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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JAMON T. BRIM, *
Plaintiff, * 10-CV-00369-IPJ
vs. * February 23, 2011
* Florence, Alabama
* 8:50 a.m.
MIDLAND CREDIT MANAGEMENT, *
INC., *
Defendant. *

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE INGE P. JOHNSON
UNITED STATES DISTRICT JUDGE

VOLUME II

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I N D E X

EXAMINATION

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P R O C E E D I N G S

(In open court. Jury not present.)

08:50:04 THE COURT: This is CV-10-369. Jamon -- he's not here.

MS. CAULEY: He is, Your Honor. He had to run something down to the car.

08:50:20 THE COURT: All right. Brim versus Midland Credit Management, Inc. And everybody is here except Mr. Brim.

08:50:40 Do you want to proceed? You haven't asked me to put this on the record, but I don't know how else to deal with it. And I'm utterly confused, because yesterday the defendants vigorously opposed plaintiff's supplemental motion in limine, and now they filed their own supplemental motion in limine.

08:50:52 I think the thing to do is for the two of y'all to sit down and figure out whether you want to call this stipulated facts or not.

08:51:06 MR. BENNETT: Judge, we agree with their stipulations. The only caveat is -- I think we resolved that this morning, as well. In their second stipulation, they again use the word, "affiliated," whereas the Court has already

1 determined under 56(d) that it is a subsidiary.

2 Other than that, Judge, we would ask that
3 those stipulations be included within the
4 stipulations that have already been --

08:51:22 5 THE COURT: Now, you understand --
6 you weren't here yesterday. You understand they
7 do not agree with yours.

8 MR. BENNETT: I understand, Judge.

9 THE COURT: Okay.

08:51:28 10 MR. BENNETT: I would suggest to
11 the Court I wasn't here. You've already ruled.
12 Those were taken from their briefings, their
13 pleadings, and this Court's order that was not --
14 in fact, some of it was verbatim from the
08:51:38 15 30(b)(6) witness.

16 THE COURT: I'll tell you, since
17 you weren't here yesterday, that Number 2 was
18 undisputed by the defendants. Number 5 was
19 undisputed by the defendants. Number 6 was
08:51:48 20 undisputed by the defendants. Number 7 was
21 undisputed by the defendants. Number 9 was
22 undisputed by the defendants. Number 12 was
23 undisputed by the defendants. And if I
24 understood correctly, Number 13, with the changes
08:52:06 25 I made, was undisputed by the defendants. And

1 Number 14 was undisputed by the defendants.
2 Number 8 was disputed by them, but I looked it
3 up. And I'm saying it's okay. I struck Number
4 10. Number 11 should be okay with the defendants
08:52:24 5 because I took out the issue about 95 percent or
6 99 percent. And that was it.

7 MR. BENNETT: Yes, Your Honor.

8 THE COURT: Do y'all want me to
9 read it to the jury before you make opening
08:52:34 10 statements?

11 MR. BENNETT: Yes, Your Honor.

12 MS. CAULEY: Yes.

13 MR. BENNETT: Your Honor, again,
14 in the same category of let's make this an
08:52:40 15 efficient trial, we have gone through the
16 exhibits with the defendant. The Court has
17 already previously ruled at the final pretrial,
18 but to the extent that there was any issue
19 remaining, I have suggested and my opposing
08:52:58 20 counsel has suggested right back at us -- we
21 jointly suggest that it would be better for the
22 trial process if we can move before the jury is
23 seated -- they don't have to be here for the
24 admission of the exhibits. They're clean. It
08:53:14 25 will expedite the trial. It will prevent

1 everybody from having to interrupt testimony for
2 checking boxes. And to that objective, the
3 parties have withdrawn objections that might be
4 outstanding or lingering with just a couple of
08:53:28 5 exceptions.

6 With respect to their exhibits, the only
7 thing we object to is Exhibit 21, which is the
8 unredacted -- I'm sorry. The redacted contract
9 that the Court considered at the final pretrial.

08:53:42 10 We have still not received redacted
11 version -- my opposing counsel says they're not
12 sure if they're going to use it or not. But if
13 they're going to use it, we've still never seen
14 what they're going to use. We would continue to
08:53:56 15 object to Exhibit 21.

16 There were other documents, like their
17 better business bureau matter, the Court had
18 withheld the decision on. We will withdraw our
19 objection to it.

08:54:08 20 The Dell deposition the reading in
21 entirety. They have two objections to two
22 plaintiff's exhibits.

23 THE COURT: Let me go back to
24 Defendant's Exhibit 21. I ruled that the price
08:54:18 25 they paid was not to be redacted. Only the other

1 lawsuits.

2 MR. BENNETT: Correct.

3 THE COURT: Are you saying now
4 you're not sure you're not going to use the
08:54:26 5 contract?

6 MR. LANGLEY: That's correct.

7 THE COURT: Okay. So until --

8 MR. BENNETT: We don't have a copy
9 even if they're going -- we would object --

08:54:34 10 THE COURT: Well, if they decide
11 to use it, they have to give you a copy
12 beforehand.

13 MR. BENNETT: Yes, Judge.

14 MR. LANGLEY: We understand that,
08:54:40 15 Your Honor.

16 THE COURT: All right.

17 MR. BENNETT: With that, I expect
18 that the defendant could move to stand up with
19 their trial book, as I will do in a moment with
08:54:50 20 ours, and say, Judge, we move for the admission
21 of these defense exhibits, and we will say we
22 have no objection except 21 and it's done.

23 THE COURT: Okay. That's great.

24 MR. LANGLEY: And then the only
08:55:02 25 remaining issue would be with a couple of the

1 exhibits in their book. These are objections
2 that we had made, I believe, shortly before the
3 pretrial conference that the Court did not
4 actually reach. That was the one part of the
08:55:14 5 objections that the Court did not consider that
6 day. Some of them have been resolved through
7 Your Honor's rulings on the motion in limine.
8 And I will just assume those objections are
9 preserved by virtue --

08:55:28 10 THE COURT: They are. They're
11 ruled on by my order.

12 MR. LANGLEY: I'm going to ignore
13 those completely for now.

14 The two remaining issues -- first of all,
08:55:36 15 Plaintiff's Exhibit 9 and 16 they've agreed to
16 withdraw. So that's no longer an issue. Which
17 leaves two documents.

18 Document Number 8, which is an
19 organizational structure chart of the parent
08:55:50 20 company of Midland Credit Management, Inc., a
21 company called Encore Capital Group. And given
22 that it is now deemed stipulated or undisputed by
23 the Court that Midland Funding, L.L.C., the
24 entity who actually purchases the debts from
08:56:06 25 Dell, is a wholly-owned subsidiary, it would be

1 unnecessary proof. We think it is irrelevant in
2 the first place. But given that now the Court
3 has determined that there's no disputed fact
4 about Midland Funding, L.L.C. being a subsidiary,
08:56:24 5 we think it would be cumulative and, in any
6 event, to the extent there's other information on
7 there, the danger of unfair prejudice would
8 outweigh any probative value.

9 MR. BENNETT: Judge, that wouldn't
08:56:36 10 be the use for which we would put it.

11 If you look at the top above that Encore
12 Capital, Encore Capital is just the parent.
13 Midland Credit Management, the defendant in this
14 case, the evidence will be, handles all the
08:56:50 15 issues. They're wholly owned. They operate as a
16 single component of Encore Capital. The logos
17 say Encore Capital, Midland Credit Management.
18 The description in the annual report, which is
19 the next exhibit they're adopting an objection
08:57:06 20 for refers to it as a single operating entity.
21 And the jury is entitled to know that.

22 This is important because this Encore
23 Capital is the only publically-traded component
24 of the defendant. They have resisted providing
08:57:20 25 any financial information. And the net worth,

1 the shareholder's net equity is available from
2 their 10-K that they publically -- they operate
3 as Midland.

4 THE COURT: All right. I'm going
08:57:30 5 to overrule that objection. And the other one?
6 The other document?

7 MR. LANGLEY: The other document
8 which ties directly into something Mr. Bennett
9 just said is the 10-K, Encore Capital's 10-K,
08:57:46 10 which contains all the financial information for
11 the parent company.

12 THE COURT: Okay.

13 MR. LANGLEY: And to the extent
14 that the plaintiffs are arguing that it's all one
08:57:56 15 single entity operating one in the same, there's
16 just not in evidence and there won't be any
17 during trial to essentially pierce the veil which
18 is kind of what Mr. Bennett is arguing.

19 MR. BENNETT: Well, Judge, the
08:58:10 20 report itself describes all the operations of
21 Midland. It doesn't say Encore does something
22 different. It talks about the resolution of --
23 it talks about their collections dynamic
24 statistics. Talks about Midland's involvement in
08:58:28 25 various components of Encore's business. It

1 is -- and it is relevant. The question is: Is
2 it the very best evidence in the entire universe?
3 Maybe not. It would be better to have an annual
4 report from Midland. But it doesn't issue an
08:58:48 5 annual report. It doesn't have this information.

6 There's nothing prejudicial in here.

7 There's nothing untrue in here. It is certainly
8 relevant. The defendant is able to argue, just
9 as we're able to argue, about all the various
08:59:00 10 components of it. But it is admissible. Encore
11 collects, and it collects as Midland.

12 THE COURT: Well, it is a public
13 document, isn't it, the one filed?

14 MR. BENNETT: Yes, Your Honor.

08:59:08 15 MR. LANGLEY: That is the 10-K
16 filed. We're not going to dispute that. What
17 we're going to dispute is, first, that it's
18 relevant to any material issue in the case.
19 Because all it contains is Encore's financial
08:59:22 20 information.

21 Second, this is very much a veil-piercing
22 argument that the plaintiffs are making here.
23 And veil piercing is very fact intensive, very
24 rare circumstance. I mean, absent unusual
08:59:36 25 circumstances, the corporate forms are observed,

1 and we just don't think there's any evidence to
2 support the theory that plaintiffs are arguing.

3 MR. BENNETT: Judge, this is --
4 this annual report -- we're not attempting to sue
08:59:50 5 Encore Capital. And if the Court enters
6 judgment, if we're somehow successful, the
7 judgment is not against Encore Capital. This is
8 evidence about the collection operation of
9 Midland. And Midland is discussed throughout it.
09:00:06 10 I mean, it's clearly relevant.

11 THE COURT: Well, there is a claim
12 for punitive damages and willful violation. And
13 it would certainly be relevant to that. I'm
14 going to overrule that objection. It is a public
09:00:20 15 document. It discusses Midland's financial
16 situation and its business practice as the same
17 as filed and public in the public record. I'm
18 just going to let it in.

19 MR. BENNETT: Judge, with that, on
09:00:32 20 those bases, plaintiff would move for the
21 admission of our exhibits. And Your Honor, the
22 plaintiff's exhibit list -- we have also given
23 the stipulations, attempted to reduce -- the
24 trees are already dead, Your Honor, but we've
09:00:52 25 attempted to reduce the number of exhibits and

1 paper that would confront the jury.

2 You see Ms. Cauley has crossed through a
3 number of exhibits. We're withdrawing those.
4 Rather than renumber, given the record has
09:01:00 5 already been established, we'll just deal with
6 that issue with the jury.

7 I can tell them in opening that the
8 parties have worked together to reduce the number
9 or if the Court chooses to or if defense wants to
09:01:14 10 to explain why there are certain documents --

11 THE COURT: The jury usually
12 doesn't get confused about the document numbers
13 skipping. They get confused if there is another
14 exhibit number from a deposition. So I hope we
09:01:28 15 just have one exhibit number on the exhibits.
16 Trial exhibit number.

17 MS. CAULEY: There is a trial
18 exhibit. On some of them, it does have the
19 deposition exhibit from the deposition, but we've
09:01:38 20 tried to make that very clear. And we've
21 reduced -- we've taken out even the excess
22 exhibits from those depositions that we don't
23 need. So they'll just hear the testimony. But
24 they won't have extra documents.

09:01:50 25 MR. BENNETT: They're all number

1 tabbed as well as court stickered.

2 MS. CAULEY: To that list, Your
3 Honor, we are adding the 82, which is the annual
4 report which you just allowed in. And that would
09:02:00 5 be -- that's Plaintiff's Exhibit 82.

6 THE COURT: You're offering all
7 the ones except for the ones you've marked out?

8 MR. BENNETT: Yes.

9 THE COURT: And with the objection
09:02:10 10 of the defendant noted to Exhibit Number 8 and
11 82, those are admitted. And you're offering --
12 do you have a list, too?

13 MR. LANGLEY: To make sure I
14 understand, the previous placeholder for Exhibit
09:02:24 15 77 is now going to be empty, and the annual
16 report will be 82?

17 MR. BENNETT: Yes.

18 MR. LANGLEY: That was the
19 objection the Court had noted and overruled. Am
09:02:32 20 I correct about that?

21 MR. BENNETT: Yes.

22 MR. LANGLEY: Thank you. Then at
23 this time, the defendants will move to admit
24 Exhibits 1 through 22 with the exception of
09:02:48 25 Exhibit 21 as discussed earlier. I will also

1 note for the Court that Exhibits 23 through 26
2 are the plaintiff's settlement agreements with
3 other defendants whom we contend are source of
4 the same alleged injury. But the Court has
09:03:06 5 withheld ruling on that. We don't intend to
6 reference it in opening. And in fact, we will
7 likely not even seek to admit it during the
8 plaintiff's case. If at all, it would be more
9 likely in the setoff context in the event there's
09:03:20 10 a verdict for plaintiff.

11 THE COURT: Okay. So you just
12 have One through 22, but you're not sure with 21,
13 so you're withholding 21?

14 MR. LANGLEY: Yes, Your Honor.

09:03:28 15 THE COURT: And 23 through 26 are
16 the settlements, and you're not offering those,
17 at least not at this time.

18 MR. LANGLEY: We don't even have
19 them.

09:03:38 20 THE COURT: Well, how could you
21 number them?

22 MR. LANGLEY: Because we had
23 subpoenaed them to trial. I believe they have
24 them, pursuant to Your Honor's order at the
09:03:46 25 pretrial conference.

1 THE COURT: All right.

09:03:54

2 MS. CAULEY: Your Honor, we do
3 have jury notebooks. We have them for Your
4 Honor, and then we have them for the jury. Is
5 there a time --

6 THE COURT: Do you have 12?

7 MS. CAULEY: We do. We've already
8 given defense counsel a copy. We have a copy for
9 Your Honor.

09:04:00

10 THE COURT: You can put them on
11 their chairs.

12 I still want to go back. Do y'all want me
13 to read the undisputed facts before you make
14 opening statements?

09:04:10

15 MS. CAULEY: Yes, Your Honor.
16 That would be great.

17 MR. LANGLEY: And defendants
18 agree.

19 THE COURT: Okay.

09:04:18

20 MR. LANGLEY: Your Honor, we do
21 not have 12 copies of our notebook. I don't
22 think that will be a problem until we get to our
23 case. And we will make efforts to get 12 of them
24 by tomorrow.

09:04:28

25 THE COURT: That's great.

1 MR. BENNETT: Your Honor, may I
2 ask the Court's courtesy? What discretion must I
3 show with respect to movement from the podium?

4 THE COURT: Everyone in here
09:04:42 5 except for the parties can move about like they
6 want to. I don't care where -- as long as you
7 don't intimidate the witnesses. Okay? Don't go
8 right up in their face. And that applies to
9 everybody. But you can move about. You don't
09:04:56 10 have to stand at the podium. You can stand over
11 there. You can do whatever you want to.

