay. Does it mean that they made a call? I
23 mean, how -- what does it mean to request mortgage
24 assistance? When a borrower request mortgage assistance,
25 in your mind, what does that entail?

1 A. A borrower can request mortgage assistance in
2 different ways. They can -- and that's requesting it from
3 a loan servicer. They can request mortgage assistance by
4 completing a Request For Mortgage Assistance Form. They
5 could call the loan servicer. They could send in various
6 documents. And when I say that, by the way, I'm saying
7 that someone could request mortgage assistance. That
8 doesn't mean that the servicer, that their policy is that
9 they accept all those different methods of requesting it,
10 but go ahead.

11 Q. So in reviewing this letter, did you investigate
12 as to what ASC was responding to?

13 A. Yes.

14 Q. What was it?

15 A. A number of documents that had been sent along
16 with a -- with a written request for mortgage assistance.

17 Q. A written request. Did you review the written
18 request?

19 A. I did.

20 Q. And that written request was made by whom?

21 A. The request was from the borrower.

22 Q. And would it be in the form of a loan
23 modification application?

24 A. No.

25 Q. So what was the form of the request?

1 A. It is a form. There is a document called a
2 Request For Mortgage Assistance.

3 Q. Okay. So then it is your testimony that in
4 writing this letter, ASC was responding to the borrower's
5 request for mortgage assistance, correct?

6 A. Correct.

7 Q. And, in addition, in response in responding or in
8 drafting this letter, they were also responding to
9 documents that were provided by the plaintiff, correct?

10 A. I can't testify with accuracy to all that. In
11 fact, even going back on your last question, it appears
12 that this document by virtue of the date is in response to
13 the request for mortgage assistance.

14 Q. Otherwise known as the RMA?

15 A. Correct.

16 Q. But I think I heard you say that you did
17 investigate what ASC had received in drafting this
18 response and you said an RMA and documents?

19 A. I didn't actually speak to anyone at ASC to
20 determine what they were looking at at the time they
21 generated this letter. But the -- there was a -- there
22 was an indication that a request for mortgage assistance
23 was sent on 9-17-15.

24 Q. Were there any documents in addition to the
25 request for mortgage assistance that was provided to ASC?

1 A. There were documents. I don't know if they were
2 also provided on the same date.

3 Q. But you said you reviewed those documents,
4 correct?

5 A. Correct.

6 Q. Well, what were those documents?

7 A. They were various documents about the borrower's
8 income and explanations about the borrower's income.
9 Other documents related to the request for mortgage
10 assistance.

11 Q. Apart from -- I'm going call it moving forward,
12 I'm going to refer to it as RMA. Is there another form or
13 method by which a borrower can request mortgage
14 assistance?

15 A. Well, to answer that question, we would have to
16 define "can request mortgage assistance." A borrower
17 obviously can request anything. And they could mail in
18 their request, they could fax it, they could fill out a
19 form, they could call. That, however, would then depend
20 on the loan servicer and what the loan servicer's method
21 or policy is for accepting requests for mortgage
22 assistance. And before you ask the next question, could I
23 just clarify one thing?

24 Q. Sure.

25 A. It is very minor, but when you handed me a

1 document earlier, then you said could you give that copy
2 to your attorney. I just want to clarify that
3 Mr. Guzzetta is not here as my attorney. He doesn't
4 represent me.

5 Q. I'm sorry. Right. Exactly.

6 A. He retained me on behalf of his client.

7 Q. I misspoke.

8 MR. GUZZETTA: He won't put blame on me as an
9 attorney. I tried, but he keeps saying no.

10 Q. BY MS. LIM: Great. So is the RMA, in essence, a
11 loan modification application?

12 A. Absolutely not.

13 Q. Okay. What -- so what is a loan modification
14 application?

15 A. A loan modification application would be a
16 sufficient amount of documents to meet the requirements
17 for an application to modify a loan.

18 Q. But is there a separate form entitled Loan
19 Modification Application?

20 A. That would depend on the servicer's loan
21 servicer.

22 Q. Okay. Well, we are talking about America's
23 Servicing Company.

24 A. I'm not aware that they actually have a separate
25 form --

1 Q. So --

2 A. -- for loan modification.

3 Q. So for all intents and purposes, a loan
4 modification application is the RMA?

5 MR. GUZZETTA: Objection. Misstates testimony.

6 THE WITNESS: And I disagree with what you are
7 saying.

8 Q. BY MS. LIM: Okay. So is it your testimony that
9 an RMA, in and of itself, is not a loan modification
10 application unless all supporting documents in support of
11 the RMA is completed, correct?

12 A. Well, there is also -- I don't think that would
13 be a complete answer to say "yes" to that. Because there
14 is also the matter that with respect to certain loans and
15 certain circumstances, a -- an application for loan
16 modification when it is a -- when there are repetitive or
17 refiled applications or multiple applications, or multiple
18 requests for mortgage assistance from the same borrower,
19 -- let me start that answer over. I apologize.

20 Q. You know what? In instead of that, let me ask --
21 let me re-ask the question.

22 A. Sure.

23 Q. How do you distinguish a request for modification
24 or mortgage assistance versus a loan modification
25 application?

1 A. A request for mortgage assistance is some oral,
2 written communication to a loan servicer that a borrower
3 wants assistance with repaying their mortgage.

4 Q. And it is, in fact, called and it is entitled on
5 the form Request for Mortgage Assistance, correct?

6 A. If you are referring to that particular document,
7 that would be yes, that would be correct.

8 Q. So how does -- how is that different from a loan
9 modification application?

10 A. A loan modification application would have to
11 contain all the information necessary by the servicer
12 standards to constitute an application. And in the case
13 of repetitive applications, there would have to be a
14 change in circumstance for the servicer to consider that
15 an application for modification.

16 Q. Okay. So do you know in doing your homework
17 whether the plaintiff provided all the information
18 necessary along with their RMA which was, according to
19 you, submitted on September 17th, 2015?

20 A. I do know.

21 Q. And what is your -- what do you know about that?

22 A. They did not.

23 Q. Okay. Do you know what information was
24 necessary?

25 A. Information was --

1 Q. And, again, this is with regard to ASC and their
2 requirements, not generally speaking. So do you know the
3 requirements that ASC holds for what is considered a loan
4 modification application?

5 A. Well, I have seen the packet that they send out
6 which requests information. And then I also know that
7 because there was a previous denial, there would have to
8 be adequate information. And also there would have to be
9 a change in circumstances.

10 Q. Okay. That wasn't my question. My question is,
11 do you know all the information necessary that's required
12 for a loan modification application, per ASC guidelines?

13 A. Well, that -- that would that would split into
14 two parts. Because you would have the information that
15 ASC would initially state that they want to consider
16 documents for possible review and possible consideration
17 as a loan modification application. But then there are
18 also guidelines or standards that are -- that are adopted
19 from regular underwriting standards as to what can be
20 considered.

21 So in some cases, a certain document could be
22 requested, but then that document could indicate that
23 further information is needed.

24 Q. Okay. So, again, do you know the information
25 that was required by ASC for the loan modification

1 application?

2 MR. GUZZETTA: Objection. Vague and ambiguous,
3 asked and answered.

4 THE WITNESS: I know what was on their initial
5 request packet they sent out when the borrower inquired
6 about a request for mortgage assistance, and what items
7 are listed in there. And then -- go ahead.

8 Q. BY MS. LIM: Okay. But I'm referring to --

9 MR. GUZZETTA: Hold on. Were you finished with
10 your answer?

11 THE WITNESS: I wasn't.

12 MR. GUZZETTA: Okay. Let him finish his answer,
13 please.

14 THE WITNESS: Beyond that, there are additional
15 potential requirements based on underwriting when looking
16 at a -- looking at documents that are submitted with the
17 request for mortgage assistance. And those underwriting
18 standards may require that additional information be
19 provided.

20 Q. BY MS. LIM: Okay. So in your research or in
21 your investigation of reviewing Ms. Manantan's RMA on
22 September 17th, 2015, and the documents that she provided
23 on that date, your testimony was that it was not compliant
24 or not -- or incomplete, correct?

25 A. Incomplete and didn't show a change in

1 circumstances.

2 Q. So, and you testified that ASC requires all the
3 information necessary in order to make a loan modification
4 application, like in your words, complete, correct?

5 A. I testified that they require the items that they
6 provide on their initial list. And then they also
7 require -- may require additional items depending on what
8 they review from what they receive.

9 Q. Okay. So what's the information that ASC
10 requires to make a loan modification application complete?

11 MR. GUZZETTA: Objection. Asked and answered.

12 THE WITNESS: I don't have the form in front of
13 me that was in the exhibits, because I didn't actually
14 bring it, because my understanding is that counsel
15 provided you with everything that I relied upon prior to
16 this meeting. So I would have to look at the form to --
17 to be able to -- because I can't remember all of the items
18 that they require.

19 Q. BY MS. LIM: Okay. So you also testified that
20 ASC has certain standards?

21 A. Correct.

22 Q. In, I guess, determining that that loan
23 modification application is complete, what are those
24 standards?

25 A. The ASC and most servicers for these type of

1 loans follow general mortgage underwriting standards. And
2 so those -- those standards would be that there is a
3 reasonable amount of documentation to be able to analyze a
4 request.

5 Q. Okay. So what documents did you review that were
6 provided along with the RMA by plaintiff on September
7 17th, 2015?

8 A. I don't recall all the documents at this moment.
9 But if I can look at all the exhibits, I could -- from the
10 matter, I could go through and find them all for you.

11 Q. Okay. So based on your review of the documents
12 and the RMA that was provided by plaintiff on September
13 17th, 2015, and looking at this letter drafted by ASC,
14 would you deem this a denial of her RMA?

15 A. The -- generally with a request for mortgage
16 assistance -- well, let me go over to with a loan
17 modification application, when something is considered a
18 loan modification application, then that can be denied. A
19 request for mortgage assistance is generally handled in
20 saying that with a response saying that there is nothing
21 that can be done at this time because it -- in general, a
22 denial is used for an actual application.

23 And I do need to add something to one of my
24 previous answers, but tell me when you have a spot.

25 Q. So then is it your testimony or opinion that this

1 was not a denial because a full or a loan modification
2 application was never submitted?

3 A. It was not a denial of an application. It was
4 information indicating that they could not move forward
5 based on the paperwork or documents that had been
6 submitted.

7 Q. What was deficient in the paperwork or documents
8 that were submitted that rendered them unable to move
9 forward with assistance?

10 A. Primarily, and that gives me a chance to add to
11 my previous answer, because you had asked me previously
12 something to the effect of what was missing and in
13 addition to any documents missing, what was also missing
14 was the fact that there was nothing showing a change in
15 circumstances. And in this case, there was nothing
16 showing -- nothing demonstrating a change of
17 circumstances.

18 Q. Can you be more particular in that?

19 MR. GUZZETTA: Objection. Vague and ambiguous.

20 THE WITNESS: I can, yes. If you look at the
21 documents from the loan servicer's analysis of the -- of
22 the income in March of 2015, and then you look at the
23 document that shows the loan servicer's analysis of the
24 income on July, I believe it is, 23rd, 2015, if you look
25 at that income and then you look at the documentation

1 provided in the September submission, there isn't anything
2 sufficient to show a change of circumstances.

3 Q. BY MS. LIM: What was the income provided in
4 March of 2015?

5 A. I don't have that document in front of me. But
6 if you would let me look at the exhibit, I'd be happy to
7 go through them and find them for you.

8 Q. Okay. Can we go off the record?

9 MR. GUZZETTA: Yes.

10 (Off the record.)

11 Q. BY MS. LIM: Okay. So just for clarification,
12 the difference between an RMA and a loan modification
13 application is that a loan modification application must
14 have all the documents in order for it to go to
15 underwriting, correct?

16 A. No --

17 Q. Then what's the difference?

18 A. -- that's not my testimony

19 Well, I think that it is -- I left out something
20 about the request for mortgage assistance that I think is
21 important too because a request for mortgage assistance
22 could span a much wider range than just looking for a loan
23 modification. Mortgage assistance, as we see it as loan
24 servicers, mortgage assistance, to us, doesn't just mean
25 looking for a loan modification. Mortgage assistance can

1 be looking for referrals to counseling companies.
2 Mortgage assistance could be considering a shortsale.
3 Mortgage assistance could be considering a deed in lieu of
4 foreclosure. Mortgage could be considering a temporary
5 forbearance rather than a modification. Mortgage
6 assistance could mean giving the borrower options as far
7 as time in order to sell their property.

8 Q. Okay. I get your drift. It could be more than
9 just a loan modification application?

10 A. Correct.

11 Q. But in the RMA, doesn't it -- doesn't the
12 borrower indicate that they want a loan modification?

13 A. They may or may not indicate that, depending on
14 the type of loan.

15 Q. But isn't there a box to check off that they want
16 a loan modification application?

17 A. I don't recall.

18 Q. So, I guess, so what is the difference between
19 RMA and a loan modification application? This is about my
20 fifth time asking it.

21 MR. GUZZETTA: Exactly. And it's been answered
22 five times. Asked and answered is the objection.

23 THE WITNESS: And I'm happy to answer it as many
24 times as necessary so that you are comfortable with
25 clarity in my answer, so I'm happy to do that. The -- a

1 request for mortgage assistance, and let's assume that
2 someone checked the box that said they want a
3 modification, is exactly that, it is a request for
4 mortgage assistance. And it is an initial communication
5 of a desire for mortgage assistance along with certain
6 documentation documents that may be provided in certain
7 circumstances.

8 And loan modification application is a sufficient
9 set of documents to be able to place the loan into
10 underwriting and in this context also a sufficient set of
11 documentation and information that demonstrates a change
12 in circumstances.

13 Q. BY MS. LIM: Okay. So with regard to
14 Ms. Manantan, your testimony is that there was no change
15 in circumstances, correct?

16 A. There was no acceptable evidence of a change in
17 circumstances.

18 Q. And what is -- what do you look at in determining
19 what a change in circumstance could be?

20 A. Well, as I said earlier, I started out by looking
21 at the March, approximately March 2015, and I knew there
22 was a decline in March of 2015. I don't recall exactly if
23 the analysis of income by the loan servicer was also in
24 March or if it was right before that, but sometime very --
25 within a few weeks of the date of the denial in March of

1 2015, there was a document produced by the loan servicer
2 that's in the exhibits that talks about what their
3 determination was of the borrower's income based on
4 information they had reviewed. And it is within about
5 five or six hundred dollars of the borrower's statement
6 of --

7 Q. Okay. So --

8 MR. GUZZETTA: Joffrey, were you done with your
9 answer?

10 THE WITNESS: No, I wasn't.

11 MR. GUZZETTA: Please let him finish his answers.

12 THE WITNESS: So that determination of income
13 that the loan servicer completed at that time was within
14 approximately \$500 of the borrower's own statement of what
15 their income was at that time.

16 Q. BY MS. LIM: Okay. So just for clarification,
17 it's your testimony --

18 MR. GUZZETTA: Hang on just a second. Joffrey,
19 were you finished with your answer? I think there was
20 more.

21 THE WITNESS: Not really.

22 MR. GUZZETTA: Please let him finish it and then
23 you can ask your clarification.

24 THE WITNESS: And that's perhaps why the
25 repetitive of asking the same question, because if I do

1 get a chance to finish and it is not satisfactory, I'd be
2 glad to answer it.

3 Q. BY MS. LIM: No, it was satisfactory. You
4 testified that the difference between the income was \$500?

5 MR. GUZZETTA: No, no, no.

6 THE WITNESS: That wasn't your question.

7 MR. GUZZETTA: That's not what he testified to,
8 No. 1. And No. 2, he testified he wasn't finished with
9 his answer. You've got to let him finish.

10 Q. BY MS. LIM: A lot of these answers, with all due
11 respect, do not answer the question. So if I do interrupt
12 you, forgive me, but if we go at this rate, we are going
13 to be here longer than expected. So please just answer
14 the question.

15 MR. GUZZETTA: Well, he --

16 Q. BY MS. LIM: So, again, in reviewing the income
17 of plaintiff, what was the change or lack of change in
18 circumstance?

19 MR. GUZZETTA: First thing --

20 Q. BY MS. LIM: -- in your opinion.

21 MR. GUZZETTA: -- you are wrong that he wasn't
22 answering your question. He was answering your question.
23 You just cut him off about a third of the way through the
24 answer or halfway through the answer, if I understand the
25 answer. Correct?

1 Q. BY MS. LIM: So let's start over. What was the
2 lack in change in circumstance?

3 A. Well, and again to make sure that I am answering
4 your question, your question was what was the lack of
5 change in the circumstance. Okay. Change means something
6 different, so, therefore, I was talking about what existed
7 before, because we can't have a change in circumstance --
8 and I can't answer a question about a change in
9 circumstance unless I tell you what the circumstance was
10 first. So I'm telling you how I base this. So I think if
11 I skip over this, I'm not answer your question. So in
12 March of 2015, there was an analysis of income.