12 If you're going to use the Elmo, which you
13 probably won't since you have notebooks, but if
14 you are going to use it, somebody needs to sit
09:05:08 15 there. And it cannot be Tammi. To run it.

16 MR. BENNETT: Even though she's
17 the only one who --

18 THE COURT: She's Elmo's best
19 friend. I'll put it that way. I assume you're
09:05:18 20 not going to use it either since you have
21 exhibits in paper form, right?

22 MR. LANGLEY: I'm sorry.

23 THE COURT: Are you going to use
24 the Elmo?

09:05:28 25 MR. LANGLEY: We will be using the

1 Elmo.

2 THE COURT: Are you going to have
3 one sitting there, running it, while the other
4 one asks questions?

09:05:34 5 MR. LANGLEY: Yes. Or someone
6 will sit there and ask the questions. We'll
7 figure it out.

8 THE COURT: That's fine.

9 MR. LANGLEY: Your Honor, there's
09:05:40 10 one more matter we would like to raise. We were
11 actually talking about this when Court convened.
12 It relates to the deposition testimony of
13 Angelique Ross which we went through yesterday.

14 Procedurally, we're trying to figure out
09:05:56 15 how the testimony comes in. And what we had
16 proposed is, for example, if it's Penny on the
17 stand, playing the part of Angelique Ross that
18 when it gets to one of our designations, I will
19 just ask the question of her, and she will read
09:06:12 20 it?

21 THE COURT: I think that's good.

22 MR. LANGLEY: I don't know if we
23 have agreement from the other side yet.

24 MR. BENNETT: It's just process.
09:06:22 25 There's no objection in principle. But the

1 problem is we have gone through -- as Your Honor
2 knows, we designated our deposition parts. We
3 provided that to the defendant. And the
4 important part here is that we then highlighted
09:06:40 5 the deposition. We've had -- I won't say
6 rehearsed, but they've gone through that.

7 The defendant wants to use other parts
8 which we think are insomnia cures and little
9 else. We don't have any objection on principle
09:06:58 10 to them coming in. The question is do we have to
11 put their evidence in.

12 THE COURT: No.

13 MR. BENNETT: Our suggestion is
14 they do that, and that's fine.

09:07:06 15 THE COURT: No. The way I
16 understand it -- the way I've done it is I assume
17 Ms. Cauley is going to read Ms. Ross --

18 MS. CAULEY: Actually, I'm going
19 to do the questioning since I took her
09:07:22 20 deposition, and Mr. Sykstus is going to answer.

21 THE COURT: I assume you're going
22 to ask the questions that you have highlighted
23 and pointed out that you're going to read from
24 her deposition.

09:07:32 25 MS. CAULEY: That's correct.

1 THE COURT: And then the defendant
2 would then read their questions that they want to
3 read afterwards?

4 MR. LANGLEY: What we had
09:07:42 5 proposed --

6 THE COURT: I know what you're
7 proposing is that you read it as you go through
8 it. No. You can read your own questions
9 afterwards.

09:07:46 10 MR. LANGLEY: Fair enough.

11 THE COURT: All right. Do you
12 want these two back?

13 MS. CAULEY: Yes, Your Honor.

14 THE COURT: Okay. Now I'm going
09:08:26 15 to go because Cheryl has to work on my computer.
16 It's not working.

17 COURTROOM DEPUTY: Judge, I need
18 to make sure their sound is going to work, too,
19 anyway before I bring them in.

09:08:38 20 THE COURT: All right.

21 (Short recess.)

22 (In open court. Jury present.)

23 THE COURT: Please be seated.

24 Good morning. Let the record show this is
09:30:36 25 CV-10-369. Jamon Brim versus Midland Credit

1 Management, Inc. And Mr. Brim is present.
2 Mr. Edrozo is present. Mr. Yang is present. The
3 lawyers are present. The jury is present. And
4 good morning to everybody.

09:31:02 5 I should say that you didn't meet one of
6 the lawyers for the plaintiff yesterday, Len
7 Bennett. He's seated on my right. I told you
8 yesterday he was excused yesterday for being in
9 court yesterday. But he's here today.

09:31:18 10 MR. BENNETT: Good morning. Thank
11 you, Judge.

12 THE COURT: You met all the
13 others.

14 I told you yesterday the first thing
09:31:24 15 you'll hear is the opening statement first by the
16 plaintiff and then by the defendant. And then
17 we'll actually start hearing the evidence.

18 I want to tell you that certain facts in
19 this case -- and you'll hear more about the case
09:31:36 20 as we go through it. Certain facts are
21 undisputed. And that means that they don't need
22 additional evidence to establish their existence.
23 They're undisputed by the parties. And before
24 the parties actually give you their opening
09:31:52 25 statements, I'm just going to read you those

1 undisputed facts because they're undisputed and
2 stipulated to by the parties.

3 First of all, Midland, which is just short
4 for the defendant, services credit accounts its
09:32:14 5 wholly-owned subsidiary, Midland Funding,
6 purchases from other companies. Midland Funding
7 purchases debts from unrelated creditors such as
8 credit card companies and financing companies
9 that those entities have charged off.

09:32:32 10 Two, Midland bought, as part of a large
11 portfolio of other consumer credit accounts, an
12 account from Dell Financial that the plaintiff,
13 who is Mr. Brim, had previously owed to Dell.

14 Midland agrees that it is responsible for
09:32:54 15 the accuracy of the information it reports to the
16 credit bureaus.

17 On September the 14th, 2004, the
18 plaintiff; that is Mr. Brim, purchased a Dell
19 computer financed by Dell Financial in an amount
09:33:12 20 of \$914.25 and a surge protector in the amount of
21 \$20.53.

22 On November the 8th, 2004, plaintiff,
23 Mr. Brim, transferred \$954.12 from his bank
24 account at Redstone Federal Credit Union to Dell
09:33:34 25 Financial to pay off the account in full.

1 The plaintiff, Mr. Brim, disputed the
2 attempt by Midland, the defendant, to collect on
3 the Dell account several times, providing it with
4 his bank statement from Redstone Federal Credit
09:33:56 5 Union, listing the November 8th, 2004, payment to
6 Dell.

7 Prior to November of 2008 after it
8 purchased the Dell account, Midland began
9 reporting the account to the plaintiff's credit
09:34:10 10 files with Equifax, Transunion, and Experian, the
11 national consumer reporting agencies, as an
12 unpaid collection account.

13 An ACDV, which stands for automated
14 consumer dispute verification, form is the
09:34:30 15 ordinary manner in which consumer disputes to the
16 credit reporting agencies are forwarded to a
17 credit information furnisher such as Midland.

18 When Midland received the ACDVs; that is
19 the automated consumer dispute verification, from
09:34:50 20 Mr. Brim from Equifax, Transunion, and Experian,
21 it used its automated batch interface system to
22 respond. Midland receives approximately 8,000
23 ACDVs, disputes, per week.

24 When Midland uses its automated batch
09:35:12 25 interface systems to process consumer disputes

1 received in the ACDVs, no employees of Midland
2 Credit Management, Inc. reviews the dispute until
3 it has been through the interface system one
4 time.

09:35:30 5 In investigating Mr. Brim's ACDV disputes,
6 Midland did not contact him, Dell, the consumer
7 reporting agencies, or any other person or
8 company.

9 Mr. Brim purchased a computer in September
09:35:46 10 of 2004, using a line of credit from Dell
11 Financial Services.

12 In November of 2004, Mr. Brim paid off the
13 account with a payment of \$954.12 to Dell
14 Financial Services via an ACH debit. That is a
09:36:06 15 telephone check.

16 The November, 2004, payment was misapplied
17 to the account of another Dell Financial Services
18 customer. Thus Dell Financial Service records
19 reflected that Mr. Brim's account was unpaid at
09:36:22 20 the time the account was sold to Midland Funding.

21 On October the 10th, 2007, Dell Financial
22 Services sold the account to Midland Funding as a
23 subsidiary of Midland Credit Management. And
24 Midland instructed the credit reporting agencies
09:36:40 25 to delete Mr. Brim's account upon being advised

1 by Dell Financial Computer Systems in August of
2 2010 that Mr. Brim's account had been paid off in
3 November of 2004.

4 These are undisputed facts. Which means
09:36:58 5 that they don't require any additional evidence.
6 They are proven to you. Okay?

7 And are you going to start?

8 MR. BENNETT: I am, Your Honor.

9 THE COURT: Okay.

09:37:12 10 MR. BENNETT: Good morning. My
11 name is Leonard Bennett. The Court has been
12 courteous in allowing me to finish my hearing in
13 Richmond, Virginia yesterday and actually,
14 unbeknownst to the Court, at 11:00 o'clock.
09:37:28 15 Before that, with my three year old who has
16 croup. So it has been a whirlwind for me.

17 And I appreciate the courtesy that you
18 show and -- as well, certainly, of Mr. Brim, my
19 client, allowing me to appear today and not
09:37:44 20 yesterday.

21 This case is a consumer protection case.
22 It is a Fair Credit Reporting Act case, which is
23 why I would be here from Virginia, which is why
24 Ms. Cauley, despite her Alabama roots, now
09:37:58 25 practices in Florence, South Carolina -- why she

1 is here. We are full-time consumer protection
2 Fair Credit Reporting Act attorneys.

3 We are working with Mr. Sykstus, Ron
4 Sykstus, who is a Huntsville attorney. I learned
09:38:16 5 last night that he actually is from Chicago. But
6 his Alabama wife convinced him to come down here
7 years ago. I said I wouldn't tell the jury that,
8 but that's where he's from. He's not from where
9 we're from, but his wife is.

09:38:28 10 He's practiced here for a long period of
11 time. He does consumer credit, consumer
12 bankruptcy, and the type of work that an
13 individual like the person that matters to us in
14 this case, Mr. Brim, would need.

09:38:40 15 Mr. Brim was born in Tupelo, Mississippi.
16 And I'm from Virginia. We don't have SEC teams.
17 I don't know if that's good or bad. But he is
18 from Mississippi. Came here 11 years ago to go
19 to college. Graduated with a bachelor of science
09:38:56 20 degree in business management from Alabama A & M.
21 He is now 33 years old. Going to turn 34 this
22 year. Mr. Brim is unmarried. He works currently
23 with Yellow Book, which is a company that
24 distributes the phonebooks. He oversees large
09:39:14 25 territories.

1 The facts that you've heard, the facts
2 that were stipulated, from our perspective,
3 resolve the most significant parts of this case.
4 This case is about the Fair Credit Reporting Act.
09:39:28 5 That's all it is.

6 The judge at the end of this trial will
7 instruct you as to the law. This right now is
8 opening. This is a point which the lawyers can
9 introduce themselves. Can provide context and
09:39:40 10 background to their client's claim as well as can
11 outline what we expect the facts to be.

12 The big notebook that we're to blame for
13 is sitting on your lap. That's the plaintiff's
14 exhibits. Those that the parties have resolved.
09:39:56 15 The Court has already ruled or admitted. The
16 defendant has a set of exhibits. I don't know if
17 they have binders for you. But we're
18 technologically together here in this courtroom.
19 And you'll be able to see the exhibits for both
09:40:10 20 parties on the screens.

21 This case is about the Fair Credit
22 Reporting Act. The sequencing of the process,
23 the trial -- the way that it works, if you
24 haven't sat through one before, this is opening
09:40:22 25 statement. I'm barred from arguing the case.

1 The defendant is barred from arguing the case.
2 We're advocates.

3 The way we tell you these objective facts,
4 of course, assume an outcome that we will ask for
09:40:38 5 in the end in our closing. But opening is where
6 the parties say, here's what we think the
7 evidence will show.

8 Much of you heard -- I will over the next
9 15, 20 minutes outline what we think the most
09:40:48 10 salient or important parts of that evidence will
11 be. We will put it up on the screen, and I'll go
12 through some of that.

13 But the Fair Credit Reporting Act. You
14 heard a bit about this, I guess, yesterday. The
09:41:00 15 core part, without giving you what the law
16 requires, which is for opening -- the core part
17 of the Fair Credit Reporting Act is a dispute
18 right that you have. It requires, when a
19 consumer makes disputes to the credit reporting
09:41:12 20 agencies, certain actions by the furnisher of
21 credit information. It is a fail safe. Mistakes
22 happen. Right?

23 This was an account that in 2004 my client
24 paid off within a month of when he bought this
09:41:26 25 Dell computer. And he did it with an electronic

1 checking account. And he did it. And he kept
2 his bank statement, which is far more than I
3 could say for much of my conduct in '04.

4 This is now 2011. This lawsuit was filed
09:41:40 5 in early 2010. The stipulation of the defendant,
6 the evidence you've just heard, is that it came
7 off only after August, 2010, with the responding
8 contact between Dell and Midland.

9 And in fact, the evidence will tell you it
09:41:56 10 actually came out of his credit report in
11 September of 2010. Nine months or so, eight
12 months after this lawsuit was active. The
13 account at issue was a collection account.

14 May we see the screen for our computer,
09:42:18 15 please?

16 You have these in your books. And as we
17 go through them, you'll have a copy of all that
18 I'm going to put up here. But I'd like to walk
19 you through it and tell you why I start with this
09:42:34 20 one here. This is a Dell document -- I mean, I'm
21 sorry. A Midland document.

22 Midland is a debt buyer. It buys or
23 accepts debts that the original creditor couldn't
24 collect.

09:42:48 25 In this case, it bought a portfolio debt

1 from Dell. Now, it bought this debt in 2007. It
2 bought it on that date in a package or portfolio.
3 And this was the official paper balance. We know
4 why Dell can't collect it now as we look back
09:43:06 5 because it had been paid off within two months of
6 when it had been charged. No interest was
7 recorded, just as a footnote. Midland assigns
8 interest by its own -- it picks that number out
9 of its own choice. But it's run out of its San
09:43:26 10 Diego office.

11 Midland is a part of a company called
12 Encore. It is a collection arm of Encore.
13 You'll hear just a little bit about that. But it
14 bought this debt at this point in time when the
09:43:34 15 statute of limitations -- everybody has some idea
16 of when this was -- you are not allowed to sue
17 past the statute of limitation. This is when it
18 knew it was going to expire.

19 As a footnote, the evidence will show that
09:43:48 20 later when they couldn't collect, when Midland
21 could not collect by parking it on a credit
22 report, it tried to unsuccessfully sue in
23 collection court and had to dismiss it.

24 And at this point, this is all the --
09:44:02 25 basically pretty much all the information that

1 Midland had. It was charged off on this date.
2 This, by the way, is a trade line. You'll see my
3 client's credit reports. You have to. Amongst
4 the other things the evidence will show, he is
09:44:24 5 before you. You will see all of his personal
6 credit reports. Not just his bank statements.
7 You'll see the good, the bad the worse. But this
8 is what you call a trade line.

9 This is what one of the three credit
09:44:36 10 reporting agencies -- there's three national
11 ones -- had in July of '08. The text you'll look
12 at will be better. This is a PDF file that's
13 been copied and blown up. But it was recorded as
14 Midland's account. It was recorded as a
09:44:52 15 collection account, which is a major derogatory.
16 Past due as of December of 2007.

17 The balance -- and this is basically --
18 you'll see changes that go through the lifecycle
19 of Midland's reporting where it says, modify
09:45:06 20 account. The main modification is it just keeps
21 increasing its balance. But this shows up in
22 everyone of my client's credit reports. Even
23 ones where they note a technical note that my
24 client has made a dispute as a major derog or
09:45:24 25 derogatory, a negative in his credit report.

1 It's not unremarkable. Anyone would expect a
2 collection account, which is a statement that
3 consumer has not paid their bill to Dell for
4 \$1,600, is a derogatory.

09:45:38 5 Now, there will be evidence the defendant
6 offers and we will talk about that predates the
7 July of 2008 period. And the reason why I'm not
8 is because -- well, I will at the end of this.
9 But we don't believe it is useful to you, but I
09:45:54 10 will tell you some of that evidence.

11 My client had -- before July of 2008,
12 November, November of '07 when Midland took over
13 the collection efforts, had already been through
14 this with Dell. And had shown the bank
09:46:10 15 statements. Had made the dispute letters. Had
16 made credit reporting items. And by then, by
17 this date, it was off his credit report at Dell.

18 Now July of '08, my client tries to buy a
19 mortgage. He now owns a mortgage which he
09:46:26 20 received -- he was able to buy a house in March
21 or so of 2009. You'll see the two major dispute
22 periods at issue in this case surrounded his
23 efforts to buy a mortgage. So in July of 2008,
24 he has a credit report. He sees this account.
09:46:44 25 And he begins the dispute process all over again

1 with this defendant now.

2 This letter he writes and he sends by
3 certified mail. And he includes a copy of his
4 bank statement as well as social security number.
09:47:00 5 He sends it to Experian. But you have the same
6 thing for Equifax and Transunion. He keeps the
7 certified mail cards. He sends this to Midland.
8 A copy of it, as well. He keeps the certified
9 mailing card.

09:47:16 10 This is the affidavit to get evidence in,
11 a year later from when this trial started.
12 There's been a lot of litigation between the
13 parties about admissibility of evidence and
14 authenticating. We have to dot our Is and cross
09:47:32 15 our Ts.

16 This is from the bank. This is the
17 statement he produced again and again and again.
18 And the relevant part of it is right down here.
19 Right here. Dell Financial. You'll see it. In
09:48:06 20 November, 2004, my client, with a telephone
21 check, because he didn't foresee any of this
22 happening, paid it off. He provided that
23 statement.

24 Now, there is no evidence at all that the
09:48:18 25 defendant ever contacted Redstone; that it ever

1 asked my client for more information; that it
2 ever said, give us an affidavit or anything. And
3 the reason is -- and I'll talk in a moment about
4 it is because the procedures the defendant
09:48:32 5 follows -- the only proof documents that a
6 consumer could give to Midland to convince an
7 account had been paid before Midland got it is a
8 settlement letter from a creditor with a copy of
9 a cancelled check corresponding to that
09:48:50 10 settlement letter. That is unless my client
11 could have had Dell or Midland agree to -- unless
12 my client had agreed to pay off a settlement with
13 Dell or Midland. And provide a letter for that.
14 There was no possibility that Midland would have
09:49:06 15 removed it, by its own written procedures.

16 He does the same thing in March, 2009.
17 And he still has all his hair. Didn't pull it
18 out with the frustration. But he's now been
19 through this for at least four or so years.
09:49:26 20 You'll see documents.

21 These are plaintiff's interrogatories. We
22 serve them. It's one of the pleadings that
23 lawyers can do. You ask questions. The
24 defendant -- they serve them to us. The
09:49:36 25 plaintiff has to answer them. And in this

1 instance, a couple of them are useful because
2 they give you the defendant's own view of this.

3 We asked Interrogatory 2: Please list the
4 communications. State the date of
09:49:54 5 communications, the author and the contents.
6 You'll see from the records we contend on the
7 list that follows have all the communications our
8 client had with Midland. But do you really need
9 more? These are the communications our client
09:50:08 10 had with Midland.

11 We also asked when my client made disputes
12 to Midland. These are what the defendant
13 acknowledges dates of disputes that it received
14 from our client, the dispute that's at issue in
09:50:24 15 this case. There's a few missing. The Equifax
16 dispute is not here. And the lawsuit was filed
17 before this. But after the lawsuit was filed,
18 Midland again verified this and said, yes. He
19 owes the debt.

09:50:44 20 You'll hear and you've already heard
21 something about a ACDV. An ACDV. And if I could
22 talk to you briefly about what this is. You'll
23 here evidence in this regard.

24 The credit reporting agencies in this
09:50:58 25 world of automation -- whether you like it or

1 don't, when consumers make disputes to the credit
2 reporting agencies, whether they take it on line,
3 telephone, written letter, it is then reduced
4 into this system called E-Oscar.

09:51:16 5 The major credit bureaus own this company
6 that administers this dispute system. And
7 electronically, the consumer's dispute is then
8 transmitted to the furnisher. The furnisher is
9 the lingo in this statute for the creditor that
09:51:34 10 provided the trade line, the account information.

11 So the ACDV is forwarded, and it conveys
12 the substance of the dispute to the furnisher,
13 the creditor. And the furnisher and creditor is
14 to then investigate. The Court will later
09:51:48 15 instruct you as to what an investigation and the
16 law requires.

17 This is what it looks like from one
18 perspective. But you'll see this coming from
19 different credit reporting agencies. It can look
09:52:00 20 a little bit different.

21 Let's talk about this one first. You can
22 see it. You have it in your exhibit book. The
23 basic layout, this one is from Transunion. Has
24 the date. This was the August, 2008. And it has
09:52:14 25 the information the credit reporting agency

1 currently has on file, identifying information.
2 And then this is the information that the
3 creditor says we have.

4 In this instance, Midland didn't have our
09:52:26 5 client's social or date of birth. But it says
6 whether the information is different or the same.
7 This is the dispute: Claims paid original
8 creditor before collection status or paid before
9 charge-off.

10 Experian is saying: Midland, you need to
11 verify the account status, pay rating, current
12 balance, amount past due, and pay history.

13 Then you have Midland puts their response:
14 Verified as reported. Sometimes they will say,
09:53:02 15 verified as reported. Sometimes they will say,
16 modify as shown. Typically the modify as shown
17 is simply changing the dollar amount when you
18 look at these.

19 And this gets sent back. This is the
09:53:12 20 status. Still reporting as a collection account.
21 There is a technical note which is not --
22 shouldn't be any surprise, given the consumer
23 wrote the letters, that Midland is saying the
24 account information is disputed by the consumer.
09:53:28 25 Here they say also: Modify account as shown.

1 And the only change is that they're changing the
2 dollar amounts.

3 This is what it looks like from, in this
4 instance, Equifax. Same concepts. In this
09:53:44 5 instance, this top row is what was before the
6 dispute was sent to Midland. And the bottom row
7 is what Midland responded with.

8 So in this instance, the amount current
9 balance went up by a dollar or by six dollars
09:54:00 10 because it was assigning its six percent
11 interest. And again, it noted account
12 information disputed by the consumer. But it
13 continued to note that its past due and assigned
14 to internal or external collection which is a
09:54:16 15 major derogatory.

16 You're going to hear -- let me suggest
17 this. This is -- Alabama has a history of some
18 really good trial lawyers. And I'm not going to
19 live up to that standard. This case isn't going
09:54:28 20 to live up to one of the -- it's not going to
21 make the headlines across the country as the most
22 glamorous and exciting case.

23 My client has had to come into federal
24 court to force his credit report to be fixed.
09:54:44 25 Your job, though, in this case might be even less

1 glamorous. Because your job is going to consist
2 of hearing two live witnesses. The rest --
3 you're going to hear three videotape witnesses.
4 And you're going to hear a read witness of the
09:54:58 5 defendant who is not here right now. And let me
6 tell you why.

7 The federal rules of civil procedure, they
8 are the rules we all have to live by. And there
9 is a limitation on your subpoena power. That is,
09:55:12 10 I cannot bring or Ms. Cauley or Mr. Sykstus could
11 not subpoena someone from San Diego to come out
12 here to testify from Midland because they're more
13 than a hundred miles from the courthouse.

14 Nor can we subpoena Ms. Banks from
09:55:30 15 Equifax, Ms. Hughes from Dallas, Texas for
16 Experian, or Mr. Newnom from Fullerton,
17 California for Transunion. We can't subpoena
18 them.

19 So we are at the -- more importantly, you
09:55:44 20 are at the -- up to the task of having to hear
21 some of the testimony -- major parts of it in
22 this case -- from videotaped depositions that the
23 parties through their lawyers already took as
24 well as to hear the defendant's deposition
09:56:00 25 testimony.

1 Ms. Ross will testify under rule called
2 Rule 30(b)(6). When you want to depose a
3 corporation so that you don't ransack their whole
4 company and depose the president all the way down
09:56:14 5 to the clerical worker, the way it works is you
6 serve a notice under Rule 30(b)(6). You list a
7 bunch of topics that you want to ask about. And
8 the defendant chooses who they're going to put
9 up.

09:56:24 10 Ms. Ross was the 30(b)(6) witness. And
11 she will speak not on her behalf but on behalf of
12 Midland. And you'll hear that with -- my
13 esteemed colleagues will read you that transcript
14 as a back and forth.

09:56:36 15 I apologize in advance because it's not as
16 lively as it might be with live witnesses in the
17 same fashion. But your job becomes more
18 important -- even more important under those
19 circumstances.

09:56:46 20 Now, there is another live witness. And I
21 also have to apologize. This individual's name
22 is Gabriel Edrozo. I've never met him before
23 this morning. He is from Midland. He comes in
24 from their San Diego office. And I don't know
09:57:06 25 much about him. I may ask questions because he

1 is filling in, I guess, as the witness of
2 Ms. Ross who isn't here. I understand she had a
3 baby, so she has a fantastic reason not to be
4 here. But she's not here.

09:57:20 5 So this witness -- I may stumble through
6 examination of that witness. I apologize in
7 advance.

8 You're going to see Ms. Banks for Equifax
9 in her video. And the parties have agreed to
09:57:32 10 just play the depositions without inserting a lot
11 of objections so that you can have it -- one of
12 the many things that she'll say -- much of what
13 she's simply saying is what I've just explained.

14 We have ACDVs. We send them on. It is an
09:57:50 15 important thing that we want to continue to focus
16 on in our facts. Is it true that Equifax relies
17 on its data furnishers to provide accurate
18 information regarding on account? Yes, we do.
19 And is it true in this instance Equifax relied on
09:58:06 20 Midland to provide accurate information regarding
21 Mr. Brim's account? Yes. And did Equifax also
22 rely on Midland to investigate -- the answer
23 would be yes if somebody besides myself was
24 working a PDF file.

09:58:20 25 Add this to the agreed facts that Midland

1 agrees it's responsible for the accuracy of the
2 information it reports to the bureaus. At the
3 end of my -- we're halfway there.

4 At the end of this opening, I will outline
09:58:34 5 a couple of the facts that the defendant may try
6 to offer. One of them is going to cast blame on
7 anyone other than Midland. Dell, for example.
8 And in this instance, Equifax testified Midland
9 is responsible for Midland's reporting. Not
09:58:52 10 Dell. Not anyone else. And the stipulation,
11 Midland itself agrees Midland is responsible for
12 Midland's credit reporting. Not Dell or anyone
13 else.

14 This you'll see this better. Don't strain
09:59:06 15 yourself. My 45-year-old eyes moved up to 2.5s.
16 You'll have a better, cleaner copy. This is
17 called a UDF or an AUDF. Everything has an
18 automated now.

19 An AUDF is the way that outside the normal
09:59:20 20 investigation process a creditor says, change my
21 trade line or the trade line for our consumer.
22 So at the end -- and you'll look at this -- you
23 can barely make it out. It will say a date of
24 September of 2010 that Midland finally deleted
09:59:36 25 this account.

1 I like what I do. And I do nothing but
2 come to federal court on Fair Credit Reporting
3 Act. But you should not have to come to a
4 federal courtroom to correct your credit report
09:59:54 5 or wait nine months of a lawsuit to do that.

6 This is what the Experian deposition --
7 Ms. Hughes in Texas will testify similarly to
8 Ms. Banks of Equifax and Mr. Newnom for
9 Transunion. And they're often witnesses in
10:00:10 10 litigation themselves.

11 This is just a -- it's Page 1 through 3.
12 That's the collection history from Midland. This
13 is their document. It's three pages. But it
14 goes up in chronology. So the next page is the
10:00:28 15 earliest of these events. You'll see it was
16 assigned or bought, rather, for pennies by
17 Midland in October of '07.

18 They sent letters, offering settlement
19 offers. The information -- to find out
10:00:42 20 information about our client's ability to pay.
21 And then moved it to try to recover, checking his
22 new addresses. They then -- this period of time
23 they sent it to a collection firm, an outside law
24 firm, to sue in collection court in Huntsville
10:01:02 25 where my client resides. Which ultimately was

1 dismissed.

2 Received certified letter from Mr. Brim
3 with a copy of the dispute. These are their own
4 notes. Received certified letter or notice,
10:01:18 5 included copy of bank statement, showing the
6 payment to Dell. Not proof.

7 I'll show you why because we have their
8 procedures. It's disputed through the credit
9 bureaus. It is disputed through the credit
10:01:36 10 bureaus. They continue to make additional credit
11 reporting.

12 Then they received additional dispute
13 calls from Mr. Brim. And they said -- he said
14 advised sent proof certified and will call back
10:01:52 15 tomorrow. Again, bank statement showing the
16 payment not proof. No settlement or paid in full
17 letter included. Which means the only proof that
18 Midland would accept was one that operated or
19 arose out of a reality that did not exist. The
10:02:10 20 reality which the consumer was a debtor. I won't
21 say a dead beat, but someone who owed a
22 collection account and then settled it. A
23 reality that didn't exist. How can my client
24 possibly get a settlement letter from Midland or
10:02:26 25 Dell when he had paid the account?

1 Ostensibly, he could have negotiated and
2 double paid it. And that's what this procedure
3 would have insisted upon.

4 E-Oscar credit reporting. Lawsuit
10:02:48 5 filed -- now, it was actually filed before this.
6 But this is apparently when it entered their
7 system. And note that it was that same day that
8 they were still verifying the information, saying
9 to Transunion, our client owes this debt.

10:03:02 10 And no one is claiming -- there's no
11 factual dispute in this case that our client did
12 anything other than pay it November of '04 on
13 time. It was financed. It was a credit line.
14 He could have kept paying it on time. But he
10:03:18 15 paid it in full at that point.

16 You'll hear something about Encore
17 Capital. We've talked about the plaintiff's
18 efforts. This is their San Diego office. I'm
19 sure it's nice. Encore Capital Management. This
10:03:38 20 is from its logo. Subsidiary, Midland Credit
21 Management. That is the company that is sued in
22 this case. This is the organizational structure.
23 Encore owns the Midland entity, and Midland does
24 the collection work.

10:03:56 25 This is from the Encore and Midland web

1 site. We purchase defaulted consumer loans from
2 major banks, credit unions and utilities. We're
3 headquartered in San Diego. We have offices in
4 these other areas. We have one of the industry's
5 largest distressed consumer accounts with
6 approximately 20 million accounts. You've
7 already heard 8,000 consumers dispute Midland
8 accounts a week.