13 Q. Which was?

14 A. Which was done by the servicer and is in the
15 exhibits and I don't recall the exact amount, but they
16 came up with it. But I did look at it carefully and
17 compared it. And, again, if you want me to look at
18 exhibits, I'll be happy to and find it for you and show
19 you exactly what I'm talking about. So in March, you have
20 a circumstance determined by the servicer.

21 Q. Which it means income?

22 A. Income, right.

23 Q. Okay.

24 A. And in July, you have another analysis where the
25 servicer again does a calculation about income. Then in

1 September, you have a submission and there isn't any
2 evidence showing a change in circumstances. So when you
3 say what circumstances didn't change, I believe that was
4 your question, it would be the circumstances that existed
5 before.

6 Q. Okay.

7 A. Did I answer your question?

8 Q. Fair enough. I mean, I'm going to ask you a
9 follow-up question to that.

10 A. Okay.

11 Q. So what was the difference in income between July
12 and September?

13 A. There wasn't any evidence of a difference in
14 income or a change in circumstances.

15 Q. Do you mean by no evidence in change of
16 circumstances because there were no pay stubs attached?

17 A. No.

18 Q. What kind of evidence were you looking for or
19 what kind of evidence was the servicer looking for?

20 A. Well, the -- I'll say that there wasn't
21 information provided that demonstrated a change in
22 circumstance. What a servicer generally looks for is
23 satisfactory evidence that shows a change in circumstance.

24 Q. I understand that. So what evidence were they
25 looking for?

1 A. Exactly what I said: Satisfactory evidence that
2 demonstrates a change in circumstance.

3 Q. What would be satisfactory evidence to
4 demonstrate a change in circumstance, according to ASC?

5 A. Okay. Well, I can give you examples from -- from
6 certain -- certain items that were provided.

7 Q. Okay. Well, what was not provided in this case?

8 A. Well, I'll tell you what was provided and then
9 what the deficiencies were. Did you want me to tell you
10 that?

11 Q. Yes.

12 A. Okay. So you have information provided on
13 request for mortgage assistance -- and I'm going from
14 memory; I don't have the form in front of me -- but you
15 have information provided on a request for mortgage
16 assistance that says that there is a large amount of
17 self-employment income.

18 Q. And just for clarification, you are referring to
19 the RMA that was submitted on September 17th?

20 A. Correct.

21 Q. Okay.

22 A. So you have a large amount of self-employment
23 income stated. The documentation relative to the
24 self-employment consists of the 2013 partnership return or
25 Vis-A-Vis Homes which indicates a significant loss, a

1 number of which I don't recall at this moment. You have
2 the 2014 partnership return Vis-A-Vis Homes which also
3 indicates a significant loss. And then you have two
4 profit-and-loss statements covering a total of a
5 five-month period of time in 2015 that show a very large
6 profit. But based on the other information, and based on
7 inadequacies with those profit-and-loss statements, that
8 income can't really be considered.

9 Q. Okay. So then is it your testimony that ASC did
10 this evaluation/analysis, whatever you want to call it,
11 before generating this letter on September 18th, 2015?

12 A. I don't know exactly when that analysis was done.

13 Q. Do you know if it -- if, in fact, it was done?

14 A. Well, there are notes -- yes, I do.

15 Q. And what did you rely on?

16 A. There are notes in the loan servicer's records
17 that indicate no change of circumstance.

18 Q. But are there notes in the -- and did you review
19 any documents indicating that ASC performed this
20 evaluation of income that you just testified to, was that
21 performed by ASC before drafting this letter on September
22 18th, 2015?

23 MR. GUZZETTA: Objection. Asked and answered.

24 THE WITNESS: I don't know when they performed
25 that analysis.

1 Q. BY MS. LIM: But you said you do know for a fact
2 that they did perform this analysis?

3 A. I said that the loan servicing notes indicate
4 different points at which they looked at documents and
5 indicated that there was no change in circumstance.

6 Q. But you don't know when that evaluation was
7 performed?

8 A. I don't know when the exact evaluation was
9 performed, but if I look at the loan servicing notes, I
10 could show you the different points there.

11 Q. So based on what you reviewed and based on this
12 letter, is it your testimony that the reason why they
13 weren't able to move forward with plaintiff's evaluation
14 of the situation was because there was no change in
15 circumstance?

16 A. No evidence provided -- no acceptable evidence
17 provided of a change in circumstance.

18 Q. Did you speak to anyone at ASC with regard to
19 this determination?

20 A. I did not.

21 Q. Did you see any notes in forming your opinion
22 that there was -- that the information was unacceptable?

23 A. Yes.

24 Q. Did you see anywhere in your notes why it was
25 unacceptable?

1 A. Because it didn't show a change in circumstance.

2 Q. Well, no. I think what you just explained was
3 that in January -- or I'm sorry, in September of 2015,
4 they provided profit-and-loss statements in 2015 that were
5 large; those were your exact words. But it was
6 unacceptable. Why was the profit-and-loss statements, why
7 were they considered unacceptable?

8 A. Those were not my words. What you just quoted as
9 my words were not my words.

10 Q. Okay. But you testified that the profit-and-loss
11 statements representing a large profit in 2015 was not
12 considered, correct?

13 A. I didn't testify that they weren't considered.

14 Q. Or they could not be considered?

15 A. I testified that they did not -- they were not
16 sufficient to show a change in circumstance.

17 Q. Do you know how large of a profit in 2015 that
18 was reported or provided to ASC?

19 A. I actually don't.

20 Q. Okay.

21 A. Because the way the profit-and-loss statements
22 were prepared, they are prepared in a manner that it is
23 not possible to determine the profit for that period for
24 the periods covered.

25 Q. What do you mean by "not possible"?

1 A. Because they -- one profit-and-loss statement
2 covers a period of April 1st -- excuse me. I'd have to
3 look at it, but one profit-and-loss statement covers a
4 period of two months ending June 30th. Another
5 profit-and-loss statement covers a period of three months
6 beginning June 1st. So the two profit-and-loss statements
7 overlap. So unless you know how much the profit and loss
8 is for June, you can't really use these statements.

9 Q. Okay. And how do you know that ASC made that
10 determination?

11 A. When you say "made that determination," which
12 determination are you talking about?

13 Q. You are saying that the profit-and-loss
14 statements that were provided in support of a loan
15 modification application could not be considered because
16 you just stated they overlapped. How do you know ASC did
17 that evaluation?

18 A. I don't personally know that ASC did the
19 evaluation of whether or not the profit-and-loss
20 statements overlapped. I made that observation.

21 Q. Based on what?

22 A. What did I base my observation on?

23 Q. That ASC didn't move forward with this loan
24 application or this RMA because of no change in
25 circumstances, which was based on, in large part, due to

1 profit-and-loss statements in 2015 that were too large
2 because they overlapped. Where did you get this
3 information?

4 A. Well, I got information from the various loan
5 servicing notes that indicate that nothing -- that
6 indicate that there was no change in circumstance. I
7 performed my own analysis -- I'm sorry, just wait. I was
8 waiting because I know he was showing you something.

9 Q. No, you can continue to talk.

10 A. Okay. I performed my own analysis based on what
11 I've learned as a loan servicer to look at whether or not,
12 aside from ASC's opinion, what is my opinion as to why
13 these documents don't show a change in circumstance or
14 can't be -- can't be used to show a change in
15 circumstance.

16 Q. Okay. So borrower Ms. Manantan submitted an RMA
17 on September 17th. Day after, ASC generates this letter
18 saying that they can't move forward. And it is your
19 opinion that they couldn't move forward because of
20 insufficient evidence to show a change in circumstance,
21 correct?

22 A. Correct.

23 Q. Okay. But you have no personal knowledge that
24 ASC performed this evaluation before they drafted this
25 letter, correct? And I'm referring to the letter on

1 September 18th.

2 A. I don't know what analysis or evaluation that
3 they performed prior to drafting this letter.

4 Q. Okay. So I'm going to show you --

5 A. And I'll add to that answer in saying that if I
6 looked at the loan servicing notes, it might actually show
7 on the 17th or the 18th an entry for no change in
8 circumstance or some other -- some other determination,
9 but I didn't -- I don't recall those notes at this moment.

10 Q. In order to determine that certain
11 profit-and-loss statements can't be considered with this
12 case, your opinion is because they overlapped and it was
13 impossible, it was an impossibility for profits to have
14 been made based on what was provided in these
15 profit-and-loss statements, correct?

16 A. That's not completely correct.

17 Q. Then why couldn't -- why -- in your mind, why is
18 it that the profit-and-loss statements were not
19 sufficient?

20 A. What I gave you was one of several problems with
21 the profit-and-loss statements.

22 Q. Because they overlapped periods?

23 A. That was one of the problems.

24 Q. Other reasons?

25 A. The other reasons are that the profit-and-loss

1 statements are, as I said, for two separate periods. One
2 is a period of two months, one is a period of three
3 months. The numbers, the gross income and every single
4 line-item expense and the net profit for the two periods
5 is 100 percent identical. The only thing different on the
6 two profit-and-loss statements are the dates stated for
7 the periods that they cover.

8 Q. Okay. And this is just your opinion, you don't
9 know if ASC actually did this evaluation, correct?

10 A. Well, what I just stated was not an opinion, it
11 was a fact.

12 Q. Let me rephrase that. Your opinion is that
13 that's why ASC could not move forward with the plaintiff's
14 RMA because of this impossibility of the profits in 2015?

15 A. That contributes to my opinion.

16 Q. Right. But you don't know for a fact that ASC
17 went through this analysis, correct?

18 A. I don't know for a fact they went through this
19 analysis.

20 Q. And you didn't see anywhere in the notes that
21 they went through this analysis, correct?

22 A. I saw that they -- there is numerous places in
23 the notes where they say "no change in circumstances."

24 Q. But you don't -- you didn't see any notes
25 indicating how they made that determination, correct?

1 A. I don't recall seeing that.

2 Q. All right. So we will mark this as Exhibit 3.

3 (Exhibit 3 marked for identification.)

4 Q. BY MS. LIM: Before we get into this line, when
5 does an RMA get converted to a loan modification
6 application per ASC/Wells Fargo's guidelines?

7 A. Well, in general, a loan modification application
8 or documents provided with the request, that they be
9 considered as a loan modification application have to be
10 considered as an application when sufficient and complete
11 documentation is provided and when there is a
12 demonstration of a change in circumstance.

13 Q. Again, at Wells Fargo or per Wells Fargo/ASC
14 guidelines, when does an RMA become a loan modification
15 application?

16 MR. GUZZETTA: Objection. Asked and answered.

17 Q. BY MS. LIM: Not in general.

18 MR. GUZZETTA: Objection. Asked and answered.

19 THE WITNESS: And I don't think it would be any
20 different at Wells Fargo/ASC than at any other place.

21 Q. BY MS. LIM: Why is that?

22 A. Because if there is a complete loan modification
23 application or complete set of documents that constitute a
24 loan modification application, and there is a
25 demonstrated -- sufficiently demonstrated change in the

1 circumstances, then that becomes a loan modification
2 application.

3 Q. But do you know what the standards are pursuant
4 to Wells Fargo or ASC in terms of -- let me back up.

5 You've made -- you've made a distinction between
6 an RMA and a loan modification application, correct?

7 A. Yes.

8 Q. They are two very different things, according to
9 you?

10 A. Yes.

11 Q. Do you know if Wells Fargo also holds the same
12 opinion as you?

13 A. Yes.

14 Q. Okay. And how do you know that?

15 A. It is evident in all the documentation. They
16 don't -- they -- they don't accept something in their
17 system as a loan modification application unless certain
18 conditions exist.

19 Q. And what are those conditions?

20 MR. GUZZETTA: Objection. Asked and answered.

21 THE WITNESS: That would be that there is
22 sufficient documentation provided from the borrower to
23 underwrite a loan modification application and there is a
24 sufficient documentation to demonstrate a change in
25 circumstance.

1 Q. BY MS. LIM: And without these two conditions,
2 borrower did not submit a loan modification application?

3 A. Without those conditions, it doesn't -- it isn't
4 considered to be a -- an application for a loan
5 modification.

6 I want to add with the profit-and-loss statement,
7 I just want to state and you may not have any more
8 questions on it and that's fine, but I just do want to add
9 that I didn't tell you all the problems I had with the
10 profit-and-loss statement. But if you don't want to know
11 the rest, that's okay.

12 Q. I may ask you about that. Do you know if these
13 -- these conditions that you just explained comply with
14 California statute?

15 MR. GUZZETTA: Objection. Calls for a legal
16 conclusion, vague and ambiguous.

17 THE WITNESS: So I'm going to avoid providing any
18 legal opinions.

19 Q. BY MS. LIM: In formulating your opinions, isn't
20 it true that you do have to resort to a working knowledge
21 of what the code or California law requires or defines as
22 what's complete or not?

23 A. As a loan servicing practitioner, I do have to
24 avoid violating the law.

25 Q. That's not my question. But, so you don't know

1 if Wells Fargo, if these conditions that you are claiming
2 that Wells Fargo operates under complies with the current
3 law?

4 MR. GUZZETTA: Objection. Calls for a legal
5 conclusion.

6 THE WITNESS: And, again, I'm not an attorney, so
7 I'm not going to offer legal opinions at trial.

8 Q. BY MS. LIM: Okay. All right. So have you seen
9 this letter before?

10 MR. GUZZETTA: You are referring to Exhibit 3?

11 Q. BY MS. LIM: Yeah, Exhibit 3.

12 A. Yes, I have seen this.

13 Q. Okay. Was this letter in any way utilized in
14 forming your opinion that -- let me back up.

15 Your opinion is that the plaintiff did not submit
16 a loan modification application, correct?

17 A. Correct.

18 Q. Okay. So was this letter utilized in formulating
19 that opinion?

20 A. It was one of many letters in communications that
21 went into that, but certainly this letter is part of that
22 process.

23 Q. Okay. In the very top, it says, "Call us
24 immediately so we may respond to your request for mortgage
25 assistance." To your knowledge, what was Wells Fargo

1 going to respond to Regina Manantan's request for mortgage
2 assistance?

3 MR. GUZZETTA: Objection. Calls for speculation.

4 Q. BY MS. LIM: To your knowledge?

5 MR. GUZZETTA: Lacks foundation as well.

6 THE WITNESS: So your question is, what was --
7 what was Wells Fargo going to respond?

8 Q. BY MS. LIM: Right. How -- what was Wells Fargo
9 -- what was Wells Fargo asking homeowner to do?

10 MR. GUZZETTA: Objection. Calls for speculation,
11 lacks foundation.

12 THE WITNESS: The -- well, we can take it line by
13 line. First, Wells Fargo is asking the homeowner to call
14 Wells Fargo immediately or ASC immediately. In addition
15 to that, they are indicating that -- let me read the
16 wording, excuse me. They are indicating that the borrower
17 gather certain information and have it ready when calling.
18 Then they are providing the borrower with information
19 about foreclosure and about the process.

20 Q. Okay. Do you know if by this time September 18,
21 2015, whether or not a trustee sale was sent?

22 A. The trustee sale occurred on October 2nd, 2015.
23 So there would have had to have been a notice of trustee
24 sale -- pardon me, I'm thinking. I'm just doing math in
25 my mind here. It would had to have been a notice of

1 trustee sale no later than about September 15th. So I
2 would have to check the documents to give a completely
3 accurate answer, but based on the time frame required for
4 filing the notice of sale or recording the notice of sale
5 prior to the actual trustee sale, the notice of sale would
6 have had to have been filed at this time.

7 Q. Okay. Do you know if a sale date had been set by
8 this time of September 18, 2014?

9 A. For a notice of sale to be filed, there has to be
10 a sale date.

11 Q. Okay. And do you know what the sale date was?

12 A. The sale the trustee sale -- I don't know what
13 the date set was at that time, but I do know that a
14 trustee sale occurred occurred on October 2nd, 2015.

15 Q. Okay.

16 A. Would you mind if I just run over and grab that
17 water?

18 Q. Sure.

19 MR. GUZZETTA: You sit. I'll get it.

20 THE WITNESS: Okay.

21 MR. GUZZETTA: Anybody else want water?

22 THE WITNESS: Thank you.

23 Q. BY MS. LIM: You may have alluded to this before,
24 but in this letter when ASC is telling or stating that "We
25 have options for you," what were those options? Do you

1 know?

2 MR. GUZZETTA: Objection. Calls for speculation,
3 lacks foundation.

4 THE WITNESS: I don't know specifically what
5 options they were referring to, but based on my previous
6 testimony about requests for mortgage assistance, there
7 are a number of options that a loan servicer, subject to
8 case-by-case limitations, could be considering when they
9 say "We have options for you."

10 Q. BY MS. LIM: Did you see anything in the
11 documents to indicate that borrower wanted to modify her
12 loan?

13 A. I would have to look back at the request for
14 mortgage assistance, because you indicated that a box was
15 checked that said borrower wanted modification. And I
16 don't recall seeing that box checked, so I would have to
17 check that.

18 Q. Okay. Did you see anywhere in the notes that ASC
19 knew that homeowner wanted a loan modification?

20 A. I believe there were, as I recall, I believe,
21 there were conversations with a third party, Maxim Equity,
22 where they discussed the possibility of loan modification.