9 This is from an annual report you'll have
10 as Exhibit 82. On overview of our business. We
11 are leaders in consumer debt buying and recovery.
12 We purchase portfolios of defaulted consumer
13 receivables at deep discounts of face value and
14 use a variety of operational channels to maximize
15 our collections from these portfolios.

16 Let's talk about that. The evidence in
17 this case will show that the defendant tried
18 three operational channels. It tried what's
19 called dun the consumer. Send him letters and
20 call. You'll see letters, which the consumer
21 pushed back, exercising a right that's not at
22 issue here under a different federal law, that
23 says, do not contact me anymore. Cease and
24 desist.

25 The second operational channel was trying

1 to sue on a debt that, you know, certainly had it
2 gone through would have found in our client's
3 favor but had to be aborted at that point because
4 it was a -- past the statute of limitation. So
10:05:26 5 that operational channel fell.

6 You have one operational channel left.

7 The evidence will be the operational channel this
8 defendant used was parking on a credit report.

9 Forcing someone who wants to buy a house, like my
10:05:38 10 client, to go get a settlement letter from Dell
11 or Midland to get it off his credit report.

12 This is from Midland or Encore's annual
13 report. Cost efficiency is central to our
14 collection and purchasing strategies. There have
10:05:54 15 a lost of cost advantages. There isn't, by the
16 way, any evidence that there was any collection
17 calls from India in this case. So that's not
18 relevant to the case. But there are other cost
19 efficiencies that are outlined.

10:06:08 20 We acquire and service receivables from
21 obligors that have failed to pay and that the
22 seller has deemed uncollectible and written off.
23 The originating institutions generally make
24 numerous attempts to recover on these
10:06:26 25 nonperforming debts, which means it's true you'll

1 hear evidence by the time that my client got to
2 the point where Midland could inflict its own
3 frustration or embarrassment or humiliation on my
4 client, he had already endured this. Cleaned it
5 up with Dell.

10:06:42

6 In order to operate profitably over the
7 long term, we must continually purchase and
8 collect on a sufficient volume of receivables to
9 generate revenue that exceed costs.

10:06:52

10 These receivables are difficult to
11 collect, and we may not be successful in
12 collecting amounts sufficient to cover the costs
13 associated with these receivables to fund our
14 operation. If we're not able to collect on these
15 receivables or collect sufficient amounts to
16 cover our costs, this may materially and
17 adversely affect our results of operation.

10:07:02

18 There are a number of other lawsuits,
19 claims, counterclaims pending or threatened
20 against us. In general, these lawsuits, claims,
21 or counterclaims have arisen in the ordinary
22 course of business and involve claims for damages
23 arising from a variety of alleged misconduct or
24 improper reporting of credit information by us or
25 our employees or agents.

10:07:26

1 This is a chart that is in their annual
2 report. The cost per dollar collected. The
3 relevant part of this, this is the cost per
4 dollar collected inhouse. That is, for every
10:07:46 5 dollar that Midland collects, it only pays 4.2
6 cents.

7 In this instance, cost efficiency, the
8 evidence will show, overwhelmed any other concern
9 or interest about the obligations to comply with
10:08:00 10 the law or our client's rights. This -- both
11 sides will offer this. Theirs is, I saw in the
12 manual, colored. Ours is not. This is the title
13 of one of their dispute and warning code manuals.

14 Again, there's this law, the Fair
10:08:22 15 Declaration Practices Act. It's not at issue in
16 the case. It does control something called a
17 45-day validation period. You basically, in a
18 debt collection, under the Fair Dec Practices
19 Act -- the FDCPA has strict liability if you --
10:08:40 20 if a creditor or debt collector, rather, doesn't
21 give the consumer a breather of at least 45 days.

22 If the consumer makes a dispute in that
23 period, Midland acknowledges the burden of
24 obtaining proof regarding the dispute is on
10:08:56 25 Midland. MCM. Do not even suggest that the

1 consumer needs to provide documentation for a
2 dispute. After 45 days -- and of course, my
3 client made disputes in 45 days, after 45 days,
4 or the like. He made disputes. Many disputes.

10:09:12

5 But after 45 days, this is what Midland's
6 claiming or instructing its employees. The
7 burden of proof is on the consumer to validate
8 the dispute claim. Documentation must be
9 provided to move forward with the dispute.

10:09:26

10 Now, the Court will, in closing, allow us
11 to argue the law as to whether it's ever a
12 consumer's obligation to prove a negative. But
13 the facts, I think, will show that our client
14 gave his best effort throughout this process.

10:09:44

15 On this very bottom part, it's really hard
16 to see except in your book. It's easy to read.
17 But these are the types of disputes that Midland
18 might have received.

10:09:58

19 And importantly, under account paid, it
20 says -- it instructs the employee the only two
21 types of documents are documents such as a
22 letter, a settlement letter with a cancelled
23 check or some other written confirmation from the
24 creditor that it's been paid.

10:10:52

25 So that if my client had a letter from

1 Dell, then that would constitute -- other than
2 that, there is no proof that would have been
3 allowed by Midland.

4 My client had absolutely -- it's not as if
10:11:04 5 there was some effort or there's any evidence
6 that he failed to go down far enough down the
7 trail. You, looking back at this with 20/20
8 hindsight, can see -- the evidence will show
9 there was a dead end. There was no possibility
10:11:20 10 of getting this off.

11 You have these procedure manuals. They
12 say much the same thing. They outline 45-day
13 verbal disputes. And what they tell the employee
14 is the consumer makes a verbal dispute, tell them
10:11:36 15 give it to us in writing. Written disputes, if
16 it's within 45 days and they provide a front and
17 back of cancelled check and settlement offer --
18 it's not one or the other. So the settlement
19 letter plus the cancelled check. Then there is
10:11:54 20 possible supporting document.

21 We cannot argue the law. You are allowed
22 to use plain English language in your decisions.
23 Investigation, which the judge will instruct you
24 what that means as a matter of the law under the
10:12:14 25 Fair Credit Reporting Act, but investigate under

1 American Heritage Dictionary is defined as a
2 detailed inquiry or systematic examination.
3 Websters, a searching inquiry.

4 At the end of the case, you're going to
10:12:30 5 hear evidence that you will have to determine
6 whether you think that there was such an
7 investigation.

8 You'll hear a deposition read to you by my
9 esteemed co-counsel of Ms. Ross, who was the
10:12:46 10 person most knowledgeable for Midland. Some
11 relevant portions: What if a bank statement was
12 received, showing a payment and they can't
13 determine if that's valid? Is that also sent to
14 do more subsequent investigation? That document
10:13:04 15 would be considered invalid. So they would have
16 made the determination that the bank statement
17 was invalid as a proof document. So a dispute
18 containing a bank statement showing a payment is
19 automatically deemed invalid? Yes. Generally.
10:13:18 20 I would say that is true unless there is
21 something else with it or maybe something else on
22 the account that would add to determination.
23 Something else is the settlement letter from
24 Dell. Essentially, the bank statement would be
10:13:26 25 the acceptance of a collection settlement offer.

1 Yes.

2 You would agree that Midland is
3 responsible for reporting accurate information to
4 the credit reporting agencies regarding specific
10:13:36 5 accounts? Midland is responsible for its own.
6 And the facts in this case will show Midland
7 knew, yes, it is so responsible, and is
8 responsible for investigating the accuracy of
9 that information. Yes.

10:13:48 10 Are you aware that Midland is responsible
11 for investigating? Yes. And it has to conduct
12 the investigation within 30 days? Yes. And
13 these disputes are received via the ACDV? Yes.
14 You told me 99 percent -- and actually, in her
10:14:04 15 deposition at one point, the Midland
16 representative says 95 percent. Let's say 95,
17 even though this she said the 99. So 95 to 99
18 percent of ACDVs are handled electronically
19 through the batch; is that right? Yes.

10:14:18 20 Let's talk about what that batch is. In
21 terms of an effective safety valve of systemic
22 inquiry, using the American Heritage definition.
23 Midland to receive these 8,000 weekly disputes
24 has set up a computer program that receives them
10:14:36 25 and its computer automatically responds. For 95

1 or, arguably, 99 percent of disputes of these
2 8,000 that -- of consumers that have to make
3 Midland disputes, Midland doesn't have a live
4 person look at them.

10:14:56 5 Computers are great. We have them here.
6 We have them here. But you will hear evidence in
7 this case that Midland's version of that
8 automated offers zero safety valve. Not even
9 after nine months of a lawsuit.

10:15:14 10 So the fact that Mr. Brim sent in a bank
11 statement, showing the payment to Dell, Midland
12 did not consider as proof of payment? Correct.
13 Didn't consider it proof of at least a partial
14 payment? Correct.

10:15:28 15 I remind you they were showing you the
16 balance with all the supposed interest. And
17 Midland never contacted Dell? That's correct.

18 By the way, you'll hear evidence from the
19 defendant as to Dell. Dell was saying it was
10:15:42 20 still owed. No effort made to contact Dell.
21 Until August of 2010, by the way, when finally
22 Dell was contacted.

23 The stipulation you've just heard now it
24 came off. And then August of '08, there's an
10:15:58 25 entry. Plaintiff's exhibit. And by the way,

1 sometimes in these -- and I apologize it just
2 happens in litigation. You'll see references to
3 some exhibits in the depositions that don't
4 correspond with either party's exhibit numbers.
10:16:10 5 The exhibit numbers that matter are the ones that
6 you have in your book. Those are the only
7 numbers that matter.

8 And the fact that there are asterisks in
9 the ACDV -- remember the Transunion we showed.
10:16:26 10 There's asterisks under employee ID, that's
11 because it was handled electronically by the
12 batch interface system? Correct. No actual
13 documents were reviewed. It's not even that a
14 person was not involved. No documents were even
10:16:40 15 considered.

16 Transunion was not contacted. The bank
17 was not contacted to determine whether or not it
18 was a forged bank statement. It's not.

19 Next. This means I'm getting near the
10:16:58 20 end.

21 There will be some evidence offered by the
22 defendant that we will characterize as
23 distractions. Dell. And by the way, this wasn't
24 May of 2010. It was August, 2010. But Dell,
10:17:12 25 will there be any evidence that Dell should be

1 held accountable for Midland's credit reporting?
2 Never contacted. The evidence is I've already
3 shown you Midland knows its credit reporting, its
4 trade line is its responsibility. Dell's came
10:17:26 5 off before my client in August of 2008 tried to
6 apply for mortgages again. And obviously, it was
7 sold for pennies.

8 Why did Dell sell it? It is a garage sale
9 of debt that Midland wants to hold to some
10:17:42 10 priceless antique value. Is Mr. Brim

11 responsible? Well, his credit report is not
12 perfect. It's not bad. It's actually really
13 good.

14 But in July of 2008, he had a couple other
10:17:54 15 blemishes. Nothing as bad as this one. But he
16 had a late payment on a credit card to G.E. Money
17 Bank. At one point with one of the reports, he
18 actually had two reports for his brother who is
19 similarly named. It came off quickly. And he
10:18:14 20 also had a student loan that was late pay. But
21 it wasn't -- it's paid. It was a 500-dollar
22 deal.

23 And there won't be any evidence that
24 should properly distract you. Where he worked.
10:18:28 25 In his deposition, you can look at one of the

1 Equifax credit reports and back in 2003, 2004,
2 Mr. Brim was a clerk at an adult video store or a
3 store that sold adult videos. And it shows in
4 his Equifax report -- it's, like, previous
10:18:44 5 employers, Target, Yellow Book, and adult video.

6 And you may hear the defendant argue
7 because before this occurred, we actually thought
8 whether they're allowed to make a point of that.
9 But you may hear the defendant say he worked in
10:18:58 10 an adult video store. He might have been denied
11 his mortgages because of that. There's no
12 evidence of that. But there is evidence in one
13 of his Equifax reports that in 2003, 2004, he was
14 a clerk at an adult video store.

10:19:12 15 Mr. Brim, he also -- is he responsible?
16 He worked for six-and-a-half years to get this
17 off. Got it off from Dell, and then Midland
18 started all over again. And Midland,
19 importantly, there is no evidence that Midland
10:19:26 20 ever made any suggestion to him of an alternative
21 way to get it resolved. All right?

22 Some identity theft instances, a creditor
23 might say, if you send us an affidavit and a
24 police report, that kind of thing, there's
10:19:40 25 nothing comparable in this case. There is no

1 evidence our client was ever offered any avenue
2 to succeed.

3 Now, this is a case about credit
4 reporting. It is not a case about a child losing
10:20:00 5 sight or a worker losing an arm in an accident.
6 That's not the case. And it would be dishonest,
7 not just disingenuous, of any plaintiff's lawyer
8 to tell you that it is the end of the world to
9 have your credit destroyed. It isn't the end of
10:20:16 10 the world.

11 But the law that you'll hear at the end of
12 the case asks you, requires you to determine a
13 proper way to compensate. And you're going to
14 have to listen to the evidence in the context of
10:20:32 15 it is about credit reporting for ways that our
16 client was impacted. And the law will be
17 provided to you. The range of types of damages a
18 consumer can recover will be part of your
19 instructions. And they're broad. But here's
10:20:46 20 what we think the evidence will highlight.

21 First, his credit damage. Our client
22 obtained a loan in March, 2009.

23 We do not have a Countrywide Mortgage
24 person to come in and testify about why his
10:21:00 25 interest rate was higher , but the evidence will

1 show that we do have here in Florence, Alabama --
2 we do have evidence that there was this long
3 delay. There were numerous mortgage attempts,
4 inquiries.

10:21:14 5 My client will testify he applied for
6 these mortgages. In fact, the two dispute
7 periods of Midland in July of '08 and March of
8 '09 were focused on trying to obtain a house.
9 And he was delayed in having done that. There's
10:21:30 10 no other reasonable explanation for -- that would
11 explain how Midland would not be a factor, an
12 important factor in that delay.

13 There is evidence that he was denied an
14 American Express credit card. You actually have
10:21:44 15 an affidavit from American Express,
16 authenticating a credit denial letter. That
17 credit denial letter says it is denied. His
18 American Express credit application in '09 was
19 denied because of a collection account in his
10:21:58 20 credit file. There was only one collection
21 account in his credit file at that time. This
22 one. At any time in the Transunion file ever.
23 This is the only collection account.

24 And you'll see a period of time where, as
10:22:10 25 the evidence shows, that our client withdrew from

1 the credit system. He had spent now at that
2 point in 2008 -- he had already spent three
3 years, trying to get it resolved without success,
4 not provided any alternative. He's now 33. But
10:22:26 5 he had done what he could.

6 And there is a period where you show not
7 just the Capital One credit card application
8 denial, the inquiry that's not there -- I mean,
9 that's there. But also his entire withdrawal
10:22:42 10 from the credit system in late '08.

11 Other economic impact, we will put on
12 evidence his time. He will testify that he makes
13 \$17 an hour. I mean, he's not Donald Trump. But
14 that's his money. That's his time. That's his
10:22:58 15 wage that he had to spend, trying to do what the
16 law, we think at the end you'll be instructed the
17 law says the defendant was supposed to do.

18 And his expenses. And they're modest
19 expenses. Federal Expressing and having to
10:23:12 20 Midland copies of these documents, certified
21 mailings, and the like.

22 The broader harms: Frustration, anger,
23 helplessness, embarrassment, and the impact of
24 having this debt collector abuse you, as it did,
10:23:32 25 through its credit reporting operational channel

1 for this period of time.