23 Q. Do you know why after ASC had on this very same
24 date indicated to the homeowner that they couldn't -- that
25 they were unable to move forward with the application, and

1 then in another letter invited homeowner to provide
2 documents --

3 A. I don't.

4 Q. -- for review?

5 A. I don't know exactly why.

6 Q. Well, in your expertise, do you know why this
7 would happen?

8 A. In general, there can be numerous requests for
9 mortgage assistance from the same borrower. And all
10 requests are generally responded to. Sometimes the
11 response to one set of documents is generated at the same
12 time as a response to a new set of documents. So there
13 may be a set of documents that came in on the -- let me
14 just take a different set of dates to not confuse it here.

15 But if a set of documents came in on the 15th of
16 April on a different loan, let's say, and there was a
17 response generated to those, that response might arrive in
18 someone's mailbox on the 1st of May. And then they may
19 have just submitted additional documents on the 30th of
20 April, and they may get another response to that
21 submission.

22 So, in general, servicers will respond to each
23 set of documents or each circumstance rather than sending
24 one all inclusive letter about everything.

25 Q. Okay. Do they generally do this when there is

1 already a trustee sale date set?

2 A. When you say "do this," you mean?

3 Q. Well, invite the borrower to submit documents or
4 respond to the borrower's request for mortgage assistance
5 during a time where there is already a sale date set?

6 A. A loan servicer wants to get a borrower to get
7 current on their payments, generally. The loan services
8 are generally under a lot of -- or generally being
9 influenced to try to get loans current and try to keep
10 borrowers in their properties. So the fact that someone
11 has a notice of trustee sale recorded or that there is a
12 trustee sale auction date set doesn't mean that a loan
13 servicer is going to shut the door and say, "We are not
14 going to consider any further requests for assistance."

15 If anything, in some cases, that might be when a
16 borrower needs assistance more than at other times.

17 Q. So based on this letter, is it reasonable, in
18 your opinion, for the homeowner to believe that she was
19 being reviewed for a loan modification?

20 A. No.

21 Q. And why is that?

22 A. Well, at this point in time, nothing here is
23 indicating that she is being reviewed for a loan
24 modification.

25 Q. Okay. By the way, have you ever spoken with

1 Erica Carrillo?

2 A. Never.

3 Q. So you see the statement, "Call us today"?

4 A. Yes.

5 Q. "Because you are currently in the foreclosure
6 process. You have limited time to receive assistance
7 before foreclosure sale is scheduled." To your knowledge,
8 if the within letter was mailed on September 18th, 2015,
9 approximately how many days did Regina Manantan have until
10 the sale of her property?

11 A. Well, if it was mailed on the 18th, I don't know
12 when she received it.

13 Q. Okay. Well, let's give her five days.

14 A. So.

15 Q. Let's say she received it on the 23rd.

16 A. So if a person receives a letter on the 23rd and
17 their property is scheduled for a trustee sale on the 2nd
18 on the following month, then they would have approximately
19 eight days --

20 Q. Eight days, okay.

21 A. -- prior to the sale.

22 Q. And the letter continues, "That's why you must
23 call us immediately. We will work with you to help
24 prevent foreclosure if we cn."

25 MR. GUZZETTA: Objection. The document sphakers

1 itself.

2 Q. BY MS. LIM: To your knowledge, on September
3 18th, 2015, did Wells Fargo have the ability to stop the
4 foreclosure of plaintiff's property before October 2nd,
5 2015?

6 A. A loan servicer can instruct a trustee to
7 postpone a trustee sale.

8 Q. So it was possible?

9 A. And that is depending on the -- who they are
10 working for, because a loan servicer is servicing a loan
11 on behalf of someone else, as is my understanding here.

12 Q. Okay. Who was the loan servicer servicing the
13 loan on behalf of?

14 A. I would have to look at the documents. I don't
15 recall. But there is a -- I believe there is an
16 investment trust or something that they were servicing it
17 on behalf of.

18 Q. So based on the loan owner, did Wells Fargo in
19 this case have the ability to -- to postpone the sale
20 date?

21 A. I don't know what their agreement was with the
22 owner of the loan.

23 Q. Do you have any reason to believe that after
24 September 18th, 2015, Wells Fargo Bank could not stop the
25 sale of plaintiff's property on October 2nd, 2015?

1 A. The limitations that would prevent them from
2 stopping a sale, that I can think of immediately, would be
3 if the instructions they have from the owner of the loan
4 don't allow them to do that. Otherwise, I'm -- otherwise,
5 I'm not able to think of anything, as I sit here right
6 now, that would stop them from being able to stop the
7 sale.

8 Q. But you don't know what the agreement was between
9 the owner and the servicer, correct?

10 A. That's correct.

11 Q. Okay. Now, you mark yourself as a foreclosure --
12 an expert in the foreclosure process, correct?

13 A. I don't.

14 Q. You don't. So what do you hold yourself out to,
15 to be an expert in servicing?

16 A. In addition to loan origination and trustee
17 investment, I have expertise in loan servicing and part of
18 that does include the loan servicer's interaction with the
19 foreclosure trustee, because obviously, as a loan
20 servicer, we are frequently interacting with the
21 foreclosure process. So my expertise is in loan servicing
22 and to the extent that I need to know about the trustee
23 sale and the trustee's obligations and how trustee works
24 and how the loan servicer's interaction with the trustee
25 is, I have expertise in that area. I've never acted as

1 foreclosure trustee, so I couldn't opine as to a trustee's
2 duties.

3 Q. Okay. Did you see any indication that Wells
4 Fargo was attempting to postpone the trustee sale date?

5 A. I don't recall seeing anything indicating that
6 they were postponing the trustee sale date.

7 Q. Is it a difficult process to delay a foreclosure
8 sale?

9 A. That would again depend on a loan servicer's
10 internal procedures and, again, depend on their agreement
11 with the owner of the loan.

12 Q. Do you know what the internal procedures are of
13 ASC?

14 A. With?

15 Q. In this context.

16 A. With respect to postponing a foreclosure sale, I
17 don't know what the procedures are.

18 Q. Is there a reason why you didn't review the
19 agreement between Wells Fargo/ASC and the owner of the
20 loan?

21 A. My main task was to review documents relative to
22 the request for mortgage assistance and relative to the
23 direct servicing of the loan by the servicer. I'm not
24 really -- I wasn't really requested to provide opinions on
25 the relationship between the loan servicer and the owner

1 of the loan.

2 Q. Was it ever provided to you? And I'm referring
3 to the pooling of servicing agreement.

4 A. No.

5 Q. What about the prospectus, was that ever provided
6 to you?

7 A. No.

8 Q. So you haven't reviewed the PSA or the
9 prospectus, correct?

10 A. I haven't reviewed the pooling and servicing
11 agreement and I haven't reviewed the prospectus, that's
12 correct.

13 Q. Okay. I'm going to pose a hypothetical. If
14 the -- if in the agreement between the servicer and the
15 owner that the owner could not allow postponement of the
16 trustee sale, can the servicer postpone the sale?

17 MR. GUZZETTA: Because it is a hypothetical, I'm
18 going to have to object that it's an incomplete
19 hypothetical. But you can answer, Joffrey, if you can
20 can.

21 THE WITNESS: So I'm going --

22 Q. BY MS. LIM: I'll rephrase. It was poorly
23 stated.

24 If there was an agreement between the owner and
25 the servicer that the servicer could not postpone a sale,

1 a trustee sale that was already set, are there any
2 circumstances under which the servicer could postpone the
3 sale?

4 MR. GUZZETTA: Objection. Incomplete
5 hypothetical, calls for speculation.

6 THE WITNESS: I want to be careful not to give a
7 legal opinion. But I'll say that if a servicer has an
8 agreement with the owner of the loan where the servicer is
9 prohibited from postponing the trustee sale, I'm not aware
10 of any circumstance where the servicer could elect to
11 postpone it without the permission of the owner of the
12 loan.

13 And I would give exceptions to operations of law,
14 because, for example, if a bankruptcy is filed, there
15 would be no choice but to postpone it, or risk violating
16 law, or if certain types of injunctions are filled. But
17 I'm not at this moment, as I sit here today, able to
18 identify a situation where a loan servicer could just make
19 their own decision to postpone a trustee sale in conflict
20 with their instructions from the owner of the loan.
21 That's a very good question, by the way.

22 Q. BY MS. LIM: What if -- what if the borrower had
23 submitted all the supporting documentation for a loan
24 modification application, could a servicer then postpone
25 the sale?

1 MR. GUZZETTA: Objection. Just let me object.
2 Sorry. Calls for speculation and incomplete hypothetical.

3 THE WITNESS: And to clarify your question, is
4 your question, what if a borrower has submitted all the
5 required documentation for a loan modification and there
6 is sufficient evidence of a change of circumstance, under
7 that circumstance, could the -- could the loan servicer
8 unilaterally decide to postpone the sale at that time? Is
9 that your question?

10 Q. BY MS. LIM: That could be the first part of the
11 question.

12 A. Okay. And, again, I am going to qualify my
13 answer by saying I think that's a legal opinion, so
14 whatever I say, you know, check with a qualified attorney,
15 please.

16 But as a practitioner, my feeling would be if I
17 was servicing a loan for the owner of the loan and the
18 owner said, "I cannot postpone trustee sales without their
19 consent or cannot postpone them at all," and then a
20 complete loan modification application came in that was
21 complete and it demonstrated a change of circumstances, in
22 the case of where there was previous loan modification
23 application denials, I would think that would come under
24 the part of my answer before, was that by operation of
25 law. Because my understanding is that at that point, we

1 couldn't proceed with the trustee sale.

2 Q. Okay. So --

3 A. And I would want to finish my answer by saying
4 that in addition to that, I would really have to check, as
5 a servicer myself, I'd have to check with counsel, because
6 I'm also not sure what the limitation is as to how -- how
7 much time before a trustee sale that complete application
8 has to be in in order to prevent him.

9 Q. Well, do you know if Wells Fargo or ASC has an
10 internal guideline as to how many days a complete loan
11 modification application has to be submitted prior the
12 sale?

13 A. I don't know.

14 Q. You don't know. Do you know in this case if the
15 borrower ended up submitting a full loan modification
16 application before the sale date?

17 A. They did not.

18 Q. And what did you rely on to make that
19 determination?

20 MR. GUZZETTA: Objection. Asked and answered.

21 THE WITNESS: I relied on the request for
22 mortgage assistance that was provided on September 17th,
23 either signed or provided on September 17th, I forgot at
24 this point, but something occurred on September 17th. And
25 then also I looked at the documents that were submitted

1 around that same time in connection with that request for
2 mortgage assistance.

3 Q. BY MS. LIM: Either before or after September
4 17th?

5 A. I believe they were either on or shortly after
6 September 17th. And, again, if I could check the
7 exhibits, I could look through them and tell you more
8 accurately.

9 Q. This whole thing with complete loan modification
10 application, are those conditions located anywhere in
11 California's statute or law?

12 MR. GUZZETTA: Objection. Calls for a legal
13 conclusion.

14 Q. BY MS. LIM: Do you know?

15 MR. GUZZETTA: Lacks foundation.

16 THE WITNESS: Well, again, I'll qualify my answer
17 by saying that I'm not going to give legal opinions at
18 trial. And I also would say that whatever I say is as a
19 practitioner, a loan servicer practitioner, and as not as
20 an attorney because I'm not an attorney. But my
21 understanding is that in the requirements that we are
22 required to work under are that -- that --

23 Q. BY MS. LIM: I'm listening.

24 A. That a -- in order to be considered a loan
25 modification application, there has to be a -- it has to

1 be a complete application. And in the case of repeat,
2 repeat requests where a loan modification application has
3 been denied and then there is another new request for
4 mortgage assistance with a new interest in a loan
5 modification application, that there has to be a
6 significant change in circumstances demonstrated before
7 that application has to be considered or needs to be
8 considered.

9 Q. Right. I understand that part of your theory.
10 Would you agree that if the sale of the borrower's
11 property proceeded on November 2nd, 2015, that it was the
12 intent of Wells Fargo to sell their property?

13 A. My understanding is that the sale occurred on
14 October 2nd, 2015.

15 Q. Okay. October 2nd, 2015.

16 A. Could you ask the question again? I'm sorry.

17 Q. Would you agree that if the sale of the owner's
18 property proceed on October 2nd, 2015, that it was the
19 intent of Wells Fargo to sell their property?

20 MR. GUZZETTA: Objection. Calls for speculation
21 as to what what Wells Fargo intended.

22 Q. BY MS. LIM: Do you know?

23 A. I don't know what their intent was.

24 Q. Okay.

25 A. I can say that generally loan servicers proceed

1 with a foreclosure process because they are attempting to
2 recover the money that was loaned.

3 Q. Okay. Is it your opinion that Wells Fargo Bank
4 acted negligently when it sold homeowner -- or plaintiff's
5 property on October 2nd, 2015?

6 A. No.

7 Q. Is it your opinion that on September 18, 2015,
8 that Erica Carrillo knew that homeowner's property was
9 going to be sold on October 2nd, 2015?

10 MR. GUZZETTA: Objection. Calls for speculation
11 and lacks foundation as to what Ms. Carrillo knew at any
12 point in time.

13 THE WITNESS: Yeah, I don't know what she knew.

14 Q. BY MS. LIM: I'm going to -- if Wells Fargo
15 always intended to sell plaintiff's property on October
16 2nd, 2015, why did Erica Carrillo ask for monthly gross
17 income from each borrower?

18 MR. GUZZETTA: Objection. Incomplete
19 hypothetical, lacks foundation, calls for speculation as
20 to why Ms. Carrillo did anything.

21 Q. BY MS. LIM: Do you know why?

22 A. Well, I -- your question says -- your question
23 is -- begins with, if Wells Fargo intended to sell the
24 borrower's property. Wells Fargo didn't own the
25 borrower's property, so I'm not understanding how they can

1 sell it.

2 Q. Well, the servicer/the owner or the owner of the
3 loan?

4 A. Well, the owner of the loan can't sell the
5 borrower's property.

6 Q. Okay. If they always intended -- if they had
7 intended to foreclose on a property on October 2nd, 2015,
8 why was this letter of September 18, 2015, generated
9 inviting owner to provide documents?

10 MR. GUZZETTA: Objection. Calls for speculation.

11 Q. BY MS. LIM: For what we can presume a loan
12 modification application?

13 MR. GUZZETTA: Objection. Calls for speculation,
14 lacks foundation, incomplete hypothetical, both as to
15 Ms. Carrillo or Wells Fargo intended and to what you can
16 presume.

17 THE WITNESS: I don't know, because I can't
18 testify as to the loan servicer's intentions. But I can
19 tell you that, as a loan servicer myself, we will continue
20 to try to work out a loan or do whatever we can to attempt
21 to avoid a foreclosure sale and the related problems if
22 there is a way to work it out to get the loan, get the
23 borrower to start making payments again and get the
24 borrower current and cause the loan to stay, as one of the
25 loans in our portfolio of loans we are servicing rather

1 than lose it and have it turn into a foreclosure.

2 Q. BY MS. LIM: Okay. So, well, based on that,
3 then, do you know at this time of September 18th, 2015,
4 were there any programs for the borrower to avoid
5 foreclosure?

6 A. I don't know exactly what programs may have
7 existed for this borrower. And I'm not sure that the loan
8 servicer had all the questions -- all the information they
9 needed to make that determination, which may be -- which
10 would be a logical reason why they are asking for the
11 information.

12 Q. Okay. Well, what programs were generally
13 available?

14 A. Well, that would go back to my previous testimony
15 which would be loan modification, forbearance without
16 loan modification, shortsale, deed in lieu of foreclosure,
17 referral to counseling agencies and possibly delaying
18 various actions until the borrower is able to sell the
19 property.

20 Q. That's how I thought you were going to answer.

21 A. And that's not all of them, but those are some of
22 them.

23 Q. Okay. Do you know what that HAMP modification
24 is?

25 A. Yes.

1 Q. Was that an option for this borrower?

2 A. I believe that the March 2015, denial, that HAMP
3 had also been considered and they had been turned down for
4 HAMP.

5 Q. Do you know why they were turned down for HAMP?

6 A. My understanding is the reason was that their
7 loan balance was higher than the maximum amount that can
8 be modified under the HAMP program.

9 Q. Okay. So they were denied under HAMP. Were they
10 -- was the homeowner eligible for any other programs in
11 terms of loan modification?

12 A. They were denied, but my understanding is they
13 were also considered for another loan modification program
14 other than HAMP.

15 Q. And what program is that?

16 A. I believe it was an internal Wells Fargo program,
17 but I would have to check back on the documents to know
18 for sure.

19 Q. Which document would tell you whether or not they
20 were being reviewed or considered for an internal Wells
21 Fargo loan modification?

22 A. I believe the printouts and the -- the printouts
23 from the -- there is various screen prints from the Wells
24 Fargo loan servicing system that show the actions taken at
25 the time of the denial, and I believe that would contain

1 the information.

2 Q. So it would indicate the name of the program that
3 the borrower would be considered for?

4 A. I believe. I'd have check after reviewing it.

5 Q. Off the top of your head, do you know the name of
6 the program?

7 A. I don't.

8 Q. So because of the loan balance of plaintiff's
9 loan, is it your opinion that she would never be eligible
10 for a HAMP loan modification?

11 A. No.

12 Q. It is not your opinion?

13 A. That's not my opinion.

14 Q. In terms of a HAMP loan modification, based on
15 what you know to be the requirements, is she eligible for
16 a HAMP loan modification?

17 A. My understanding is that at the time of the March
18 denial, March 2015 denial and through October 2nd, 2015,
19 that her loan balance was higher than the maximum that can
20 be modified under the HAMP program.

21 Q. So then it is your testimony that based on that,
22 she would never be entitled or eligible for a HAMP loan
23 modification?

24 MR. GUZZETTA: Objection. Misstates his
25 testimony.

1 THE WITNESS: Yeah, never is a different period
2 of time than March through October 2015.

3 Q. BY MS. LIM: Do you know what the original loan
4 balance was?

5 A. I would have to look at the records.

6 Q. If I submitted to you that it was at least
7 \$750,000, would she be eligible for a HAMP loan
8 modification?

9 A. I would have to check the exact amount that's the
10 maximum that can be modified under HAMP. It is somewhere
11 in the -- it is somewhere in the 700s, but I don't have it
12 in front of me.

13 Q. Okay. I believe the maximum loan balance is
14 725,000. So if borrower's loan balance exceeded the
15 maximum amount pursuant to HAMP, she is not eligible for a
16 HAMP, correct?

17 A. That's my understanding.

18 Q. Going back to -- so if borrower's loan balance
19 exceeded the maximum loan balance required under HAMP, why
20 was she being reviewed for HAMP?

21 MR. GUZZETTA: Objection. Calls for speculation,
22 lacks foundation. You can answer if you know can.

23 THE WITNESS: In general, in both in loan
24 servicing and in lending in general, if sufficient
25 information is provided and the circumstances are

1 sufficient for somebody to be considered for a loan
2 modification, then it would be normal to proceed with that
3 review and then make a determination.

4 So in this case, they may have taken in -- and,
5 again, I'm speculating. I don't know for sure what the
6 circumstance was. But, in general, they may have taken it
7 into the process to show they they did evaluate it and
8 then make a determination that the loan amount was too
9 high to be modified under that circumstance.

10 Q. BY MS. LIM: Isn't that something that could be
11 determined early on?

12 A. Well, I think that taking in the application also
13 does -- provides what did occur here, which it gives the
14 -- gives the servicer the chance to look at other options
15 as well.

16 Q. Do you know when the servicer decided to look at
17 other options for this borrower?

18 A. I would have to check the documents to see. It
19 is probably in the loan servicing notes and also it would,
20 I believe, it would be reflected in that screen printout
21 that I was referring to.

22 Q. Okay. In the September 18th, 2015, letter we
23 marked as Exhibit 3, it does indicate that the property is
24 in foreclosure. Do you know of any internal guideline by
25 ASC that requires the sale date to be included in that

1 letter?

2 A. I am not aware of any guideline by ASC that
3 requires a date of foreclosure sale to be included in a
4 letter like this.

5 Q. Do you think foreclosure sale date should have
6 been included in a letter like this?

7 A. No.

8 Q. Why not?

9 A. The foreclosure process is established to
10 separate foreclosure from the loan servicer, to some
11 extent, so that a borrower receives the protection of
12 being able to find out about trustee sales dates directly
13 from the foreclosure trustee, which is not a loan
14 servicer. So to put a date like that in a letter like
15 this might -- well, it would not be as accurate as the
16 borrower being able to contact the trustee directly and
17 find out when the foreclosure sale date is.

18 MR. GUZZETTA: Counsel, when we get a chance, can
19 we take a bathroom break?

20 MS. LIM: Just one more question.

21 MR. GUZZETTA: Yeah, that's fine.

22 Q. BY MS. LIM: In that letter, was it required that
23 the trustee contact information be included?

24 MR. GUZZETTA: Objection. Calls for a legal
25 conclusion, lacks foundation.

1 THE WITNESS: I'm not aware of any requirement
2 that the trustee sale contact information be included in
3 the letter soliciting information for -- for a request for
4 mortgage assistance.

5 Q. BY MS. LIM: Do you think it should be included
6 in a letter such as that?

7 MR. GUZZETTA: Objection. Asked and answered.

8 Q. BY MS. LIM: And I'm referring to trustee sale or
9 the trustee, the foreclosing trustee information.

10 A. Well, the foreclosing trustee information is
11 public record and it is required by law to be public
12 record. And, again, that is so that all parties have
13 access to it whether or not the loan servicer elects to or
14 attempts to provide it. So the proper place for the
15 borrower to get trustee information and sale date
16 information is from the foreclosure trustee.

17 MS. LIM: Okay. Do you want to take a break?

18 MR. GUZZETTA: Yeah.

19 (Off the record.)

20 Q. BY MS. LIM: Okay. Can you tell me about your
21 education beginning with high school?

22 A. Yes. I -- after completing high school, I took
23 some years of study at California State University
24 Northridge, did not finish a degree program there. And
25 then the bulk of my education has been seminars, classes

1 and other aggregation I received through the mortgage
2 industry.

3 Q. You don't have a degree?

4 A. Not a college degree, no.

5 Q. So what, just a high school degree?

6 A. That's the only formal type of degree of that
7 nature that I have.

8 Q. And where you didn't attend law school, correct?

9 A. I did not.

10 Q. And you don't intend to offer any legal opinions
11 at trial, correct?

12 A. Correct.

13 Q. And you regard yourself as an expert in loan
14 modification applications, correct?

15 A. That's one area, yes.

16 Q. Okay. Are you a landlord?

17 A. Yes.

18 Q. Are you familiar with the term "unlawful
19 detainer"?

20 A. Yes.

21 Q. Have you ever evicted tenants?

22 A. Yes.

23 Q. On how many occasions?

24 A. I've been a landlord for 42 years, and I was not
25 prepared to answer that question. It would be very

1 difficult for me to give you an accurate answer. It would
2 require some research and thought. And I apologize, I was
3 not prepared for that question.

4 Q. That's fine. Are you also a hard money lender?

5 A. Correct.

6 Q. What does it mean to be a hard money lender?

7 A. Private money loans are hard money loans, both
8 terms are used for the same thing. It has to do with the
9 making or arranging of loans that are made with
10 non-institutional funds provided primarily by private
11 parties and are generally used for the purpose of making
12 loans for borrowers and/or properties that don't qualify
13 for institutional type loans.

14 Q. Okay. When were you first contacted by Severson
15 & Werson regarding your retention in this case?

16 A. I would estimate that it was approximately five
17 to seven days prior to the date of that retainer agreement
18 that I showed you.

19 Q. So around October 10th?

20 A. And we could verify that by looking at the
21 billing record that was supplied to you by retained
22 counsel.

23 Q. Okay. What I'm going to do is I'm going to have
24 you -- these are the list of documents that was provided
25 by your counsel.

1 MR. GUZZETTA: Again, I'm not his counsel.

2 Q. BY MS. LIM: I mean --

3 MR. GUZZETTA: Wells Fargo's counsel.

4 Q. BY MS. LIM: Wells Fargo' counsel.

5 MR. GUZZETTA: He works for me. I don't work for
6 him.

7 Q. BY MS. LIM: I see, yes.

8 A. Ms. Lim, can I ask, are you finished with Exhibit
9 3?

10 Q. Yes.

11 A. Okay.

12 Q. We can look that up later. Okay.

13 So who have you spoken with at Severson & Werson?

14 A. I've spoken with Laszlo Ladi regarding this
15 matter and I've also spoken with Joe Guzzetta regarding
16 this meater.

17 Q. And what did they tell you about the case?

18 A. They indicated that it was a matter regarding a
19 dispute between a borrower and a loan servicer, and they
20 indicated what the nature of the dispute was and what some
21 of the allegations were. And they indicated what
22 documents they would be sending me to review and what
23 areas they wanted me to consider or look at.

24 Q. And what areas were those?

25 A. Those were the areas that I had indicated that I

1 had indicated that I have formed opinions on. And I can
2 repeat those if you'd like.

3 Q. We already have a list of those. Did you take
4 notes during -- was this during a telephone call?

5 A. Yes.

6 Q. And did you take notes?

7 A. I did not.

8 Q. Okay. Did you form an opinion during the first
9 telephone call --

10 A. No.

11 Q. -- received from Severson & Werson?

12 What information did you rely upon in accepting
13 your retention by the defendants in this case?

14 A. The -- they had provided me with some of the --
15 some documentation already. The complaint and, I believe,
16 the response. And then I don't recall what other
17 documentation I had received by the time I had received --
18 agreed to the retention.

19 Q. Do you intend to review further documents --

20 A. Yes.

21 Q. -- after today?

22 A. Yes.

23 Q. What documents would those be?

24 A. Well, I may continue to -- I will continue to
25 review the documents that have already been provided by

1 retaining counsel to you. And then I will also be
2 reviewing the deposition of Mr. Tarter. And I'll also
3 review any other depositions or any other documents that
4 emerge in this matter or that become available in this
5 matter that might affect my opinion or that might be
6 useful to me.

7 MR. GUZZETTA: Counsel, I can help here. We will
8 commit that he is not going to be formulating any new
9 opinions after today other than rebutting opinions by
10 Tarter and any other servicing opinions by any of your
11 experts you guys put forth. I doubt there will be any,
12 but to the extent there are.

13 MS. LIM: Okay.

14 MR. GUZZETTA: But he is not going to continue
15 forming opinions about -- you know, we know that rule.

16 Q. BY MS. LIM: Including today's deposition, can
17 you -- how many hours have you worked on this case?

18 A. Approximately 16 or 17 hours.

19 Q. And how many hours do you expect to spend in the
20 future on this case?

21 A. I don't know. Assuming that -- including if it
22 goes to trial and all that?

23 Q. Yes.

24 A. Well, let's see, there will be some time -- I can
25 add it up here approximately. There will be some time

1 involved to review the transcript of this deposition.
2 There will be time to review other depositions, if there
3 are other depositions provided. There will be time to
4 prepare for the trial, which will depend on how much new
5 information is provided and what's involved in preparing
6 for trial. And then, of course, time for actual trial
7 testimony. So I -- I mean, I could estimate maybe another
8 15 to 20 hours.

9 Q. Okay. Fair enough. So you are a landlord and
10 you are a hard money lender. Any other --

11 A. I think improve on that last estimate. Maybe --
12 maybe closer to 10 to 20 hours.

13 Q. 10 to 20 hours. Okay, very good. So can you
14 estimate the percentage of your income from serving as an
15 expert witness in litigation matters?

16 A. It is approximately 25 percent of my income,
17 sometimes as much as 30.

18 Q. And what percentage of that is for plaintiff?

19 A. Probably about 40 to 45 percent is plaintiff
20 retentions.

21 Q. What licenses do you currently hold?

22 A. I have a California Bureau of Real Estate Real
23 Estate Broker's License. And then I also have a -- I am
24 also the broker officer for my corporation, which is
25 Southwest Bank Corp which, also holds a California Bureau

1 of Real Estate License. And then I also have a -- an
2 endorsement, which is considered a license, but
3 technically it is called an endorsement, from the
4 Nationwide Mortgage Licensing System which licenses people
5 involved in originating and servicing consumer-purpose
6 loans like this one. And then also I'm the designated
7 officer for the corporation, and the corporation has an
8 endorsement from the Nationwide Mortgage Licensing System.

9 Q. Did you have to take any courses in obtaining
10 those licenses?

11 A. I actually -- yes. And I actually teach those
12 courses as well. I teach license prep and -- for both
13 categories, and I teach continuing education for both
14 categories.

15 Q. Do you currently teach?

16 A. I currently teach the continuing education for
17 the Nationwide Mortgage Licensing System.

18 Q. Okay. Where do you teach?

19 A. I teach through an independent contract training
20 company called Duane Gomer Seminars.

21 Q. Can you spell that for me?

22 A. DUAME, GOMER and then Seminars.

23 Q. Can you approximate how many hours a week?

24 A. It is per year, because there is a season, a part
25 of the year when these classes are offered. And I

1 generally teach the full eight-hour class between five and
2 10 times a year.

3 Q. Okay. How much moneys have you been paid
4 regarding this case so far?

5 A. None.

6 Q. Okay. Do you expect to be paid?

7 A. Yes.

8 MR. GUZZETTA: Are you sure about that, Joffrey?

9 Q. BY MS. LIM: Are you sure about that?

10 A. Actually, to be correct, the only payment I've
11 received so far is from you, but I have received money.
12 And I should be accurate that I have received money
13 regarding this case.

14 MR. GUZZETTA: You do want us to pay you?

15 THE WITNESS: You will.

16 MR. GUZZETTA: All right. All right.

17 Q. BY MS. LIM: Have you ever been retained by
18 plaintiff to give testimony in which the issue was a loan
19 modification?

20 A. Yes, I have.

21 Q. So a dispute between borrower and --

22 A. Loan servicer.

23 Q. -- loan servicer?

24 A. Yes.

25 Q. Which case was that?

1 A. I don't recall the name of the case.

2 Q. Do you remember when?

3 A. The last one was approximately two years ago.

4 Q. Do you remember which courthouse it was out of?

5 A. I don't remember which court it was in.

6 Q. Do you remember the name of the plaintiff that
7 retained you?

8 A. I believe it was Younan, YOUNAN, but I don't
9 recall name of the servicer or the court.

10 Q. You are located in Granada Hills, correct?

11 A. Correct.

12 Q. Okay. Do you remember the name of the law firm
13 of the plaintiff?

14 A. I don't.

15 Q. Do you remember the name of the attorney who you
16 discussed the matter with?

17 A. I don't remember.

18 Q. And you already said you don't remember who the
19 defendant was, correct?

20 A. I don't remember which, whether it was a loan
21 servicer or a bank servicing on behalf of themselves.

22 Q. Do you remember if it was in California?

23 A. It was in California.

24 Q. Do you remember if it was in the County of Los
25 Angeles?

1 MR. GUZZETTA: Asked and answered.

2 THE WITNESS: I don't recall which county it was
3 in.

4 Q. BY MS. LIM: Okay. Are you familiar with the
5 Homeowners Bill of Rights Act?

6 A. Yes.

7 Q. Have you obtained any formal education regarding
8 the Homeowners Bill of Rights Act in California?

9 A. Could you define what you mean by "formal
10 education"?

11 Q. Well, any classes. Have you taken any courses or
12 seminars regarding the Homeowners Bill of Rights Act?

13 A. Yes. And I apologize. When you said "formal," I
14 thought maybe like a college course or something, which I
15 didn't take. But yes. The answer is yes.

16 Q. Okay. Where?

17 A. Primarily, I'm a member of the Board of Directors
18 of the California Mortgage Association, which is a
19 statewide trade association for originators and investors
20 and servicers of real estate loans. And when the
21 Homeowner Bill of Rights was first proposed or first
22 introduced in legislature, our organization was very
23 active in legislative advocacy to try to make sure that
24 when a loan is passed, that it was workable and feasible
25 and was something that loan servicers could comply with.

1 So I was involved with our legislative advocates
2 and with our Board of Directors at the time that that law
3 was actually being formed. At the time, after the law
4 passed and became law on 1-1-13, we had numerous seminars
5 through our organization both before passage of it to make
6 sure we were aware of how to comply with it and then after
7 passage of it. And then we have had continuing updates on
8 how it has affected loan servicing and how different
9 entities are complying with it.

10 Q. Okay. How ever taught any classes regarding the
11 Homeowners Bill of Rights Act?

12 A. I have not been a participant in teaching those
13 classes.

14 Q. Do you intend to offer an opinion regarding
15 application of the Homeowners Bill of Rights Act as it
16 relates to this case?

17 A. I want to be careful how I answer that because I
18 can't offer legal opinions, but I can offer opinions as to
19 what I feel I am required or loan servicers are required
20 to do when they are attempting to operate within -- in
21 compliance with that.

22 Q. Are you familiar with dual tracking?

23 A. Yes.

24 Q. Okay. So do you intend to offer an opinion as to
25 whether or not dual tracking was happening with this loan

1 or not?

2 A. Yes, I do.

3 Q. You do, okay. And your opinion is?

4 A. That it was not occurring here.

5 Q. Okay. Let's skip to that. Okay. Why did dual
6 tracking not occur in this case?

7 A. I have not been able to find any evidence of any
8 time when a foreclosure was in process at the same time
9 that an active loan modification application was in
10 process.

11 Q. Okay. And so in that statement, you make
12 reference to an active loan modification application?

13 A. Correct.

14 Q. What do you mean by "active"?

15 A. Well, a -- that would be a loan modification that
16 was a complete application that was either an original
17 application or if it was a resubmission, it was a
18 resubmission which also demonstrated acceptable
19 information about a change in circumstances.