2 The best part about damages at the end in
3 argument is I don't have any say. You're going
4 to have to decide. You're going to have to
10:23:44 5 listen to the evidence and determine what is a
6 proper amount that had my client maybe
7 pre-negotiated this -- you can destroy my credit
8 for the next couple of years, drag me into
9 federal court, expose my data, and do what you've
10:24:02 10 done with the mortgages -- what is a dollar
11 amount that at the beginning, back in '08 Midland
12 and my client could have worked out.

13 This is what it looked like when the
14 lawsuit was filed. Transunion collection
10:24:18 15 account. A remark. The best that he could earn
16 is a remark that says it's disputed. Not a
17 surprise. These are Transunion inquiries during
18 this period of time. That is every inquiry. And
19 you'll have these reports to look at. Every
10:24:38 20 inquiry is an attempt by my client to obtain
21 credit. And he will testify he didn't get any of
22 this. Not until he got to Countrywide Mortgage
23 in the spring of '09 at his higher rate.

24 There's also something called promotional
10:24:52 25 inquiries. These are the things that give you

1 junk mail. But the account review inquiries,
2 these are existing creditors he already has.
3 Insurance company, for example, or this is his
4 annual free credit report.

10:25:04 5 These are his existing creditors that
6 Midland told, through the credit report, he
7 doesn't pay his bills. This is the American
8 Express denial letter May, 2009. The only
9 collection for serious delinquency in May of '09
10:25:26 10 in his report, the only one is this one.

11 The law regarding punitive damages, in
12 voir dire some questions were asked. You have to
13 determine at the end of this the proper standard.
14 The Court will instruct you the proper standard.
10:25:42 15 You have to determine whether or not the facts in
16 this case support it.

17 But one of the pieces of evidence you will
18 look at is the net worth. The idea that how do
19 you move a giant? Small pushes? Its annual
10:26:00 20 report as of Valentine's Day, last week or so,
21 this is the net worth of this debt collector.

22 That's the end. You have the hardest job.
23 At the end of this case, you have to take all the
24 facts. And my colleague is an exceptional
10:26:26 25 lawyer. The defendant isn't rolling over. But

1 you will hear both sides. They're different.
2 You've heard the stipulated facts, the evidence.
3 In the end, the Court will instruct you as to the
4 law. Thank you.

10:26:40 5 This has been a long opening. Thank you
6 for your patience. We're going to do what we can
7 to move the trial. In the end, this is going to
8 be in your hands. You all matter. Thank you.

9 THE COURT: Are you ready? Are
10:26:54 10 y'all okay over there? Okay.

11 MR. TOMPKINS: Good morning again.
12 You did meet me yesterday. To remind you, my
13 name is Jason Tompkins. Along with my colleague,
14 Eric Langley, we represent Midland Credit
10:27:22 15 Management. With us are Gabe Edrozo and Chris
16 Yang. Both flew in from San Diego.

17 We, too, are disappointed Angelique Ross
18 couldn't be at this trial. She did have a baby
19 about two weeks ago. She's out on maternity
10:27:36 20 leave for the next few months.

21 My opening statement is going to be very
22 different than Mr. Bennett's for several reasons.
23 The first is he is a full-time credit reporting
24 lawyer, and he says all he does is go to federal
10:27:48 25 court. This is my very first jury trial and my

1 first opening statement ever.

2 But beyond that, we believe the evidence
3 in the case will lead to the exact opposite
4 conclusion that Mr. Bennett reached. And that
10:28:00 5 is, that Midland performed a reasonable
6 investigation of Mr. Brim's disputes. And that
7 even if the investigation was unreasonable,
8 Midland's actions did not cause Mr. Brim any
9 injury whatsoever.

10:28:14 10 Yesterday in the voir dire, Eric talked to
11 you about factoring and told you that that's what
12 Midland does. And I know that a couple of you
13 were engineers and mathematicians, and factoring
14 may have a slightly different meaning.

10:28:28 15 In the financial context, it's when one
16 company buys the receivables of another company,
17 usually at a discount, in order to get the
18 selling company immediate cash on hand. And many
19 times, these are charged-off accounts that the
10:28:42 20 seller has tried to collect and been unable to
21 for sometime. And they would rather have some
22 discounted amount of money than to continue to
23 try to collect those accounts.

24 Midland purchases a lot of accounts since
10:28:54 25 this is its primary business. In fact, you will

1 likely hear testimony that Mr. Brim's account was
2 part of at least 64,000 accounts purchased from
3 Dell in that single transaction.

4 And you heard about the percentage that
10:29:10 5 some accounts are purchased for. I think the one
6 that was displayed was 4.2 percent. But in
7 absolute dollar terms, it's still a
8 multi-million-dollar deal.

9 These are not worthless accounts to
10:29:24 10 Midland. They're very important to Midland.
11 They don't make money if the accounts are
12 worthless.

13 When Midland purchases accounts from
14 sellers like Dell, those sellers make certain
10:29:34 15 representations about the accounts; that they're
16 valid, unpaid accounts. They give us data about
17 the account balances, about the debtor's personal
18 information, name, address, all sorts of
19 information about that account. And Midland
10:29:54 20 imports that data into its system.

21 In this case, Dell sold its account in
22 2007. You heard that Mr. Brim paid it in 2004.
23 And we know now that that's true. But in 2007,
24 when it was sold to Midland, no one knew that was
10:30:14 25 the case. It was represented as a valid,

1 collectible account. And Midland imported that
2 data into its system.

3 It wasn't until August, 2010, that Dell
4 received the information it needed to track
10:30:28 5 Mr. Brim's payment. And at that time, it
6 informed Midland of that fact. And Midland
7 deleted the account. And is no longer trying to
8 collect the money.

9 Mr. Bennett has talked about a lot of
10:30:40 10 issues this morning. But in the end, the case
11 boils down to one question. Was Midland's
12 investigation of Mr. Brim's account reasonable?
13 And if not, did Midland's actions lead to any
14 injury for Mr. Brim?

10:30:58 15 You're going to hear testimony about
16 Midland's system. And it's very important that
17 you understand the system.

18 You saw the ACDV forms that Midland
19 receives from the consumer reporting agencies.
10:31:14 20 Transunion, Experian, Equifax. That is all
21 Midland receives. And that form was created by
22 the consumer reporting agencies. And it's
23 transmitted electronically through a software
24 system that the consumer reporting agencies
10:31:30 25 developed.

1 Midland purchased another software system
2 from the consumer reporting agencies, the batch
3 interface system. And it's adapted it over time
4 to its system, but that system was developed to
10:31:40 5 receive the ACDVs that the CRAs are going to send
6 to Midland.

7 These ACDVs include all sorts of disputes.
8 You can imagine. Wrong address, wrong balance,
9 not mine, inaccurate social security number; it's
10:31:56 10 my brother, everything. And when the consumer
11 reporting agencies send the ACDVs, they have
12 certain codes on them. And there are no
13 documents that come with the ACDVs. You'll hear
14 the consumer reporting agencies tell you that.

10:32:12 15 It's just that single form of mostly coded
16 information.

17 When Midland's batch interface system
18 receives that form, it compares the information
19 to information that's on the system. And you
10:32:22 20 will hear testimony that there are -- in
21 Midland's collection system, there are codes that
22 can be put on the account. And the system reads
23 all these codes back and forth and determines
24 whether the dispute can be resolved through the
10:32:40 25 automated system by comparing information, maybe

1 updating some information, or whether it needs to
2 be transferred out for a manual review by Midland
3 employee.

10:32:58 4 Mr. Brim's disputes came in to the ACDV,
5 into the batch interface system, and they were
6 processed in an automated fashion. There was
7 nothing on his account with Midland that
8 triggered for a manual review. And there was
9 nothing in the ACDV that triggered it for manual
10:33:12 10 review.

11 Given that there's an interaction between
12 the two systems in Midland, the collection system
13 and the batch interface system, the information
14 contained in the collection system is very
10:33:26 15 important.

16 And Mr. Bennett indicated that -- he told
17 you about the 45-day disputes. And he indicated
18 that Mr. Brim submitted a dispute within that 45
19 days. But that's not the case. In fact, when
10:33:46 20 Midland purchased this account, they sent
21 Mr. Brim a letter, saying that they were now the
22 creditor, and he didn't dispute it then. It was
23 in October of 2007. They sent him another letter
24 in December of 2007. No dispute. Another letter
10:34:04 25 in January, 2008. No dispute.

1 Midland referred it out to its collection
2 firm, as you've heard Mr. Bennett talk about, and
3 the law firm sent him a letter in April of 2008.
4 No dispute.

10:34:18 5 In fact, it wasn't until July of 2008,
6 nearly nine months after Midland's first letter,
7 that it received a dispute. And it received a
8 dispute shortly from Mr. Brim and it shortly
9 thereafter received a dispute through the
10:34:42 10 consumer reporting agencies.

11 A dispute from the consumer reporting
12 agencies was just that ACDV. No attached
13 documents.

14 The dispute from Mr. Brim included his
10:34:50 15 bank statement. Midland -- a person at Midland
16 looked at Mr. Brim's direct dispute. Determined
17 that that bank statement was not adequate proof
18 of the payment. That was coded in the system.

19 So when the automated batch interface
10:35:12 20 system processed ACDV disputes, there was nothing
21 indicating that sufficient proof had been
22 submitted.

23 Now, all these facts were reflected in
24 Midland's system. And you will hear testimony
10:35:24 25 that had any of these facts differed, there would

1 have been different codes on the account and the
2 automated system may have processed it
3 differently.

4 In addition to showing that Midland's
10:35:38 5 investigation was unreasonable, Mr. Brim has to
6 show that he suffered an injury caused by
7 Midland's actions. We've heard about credit
8 injuries. We've heard about mortgages.

9 You won't hear from a single mortgage
10:35:52 10 company, saying that they denied Mr. Brim credit
11 much less that they denied him credit based on
12 anything Midland did. I don't know that you will
13 even see any evidence that he was actually denied
14 any credit by a mortgage company.

10:36:10 15 What you will see is the letter from
16 American Express that Mr. Bennett showed you,
17 denying Mr. Brim a credit card. I'm sorry I
18 don't have it blown up like Mr. Bennett had. But
19 it states we're unable to open an account for you
10:36:36 20 at this time for the following reasons. Your
21 consumer credit bureau score from Transunion is
22 too low. And it lists several factors that could
23 have contributed to the Transunion credit score.

24 You will hear testimony from Transunion by
10:36:58 25 video that an account marked as disputed does not

1 factor into the credit score. You'll hear
2 testimony that Mr. Brim's account was marked as
3 disputed from the time of his very first contact
4 with Midland until it was deleted in September of
5 2010.

6 You'll hear Mr. Brim testify about stress
7 and anxiety. But you won't hear any
8 corroboration for that testimony. And if you
9 look at the timing of Mr. Brim's disputes, you'll
10 see that they happened every six months or so.

11 The fact that Midland's investigation did
12 not yield the results that Mr. Brim believes they
13 should have is not enough to hold them liable in
14 this case. Mr. Brim has to show that some injury
15 was caused by Midland's actions. Has to show
16 that the results would have been different had
17 Midland done something else.

18 So what did Mr. Bennett indicate Midland
19 should have done? Midland should have contacted
20 Dell, he said. But the result would have been
21 the same. You'll hear testimony from Dell,
22 Rachel Garlock from Dell Financial says at the
23 time Dell Financial Services sold Mr. Brim's
24 account to Midland, they believed it was due and
25 payable. They believed it was due and payable

1 until August of 2010.

2 Furthermore, she states had Midland
3 contacted Dell Financial in July of 2008 or March
4 of 2009, times that Mr. Brim disputes, they would
10:39:14 5 have told Midland that this account still had a
6 balance and they had received no proof of payment
7 for the account.

8 Mr. Bennett also says Midland should have
9 contacted Redstone Credit Union. The result
10:39:34 10 would have been the same. A representative of
11 Redstone will be here. And we expect the
12 evidence to be that had anyone other than
13 Mr. Brim or a cosigner on his account contacted
14 Redstone and asked about a particular
10:39:52 15 transaction, they would have refused to speak to
16 them.

17 We also expect Redstone to tell you that
18 had Mr. Brim at any time told them that the bank
19 statement was not being accepted by Dell or by
10:40:10 20 Midland as proof of his statement, that they
21 would have provided him with something else. A
22 transactional detail report. And it is the very
23 document that Mr. Brim obtained in August of 2010
24 that allowed Dell to track this payment and
10:40:30 25 resulted in Midland deleting the account. This

1 is what a transaction detail report looks like.
2 This is the very one that allowed Dell to track
3 this payment.

4 Mr. Bennett also said that Midland could
10:40:44 5 have followed up with Mr. Brim. But they
6 couldn't. When Mr. Brim wrote Midland about this
7 account, he asked in every letter that Midland
8 not contact him about -- by phone or in writing.

9 Mr. Bennett indicated there's another
10:41:12 10 statute that's not an issue called the Fair Debt
11 Collections Act. And you'll hear testimony
12 Midland did not contact Mr. Brim because his
13 demand triggered a duty for them not to. They
14 could have been in jeopardy of violating some
10:41:32 15 other law.

16 You'll hear evidence, as well, that
17 Mr. Brim has tried to solve this for several
18 years. He contacted Dell many times. He
19 submitted his bank statement to Dell many times.
10:41:44 20 He submitted his bank statement to Midland a
21 couple of times. He submitted his bank
22 statements to the consumer reporting agencies.
23 He never submitted anything else. You'll hear
24 evidence Dell asked him to submit something else.
10:42:00 25 They asked him to submit a transaction detail

1 report years ago.

2 He filed a complaint with the better
3 business bureau through Dell. Through the better
4 business bureau, he was told we need a
10:42:14 5 transactional detail report. He never submitted
6 anything other than his bank statement.

7 Mr. Bennett said that Mr. Brim had to come
8 to federal court to fix his credit report; that
9 there was no possibility of getting this off of
10:42:28 10 his credit report without coming to federal
11 court. But that's simply not the case. It
12 didn't take a lawsuit to fix this credit report.
13 It took the transactional detail report. And
14 that's the only document it took.

10:42:44 15 We sympathize with Mr. Brim. There's no
16 question now that he paid Dell in 2004. But when
17 Midland purchased the account in 2007, when it
18 received disputes about Mr. Brim's account in
19 2008 and 2009, all the information available to
10:43:04 20 it would not have changed the fact that it
21 believed it was a valid, collectible account.

22 We believe the evidence will show that
23 Midland's investigations were reasonable. But if
24 you conclude that the investigations were not
10:43:24 25 reasonable, you have to ask whether Midland's

1 actions caused Mr. Brim any injury.

2 With the number of you who indicated that
3 your hobbies were Alabama football or Auburn
4 football, I probably don't have to explain many
10:43:46 5 plays to you, but it's sort of like a pass
6 attempt. We believe there was no contact here.
7 But even if there was, you don't call pass
8 interference if the ball is uncatchable.

9 Accordingly, at the end of the case, we're
10:44:00 10 going to ask you to return a verdict in Midland's
11 favor. Thank you.

12 THE COURT: Ladies and gentlemen
13 of the jury, we're going to take a morning
14 recess. And while you're on break, don't discuss
10:44:12 15 the case among yourselves. And please observe
16 the instruction I gave you yesterday. That is
17 applicable all through this trial. And come back
18 in 20 minutes. Thank you.