20 Q. Can you repeat that, please? I'm sorry.

21 A. Sure. You have either complete applications for
22 loan modification, or in the case where there has already
23 been a denial, then it has to be a complete application
24 for a loan modification and there has to be a change of
25 circumstances demonstrated.

1 Q. So what about in absence of a denial, would that
2 change your meaning of what active is?

3 MR. GUZZETTA: Objection. Vague and ambiguous.

4 Q. BY MS. LIM: For instance, you stated that an
5 active loan modification in the event of a prior denial
6 would be a complete application, plus evidence of a change
7 of circumstance, correct?

8 A. Correct.

9 Q. Would your definition of active in the context of
10 a prior denial be different if there were no prior denial,
11 or would it be the same, denial or not? And I'm only
12 going by your words, so.

13 MR. GUZZETTA: Objection. Vague and ambiguous.

14 Q. BY MS. LIM: If you don't understand, let me know
15 and I'll rephrase.

16 A. I'm trying to understand.

17 Q. Okay. All right.

18 A. I'm sorry.

19 Q. So --

20 A. Maybe I need a sip of water.

21 Q. Go right ahead.

22 A. Okay. If you could ask it again, I'd really
23 appreciate it. Thank you.

24 Q. Okay. So you do intend to testify as to whether
25 or not it is in your opinion that dual tracking either

1 occurred or didn't occur, correct?

2 A. Yes.

3 Q. You've told me that dual tracking did not occur
4 in this case, correct?

5 A. Correct.

6 Q. And it is because there wasn't a foreclosure in
7 process at the same time an active loan modification
8 application existed?

9 A. Correct.

10 Q. Correct, okay. Then I asked you, well, what's
11 active? And you said, well, in the case of a prior
12 denial, it is determined to be active if there is a
13 complete loan modification application and there is a
14 showing of a change in circumstances, correct?

15 A. And I think, to clean that up a little bit, I
16 should say that after there has been a denial of a loan
17 modification or a request for mortgage assistance or a --
18 and then if it was a loan modification application, if
19 there has been a denial and the borrower resubmits a new
20 request for mortgage assistance and wants a modification,
21 that with that -- for that modification to be a complete
22 -- for that application to be complete, all the necessary
23 information has to be provided in addition to the fact
24 that there has to be a significant change in
25 circumstances.

1 Q. Okay. So prior to the foreclosure sale on
2 October 2nd, it is your opinion that by submitting the RMA
3 on September 17th or on or about September 18th, the loan
4 modification --

5 Well, there was no loan modification application,
6 correct?

7 A. Correct.

8 Q. And which made it inactive, correct?

9 A. Well, I'm going to not use the term inactive.
10 I'm going to say that there either is a loan modification
11 application that has to be recognized or there is not a
12 loan modification application. I think that -- and I
13 realize it was me that used the term. I used the term
14 active. I think active and inactive isn't part of it.
15 There either is an application for a loan modification
16 that is an application that meets the requirements that I
17 outlined for an application or there is not an
18 application.

19 Q. Okay.

20 A. And I apologize for the use of the word active.
21 I mean, obviously, if an application is is put forth and
22 it is a complete application and it is being looked at, it
23 would be active. But that term isn't really --

24 Q. Okay. Fair enough.

25 A. Isn't helpful to our discussion.

1 Q. Fair enough. So my question is, there was a
2 prior -- there were prior RMAs submitted to ASC prior to
3 September 18th, 2015, correct?

4 A. And I think you meant to say September 17th.

5 Q. I mean September 17th.

6 A. Yeah. And that is correct, yes, there were.

7 Q. Do you know how applications were submitted?

8 A. I would have to go through the documents, because
9 there were a number of them.

10 Q. Okay. I think you made reference to one in March
11 then one in July, correct?

12 A. Well, I made reference to a decision in March.
13 That was actually for an application that was submitted
14 October 14th, 2014.

15 Q. Okay.

16 A. Or a request for mortgage assistance that was
17 submitted October 14th, 2014.

18 Q. When an applicant resubmits an application, when
19 you -- when you say resubmit, do you mean subsequent a
20 denial of a loan modification application?

21 A. Yes.

22 Q. Okay.

23 A. Yes.

24 Q. Would it also mean -- would it also mean to
25 resubmit an application when the servicer claims that they

1 didn't receive all the documentation prior?

2 Let me put it another way. Could a borrower
3 resubmit an application because the servicer is letting
4 the borrower know that we didn't receive all the
5 documentation, so go ahead and resubmit another
6 application?

7 A. The borrower could submit another request for
8 mortgage assistance.

9 Q. Okay. Okay. So it doesn't necessarily mean that
10 you resubmit an application after a denial, correct?

11 A. Well, if you have a denial, after that denial, a
12 borrower could submit another request for mortgage
13 assistance or multiple ones. However, after a denial,
14 where there actually has been a denial of an actual
15 modification request, then after that denial, then for the
16 -- for one of those other submission of documents, to be
17 considered a complete application, there would have to be
18 demonstrating a change in circumstance.

19 Q. Okay. So on September 18th was Regina Manantan
20 being reviewed to determine whether she provided documents
21 to demonstrate a significant change in circumstance?

22 A. Well, on -- at the time throughout various points
23 in September, various documents were being submitted by
24 the borrower. And at that time, the loan servicing notes
25 clearly show that there were decisions made or

1 determinations made that there was no evidence of a change
2 in circumstance.

3 Q. And I think -- but was it -- we went over this
4 before. But you don't know for certain if the servicer
5 was actually reviewing the documents in terms of whether
6 there was a change of circumstance?

7 MR. GUZZETTA: You can tee it up for him like
8 that. Asked and answered. Objection.

9 THE WITNESS: The loan servicing notes clearly
10 indicate determinations being made that there wasn't
11 sufficient documentation to show a change in circumstance.
12 So in order to make those notes, there would've had to
13 have been a determination of that. Do I know? I mean, I
14 didn't talk to the people that made that determination. I
15 didn't watch them do their work, so I don't know exactly
16 what happened. But those notes indicate, in my review to
17 verify information, indicates that there wasn't sufficient
18 information provided to show a change in circumstance.

19 Q. BY MS. LIM: Can you -- I'm going to show you the
20 log. Can you find the notes that you are referring to?

21 Okay. I'm going to -- is it a denial of a loan
22 modification or an RMA or loan modification application
23 when the servicing -- when the servicer says, "We can't
24 proceed because we don't have enough information," is that
25 considered a denial?

1 MR. GUZZETTA: Objection. Calls for -- I'm
2 sorry. Objection. Calls for a legal conclusion.

3 THE WITNESS: I guess -- I guess, that -- not I
4 guess. I think that if you have a loan modification
5 application, the choices would be to either approve it,
6 deny it or request additional documentation. If there is
7 a submission of documents such as a request for mortgage
8 assistance or a -- or other documents that have been
9 submitted that are not an application, I'm hearing your
10 question is, can that be denied? Is that what you are
11 asking?

12 Q. BY MS. LIM: Well, okay. So, I guess, if there
13 -- the -- okay. You are saying that in the general
14 standard practice of servicing loans, when reviewing a
15 borrower for a loan modification, they can either deny it
16 outright, request additional documents and what was the
17 other?

18 A. Or approve it.

19 Q. Or approve it. My question is, can you deny a
20 borrower for a loan modification application if they don't
21 provide the documents that they are requesting, that the
22 servicer is requesting? Would that be considered a
23 denial?

24 MR. GUZZETTA: Objection. Calls for a legal
25 conclusion.

1 THE WITNESS: So, and I'm trying -- I think I'm
2 getting your question here. I think it is sinking in.
3 The -- are you asking if a loan servicer receives
4 incomplete information from a borrower but decides to
5 review it anyway, in other words, is in a position where
6 they don't really have to consider the complete
7 application but says -- that they say, well, it is not
8 complete, but we are going to review it anyway. We are
9 going to take what we have and work with it, if they do
10 that, can that be considered a denial?

11 Q. BY MS. LIM: No, that's not what I'm asking.

12 A. Okay.

13 Q. I'm asking if according to the standards or the
14 required documents that the servicer is requesting, the
15 borrower doesn't provide all the documents, they don't
16 proceed with review of the loan modification application,
17 is that considered a denial?

18 A. So if the -- so if the servicer receives certain
19 documents, determines that those are not sufficient to
20 constitute an application or to begin to consider an
21 application for a loan modification, then is there
22 indication to the borrower that there is not enough
23 information to proceed with a loan modification
24 application, is that considered a denial?

25 Q. Yes.

1 A. Okay. And, to me, that's just a question of what
2 wording you want to use. I mean, it certainly is a
3 refusal to proceed with an application based on what's
4 been provided.

5 Q. Okay.

6 A. I think to use the term denial is confusing,
7 because denial is generally associated with an actual
8 application.

9 Q. So then can you explain what a denial would be in
10 the context of a loan modification application?

11 A. Would be where the -- where the loan servicer has
12 received documentation that it determines is sufficient to
13 be able to perform calculations of the borrower's income
14 and determines that the income isn't sufficient or some
15 other aspect of the borrower's circumstance isn't
16 sufficient to be able to help them with a modified payment
17 that they can afford.

18 Q. And that's after a full review of the borrower's
19 financial situation, correct?

20 A. It is after a review of the borrower's financial
21 situation. I'm not sure how you are defining a full
22 review.

23 Q. How about just underwriting? After going through
24 the underwriting process?

25 A. After going through some necessary part of the

1 underwriting process, provided there is sufficient
2 information to consider it is an application and provided
3 that there is enough information there to be able to make
4 some kind of a meaningful decision.

5 Q. And they don't qualify. For instance, you can
6 deny a borrower if there is insufficient income, correct?

7 A. Correct.

8 Q. Okay. What are the requirements in denying a
9 homeowner under those circumstance after a full
10 review/underwritting?

11 MR. GUZZETTA: Objection. Calls for a legal
12 conclusion.

13 Q. BY MS. LIM: Do you know what the requirements
14 are?

15 MR. GUZZETTA: Objection. Calls for a legal
16 conclusion. You can answer the question.

17 Q. BY MS. LIM: Do you remember the question?

18 A. I do.

19 Q. Okay.

20 A. I do. I'm not sure exactly what the requirements
21 are, but I do believe that a notification has to go to the
22 borrower.

23 Q. That what?

24 A. Notification has to be provided to the borrower
25 that they were denied.

1 Q. That they were denied. But do you know what must
2 be in that notification in explaining the denial to the
3 borrower?

4 MR. GUZZETTA: Calls for a legal conclusion.

5 THE WITNESS: I would have to check the exact --
6 we have forms in our company that we use, but I would have
7 to check exactly what information is provided.

8 Q. BY MS. LIM: But as part of servicing a loan and
9 in determining whether or not a borrower is approved for a
10 loan modification application, isn't it part of your
11 know-how to know what is required in a denial letter of a
12 loan modification application?

13 MR. GUZZETTA: Objection. Asked and answered.

14 THE WITNESS: We have had an attorney prepare a
15 letter that we use in our company, and I didn't review
16 that letter before coming here today. But I'd be happy to
17 review that letter and tell you exact what, because I know
18 that our letter is correct.

19 Q. BY MS. LIM: Did you review -- there was a denial
20 after a full underwriting of plaintiff's loan modification
21 application, correct?

22 A. In the -- there was a denial in the -- in March
23 of 2015.

24 Q. Did you review that denial correspondence?

25 A. I believe I did.

1 Q. Okay. Are you prepared to offer an opinion as to
2 whether or not that denial letter is valid?

3 A. Well, valid as to what?

4 Q. Are you prepared to offer any opinion as to that
5 denial letter in March of 2015?

6 A. I don't -- I am not going to offer opinions about
7 the 2015 denial, except to the extent that what the income
8 was that was used for that denial.

9 Q. Okay. Well, what's your opinion on the income
10 that was used in that denial?

11 A. My opinion is that the loan servicer did
12 correctly calculate the income based on the information
13 that was provided. And a fact, not an opinion, is that
14 the income that the loan servicer used in their
15 computations on that denial was approximately \$500 less
16 than what the borrower stated themselves. And that both the
17 borrower's income that the borrower stated and the income
18 that the loan servicer determined both were well below
19 what they would've had to have been to be able to properly
20 assist the borrower with an affordable payment.

21 Q. So is it -- so are you telling me that your
22 testimony with regard to the denial will be limited to the
23 calculation of the borrower's income?

24 A. At present, I believe that's correct, that I
25 would not -- that it would be limited to that calculation

1 of that income. And, of course, also the fact that that
2 denial is the one that forms the basis for later
3 attempting to determine if there was a change in
4 circumstance.

5 Q. Okay. So, and also you'll be offering an opinion
6 as to, well, with regard to the denial, that it was valid,
7 it was proper, correct, based on the borrower's income?

8 A. Correct.

9 Q. Okay. Will you be testifying or offering any
10 other opinion as to the denial letter in and of it -- as
11 to the denial letter from March 2015?

12 A. No, I won't offer an opinion about that denial
13 letter.

14 Q. Just -- okay. Going back to -- okay. After the
15 March 2015, denial letter, borrower resubmitted a new
16 application, correct?

17 A. No.

18 Q. What did borrower do?

19 A. Borrower submitted various requests for mortgage
20 assistance.

21 Q. Okay. And when you differentiate a loan
22 modification application from a request for modification
23 assistance you mean that subsequent to March 2015,
24 borrower did not provide all the documents?

25 A. Well, your question was when you -- something to

1 the effect that when you differentiate a loan modification
2 application from a request for modification assistance,
3 I'm talking about a request for mortgage assistance.

4 Q. I'm sorry. Mortgage assistance, right. So after
5 March -- after the denial in March 2015, borrower
6 resubmitted an RMA, correct?

7 A. Correct.

8 Q. Did borrower resubmit documentation in support of
9 the mortgage assistance?

10 A. Some documentation, yes.

11 Q. What documents?

12 A. I would have to go back through the exhibits to
13 see.

14 Q. Okay. But your testimony is that it was lacking
15 to convert it to a full loan modification application,
16 correct?

17 A. Correct.

18 Q. And that's because it was missing documents,
19 correct?

20 A. Missing documents and also nothing provided
21 demonstrated a significant change in circumstance.

22 Q. So how did the servicer respond to the subsequent
23 RMA?

24 A. There is -- there are a number of records in the
25 loan servicing notes and copies of various letters that

1 indicate multiple communication on different dates.

2 Q. Was there ever a denial?

3 A. There can't really be a denial if there isn't an
4 application. There were indications that they couldn't
5 move forward or couldn't -- couldn't provide assistance at
6 certain times. But...

7 Q. And was that because they didn't have the
8 adequate information --

9 MR. GUZZETTA: Objection. Calls for speculation.

10 Q. BY MS. LIM: -- from borrower?

11 MR. GUZZETTA: Withdrawn.

12 THE WITNESS: The reason that they -- that they
13 continue to correspond with the borrower and continue to
14 send the letters indicating that they could not help the
15 borrower was that they didn't receive an actual
16 application that was complete and demonstrated enough
17 information about a significant change in circumstances.

18 Q. BY MS. LIM: So did the servicer inform the
19 borrower how it was incomplete?

20 A. Again, there are various letters and various
21 documents and evidence of various phone conversations
22 about items needed from the borrower.

23 Q. Did the borrower submit those items to the
24 servicer?

25 A. They submitted some items, but not sufficient

1 items to constitute a complete application or
2 constitute -- or demonstrate a significant change of
3 circumstances.

4 Q. Who decides whether the information is
5 sufficient?

6 A. The loan servicer.

7 Q. What are the -- do you know what the guidelines
8 are as to what is considered sufficient versus
9 insufficient?

10 A. Generally, loan servicers follow standard
11 institutional lending underwriting guidelines, but they
12 are somewhat relaxed or easier for loan modification
13 purposes.

14 Q. Okay. Did you see anywhere in the notes that the
15 borrower indicated that they had submitted the requested
16 documents?

17 A. There may have been claims of that nature.

18 Q. Claims. And such claims would be notated in the
19 log, correct, in the notes?

20 A. I'm not sure if it would have been notated or
21 not.

22 Q. Okay. But do you recall seeing claims of
23 borrower submitting documents, per servicer's request?

24 A. Well, I saw documents that were submitted. And
25 when you say claims?

1 Q. You are the one who said claims. You are the one
2 who said that there were notes that borrower claimed to
3 have submitted documents.

4 A. And actually, to be correct, that would have been
5 Maxim, because I don't actually see where the borrower was
6 communicating with the servicer. There was a company
7 called Maxim Equity that was communicating.

8 Q. Okay. Do you recall any reason to believe that
9 Maxim and/or borrower failed to submit the requested
10 documents by servicer?

11 A. Yes.

12 Q. Based on what?

13 A. Well, based on the fact that there wasn't a point
14 reached where there was a complete application with
15 complete documentation and that did -- and there wasn't a
16 point where there was sufficient evidence of a significant
17 change in circumstances.

18 Q. So there was no dual tracking, because borrower
19 failed to submit all the documents in support of her
20 request for mortgage assistance, correct?

21 MR. GUZZETTA: Objection. It misstates
22 testimony.

23 THE WITNESS: The --

24 MR. GUZZETTA: Asked and answered.

25 THE WITNESS: The reason that there wasn't a

1 complete application or that there wasn't dual tracking
2 was because there was not a complete application that
3 demonstrated change of circumstances in existence at any
4 time during the time that a foreclosure was being
5 conducted.

6 Q. BY MS. LIM: And you base that on what?

7 MR. GUZZETTA: Objection. Asked and answered
8 several times.

9 THE WITNESS: I base that on the lack of complete
10 documentation and also the fact that there was no
11 significant documentation provided that demonstrated a
12 significant change in circumstances from the borrower.

13 Q. BY MS. LIM: What was lacking with this borrower?

14 A. With the documents submitted?

15 Q. With the documents, yes.

16 A. Well, part of that we discussed earlier, for
17 example, with the profit-and-loss statement and there were
18 other concerns I had with the profit-and-loss statement,
19 but I don't believe you asked a question about those.

20 Q. Yeah, we are going to get back to it. So what
21 was wrong with the profit-and-loss statement?

22 A. Other things wrong with the profit-and-loss
23 statement? Another aspect that was -- that didn't add up
24 was that in these -- and, of course, it is -- some of it
25 stems from the unusual fact that you have two different

1 time periods, which aside from overlapping, you have two
2 different time periods during the operation business with
3 all kinds of different expenses, and you have exactly the
4 same income and exactly the same expenses during those
5 same time periods, which is very unusual.

6 The other thing that makes, causes the
7 profit-and-loss statements just not to add up is the fact
8 that in each statement, there is an expense for rent for
9 \$12,600. So in the three-month statement, 12,600 would be
10 4,200 times three and that would actually match what the
11 borrower is claiming is her rent which she receives from
12 the property. Because, well, the borrower's circumstances
13 is that they have an entity that they operate the business
14 through, and the entity pays rent to the borrower as an
15 individual. So the borrower is claiming that individual
16 as an individual income.

17 So you have one profit-and-loss statement that
18 shows \$12,600 in income, which would be three months of
19 4,200 a month, which would match what the borrower is
20 claiming she is receiving and what it shows. With the
21 other period of two months, you have, of course, the exact
22 same figure, 12,600. Well, at \$4,200 a month. In two
23 months, you wouldn't have paid \$12,600 in rent, so that's
24 another factor that causes it not to match.

25 And then the fourth problem with the

1 profit-and-loss statement is that if you look at the
2 borrower's earlier information provided by the borrower,
3 the sequence of events with their business, Vis-A-Vis
4 Homes, is this: You start out with a 2013 tax return,
5 partnership tax return, Form 1065, which they filed. So
6 you have the 2013 tax return, they submit that. It shows
7 a large loss for the business.

8 Then they come in with a 2014 profit-and-loss
9 statement for the business, it shows a significant net
10 profit. So now you are -- now the reader is looking and
11 saying okay, maybe in 2013 they had a loss, but in 2014,
12 they had a profit. Okay. Later on, you get the 2014
13 partnership return, and instead of that profit that was
14 submitted earlier, it shows a large loss.

15 So now you are at a point where if the same
16 borrower provides you another profit-and-loss statement
17 and you look at the history, you realize that, to protect
18 that borrower from getting into a payment that's too high
19 for them, you want to get further verification on any
20 profit-and-loss statement, because they may just have a
21 problem with the way they keep books or how they -- I
22 mean, obviously, their tax return is true, because they
23 are signing that under penalty of perjury.

24 So, therefore, that's another reason why you have
25 to not allow this borrower to get themselves into trouble

1 with a payment they can't afford, because whoever is
2 running the profit-and-loss statements are not -- have not
3 been in the past reliable. So that's what, as of this
4 point, what I found of the profit-and-loss statements.

5 Q. Any other reason why they couldn't move forward
6 with borrower's loan modification or RMA?

7 A. Yes.

8 Q. And what are they?

9 A. Well, there is also the question of rent, because
10 they are claiming on the -- on their request for mortgage
11 assistance, they are claiming rental income of \$8,400 a
12 month, and they are showing that as a gross rental income.

13 And then on the other side of the application on
14 the liability side, they are showing a payment. There is
15 a question on the RMA that says payment -- monthly
16 payments on mortgages that are not mortgages on the house
17 which are -- that's in question. That's not the exact
18 wording, but something to that effect. In other words,
19 monthly payments on the house other than the one you are
20 asking for mortgage assistance on, on other mortgages.

21 So they have the figure there of 3,500 a month.
22 Well, in the same submission, they are submitting a
23 scheduled real estate owned that shows that their monthly
24 mortgage payments on the two mortgages other than the
25 house that they live in are approximately 8,175, and

1 that's accurate within \$150. So where they are claiming a
2 rental income of 8,400 and they are only claiming 3,500,
3 that's completely inaccurate.

4 The net rental income or what they are actually
5 getting in profit from the rental, if you look at the
6 gross amount they are receiving 8,400 that they say they
7 are receiving, and you subtract the payments that they are
8 making of approximately 8,175, that only leaves about \$225
9 in net profit. Again, my numbers may be off by \$100, but
10 as I'm going from memory, you see I don't have notes in
11 front of me.

12 But if you look at that, the difference between
13 the rents that they say they are collecting and the
14 payments that they are actually making, according to their
15 schedule of real estate owned, that's only a difference of
16 \$200, approximately. Now, that doesn't leave anything for
17 maintenance on the property, vacancy of the properties,
18 leasing of the properties, reserves for replacement.

19 As I mentioned earlier, I've been a landlord for
20 42 years. I know what those expenses are, and they are
21 much more than \$200 a month on two houses. So, therefore,
22 there is no rental income. There is no net rental income.

23 The other challenge with the rental income is
24 that if you look at the documentation that they provide,
25 they provide bank statements from Mrs. Manantan's personal

1 account that indicate deposits of \$4,200, two deposits of
2 4,200 a month in July and August, which presumably is
3 the rent -- well, it is marked as rent. Those are teller
4 deposits. They are not regular deposits for checks
5 deposited in a normal method. They are teller deposits,
6 meaning someone went to the window and made a deposit
7 right at the bank.

8 Now, the challenge with that is that if you look
9 at the bank statements for Vis-A-Vis Homes and you look
10 for payments of 4,200 going out, there isn't any. There
11 is no checks being paid out for 4,200. So what that leads
12 you to believe is that either something is not accurate or
13 maybe there is another bank account for Vis-A-Vis Homes
14 that we are not aware of and were not provided with.

15 So that whole -- but even if you accept that rent
16 of 4,200 a month for each house, let's say that you accept
17 that and you agree that that's valid, it still doesn't
18 result in any net income, because of the mortgage and the
19 expenses of operating them. So that would be another
20 concern.

21 Q. Okay. This explanation of why there was no
22 change in circumstances, do you know for a fact that the
23 servicer went through this process that you just
24 explained?

25 MR. GUZZETTA: Objection. Asked and answered.

1 THE WITNESS: I don't know if they -- this is the
2 way I look at documentation and the way I analyze it. I
3 don't know exactly what procedure they went through, but
4 they arrived at the same conclusion that there was no
5 change in circumstances.

6 Q. BY MS. LIM: But you don't know how they got
7 there?

8 A. I don't know how they got there.

9 Q. Okay. Based on what was presented to you with
10 regard to the P&L and the bank statements, do you have any
11 questions that would perhaps reconcile your concerns?

12 A. I'd be happy to answer that. But before I do
13 answer that, I would like to make sure I complete my last
14 question. And, again, I don't have the request for
15 mortgage assistance in front of me, so let me just try to
16 remember, because I want to talk to you about all --
17 because you asked me about all the problems, all the
18 indications that there was no change of circumstance. So
19 let me go ahead and address them all, but I can do it from
20 memory if you just give me a minute.

21 Okay. The last item was they indicated
22 contributions from others. And, again, there is no
23 evidence provided that shows a change of circumstances
24 there. They are stating that a higher amount is going to
25 be contributed, but there is no evidence to show that that

1 can be contributed.

2 Q. Okay.

3 A. And that would end my statements about my reasons
4 for determining that there was no change in circumstances
5 or no significant change in circumstances.

6 If you would repeat your other question, be happy
7 to answer that. I forgot what it is already.

8 Q. Okay. Do you have any questions based on the
9 information about borrower's finances that would reconcile
10 or answer some of your concerns?

11 A. There is -- there isn't an answer that would
12 resolve those problems, because there is -- there isn't
13 information provided that shows a change in circumstances.
14 You couldn't, for example, ask someone a question and get
15 some answer that's going to overcome what I already told
16 you.

17 For example, if you have rent of 8,400, assuming
18 it is valid and you are paying out more than 8,400 in
19 expenses, there is not an explanation that's going to
20 cause me to say, oh, well, in that case, it is income. It
21 is not.

22 Q. Do you know if the servicer reached out to the
23 borrower for more information with regard to the change of
24 circumstances?

25 A. Well, there wasn't any demonstration of a change

1 of circumstances.

2 Q. And my question is, did the servicer reach out to
3 the borrower and ask any questions involving the change of
4 circumstances?

5 A. I would have to look at the documentation,
6 because there are different interactions between the
7 borrower and the loan servicer, different questions asked,
8 different letters sent, different messages left. And, of
9 course, I shouldn't say between the servicer and the
10 borrower, but between the loan servicer and the borrower's
11 representative, Maxim Equity.

12 Q. This whole process that you described to me, is
13 that part of the underwriting?

14 A. Yes.

15 Q. Did the servicer explain to the borrower why
16 there was no change of circumstances?

17 A. I would, again, have to go back and look at the
18 records to see what -- what the different conversations
19 were.

20 Q. Aren't some of these issues that you just
21 presented reasonable issues that, in reviewing someone for
22 a loan modification, that they would ask the borrower to
23 provide additional information?

24 A. Well, if they are determining -- if you are
25 determining if there has been a change in circumstance and

1 documentation is provided that doesn't show a change in
2 circumstance, if that's a documentation the borrower
3 provided, it is the documentation that's going to be --
4 going to be effective. Once you have a certain document
5 that shows a limitation, as the ones I clearly explained,
6 there isn't going to be another document that is going to
7 make something go away or make something different.

8 Q. But it is your opinion that Wells Fargo or the
9 servicer did go through this process in determining that
10 there was no change of circumstances, correct?

11 A. That is not my opinion.

12 Q. That is not your opinion?

13 A. No.

14 Q. Then what is your opinion as to why the servicer
15 determined that there was no change in circumstances?

16 MR. GUZZETTA: Objection. Asked and answered.

17 THE WITNESS: Well, my statement is: The fact is
18 that the loan servicer determined there was no change of
19 circumstance.

20 Q. BY MS. LIM: Right. But you don't know how they
21 got there?

22 A. I don't know what procedure they used to reach
23 that conclusion.

24 Q. Is it your opinion that in order to reach that
25 conclusion, that they had to do an underwriting?

1 A. There had to be some analysis of the
2 circumstances and of documents to be able to reach a
3 decision.

4 Q. Okay. So is it your opinion that the servicer
5 determined that there was no change of circumstances, not
6 due to the fact that borrower failed to provide the
7 requested documents, but rather due to the fact that what
8 they provided was not adequate evidence?

9 A. I'm sorry. I'm going to ask you to repeat that
10 question.

11 Q. We all know that Wells Fargo or the servicer
12 determined that there was no change of circumstance or
13 significant change of circumstance with this borrower,
14 right?

15 A. That's what the notes say.

16 Q. Right. And is it your opinion that Wells Fargo
17 or the servicer determined that there was no change of
18 circumstance, not because the borrower failed to provide
19 documents, but rather because the documents that were
20 provided were not adequate?

21 A. No, that's not my opinion.

22 Q. Then what is your opinion?

23 A. My opinion --

24 MR. GUZZETTA: Asked and answered.

25 Q. BY MS. LIM: What is your opinion as to why or

1 how the servicer determined that there was no change of
2 circumstance? Is it not because of this process that you
3 described to to me with regard to the issues with the P&L?

4 MR. GUZZETTA: I think he has he repeatedly said
5 that he doesn't have an opinion to that issue. Over and
6 over and over again, he said he doesn't have an opinion
7 you. And you keep asking them him over and over over
8 again --

9 Q. BY MS. LIM: That's not what I'm hearing. I'm
10 hearing from Mr. Long that the servicer made the
11 determination that there was no significant change of
12 circumstance because of the issues with the documents that
13 were provided?

14 MR. GUZZETTA: Then you are mishearing what he
15 said.

16 THE WITNESS: That's not my testimony.

17 Q. BY MS. LIM: Then what is your opinion?

18 MR. GUZZETTA: He was very clear that he doesn't
19 have an opinion on that.

20 MS. LIM: It is a standing objection. And you
21 are coaching the witness, because --

22 MR. GUZZETTA: No, I'm not.

23 Q. BY MS. LIM: -- he clearly stated that there were
24 issues with the documents that were provided by borrower?

25 MR. GUZZETTA: Let me suggest you read the

1 transcript when you done and you'll find that you are not
2 correct in that regard.

3 Q. BY MS. LIM: All right. So in your records, did
4 you find any correspondence by the servicer explaining to
5 the borrower why they determined that there was no change
6 of circumstance?

7 A. There has been a lot of correspondence and a lot
8 of different communications and conversations with the
9 borrower's authorized third-party representative. Whether
10 there was a specific letter toward that last few weeks
11 explaining why there wasn't a change of circumstance, I
12 would have to look at that.

13 Q. Is there even any correspondence from the
14 servicer telling the borrower that there was no change of
15 circumstance, therefore, "We can't move forward"?

16 A. I would have to look at the documents again.

17 Q. If I submitted to you that there were no
18 documents by the servicer to the borrower letting her know
19 that we can't move forward with your RMA is because there
20 is no significant change of circumstance, would that be
21 negligent on the part of servicer?

22 A. No. Because -- no, it would not.

23 Q. Are they not required to let the borrower know
24 why they can't move forward with a loan modification
25 review?

1 A. There is a point when it is -- when they are
2 continuing to try to help the borrower at the very end of
3 the situation right before the trustee sale where there
4 may not be enough time to go back and cover each aspect of
5 what's -- what documentation was reviewed or whatnot.

6 But there is evidence in the loan servicing
7 records of their continued conversation with the
8 borrower's authorized third party continuing to inform
9 the -- and ask the authorized third party for
10 documentation and inform the authorized third party of the
11 status.

12 Q. Meaning letting the borrower or Maxim know that
13 we can't move forward with your application, because there
14 is no significant change of circumstance?

15 A. Correct.

16 Q. Correct. So are you testifying that they did
17 make that representation to either the borrower or Maxim?

18 A. Well, my recollection is that there were no
19 direct conversations with the borrower, that they were all
20 with Maxim Equity. And, again, I would have to review the
21 notes, but there was a lot of conversation, a lot of
22 interaction right in that last period prior to the trustee
23 sale when they were determining that there was no change
24 of circumstance.

25 Q. If the servicer determines that there is no

1 change in circumstances and they let the borrower know
2 that they can't move forward, is that considered a denial?

3 A. Again, we talked about that earlier. The -- I
4 think that a refusal to proceed with documentation and
5 treat it as an application is a refusal to proceed with an
6 application. I think the term denial is confusing,
7 because the term denial is usually used with an
8 application. So...

9 Q. Okay. So your testimony is, then, they, the
10 servicer, has refused to proceed because there has been no
11 significant change of circumstance, correct?

12 A. Or is unable to proceed.

13 Q. Right, or is unable to proceed. And there was
14 some amount of an analysis that needed to be made before
15 determining that there was no significant change of
16 circumstance, correct?

17 A. That is correct.

18 Q. How do you define a significant change of
19 circumstance?

20 A. Significant change of circumstance would be where
21 the borrower's income has increased or other debt has
22 decreased to a point where their previous denial for lack
23 of income would now be able to be re-evaluated. And it
24 could incorporate other changes of circumstance too such
25 as, for example, someone inherited a \$100,000 from their

1 aunt, that that would be a significant change of
2 circumstance that might impact their ability to move
3 forward or be reconsidered.

4 Q. So you know that the borrower had filed some
5 bankruptcies, correct?

6 A. Correct.

7 Q. Are you prepared to offer any testimony as to how
8 those bankruptcy filings affected what you call RMA, what
9 I call loan modification process?

10 A. My -- the opinions that I'm going to offer about
11 bankruptcy are the -- that -- or will be limited to the
12 effect that bankruptcy has on a pending foreclosure or on
13 a pending collection effort on the part of the servicer.
14 So bankruptcy, I'm not a bankruptcy expert. But as a loan
15 servicer, I do know that when somebody files a bankruptcy
16 or is in a bankruptcy, it is not feasible to take any
17 collection action against them, foreclose or contact them
18 even.

19 Q. And that's the extent of the testimony as to the
20 bankruptcy affecting borrower's loan modification?

21 A. The -- in terms of other affects on the loan
22 modification, my understanding is that a -- to modify a
23 loan or to be able to foreclose on someone, it would
24 require getting permission from the bankruptcy court.