19 (Jury excused.)

10:44:38 20 (Short recess.)

21 (In open court. Jury present.)

22 THE COURT: Would you call your
23 first witness?

24 MR. BENNETT: Yes, Your Honor. If
11:06:56 25 the Court please, for our first witness, I think

1 we would like to call Gabriel Edrozo, the
2 representative for Midland here.

3 THE COURT: All right.

4 (Witness sworn.)

11:07:24 5 COURTROOM DEPUTY: Will you state
6 your first and last name?

7 THE WITNESS: Gabriel Edrozo.

8 COURTROOM DEPUTY: And will you
9 spell your last name?

11:07:32 10 THE WITNESS: E-D-R-O-Z-O.

11 **DIRECT EXAMINATION**

12 **BY MR. BENNETT:**

13 Q Mr. Edrozo, where do you reside?

14 A In San Diego.

11:07:46 15 Q Where are you employed?

16 A By Midland Credit Management.

17 Q Is that who's on your paycheck?

18 A Yes.

19 Q How long have you been so employed?

11:07:52 20 A For ten months now.

21 Q Prior to Midland, how were you employed?

22 A Prior to Midland, I was with Thornton
23 Financial Industries. It was a debt buyer, as
24 well. There for four years. Prior to that with
11:08:06 25 HSBC, Hong Kong Shanghai Banking Corporation. I

1 was with them for nine years.

2 Q What is your job title with Midland?

3 A I am a group manager.

4 Q Now, I apologize. You and I just met
11:08:18 5 first time this morning, correct?

6 A Correct.

7 Q And you are here today as a potential
8 witness for Midland, as well, not simply for my
9 client to call, right?

11:08:30 10 A Correct.

11 Q And so I assume that you have done
12 background, and you've researched -- even though
13 you've only been at Midland for ten months, you
14 have prepared for today, prepared for this week,
11:08:44 15 and have researched the issues in this trial?

16 A Yes.

17 Q And as a group leader, you would be, in
18 part, responsible for understanding, helping
19 implement the dispute procedures that Midland
11:08:54 20 uses?

21 A Not within my standard role with the
22 company. No.

23 Q But you prepared for that for today?

24 A Yes.

11:09:02 25 Q You're familiar with the procedures that

1 are at issue in this case?

2 A Yes.

3 Q If we could -- well, let me before I do
4 that, let me ask a few things.

11:09:12 5 Again, as the representative of Midland,
6 are you aware of anything that occurred with
7 respect to how my client was treated by Midland
8 that was contrary to Midland's standard operating
9 procedure?

11:09:26 10 A Can you repeat the question?

11 Q Sure. Are you aware of anything about the
12 way that my client was treated, Mr. Brim was
13 treated, that was contrary to Midland's standard
14 operating procedure?

11:09:36 15 A Nothing I'm aware of, no.

16 Q And in fact, everything that Midland did
17 with respect to my client was in accordance with
18 its intended procedures?

19 A Correct.

11:09:46 20 Q And those procedures, if my client -- if
21 this happened again, if Dell did the same
22 reporting, if Midland received the same
23 information, and my client went through the same
24 dispute process over another Dell account he had
11:10:02 25 paid off, your procedures, even after this

1 lawsuit, are unchanged, correct?

2 A As respect to specifically to ACDV?

3 Q As a way to handle my client's account

4 category of disputes; that is, if the facts were

11:10:18 5 to play out again in 2011 through 2013, Midland

6 would expect the same outcome through Mr. Brim or

7 for other consumers, as well?

8 A I believe there are changes to that

9 process.

11:10:34 10 Q Really? What were those changes?

11 A I believe there are changes to the process

12 of a written dispute. But I would have to defer

13 to Angelique's testimony on that.

14 Q Okay. Now, in opening, your company spent

11:10:50 15 a little bit of time talking about something

16 called a transactional detail?

17 A Yes.

18 Q You're prepared to talk about that?

19 A Yes.

11:11:06 20 Q This is the exhibit book that you prepared

21 for -- this is Midland's exhibits. You have seen

22 this before today?

23 A I have, yes.

24 MR. BENNETT: May I offer this?

11:11:20 25 THE COURT: Did you say -- what

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1 did you say?

2 MR. BENNETT: Your Honor, may I
3 show just the book to the witness?

4 THE COURT: Yes. For the record,
5 11:11:32 it is admitted.

6 **BY MR. BENNETT:**

7 Q This is the copy your lawyers gave me.
8 There is some better business bureau discussion
9 in there. Have you reviewed that before?

10 11:11:46 A I have not.

11 Q But it also has the procedures. All of
12 these procedures. The ones I've put up here and
13 other procedures for Midland in there. You've
14 seen those, correct?

15 11:11:56 A Yes, I have. Correct.

16 Q Can you help the jury and we can pull one
17 up on the Elmo -- show us where it discusses this
18 idea if a consumer provides -- I think you said a
19 transactional detail that that's sufficient
20 11:12:12 proof?

21 A Where it shows --

22 Q Anywhere. Any of the procedures that
23 match in the computer?

24 A Within the training documentation, it
25 11:12:28 indicates the front and back of a check.

1 Q By itself? Is that what it says?

2 A As well as a copy of a paid letter from
3 the originator.

4 Q As well as a copy -- Ms. Cauley, can you
11:12:38 5 please pull up Plaintiff's Exhibit 35 on the
6 monitor for the jury? And you also have it up
7 there, correct, sir?

8 A I don't. My monitor is blank.

9 Q Page 3. This is the module six disputes
11:12:54 10 and warnings. That's your procedures, right?

11 A Yes.

12 Q All right. Now, on that bottom left-hand
13 corner where I embarrassed myself in front of the
14 jury trying to read it, you can read it now,
11:13:04 15 right? Number 3 under proof required for
16 accounts outside the validation period for
17 accounts paid disputes?

18 A Yes.

19 Q And, of course, the rhetorical, there is
11:13:20 20 no mention of this idea if a consumer obtains
21 some deeper document from a bank, whether its
22 transactional detail or something else, that's
23 not mentioned in your procedures, right?

24 A No. Our procedures are specific to the
11:13:34 25 front and back of a check.

1 THE COURT: I'm sorry. Would you
2 speak up? I can't hear you.

3 THE WITNESS: Okay. I will.

4 THE COURT: Okay. You said what,
5 now? Our procedures are specific to the front
6 and back of a check?

7 THE WITNESS: Front and back of a
8 check, yes.

9 **BY MR. BENNETT:**

10 Q Can you read for me, then, under Number 3
11 if a consumer disputes by saying the account has
12 been paid, what documents does Midland's
13 procedures allow as a means to -- for a consumer
14 to obtain correction of an inaccurate paid item?

15 A Are you referring to Three?

16 Q Sure. Unless you have a better idea.

17 A Which Three? The mouse is moving to the
18 other side of the screen.

19 Q How about this? Do we have our black
20 volume? The jury already has our black volume.
21 Page 3. They can look at it. Let's be fair to
22 you. So the jury has that same Exhibit 35, Page
23 3. Exhibit 35, Page 3. Bottom left hand. When
24 a consumer says the account is paid on Page 3 of
25 that exhibit -- I think it's the next page. I

1 want to make sure everybody has it. Bottom
2 left-hand corner, what document does Midland's
3 procedure allow a consumer to use or provide a
4 consumer could use as a means to obtain
11:15:26 5 correction of a paid in full account?
6 A A copy of a paid letter, a copy of a
7 settlement offer, and front /back of cancelled
8 check.
9 Q Now, you've been in banking industry for
11:15:40 10 how long? Finance industry?
11 A It's been, now, 15 years.
12 Q And when did you first learn about what a
13 transactional detail is?
14 A That was more recent within the last five
11:15:56 15 months.
16 Q As in the litigation in this case?
17 A Yes.
18 Q The first time you ever heard of
19 transactional detail, despite your 15 years in
11:16:06 20 the finance industry, was in the litigation in
21 this case, correct?
22 A Correct.
23 Q Do you have a bachelor of science in
24 business like my client?
11:16:18 25 A I do not.

1 Q What's your degree in?

2 A I do not have a degree.

3 Q Since you're on 35, on that same page, in
4 fact, Page 3, look at the top right-hand corner.
11:16:48 5 It says for consumers that -- for any -- all
6 disputes that occur outside the first 45 days of
7 your client buying the account, it says burden of
8 proof equals consumer. Do you see that very top
9 heading? Burden of proof equals consumer? Do
11:17:04 10 you see that?

11 A Yes.

12 Q And could you turn to the page just before
13 it? Page 2 of this exhibit? On the top right,
14 it says, again, outside this 45-day period, do
11:17:22 15 you see where it says burden of proof is on the
16 consumer to validate the dispute claim. Do you
17 see that?

18 A Yes.

19 Q Do you have any idea where Midland gets
11:17:30 20 this idea that it's somehow the consumer's burden
21 to proof the validity or invalidity of a debt
22 your client has bought for pennies from Dell
23 Financial?

24 A I don't know.

11:17:46 25 Q You don't know?

1 A I don't.

2 MR. BENNETT: I don't have other
3 questions. I appreciate your courtesy. I
4 understand that I've not had a chance to examine
11:17:54 5 before or you answer. I thank you. Answer any
6 questions that your counsel has.

7 THE COURT: Any questions?

8 MR. LANGLEY: No questions at this
9 time.

11:18:00 10 THE COURT: Thank you so much.
11 Wait. Do y'all have any questions? I forgot to
12 ask you. You know, I told you you could ask
13 questions. Do you need just a short break to
14 think about it? Just write them down. You can't
11:18:14 15 ask them orally. Just write them down and give
16 them to Tammi. I need to go get my glasses
17 anyway. Just remain seated, sir.

18 (Short recess.)

19 THE COURT: Do you have the
11:21:58 20 questions? I need to see the lawyers in
21 chambers.

22 (Bench discussion in chambers out
23 of presence and hearing of jury.)

24 (End of bench discussion.)

11:24:02 25 (In open court. Jury present.)

1 THE COURT: Okay. One question.
2 It's the first question.

3 The plaintiff's attorney inquired whether
4 the policy or procedures had changed at Midland.
11:24:32 5 Never heard the answer. Will you repeat your
6 answer, please?

7 THE WITNESS: My answer is I
8 believe there had been some changes. But I would
9 have to defer to Angelique's deposition.

11:24:40 10 THE COURT: You talking about
11 Ms. Ross?

12 THE WITNESS: Ms. Ross. Angelique
13 Ross.

14 THE COURT: And then the next
11:24:46 15 question is: Is Exhibit 35 the same today as it
16 was in -- on May the 3rd, 2010?

17 THE WITNESS: I am not sure.

18 THE COURT: Okay. After a lawsuit
19 was filed, you stated some changes were made in
11:25:20 20 how disputes were handled within the company.
21 Can you elaborate?

22 THE WITNESS: I cannot, no.

23 THE COURT: Okay. Now, did you
24 hear it? Because I mean, Mr. Edrozo looked at
11:25:30 25 me. Did you hear the answers? Okay. Thank you.

1 You may step down. Thank you, sir.

2 (Witness steps down.)

3 THE COURT: Can you call your next
4 witness, please?

11:26:00 5 MS. CAULEY: We would like to call
6 Angelique Ross by deposition.

7 THE COURT: Are you going to read
8 the questions?

9 MS. CAULEY: I am.

11:26:10 10 THE COURT: And Mr. Sykstus,
11 you're going to be Angelique Ross?

12 MR. SYKSTUS: Just for today.

13 THE COURT: You would consider
14 that as if Ms. Ross was here in person,
11:26:20 15 testifying in front of you.

16 And are you making the deposition
17 available for Cheryl?

18 MR. BENNETT: We are, Your Honor.
19 Yes, Your Honor.

11:26:54 20 (Discussion off the record.)

21 MR. BENNETT: Your Honor, what
22 we're going to attempt to do because there are
23 different exhibit numbers for the deposition,
24 we're going to do our best to put the correct
11:27:08 25 ones with the Court's exhibit number up on the

1 screen.

2 THE COURT: Okay.

3 **DIRECT EXAMINATION**

4 **BY MS. CAULEY:**

11:27:38 5 Q Please state your name for the record.

6 A Angelique Danielle Ross.

7 Q The reason you've been put up for
8 deposition are the experience and duties you have
9 for the FCRA?

11:27:46 10 A Yes.

11 Q Do you understand that you are testifying
12 here on behalf of Midland Credit Management?

13 A Yes.

14 Q You're an employee of Midland Credit
11:27:54 15 Management?

16 A Yes.

17 Q And, in fact, is it true that Midland
18 Funding has no employees?

19 A That's true.

11:28:00 20 Q Midland Funding is the owner of the debt
21 that was purchased with respect to Mr. Brim?

22 A Yes.

23 Q And all accounts are actually purchased by
24 Midland Funding, L.L.C.; is that right?

11:28:12 25 A Yes.

1 Q But all employees who have any
2 responsibility with respect to collecting or the
3 handling of disputes through the credit bureau
4 are employed by Midland Credit Management?

11:28:24 5 A Yes.

6 Q Can we agree for purposes of the
7 deposition that if I use the term, "Midland," I
8 am referring to Midland Credit Management?

9 A Yes.

11:28:34 10 Q You already gave us your name. Will you
11 give us your address, please?

12 A 8875 Arrow Drive, Suite 200, San Diego,
13 California 92123.

14 Q And what position do you hold at Midland?

11:28:56 15 A I am the consumer relations manager.

16 Q How long have you held that position?

17 A A little over four years.

18 Q Who is your supervisor at Midland?

19 A Juan Naves.

11:29:08 20 Q What is his title?

21 A General counsel.

22 Q Besides working at Midland, have you
23 worked at any other employer where you had any
24 responsibilities with respect to the Fair Credit
11:29:22 25 Reporting Act?

1 A No.

2 Q Prior to being employed by Midland, have
3 you ever had any training regarding the Fair
4 Credit Reporting Act?

11:29:26 5 A No.

6 Q When a dispute comes in from a consumer to
7 Midland and it is a dispute regarding whether or
8 not they owe the account or owe the debt, what
9 department would that dispute go to for review?

11:29:44 10 A Any review of the dispute would come to
11 consumer relations.

12 Q Are you familiar with the term, "ACDV"?

13 A Yes.

14 Q When ACDVs come in to Midland, are those
11:29:58 15 handled by the consumer relations department?

16 A Yes.

17 Q No other department at Midland would be
18 responsible for responding to ACDVs?

19 A No.

11:30:06 20 Q Tell me what your duties are as the
21 consumer relations manager.

22 A I manage the consumer relations staff
23 which include managing workload and workload
24 assignments in addition to responding to some
11:30:20 25 escalated consumer issues.

1 Q What are the duties for the consumer
2 relations supervisors?

3 A They first have to manage the consumer
4 relations liaisons directly. They also respond
11:30:32 5 to escalated consumer issues. They also may
6 answer questions from their team members.

7 Q The liaisons, are those individuals
8 responsible for handling the ACDVs?

9 A Yes.

11:30:44 10 Q Do they have any other duties?

11 A Yes.

12 Q What are those?

13 A They process consumer correspondence and
14 answer consumer phone calls.

11:30:52 15 Q So any time they're responding or sending
16 out correspondence to a consumer, it would be in
17 response to either a telephone call or a letter
18 from that consumer concerning some type of
19 dispute?