25 Q. Are you prepared to testify as to how this

1 particular borrower's bankruptcy filings affected her,
2 again, what you call RMA, what I call loan modification
3 application process?

4 MR. GUZZETTA: I'm going to object that that's
5 vague and ambiguous.

6 THE WITNESS: I'm limiting my testimony to what
7 happened in 2015, but going back to October 14th, 2014,
8 because that was the date of the application or the
9 request for mortgage assistance that resulted in the
10 denial in March of 2015.

11 But my primary testimony about bankruptcy would
12 be to the extent that the effect bankruptcy has on a
13 foreclosure, of stopping a foreclosure. And the fact that
14 it is going to a larger portion of time or going beyond
15 2015, the opinion that I'll offer that goes further back
16 than 2014 is that it is unusual for a borrower to file so
17 many repetitive bankruptcies, particularly with all of the
18 bankruptcies being what are called either skeleton filings
19 or face page filings where there is just an initial filing
20 of a document, and then the follow-up documents are not
21 filed.

22 And that frequently borrowers do use repetitive
23 bankruptcy filings as a method just to slow down the
24 foreclosure process.

25 Q. BY MS. LIM: Okay. But are you prepared to

1 testify as to how borrower's bankruptcy filings affected
2 her foreclosure process?

3 A. Yes.

4 Q. As to -- and what are you prepared to testify
5 about?

6 A. Well, when a bankruptcy is filed, the foreclosure
7 process can't go further. So it affects the foreclosure
8 process or affects the foreclosure process in this
9 circumstance, because when a bankruptcy is filed, all
10 foreclosure efforts must stop immediately.

11 Q. Okay. From the initial -- do you know if
12 borrower was in a bankruptcy proceeding at the time she
13 filed her RMA in October of 2014?

14 A. I don't recall the date of her most recent
15 bankruptcies.

16 Q. Okay. Was her bankruptcy filing ever a factor in
17 determining whether she was eligible for a loan
18 modification?

19 A. I'm not aware of that, because the one
20 application that was considered and was denied in March of
21 2015, I saw the reasons as for denial being based on the
22 not being able to bring down the payment to an amount that
23 was affordable for the borrower to help the borrower.

24 Q. But I thought the denial for the October 2014,
25 application was because she wasn't eligible for a HAMP?

1 A. That is correct with respect to the HAMP program.

2 Q. So are you saying that in that -- in review of
3 her application submitted in October 2014, she was
4 actually reviewed for other programs?

5 A. There is a screen print that shows debt-ratio
6 calculations and shows that they were unable to get the
7 monthly payment down low enough to make it affordable.

8 Q. What was the affordable monthly payment?

9 A. I don't recall the payment. If I can look at the
10 exhibits, we can find it and figure it out.

11 Q. Are you prepared to offer an opinion on the
12 validity of the denial? I think we went over this before.

13 A. We did.

14 Q. And it will only be in terms of the income that
15 was used?

16 A. The income that was used and the -- the income
17 that was used, the debt ratio that resulted from their
18 analysis. And the fact that the HAMP -- the loan balance
19 was too high for HAMP, and the fact that they basically --
20 generally, servicers go through the waterfall where they
21 look at each program to see which program is available.
22 And if they don't qualify for HAMP, they look at in-house
23 programs sometimes, they look at alternatives, because
24 that's the whole process of seeing how they can help
25 people.

1 Q. And the servicer did review her for other
2 programs apart from HAMP?

3 A. The documentation appears to indicate that.

4 Q. Do you know what other programs?

5 A. I don't.

6 Q. Okay. Does a bankruptcy dismissal in any way
7 affect the change in circumstances of a borrower?

8 A. Well, not -- not a bankruptcy dismissal where it
9 is being dismissed for lack of filing schedules, because
10 if you don't have any schedules and you just have what's
11 called a face page filing or skeleton filing, if you don't
12 have any schedules, you don't really have any information
13 on which to base -- you don't know anything about their
14 circumstance.

15 All you know about their circumstance is they
16 filed a bankruptcy and that it was dismissed. So it
17 doesn't really give you any information about their
18 circumstances for from a financial perspective.

19 Q. Okay. Do you know if the guidelines for a loan
20 modification are different when a borrower is in
21 bankruptcy or out of bankruptcy?

22 MR. GUZZETTA: Objection. Vague and ambiguous.

23 THE WITNESS: Aside from the fact that in order
24 to complete or for a borrower to execute loan modification
25 documents, they would have to get permission from the

1 bankruptcy court, I am not aware of other differences in
2 how they are underwritten or how they are reviewed.

3 Q. BY MS. LIM: Okay. Do you service a lot of
4 loans?

5 A. We are what's defined as a small servicer.

6 Q. Okay.

7 A. So I don't know what you mean by a lot of loans,
8 but we service approximately 119 loans at this time.

9 Q. Currently?

10 A. Correct.

11 Q. Are they -- what kind of loans are they?

12 A. They are both consumer-purpose loans, of the
13 nature of this loan, and they are also
14 non-consumer-purpose loans.

15 Q. What's considered non-consumer-purpose loan?

16 A. Non-consumer-purpose loan is a loan that was made
17 for a purpose other than for personal or household use.

18 Q. Oh, for business?

19 A. Well, it could be for a number of non-consumer
20 purposes.

21 Q. Would hard money loans fall under that category?

22 A. They could be either.

23 Q. Okay.

24 A. There are some hard money lenders that are
25 consumer purpose and some that are not consumer purpose.

1 Q. Okay. So of the 119 loans, how many are hard
2 money?

3 A. Probably 55 percent.

4 Q. And the others would be your traditional?

5 A. More traditional institutional-quality loans.

6 Q. Institutional, okay. Can you name of the owners
7 of the loans?

8 A. Well --

9 MR. GUZZETTA: Oh. I might let you decide the
10 extent of what you want to answer.

11 THE WITNESS: The -- when I say institutional
12 quality loans, they are underwritten by institutional
13 standards and have institutional terms, but they are not
14 held by mortgage bankers or by securitized trust. They
15 are held by individuals or small pension plans.

16 Q. BY MS. LIM: Do you service any loans that are
17 held by the standards that, let's say, ASC would be held
18 by?

19 A. Yes.

20 MR. GUZZETTA: Objection. Vague and ambiguous.

21 Q. BY MS. LIM: Okay. And how many of those do you
22 service?

23 MR. GUZZETTA: Objection. Vague and ambiguous.

24 THE WITNESS: Well, every consumer-purpose loan
25 that we service that's a first trust deed would be subject

1 to the same standards, if you are speaking with respect to
2 the Homeowners Bill of Rights.

3 Q. Okay. So how many loans do you service that are
4 subject to the Homeowners Bill of Rights?

5 A. Approximately 55.

6 Q. 55, okay. How many people work for you?

7 A. Three.

8 Q. Three. How many loans have you reviewed for
9 modification?

10 A. I would say over 200.

11 Q. Over the past how many years?

12 A. Over the past seven years.

13 Q. Seven years.

14 A. I would correct that to say probably over the
15 past 10 years, because that would include some of the
16 downturn time when there were more modifications.

17 Q. Okay. So in reviewing borrowers for loan
18 modifications, you must have a working knowledge of the
19 Homeowners Bill of Rights, correct?

20 MR. GUZZETTA: Objection. Asked and answered.

21 THE WITNESS: Well, again, I'm not an attorney,
22 and I do rely on attorneys for advice regarding that. But
23 as a loan servicer practitioner, I, of course, have to be
24 aware of limitations on what I can do and what's required
25 of me to attempt to comply with that law.

1 Q. BY MS. LIM: Okay. And what about the
2 foreclosure process?

3 A. As I mentioned before, with respect to the
4 foreclosure process, I've never personally acted as a
5 foreclosure trustee, and my company doesn't act as a
6 foreclosure trustee. But as loan servicer, we have to
7 interact with foreclosure trustees, we have to issue
8 instructions on foreclosure trustees and we have to take
9 various actions with respect to that entire process.

10 So I have studied the foreclosure process and
11 I've received some designations with respect to trustee
12 work. Although, again, I don't -- I don't function as a
13 foreclosure trustee.

14 Q. Do you know whether the Homeowners Bill of Rights
15 forces a delay in a foreclosure after a denial of a loan
16 modification?

17 MR. GUZZETTA: Objection. Calls for a legal
18 conclusion.

19 THE WITNESS: I would have to check.

20 Q. BY MS. LIM: So you don't know off the top of
21 your head?

22 A. Off the top of my head, I don't know.

23 Q. Okay. Do you know if the time for filing a
24 notice of default is affected by the Homeowners Bill of
25 Rights?

1 MR. GUZZETTA: Objection. Calls for a legal
2 conclusion.

3 THE WITNESS: Again, I would check with counsel
4 to be sure, but the -- my understanding is and our
5 practice is that we have to make certain contacts or
6 attempt to make certain contacts with the borrower. And
7 when we do file our declaration, we to indicate that we
8 have attempted to contact the borrower and that we have
9 met other requirements that have to do with the Homeowner
10 Bill of Rights.

11 Q. BY MS. LIM: Was it part of your retention to
12 review the foreclosure process in this case?

13 A. It was not.

14 Q. Do you anticipate that you will be offering
15 testimony as to the foreclosure process in this case?

16 A. With respect to the last question, I should
17 change that answer to say that I will -- I am offering
18 testimony that there was no dual tracking, which has to do
19 with the foreclosure process. I am offering testimony
20 that the borrower can get information about the trustee
21 sale and other aspects of the foreclosure directly from
22 the trustee. So I -- some of my opinions will go over
23 into the foreclosure your process, so I am offering
24 opinions about the foreclosure process.

25 Q. Okay. But are you going to offer your opinions

1 as to whether the foreclosure process was valid?

2 MR. GUZZETTA: Objection. Vague and ambiguous.

3 THE WITNESS: Whether -- when you say whether
4 whether the foreclosure process was valid, do you mean a
5 actions that the trustee took in conducting the
6 foreclosure?

7 Q. BY MS. LIM: Yes.

8 A. And whether the trustee conducted the foreclsoure
9 correctly?

10 Q. Yes.

11 A. I will not offer an opinion on that.

12 Q. Okay. And you don't anticipate offering any
13 opinion on that --

14 A. No.

15 Q. -- correct?

16 Do you know if the Homeowners Bill of Rights
17 mandates a delay in the foreclosure of a property if the
18 buyer filed an appeal of the dedial of the application for
19 a loan modification?

20 MR. GUZZETTA: Objection. Calls for a legal
21 conclusion.

22 THE WITNESS: And, again, my recollection is
23 there is an appeal process, and I would have to check, but
24 I believe there was a delay in the foreclosure at that
25 point.

1 Q. BY MS. LIM: Do you know by how long?

2 A. I don't know. I would have to check.

3 Q. Are you familiar with Civil Code Section 2923.6?

4 A. I've read different parts of the Civil Code that
5 relate to the Homeowner Bill of Rights. I don't know them
6 by number or by heart, so you would have to tell me what
7 that is.

8 Q. Do you know if in this case whether the Civil
9 Code Section 2923.6 applied to this plaintiff's loan?

10 MR. GUZZETTA: Objection. Calls for a legal
11 conclusion.

12 THE WITNESS: Well, I just testified that I'm not
13 sure what 2923.6 is. So the answer to your next question
14 would be pretty radical.

15 Q. BY MS. LIM: I just have to make sure. Do you
16 know when the notice of default was recorded against the
17 plaintiff's property in this case?

18 A. I would have to check the records. I don't know
19 right off-hand.

20 Q. In forming -- in formulating your opinions, did
21 you have to review the date of the notice of default?

22 A. The -- I did look at the date of the notice of
23 default. I just don't recall what it is.

24 Q. So it didn't really matter as to -- well, did it
25 play -- well, was it considered in formulating your

1 opinions as to this case?

2 A. Well, I did look at it to see over what time span
3 the property was in default.

4 Q. Why did you do that?

5 A. Well, because this case was revolves partly
6 around the foreclosure and it would be something I would
7 normally look at. I just don't recall that date at this
8 moment.

9 Q. Why would you normally look at when the notice of
10 default was recorded?

11 A. It is just -- it is something that's relative to
12 the actions that are taking place. There is a -- there is
13 a foreclosure taking place. There is a dispute over the
14 way the foreclosure, the timing of the foreclosure, so
15 looking at the notice of default would be part of that
16 process.

17 Q. But, again, you are not prepared or expected to
18 testify as to the foreclosure process, as to its validity,
19 correct?

20 A. Well, again, I just want to be real clear.
21 I'm -- a lot of my testimony involves or overlaps with
22 foreclosure, because there is a foreclosure going on here
23 and there is an allegation that there was a modification
24 application pending at the same time of the foreclosure.
25 As to the actual actions of the trustee, whether the

1 foreclosure trustee themselves did something wrong in the way
2 they handled the sale or handled the notice of default, as
3 to the trustee's behavior, no, I'm not going to testify
4 about that.

5 Q. Okay.

6 A. But I want to make it clear that some of my other
7 testimony obviously overlaps or talks about the
8 foreclosure process.

9 Q. For instance, with regard to dual tracking,
10 you'll offer some testimony that the property was, in
11 fact, in foreclosure, correct?

12 A. Correct.

13 Q. Do you anticipate that you'll be testifying as to
14 the foreclosure process beyond that?

15 A. Not beyond the fact that the various dates
16 involved or that there was -- there was a pending
17 foreclosure and then also, of course, the fact that the
18 borrower gets their information about a foreclosure sale
19 or a foreclosure auction or about the trustee from the
20 public records or from the trustee.

21 Q. Will you be -- well, let's -- let me ask you
22 this. Do you know if the servicer informed the borrower
23 of who the foreclosing trustee was and their contact
24 information?

25 A. I don't know if they informed the borrower of

1 that.

2 Q. Is it your practice to inform the borrower of who
3 foreclosing trustee is when you are servicing loans?

4 A. It is not.

5 Q. And why not?

6 A. Because the borrower gets notices directly from
7 the foreclosure trustee informing them of all that
8 information and informing them of who to contact, how to
9 reinstate, how to bring their loan current. And a lot --
10 and provides them with a lot of other information. So the
11 actions of the foreclosure trustee are deliberately
12 separated from the loan servicer. So it is all public
13 record. There is no way that the loan servicer, if they
14 had bad intentions, could hide that information from the
15 borrowee, because it is public record and they are
16 communicated with directly by the trustee.

17 Q. It is just not the servicer's obligation to
18 inform the borrower who the foreclosing trustee is,
19 correct?

20 A. Correct.

21 Q. Okay. To your knowledge, do you know how many
22 days must pass before a notice of trustee's sale be
23 recorded?

24 A. How many days must pass from what?

25 Q. From the time the notice of trustee sale is

1 recorded?

2 A. From the time the notice of trustee sale is
3 recorded, the minimum time is 21 days to have the sale.

4 Q. Okay. Do you know the controlling statute
5 regarding the recordation of documents in a foreclosure in
6 the State of California?

7 MR. GUZZETTA: Objection. Calls for a legal
8 conclusion.

9 Q. BY MS. LIM: I'm just asking if you know?

10 A. I don't.

11 Q. Do you know what the operative dates in this case
12 regarding the foreclosure of the plaintiff's property are?

13 MR. GUZZETTA: Objection. Vague and ambiguous.

14 THE WITNESS: I recall that the foreclosure --
15 the trustee sale occurred on October 2nd. I don't recall
16 the other dates without looking at the documentation.

17 Q. BY MS. LIM: Okay. But isn't it true that it
18 really played no part in what your task was in this case?

19 A. I would say that there was an active foreclosure
20 in process. And I'm providing testimony that there was
21 not a -- there was not an application for a loan
22 modification in process at the same time.

23 Q. Okay. Can we go off the record real quick?

24 MR. GUZZETTA: Sure.

25 (Off the record.)

1 Q. BY MS. LIM: Okay. So before a notice of default
2 can be recorded, you mentioned that they have to make
3 contact with the borrower. Do you know exactly what is
4 required before notice of default is recorded?

5 MR. GUZZETTA: Objection. Calls for a legal
6 conclusion, beyond the scope the opinions to be offered.

7 Q. BY MS. LIM: Do you know?

8 A. My understanding is that there has to be, on
9 loans that -- are you are talking about loans that are
10 covered under the Homeowner Bill of Rights?

11 Q. Right.

12 A. There has to be, I believe, three separate
13 attempts to reach the borrower discuss foreclosure
14 prevention alternatives.

15 Q. Okay. So do you know what -- in what method
16 those communications must be made before notice of default
17 can be recorded?

18 MR. GUZZETTA: Objection. Calls for a legal
19 conclusion, beyond the scope of the opinions the witness
20 has expressed he will offer.

21 THE WITNESS: I would have to check our records,
22 but I believe that there has to be three separate
23 attempts, if they are unsuccessful on the first two
24 attempts. And they can be by telephone, and, I believe,
25 in our procedure, is we send notifications by mail as

1 well. I have to check to see what the required procedure
2 is.

3 Q. BY MS. LIM: Okay. Are you prepared to testify
4 as to any of the alleged violations of the Homeowners Bill
5 of Rights, apart from dual tracking?

6 A. Again, I'm not going to give legal opinions.

7 Q. I'm not asking you that. I'm just asking, are
8 you prepared to testify as to whether or not the servicer
9 or Wells Fargo violated any aspects of the Homeowners Bill
10 of Rights?

11 A. Well, I think that, in and of itself, whether or
12 not he violated any law is a legal opinion.

13 However, I am providing a lot of opinions, many
14 of which we have discussed, that would certainly be
15 opinions about the loan servicer's behavior that would
16 then speak to whether or not the Homeowners Bill of Rights
17 were violated. But whether I can directly opine as to
18 whether the Homeowners Bill of Rights was violated, I
19 don't think I can because I'm not an attorney. And the
20 judge will know it better than I will.

21 Q. Apart from dual tracking, apart from whether or
22 not an RMA has been converted to what you deem as a loan
23 modification application, are you prepared -- or are you
24 prepared to testify on any other area?

25 A. Yes.

1 Q. Okay. And what are those areas?

2 A. I'll go ahead, and some of this may be
3 repetitive, but I'll just get these all out so that in
4 case I didn't cover something, we are covered. And some
5 of it, again, will be repetition.

6 So after the denial of March 2015, for the
7 October 2014, request for mortgage assistance, there was
8 no complete application submitted.

9 The September documents provided in the September
10 17th RMA did not constitute a complete application.

11 And as of 10-2-17, there continue to be no
12 complete application and no evidence of documentation of a
13 material change of circumstances was provided.

14 The next one would be that the loan servicer met
15 the standard of care in servicing the loan receiving
16 documents and responding to the borrower's various
17 requests for mortgage assistance.

18 Q. Okay. And that's it?

19 A. No, that's not it.

20 Q. Okay.

21 A. I intend to offer a generalized overview at trial
22 of how loan servicing works, including various aspects of
23 loan servicing, but also including the fact that loan
24 servicers can't acquire the property.

25 And No. 2, that loan servicers don't determine

1 the standards for modification with respect to qualifying.
2 It is the owner of the loan that would indicate the
3 standards.

4 And then I also intend to offer a generalized
5 overview at trial of how bankruptcy affects foreclosure,
6 which you and I already discussed. And then also -- I
7 believe I told you this, but it is highly unusual for
8 borrowers to file so many bankruptcies. It is commonplace
9 for borrowers to use various methods to stop the
10 foreclosure process. One of the most common methods of
11 stopping foreclosure is to file repetitive bankruptcies.
12 Another method of stopping foreclosure is to continue to
13 file and refile multiple requests for assistance or
14 modification to delay the foreclosure process.

15 Another opinion would be that when a borrower
16 submits a request for mortgage assistance or other
17 information relative to getting mortgage assistance at the
18 last minute or only, for example, 16 days prior to a
19 trustee sale, it leave no margin for error and may not
20 allow sufficient time for the employees of the loan
21 servicer to perform work related to received documents.

22 And the last one that it is not unusual for
23 specific points of contact to change.

24 Q. Okay. I think I asked you this, but how did the
25 filing -- how did the borrower's bankruptcy filings affect

1 her review for a loan modification?

2 MR. GUZZETTA: Objection. Asked and answered.

3 THE WITNESS: I'm happy to answer it again. My

4 -- I'm --

5 Q. BY MS. LIM: You know what, I'll withdraw that
6 question.

7 A. Okay.

8 Q. Do you believe the borrower intentionally filed
9 multiple bankruptcies to stall the bankruptcy -- or to
10 stall the foreclosure?

11 A. I cannot offer opinions as to her intentions.

12 Q. Okay. But you are prepared to offer testimony
13 that multiple bankruptcy filings are often used to stop a
14 foreclosure?

15 A. Correct.

16 Q. Do you believe that this borrower filed her RMA
17 on 9-17 as a last-minute attempt to stall the foreclosure?

18 A. I really can't -- I really can't give an opinion
19 as to what her intentions were. That would be unfair,
20 because I've never spoken to her.

21 Q. Well, what is your opinion as to this homeowner
22 and her bankruptcy filings?

23 MR. GUZZETTA: Objection. Asked and answered.

24 THE WITNESS: My opinion is that -- well, let me
25 start with --

1 Q. BY MS. LIM: Not generally speaking. As to this
2 particular borrower?

3 A. The fact is, not an opinion, the fact is that she
4 did file multiple bankruptcies. And the fact is that they
5 were largely dismissed due to failure to file the
6 supplemental schedules that are required. So those are
7 the facts.

8 My opinion is, in terms of this borrower, I
9 really don't have an opinion about why this borrower did
10 that. I do know, in general, borrowers filed
11 bankruptcies, but you didn't want an opinion in general.

12 Q. No. But that's what's your opinion as to why
13 this borrower filed multiple bankruptcies?

14 MR. GUZZETTA: He stated several times he has
15 none. And it is not going to be offered at trial.

16 Q. BY MS. LIM: Okay. Why is it that you are
17 prepared to offer testimony that servicers can't acquire
18 property?

19 A. Well, the -- the first part of the foreclosure
20 process is that -- and I'll add to that to say that my
21 opinion is that the loan servicer can't acquire the
22 property unless they are the owner of the loan. So if the
23 loan servicer was the owner of the loan, they could
24 acquire the property.

25 But a loan servicer in this context is servicing

1 on behalf of another, if there is a trustee sale, and if
2 the property reverts back to the beneficiary, it would
3 revert to the owner of the loan, not the loan servicer.
4 So the loan servicer would not acquire the property.

5 Now, the only way that a loan servicer could
6 actually acquire property through a foreclosure sale when
7 they are servicing on behalf of another would be if the
8 loan servicer himself were to go to the trustee sale and
9 bid as a third-party bidder. But that would usually be
10 restricted by the agreement with the owner of the loan.

11 Q. But why is that important in this case?

12 A. Because in some cases, people float. In some
13 case, people attempt to make it sound like a loan servicer
14 was trying to get the borrower's property.

15 Q. So you've very carefully given me all the areas
16 that you intend to offer your opinion on. What is your
17 opinion on each of these areas?

18 A. I've given you many of them, but I'd be happy to
19 repeat them.

20 MR. GUZZETTA: The opinions that he read are the
21 opinions he is going to offer. Isn't that correct,
22 Joffrey?

23 THE WITNESS: Correct. Let me just check to make
24 sure. I want to make sure I give you -- that's correct.
25 So opinion No. 1, about not having a complete application

1 and no significant change of circumstance, that, we --
2 that, you have my opinion, so that was stated.

3 Loan servicer met the standard of care, that's
4 the opinion. You have the opinion.

5 Generalized overview at trial of how loan
6 servicing works, that's going to be more factual, not as
7 much opinion, but it will contain the other information
8 that loan servicers can't really acquire the property.
9 And the loan servicer doesn't determine the standards for
10 modification as to qualifying.

11 I've given the opinion about bankruptcy, and we
12 have talked about that extensively. And then about the
13 fact that it is highly unusual for the same borrower to
14 file so many bankruptcies, and that one method of stopping
15 foreclosure is to file multiple bankruptcies. But, again,
16 I don't know that that's what this borrower did or why
17 they did it.

18 And then also another tactic to delay foreclosure
19 is to file multiple requests for assistance or
20 modification. And, again, I'm not saying that's what this
21 borrower did. I'm just saying that is, in general, a
22 tactic.

23 The opinion about when a borrower submits a
24 request for mortgage assistance at the last minute, I read
25 you the opinion.

1 And then the last one is that it is not not
2 unusual for specific points of contact to change, and
3 that's an opinion.

4 Q. Why do specific points of contact change?

5 A. Generally, it is because, unfortunately,
6 personnel changes at many different types of businesses.
7 And, of course, a special point or a specific point of
8 contact -- could you correct me? Is it special point of
9 contact or --

10 Q. I'm sorry. Special point of contact.

11 MR. GUZZETTA: Is it special or --

12 MR. McCANDLESS: Single.

13 Q. BY MS. LIM. It's late.

14 A. So I'm changing my last opinion. It is not
15 unusual for special points of contact to change, that is
16 not longer my opinion. My opinion is it is not unusual
17 for single points of contact to change. I apologize.

18 Q. I apologize.

19 A. No. It was my fault.

20 MR. GUZZETTA: I don't apologize.

21 THE WITNESS: So the --

22 MR. McCANDLESS: They are special.

23 THE WITNESS: So when, you know, a single point
24 of contact is either -- it is either a human being that an
25 organization has hired and it is fulfilling that role or

1 it is a group of people at a particular department. And,
2 of course, either a single person or a group of people
3 could turn over, so it is not uncommon for that occur.

4 Q. BY MS. LIM: But do you know why there were a
5 number of single points of contacts in this case?

6 A. I do not know.

7 Q. Okay. Apart from the defendant, who retained
8 you, have you spoken to anyone else about this case?

9 A. Only to Mr. Guzzetta and Mr. Ladi at Severson.

10 Q. Did you prepare any reports?

11 A. I did not.

12 Q. Can I get a copy of what you were reading?

13 A. Absolutely. Is there a way that you can make a
14 copy? Because this is my only copy.

15 Q. You know what? I can make a picture.

16 A. Can you? Great.

17 Q. According to the CV, I believe, that you've been
18 retained by the defendants in this case, correct?

19 A. That's correct.

20 Q. How many times?

21 A. By the same entity, by America's Servicing or
22 Wells Fargo.

23 Q. All of the above?

24 A. I don't know. Maybe in excess of three or four
25 times, and that's over a 10-year period.

1 Q. 10-year period, okay. What are the names of
2 those cases?

3 A. I apologize. I wasn't prepared for that
4 question. I would have to check my records.

5 Q. Do you remember the case of John Alvarez v. Wells
6 Fargo Bank?

7 A. Yes, I do.

8 Q. Okay. And, I believe, the attorney on the other
9 side -- this was also a Severson --

10 A. A different attorney at Severson.

11 Q. A different attorney at Severson. I believe the
12 plaintiff's counsel was offices of Tracy Law Center. So
13 you do recall this case, correct?

14 A. Correct. But I want to go back and say I'm not
15 sure, because I don't know if it was the lead attorney was
16 the same. I know I was dealing with a different attorney
17 than Mr. Guzzetta or Mr. Ladi.

18 Q. Do you remember any other cases?

19 A. I'm trying to think back into memory here.

20 Q. Did you -- have you -- do you intend to provide
21 trial testimony in the case of John Alvarez v. Wells Fargo
22 Bank?

23 A. If I'm asked to.

24 Q. Okay. Have you ever testified at trial on behalf
25 of Wells Fargo, or?

1 A. I have.

2 Q. Okay. When was this?

3 A. I testified at one trial approximately a year
4 ago.

5 Q. Do you remember which court?

6 A. I believe it was Sacramento court.

7 Q. Was this also Severson & Werson?

8 A. Yes.

9 Q. Okay. Do you remember the judge's name?

10 A. I do not.

11 Q. Do you remember the defendant's name?

12 A. The defendant was Wells Fargo Bank.

13 Q. Okay. And when was the trial?

14 A. It was approximately, well, about a year ago and
15 I can't remember the exact month.

16 Q. Summertime?

17 A. I think it was in the summer, yeah.

18 Q. Summer. Were the issues similar to the issues
19 that are in this case?

20 MR. GUZZETTA: Objection. Vague and ambiguous.

21 Q. BY MS. LIM: Did you have to opine or offer
22 testimony on whether or not there was dual tracking?

23 A. I'm trying to recall the case. I would have to
24 check. I would have to check.

25 Q. Okay. Have you ever testified in a deposition

1 and/or trial with regard to dual tracking?

2 A. Well, yes, in the sense that I've testified as to
3 whether or not there was an active -- or whether or not
4 there was a loan applicant -- or excuse me.

5 Q. A complete loan?

6 A. A complete loan modification application.

7 Q. And when was that?

8 A. I don't recall when the last case was on that.

9 Q. Did you testify as to that issue, on that issue
10 in the Sacramento trial last year?

11 A. That's what I was trying to remember. I was just
12 racking my brain here. I'm trying to remember what that
13 was about. I just -- I'm having a hard time remembering
14 what that case was about.

15 Q. Okay.

16 A. But it may come back to me in a minute.

17 Q. Do you remember the plaintiff's attorney's name
18 on that case?

19 A. I don't.

20 Q. Okay. What other banks have you provided expert
21 witness testimony?

22 A. Chase.

23 Q. And who was the law firm for Chase?

24 A. That was quite a while ago. I don't recall.

25 Q. How long ago?

1 A. That was more than six years ago.

2 Q. Okay. Have you ever offered testimony that a
3 defendant wrongfully foreclosed on a property?

4 A. I don't recall if that came up. I know I would
5 be retained on cases where that was involved, but I don't
6 know if it went to testimony.

7 Q. So is it your testimony that you've been retained
8 by Severson & Werson approximately four times?

9 A. I can recall four times over the years. There
10 may have been others.

11 Q. Can you estimate?

12 A. It is difficult to recall at this moment.

13 Q. More than 10?

14 A. I don't think it's been that many.

15 Q. Okay. So less than 10?

16 MR. GUZZETTA: He said more than four.

17 THE WITNESS: Yeah, I said more than four.

18 MR. GUZZETTA: He actually didn't have any other
19 memory.

20 THE WITNESS: I don't recall. I wasn't prepared
21 for that. Sometimes they ask for a list of cases, but I
22 didn't receive such a list for -- or such a request here.

23 Q. BY MS. LIM: Have you ever refused to be retained
24 by Severson & Werson as an expert witness?

25 A. Yes.

1 Q. And why did you refuse?

2 A. It was a case where I didn't feel that my
3 knowledge was sufficient of the areas to where I could be
4 helpful to the triers of fact.

5 Q. What were the issues in that case?

6 A. I don't recall exactly what it was, but I do
7 recall there was one where it just was not -- something
8 where I -- it was not within my -- I didn't have enough
9 expertise to testify.

10 Q. Okay. How much time did you spend in preparing
11 for this deposition?

12 MR. GUZZETTA: Objection. Asked and answered.

13 THE WITNESS: Approximately -- well, part of the
14 time spent preparing more was also time just studying the
15 case, in general. So it kind of overlaps. But I would
16 say approximately five hours that I could say was specific
17 to this.

18 Q. BY MS. LIM: Okay.

19 A. And, again, some of that overlapped into
20 generally what I am studying about the case, just to have
21 the general knowledge, because there are a lot of facts
22 here.

23 Q. Okay. Do you know Thomas Tarter?

24 A. I have never met Thomas Tarter, but I have seen
25 him testify before.

1 Q. Were you opposite?

2 A. Yes.

3 Q. Okay.

4 A. Yes, I was.

5 Q. Okay. Have you ever read a deposition transcript
6 in which Thomas Tarter was a retained expert witness?

7 A. I don't believe I have.

8 Q. Were you an expert witness in the case of
9 Stansell v. Bank of America?

10 A. I'm sorry?

11 Q. Stansell STANSELL v. bank of America?

12 A. I don't recall that case. I don't think I've
13 ever testified in a case with B of A more than once. I
14 think it had a different name.

15 Q. When did you testify for Bank of America?

16 A. It was more than -- I think it was more than five
17 or six years ago, so I don't recall.

18 Q. Were you an expert witness in the case of Valdez
19 v. Citi Bank?

20 A. No, I don't recall that case.

21 Q. Were you an expert witness in the case of Guerra
22 v. Nationstar?

23 A. I don't believe I was.

24 MR. LIM: Okay. Tim, do you have any questions?

25 MR. McCANDLESS: I mean, we need to attach these.

1 MS. LIM: Okay. We will attach Mr. Long's fee
2 schedule agreement as 4.

3 (Exhibit 4 marked for identification.)

4 THE WITNESS: I believe this is yours, because I
5 got my original.

6 MS. LIM: And then Mr. Long's sheet of opinions
7 as Exhibit 5.

8 (Exhibit 5 marked for identification.)

9 THE WITNESS: So these, I'll put here in your
10 stack. Okay.

11 MS. LIM: Yes, thank you.

12 So Mr. Guzzetta, should we enter into the same
13 stipulation as we did?

14 MR. GUZZETTA: Well, we are getting close to
15 trial and the MSC. So why don't we get off the record.

16 (Off the record.)

17 MS. LIM: Okay. So we -- the original copy will
18 be forwarded to Mr. Guzzetta's office on the 14th.

19 MR. GUZZETTA: I'll also get an e-mail of that by
20 the 14th.

21 MS. LIM: And then Mr. Long will have a week to
22 review and make any changes, if necessary, and deliver it
23 to our office by the 21st.

24 MR. GUZZETTA: I will e-mail the --

25 MS. LIM: The errate?

1 MR. GUZZETTA: The errata sheet to the extent
2 there is one by the 21st.

3 MS. LIM: So stipulated.

4 MR. GUZZETTA: So stipulated.

5 MS. LIM: Or if he doesn't, then the original can
6 be used -- or a certify copy can be used for all purposes.

7 MR. GUZZETTA: Yeah.

8 (Off the record.)
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