11:31:06 20 A That's correct.

21 Q So the liaisons actually answer the
22 telephone calls that come in from consumers?

23 A Yes.

24 Q And then they process mail that comes in
11:31:16 25 from consumers?

1 A Yes.

2 Q And then they are responsible for sending
3 correspondence out to consumers?

4 A Yes.

11:31:22 5 Q And they also handle ACDVs?

6 A Yes.

7 Q And there are seven liaisons currently?

8 A In the San Diego site, there are seven.

9 Q How many other sites for Midland have
10 consumer relations department?

11 A One.

12 Q What is that site?

13 A St. Cloud, Minnesota.

14 Q How many do they have?

11:31:42 15 A There are five full-time liaisons and one
16 liaison that splits her time between consumer
17 relations and another department.

18 Q Does the St. Cloud site also handle ACDVs
19 that come in?

11:31:54 20 A Yes.

21 Q So ACDVs are actually handled at two
22 separate sites, then?

23 A Yes. The majority are handled by the St.
24 Cloud team.

11:32:04 25 Q And in this case, Mr. Brim's account was

1 related to a computer purchase. So all of his --
2 all his ACDVs would have been handled by the St.
3 Cloud site?

11:32:20

4 A Either the St. Cloud site or our automated
5 system, yes.

6 Q And what automated system does Midland
7 use?

8 A We use a batch interface.

9 Q How does that work?

11:32:28

10 A When a ACDV comes in, we use an E-Oscar
11 system, our automated system can look in or look
12 at the ACDV, match it, compare it to our account
13 system information, and respond to the majority
14 of the ACDVs.

11:32:42

15 Q Can you give me your best judgment on what
16 percentage of ACDVs are handled exclusively by
17 the batch interface?

18 A I would say maybe 95 percent.

11:32:58

19 Q So I make sure I understand, when a ACDV
20 comes in, the batch interface system can review
21 the computer codes on the ACDV and compare the
22 information contained on the ACDV with the
23 information in Midland's system, and
24 automatically verify that the information is
11:33:12 25 accurate?

1 A Yes.

2 Q If the consumer's letter says cease
3 contact or there is a cease and desist letter as
4 well as a dispute, no request from Midland
11:33:26 5 regarding additional documentation is sent?

6 A Correct.

7 Q Is that the same whether it is a general
8 dispute, a paid prior dispute, or a fraud
9 dispute?

11:33:36 10 A Yes.

11 Q So that's Midland's policy with respect to
12 any dispute; if it is a writing outside the 45
13 days and it includes a cease and desist contact,
14 then the account is simply marked as disputed and
11:33:50 15 a no-contact code is entered and no letter from
16 Midland is ever sent to the consumer?

17 A Yes. As long as the consumer is not --
18 does not mention credit reporting. As of the
19 time frame of this account, that's what would
11:34:04 20 have happened, yes.

21 Q During the time that Mr. Brim was sending
22 his letters, that is what would have happened?

23 A Yes.

24 Q Is that different now?

11:34:24 25 A Yeah. As of July 1st, yes.

1 Q What is the procedure now?

2 A Now if the consumer requests a cease and
3 desist and did not provide documentation, a
4 letter will go out, stating that we need more
11:34:38 5 information but also include information that
6 says, per your request, we will not contact you
7 any further.

8 Q Who is responsible for that change in
9 policy?

11:34:46 10 A The compliance department.

11 Q Any changes with respect to the handling
12 of ACDVs?

13 A No.

14 Q Going back to 2008 and 2009, if a consumer
11:35:00 15 sent in a written dispute, regardless of what the
16 dispute was, and it did contain some
17 documentation, how was that dispute handled?

18 A It would depend on the documentation that
19 was received.

11:35:12 20 Q What about with respect to a paid prior
21 dispute?

22 A We may receive paid letters.

23 Q Like a paid-in-full letter?

24 A Yes.

11:35:24 25 Q Okay.

1 A We may receive settlement offer letters
2 with copies of proof of payment. Sometimes we
3 receive cancelled checks. We receive bank
4 statements.

11:35:36 5 Q Who reviews the documentation that is sent
6 in? Who reviews the documentation that is sent
7 in with respect to a dispute? Is that the
8 consumer relations department?

9 A Yes.

11:35:50 10 Q Does the department open the letter and
11 deal with the letter or is it scanned and sent
12 electronically?

13 A We get the hard copies of the
14 correspondence so the letters are actually opened
11:36:00 15 and read. The hard copies.

16 Q In consumer relations?

17 A Yes.

18 Q Regardless of whether it is in San Diego
19 or St. Cloud, a consumer relations employee will
11:36:12 20 actually open the mail and read the letter?

21 A The mail is opened by our mailroom. But
22 the consumer relations team, either site, they're
23 responsible for reading the letter.

24 Q Does the letter go to consumer relations
11:36:24 25 as the actual letter or is it scanned?

1 A It is the actual letter.

2 Q What is done with it after consumer
3 relations sees it?

4 A After it is received and reviewed, any
11:36:36 5 dispute letters will then be scanned after they
6 have been processed.

7 MS. CAULEY: For the record, Your
8 Honor, we're going to be referring to Pages 168
9 and 169, which is Plaintiff's Exhibit 34.

10 THE COURT: Okay.

11 **BY MS. CAULEY:**

12 Q Pages 168 through 169, that's the
13 guidelines for handling written disputes that it
14 has been paid prior; is that correct?

15 A Correct.

16 Q The liaison is to review the account and
17 verify that the social, name, and address match?

18 A Yes. If they can. Consumers don't always
19 include all the information on their
11:37:50 20 correspondence.

21 Q They're also looking for proof. Here it
22 says it could be the front and back of a
23 cancelled check with a settlement offer letter or
24 paid letter with a matching account number?

11:38:00 25 A Yes.

1 Q Are there any other documents that help
2 consumer relations liaisons determine what is
3 sufficient proof with respect to the accounts
4 with a paid prior?

11:38:12 5 A Say that again.

6 Q Sure. It has two examples of what would
7 constitute proof of a paid prior dispute on Page
8 168, right?

9 A Correct.

11:38:24 10 Q Is there any other document or memo or
11 guideline that would help a liaison know what
12 other proof would be acceptable with respect to
13 Midland?

14 A No.

11:38:36 15 Q There is no list of other documents that
16 would be accepted as proof that an account had
17 been paid prior?

18 A Not that I am aware of.

19 Q Is a bank statement showing payment to the
11:38:48 20 original creditor sufficient proof that the
21 account had been paid prior?

22 A No.

23 Q Never?

24 A Not by itself, no.

11:38:56 25 Q On Number 5, it says if unable to

1 determine if proof is valid, account will be
2 referred to ACQ.

3 A It stands for acquisitions.

4 Q Do you have any knowledge what happens
11:39:14 5 when an account is assigned to the acquisitions
6 department?

7 A Yes.

8 Q What happens?

9 A Like in this case, if an account is
11:39:24 10 assigned to them, they may follow up, go back to
11 the seller of the account to ask questions
12 related to whatever the issue is.

13 Q If the proof is determined sufficient,
14 then a warning code, 286, is entered on the
11:39:36 15 account; is that correct?

16 A Correct.

17 Q Then the reporting of the account to the
18 credit bureaus would stop and the account would
19 be deleted?

11:39:46 20 A Correct.

21 Q If the proof is determined insufficient,
22 then warning code of 130 is added to the account?

23 A It is actually the 286, and the 130 would
24 be added at the same time. So the 130 is added
11:40:00 25 when that consumer is provided documentation and

1 the account is being deleted.

2 Q If the proof is deemed not sufficient and
3 it is assigned to acquisitions, then neither of
4 those warning codes would be entered on the
5 account?

11:40:14

6 A That's correct.

7 Q In the comments on Page 169 for Step 5, it
8 says, assign account to the CPL queue. What is
9 CPL queue?

11:40:26

10 A It is a designated location in our system
11 which indicates the account should be deleted.

12 Q Is the account deleted from Midland's
13 system all together or just from the credit
14 bureaus?

11:40:40

15 A From the credit bureaus.

16 Q It would only be assigned to the CPL queue
17 if the proof provided was deemed valid by
18 Midland?

19 A Correct.

11:40:50

20 Q Let's go to the next comment. It says,
21 forward proof to acquisitions for possible put
22 back. Is that what happens if the proof is not
23 sufficient?

24 A That actually happens if the proof is
25 sufficient.

11:41:02

1 Q What does that mean forward proof for
2 possible put back?

3 A There is a period of time in which the
4 account can be sent back to the seller if Midland
11:41:12 5 received proof that it was valid and no longer
6 collectible. So the information would be sent to
7 acquisitions to see if they should give that back
8 to the seller.

9 Q Then the next comment, send the consumer a
11:41:26 10 QCDT letter, which is the deletion letter.
11 That's only done if the proof was determined to
12 be valid?

13 A Correct.

14 Q Are there any comments that tell you what
11:41:38 15 happens if the consumer relations liaison is
16 unable to determine if the proof is valid?

17 A Yes. If the consumer relations liaison is
18 unable to determine that the proof is valid, then
19 they would go to Step 6 through 9.

11:41:52 20 Q So the account is not sent to
21 acquisitions, or is it?

22 A It would be sent to acquisitions. It is
23 not the actual account itself. It is more the
24 document is sent to acquisitions.

11:42:04 25 Q And the account is also assigned to PDPQ?

1 A Correct.

2 Q And what does that stand for?

3 A It is a written dispute outside of the 45
4 days where the consumer has disputed that the
11:42:16 5 account has been paid prior.

6 Q For any paid prior dispute that is
7 received in writing where the consumer relations
8 department is unable to determine if the proof is
9 valid, the account should be assigned to the
10 PDPQ; is that correct?
11:42:36

11 A Yes. If they were unable to determine if
12 it's valid. For example, if it was missing an
13 account number and it was a paid letter, that is
14 something they would put in that, assign to that.

11:42:48 15 Q What if it is a bank statement received,
16 showing a payment and they can't determine if
17 that is valid? Is it also sent to the PDPQ?

18 A That document would be considered invalid.
19 So they would have made a determination that it
11:43:02 20 was invalid.

21 Q So a dispute containing a bank statement
22 showing a payment is automatically deemed
23 invalid?

24 A Yes. Generally, I would say that is true
11:43:14 25 unless there is something else with it or maybe

1 something else on the account that would add to
2 the determination.

3 Q So any letters that are received from
4 consumers disputing an account as paid prior that
11:43:26 5 contain a bank statement would not be assigned to
6 the PDPQ?

7 A Unless there was something else on the
8 account that would make the liaison believe it
9 should be. I would say 99.9 percent would not be
11:43:42 10 assigned to the PDPQ.

11 Q If an account is assigned to the PDPQ,
12 then it stays in that queue until the dispute is
13 resolved; is that correct?

14 A Yes.

11:43:54 15 Q If the dispute is not resolved in 120
16 days, the account automatically moves through a
17 process into the PDRQ?

18 A Yes.

19 Q And all reporting on the account is
11:44:06 20 stopped?

21 A Yes.

22 Q That was the policy that existed in 2008
23 and 2009 for Midland?

24 A Yes.

11:44:14 25 Q That's the same policy that exists today?

1 A Yes.

2 Q Are you familiar with the term,
3 "interrogatories"?

4 A Yes.

11:44:28

5 Q As part of your responsibilities as the
6 manager of consumer relations, did you sign the
7 interrogatories on behalf of Midland?

8 A Yes.

11:44:42

9 Q Did you review the documents produced by
10 us prior to your deposition today?

11 A Yes.

12 Q Page 54. Your reporting of accounts is
13 done by Midland Credit Management; is that
14 correct?

11:45:20

15 A Correct.

16 Q With respect to Midland, Midland does not
17 use any type of outsourced vendors for the
18 handling of ACDV?

19 A No.

11:45:28

20 Q You would agree that Midland is
21 responsible for reporting accurate information to
22 the credit reporting agencies regarding specific
23 accounts, correct?

24 A Correct.

11:45:38

25 Q Would you agree that Midland is

1 responsible for the accuracy of the information
2 that it reports specifically to the credit
3 bureaus?

4 A Correct.

11:45:46 5 Q I believe you told me earlier that you are
6 familiar with the Fair Credit Reporting Act?

7 A Yes.

8 Q Are you aware that Midland is responsible
9 for investigating the disputes received on an
10 account to the credit reporting agents?

11 A Yes.

12 Q And Midland is responsible for conducting
13 that investigation within 30 days?

14 A Yes.

11:46:12 15 Q Those disputes are all received via the
16 ACDV through the credit bureaus?

17 A Yes.

18 Q You told me 99 percent of ACDVs are
19 handled electronically through the batch; is that
20 right?

21 A Yes.

22 Q If an ACDV is not handled automatically
23 through the batch system, are there steps
24 contained in any type of manual or policy,
11:46:36 25 whether it is printed or just a note on the

1 system, that tells an individual in consumer
2 relations how to investigate that credit dispute?

3 A Well, as far as using the actual system,
4 there is a tutorial that is available through the
11:46:50 5 E-Oscar system to show them how to actually put
6 information in. Other than that, we just have
7 some screen prints that show the screen in order
8 to find the information on our system.

9 Q Does that E-Oscar tutorial help the
11:47:04 10 employees know how to perform or respond to an
11 ACDV that is received through E-Oscar?

12 A No. Well, it shows them the choices they
13 have to respond. But it is more or less a user
14 guide of how to use and navigate through the
11:47:18 15 E-Oscar system itself.

16 Q So the tutorial doesn't explain to the
17 consumer relations employee how to actually
18 conduct an investigation with respect to an ACDV,
19 but basically gets them the drop-down menus of
11:47:32 20 what codes are available for responding; would
21 that be fair?

22 A Yes.

23 Q Once an ACDV is actually completed and
24 returned to the credit bureau, there is no
11:47:42 25 internal monitoring of whether those responses

1 were correct?

2 A No.

3 Q How many disputes does Midland normally
4 get, say, per week of -- for ACDV?

11:47:54 5 A I would say maybe about 8,000.

6 Q Would that be the same pretty much every
7 week?

8 A Yeah.

9 Q Then if my math is right, five percent of
11:48:02 10 that would be about 400 are actually handled by
11 an individual in the consumer relations
12 department per week?

13 A Yeah. I guess that is about right.

14 Q Have those numbers been the same from 2008
11:48:16 15 to today?

16 A I would say approximately the same.

17 Q I understand they might go up slightly.
18 But overall, they've been about the same since
19 January of 2008?

11:48:26 20 A Yes.

21 Q And you've actually been the manager of
22 the consumer relations department since January
23 of 2008?

24 A Yes.

11:48:36 25 Q If you go to the next letter, which is

1 Page 3, this is actually a letter that Mr. Brim
2 sent in to Midland. And it is dated July 29th,
3 2008.

11:48:58

4 And for the jury, that is Exhibit 11 in
5 our notebook.

6 A Correct.

7 Q It was received on August 5th, 2008 by
8 your department?

9 A Correct.

11:49:30

10 Q Attached to that letter was a bank
11 statement from Redstone Federal Credit Union?

12 A Correct.

13 Q In this letter, Mr. Brim indicated he
14 disputed the debt; is that right?

11:49:40

15 A Yes.

16 Q And he disputed the debt because the debt
17 was paid on November 8th of 2004?

18 A Yes.

11:49:54

19 Q And indicated in his letter, he was -- and
20 indicated in his letter, he was included a
21 detailed report from his bank statement, showing
22 the payment and transaction letter?

23 A Yes.

11:50:04

24 Q He also requested no further communication
25 by phone or in writing from Midland?

1 A Yes.

2 Q As a result of that cease and desist
3 request, no additional letters were ever sent to
4 Mr. Brim?

11:50:14 5 A Correct.

6 Q Do you know which employee received this
7 letter?

8 A According to the notes, Melanie Bloome.

9 Q Still employed?

11:50:24 10 A Yes.

11 Q Can you tell from Page 53 what action
12 Ms. Bloome took upon receipt of this letter?

13 A Well, I know that she noted the account.
14 I believe she would have marked the account as
11:50:38 15 disputed. And also marked it with a cease and
16 desist which is indicated by DISP for dispute and
17 CND or cease and desist. And then the letter it
18 says to forward it over to the firm handling it
19 at the time.

11:50:54 20 Q Page 53 it says included copy of bank
21 statement, showing \$954.12 to Dell Financial
22 11-08; is that right?

23 A Yes.

24 Q Then it says not proof?

11:51:08 25 A Yes.

1 Q The next exhibit is Exhibit 12. Document
2 5. That is a letter from Mr. Brim, dated March
3 10th, 2009 to Midland; is that right?

4 A Yes.

11:51:30 5 Q It is disputing the debt?

6 A Yes.

7 Q He states he does not owe this debt and
8 does not owe any debt to Dell; is that right?

9 A Yes.

11:51:40 10 Q He puts that the debt was paid in full on
11 November 8th, 2004, and he encloses a copy of his
12 bank statement?

13 A Yes.

14 Q Also in this letter, Mr. Brim requests
11:51:52 15 Midland immediately correct his credit report
16 with all three agencies to show a zero balance
17 and no derogatory or negative information,
18 correct?

19 A Correct.

11:52:04 20 Q And who handled this letter that was
21 received?

22 A Melanie Bloome.

23 Q The only action that would have been taken
24 by Ms. Bloome upon receipt of the second letter
11:52:18 25 is to document the receipt of it and then send it

1 to be scanned?

2 A Yes.

3 Q The next exhibit would be 15. Look at the
4 collection account detail. It notes that

11:52:48 5 Mr. Brim called in with a dispute, as well.

6 A Yes.

7 Q What date was that?

8 A 3-11, 2009.

9 Q Which consumer relations employee received
10 that call?

11 A Sydney Barrett.

12 Q Is that a man or a woman?

13 A Woman.

14 Q Is she in San Diego?

11:53:06 15 A Yes.

16 Q Looking at Page 53, March 10th, 2009, it
17 has FAC Data called. Request authorization to
18 release and to have consumer fax cease and
19 desist. Do you know what that means?

11:53:24 20 A I believe so.

21 Q Can you tell us?

22 A I believe FAC Data is short for Factual
23 Data which is a company. So Factual Data called
24 in. Now it is referring to the person who
11:53:38 25 requested the note. They request information to

1 release. Basically to release information and
2 also to have the consumer fax a cease and desist
3 release.

4 Q What kind of company is Factual Data?

11:53:52

5 A I believe they are a credit verification
6 company. They do something verifying information
7 on the credit report.

8 Q And the employee at Midland told them
9 Mr. Brim would need to fax a cease and desist
10 release?

11:54:04

11 A He told them they would need an
12 authorization so they could release information
13 and to have the consumer fax a cease and desist
14 release.

11:54:16

15 Q Continuing up to the same date, it has CCI
16 from blocked number. Do you know what that is?

17 A CCI is customer called in from a blocked
18 number. Transferred to extension 5034.

19 Q BC7. Do you know who that is?

11:54:38

20 A Sydney Barrett.

21 Q She is in consumer relations?

22 A Yes.

23 Q She took the call on March 11th, the next
24 day?

11:54:44

25 A Yes.

1 Q Do you know why the account manager
2 employee indicated that Mr. Brim needed to fax a
3 cease and desist release?

4 A From what I know, the account managers
11:54:56 5 can't speak with or they don't speak with
6 consumers who have a cease and desist on their
7 account. So they would request to have something
8 indicating that the consumer basically wanted to
9 have communication again.

10 Q But that doesn't apply to consumer
11:55:08 11 relations when the consumer is calling in,
12 regarding the dispute?

13 A That's correct.

14 Q There is no information that Ms. Barrett
11:55:18 15 told Mr. Brim he needed to fax in a cease and
16 desist release?

17 A Correct.

18 Q There is no notation that Ms. Barrett
19 informed Mr. Brim that the documentation he
11:55:28 20 previously provided was insufficient to resolve
21 the dispute?

22 A Correct.

23 Q Following receipt of Mr. Brim's two
24 letters and his telephone call, Midland continued
11:55:38 25 to report the account with a past due balance and

1 being owed by Mr. Brim?

2 A Yes. It continued to report but was
3 marked as disputed.

4 Q It was reporting with a balance due of
11:55:52 5 over \$1,600. So we're clear, after March, 2009,
6 Midland continued to report a balance due of over
7 \$1,600?

8 A Yes.

9 Q That amount changed monthly based on
11:56:04 10 interest?

11 A Yes.

12 Q There is no information in the collection
13 detail that Midland ever contacted Dell to
14 question or investigate Mr. Brim's dispute?

11:56:14 15 A That's correct.

16 Q On Page 7, it indicates an interest rate
17 of six percent.

18 A Yes.

19 Q That Midland is adding to the account?

11:56:40 20 A Yes.

21 Q Do you have any information why Midland
22 chose that interest rate?

23 A No.

24 Q And also on this document, Seven, on the
11:56:50 25 additional data screen, it indicates that the

1 date of occurrence was October 18th, 2004.

2 A Okay.

3 Q Do you see that?

4 A Yes.

11:57:00

5 Q To your knowledge, would that have been
6 the charge-off date or the delinquency date?

7 A It is the delinquency date.

8 Q Under that, it has the statute of
9 limitations expiration date as October 18th,

11:57:16

10 2007?

11 A Yes.

12 Q If letters are mailed out on an account,
13 they would be documented in the collection detail
14 unless they've been previously archived?

11:57:36

15 A Yes.

16 Q If you look at entry on Page 3 dated
17 January 21st, 2008, about midway down, do you see
18 that?

19 A Yes.

11:57:48

20 Q It says, account eligible for recovery.
21 Legal letter mailed?

22 A Yes.

23 Q Going up to March 30th, 2008, the account
24 was referred to an attorney's office?

11:58:00

25 A Yes.

1 Q Going back to Two, if you look at the
2 comments, there is no indication that Mr. Brim
3 was told either in writing or on the phone during
4 his telephone call that he needed to send in
5 additional documentation for his dispute,
6 correct?

11:58:12

7 A Correct.

8 Q And the payment of \$954.12 was never added
9 to the account or credited to the account?

11:58:22

10 A No.

11 Q So the fact that Mr. Brim had sent in a
12 bank statement, showing a payment to Dell
13 Financial in the amount of \$954.12 -- Midland,
14 first, did not consider that to be proof of
15 payment in full on the account, correct?

11:58:36

16 A Correct.

17 Q And Midland didn't consider it to be proof
18 of at least a partial payment, correct?

19 A Correct.

11:58:44

20 Q And Midland never contacted Dell to
21 determine what the status of that payment was?

22 A That's correct.

23 Q And then on August 6th, 2008, there's an
24 entry on Plaintiff's Exhibit 2 that an ACDV was
25 received from Transunion; is that correct?

11:59:00

1 A Correct.

2 Q And the fact that there are asterisks
3 where employee ID would be contained, does that
4 indicate to you that that ACDV was handled
11:59:14 5 electronically by the batch interface system?

6 A Yes.

7 Q No actual documents were reviewed in
8 responding to the ACDV received on August 6th,
9 2008 from Transunion?

11:59:28 10 A No.

11 Q Transunion --

12 MR. LANGLEY: Your Honor, there's
13 actually more to that answer that's not being
14 read.

11:59:38 15 MS. CAULEY: That's all we
16 designated.

17 MR. LANGLEY: I don't think you
18 can designate half an answer.

19 THE COURT: Read the whole answer.

11:59:44 20 MR. SYKSTUS: Yes, Your Honor.

21 A No. The system didn't review that. But
22 if there were review of the documents happening
23 at that time, there would have been specific
24 codes that the system could have recognized.

11:59:52 25 JUROR 16: Could you repeat that

1 question? I got lost in all that.

2 MR. CAULEY: Certainly.

3 **BY MS. CAULEY:**

4 Q The question: No actual documents were
12:00:02 5 reviewed in responding to the ACDV received on
6 August 6th, 2008 from Transunion?

7 A No. The system didn't review that. But
8 if there were review of the documents happening
9 at that time, there would have been specific
10 codes that the system could have recognized.

11 Q Transunion. Upon receipt of that ACDV,
12 Dell was not contacted?

13 A No.

14 Q Redstone Federal Credit Union, where the
12:00:36 15 bank statement was from, was not contacted to
16 verify whether the bank statement was valid or
17 whether a payment had been made?

18 A No.

19 Q There is an entry on August 12th, 2008.
12:00:46 20 An ACDV was received from Experian; is that
21 right?

22 A Yes.

23 Q And, again, the batch interface system
24 handled that dispute electronically?

12:00:56 25 A That's right.

1 Q Nothing was done differently in the
2 handling of the first ACDV than the first?

3 A No.

4 Q On March 19th, 2009, a third ACDV was
12:01:06 5 received from -- this one was from Transunion; is
6 that right?

7 A Yes.

8 Q And at that time, it states the dispute
9 type was 109?

12:01:14 10 A Yes.

11 Q And, again, the batch interface system
12 responded to that ACDV?

13 A Yes.

14 Q It was the same response as to the
12:01:24 15 previous two ACDVs?

16 A Yes. It looks like it.

17 Q No investigation was done by a consumer
18 relations employee into the dispute?

19 A No.

12:01:34 20 Q No documents were reviewed by any employee
21 of consumer relations in response to the ACDV?

22 A No.

23 Q No letters were sent to Mr. Brim regarding
24 receipt of that ACDV?

12:01:46 25 A No. No letters could be sent regarding

1 that dispute because of the cease and desist.

2 Q And Dell was not contacted?

3 A That's correct.

4 Q On March 20th, 2009, the very next day, an
12:02:00 5 ACDV is received from Equifax?

6 A Yes.

7 Q This fourth ACDV was also handled by the
8 batch interface system?

9 A That's correct.

10 Q Nothing new was done in responding to that
11 ACDV?

12 A No.

13 Q Then on February 25th, 2010, an ACDV was
14 received from Transunion?

12:02:18 15 A Yes.

16 Q This fifth ACDV was handled by the batch
17 interface system?

18 A Yes.

19 Q With respect to all of the ACDVs that were
12:02:26 20 received by Midland regarding disputes by
21 Mr. Brim, each and every one of them was handled
22 electronically by the batch interface system?

23 A Yes.

24 Q No consumer relations employee ever
12:02:38 25 reviewed the ACDVs?

1 A That is correct.

2 Q If you'll look at Page 11 --

3 Actually, this is Plaintiff's Exhibit 29.

4 THE COURT: Okay.

12:03:20 5 **BY MS. CAULEY:**

6 Q If you'll look at Page 11, Midland
7 Document 11, this looks like a summary of when
8 Midland started reporting the account?

9 A Yes.

12:03:30 10 Q That would have been November 16th, 2007?

11 A Correct.

12 Q Are you aware that Midland Funding sued
13 Mr. Brim to collect this debt?

14 A I do know that it went to an outside firm.

12:03:46 15 Q Do you know that a lawsuit was actually
16 filed against Mr. Brim?

17 A I believe so.

18 Q Are you aware that the lawsuit was
19 actually dismissed by Midland?

12:03:54 20 A Yes.

21 Q Do you know why the lawsuit was dismissed?

22 A I know I've seen the reason. But I don't
23 recall specifically.

24 Q Would that reason have been contained on
12:04:04 25 some screen in Midland's system?

1 A I believe I saw the reason in the
2 production notes where it says -- where it says
3 efforts exhausted.

4 Q There's one more line in that answer.

12:04:16 5 A That is the only way I knew that it was
6 closed.

7 Q This is actually referring to Plaintiff's
8 Exhibit 18. We go back to Page 27. That's a
9 copy of the complaint. Do you see where it says
10 Midland sued to collect the total sum of \$1,344?

11 A Yes.

12 Q And that is different from the amount that
13 was actually reported by Midland?

14 A Yes.

12:05:36 15 Q In fact, even if you look at the very
16 earliest time the account was reported in 2007,
17 it was reported with a balance due in excess of
18 \$1,381, right?

19 MR. LANGLEY: Your Honor, I think
12:05:50 20 there might be a mixup in the documents that were
21 referred to in the deposition versus the
22 plaintiff's exhibit that's on the screen.
23 Because Ms. Cauley is referring to something that
24 refers to a suit for 1,344. And Plaintiff's
12:06:08 25 Exhibit 18 is not that unless I'm mistaken.

1 MS. CAULEY: I'm sorry. It does
2 have a different dollar number, Your Honor. The
3 exhibit says \$1,381.

4 THE COURT: I can't -- okay.

12:06:24

5 MS. CAULEY: It may have been a
6 typographical error because on Line 39, it does
7 say 13 --

8 MR. LANGLEY: What is Document 27?
9 Would that be from the Midland production?

12:06:40

10 (Discussion off the record.)

11 THE COURT: What's the dispute?

12:07:00

12 MS. CAULEY: The amount contained
13 within the deposition, Your Honor, is different
14 than the amount -- the first amount that I read
15 is actually -- must be a typographical error,
16 because the amount on the complaint in the
17 plaintiff's exhibit and later on --

18 THE COURT: 1,381 instead of
19 1,344?

12:07:16

20 MS. CAULEY: Yes.

21 THE COURT: Okay.

22 MS. CAULEY: Start back.

23 **BY MS. CAULEY:**

12:07:22

24 **Q** Even if you look at the very earliest time
25 the account was reported in 2007, it was reported

1 with a balance due in excess of the \$1,381,
2 right?

3 A That's correct.

4 Q Then the next stapled group starts on Page
5 43 and goes to 45. It is account media.

12:07:42

6 THE COURT: How close are you to
7 finishing?

8 MS. CAULEY: I'm very. Ten
9 minutes.

12:07:56

10 THE COURT: Well, let's recess for
11 lunch, because we can't get to defendant's
12 questions anyway before lunch.

13 MS. CAULEY: Okay.

12:08:04

14 THE COURT: Ladies and gentlemen
15 of the jury, you're under the same instruction
16 I've given you earlier. Please be back in an
17 hour and 15 minutes.

12:08:16

18 For your information, I just want you to
19 know we're going to recess at 3:30 this afternoon
20 because I'm sick. I'm going to the doctor. And
21 I just made an appointment. So we're going to
22 recess at 3:30. Just so you know that. And the
23 lawyers know it, too. Be back in an hour and 15
24 minutes.

12:08:34

25 MR. BENNETT: Your Honor, we might

1 try to winnow out maybe the credit bureau
2 depositions which might be redundant. Because
3 each of them now is about an hour.

4 THE COURT: Well, it's okay.

12:08:44 5 Whatever y'all want to do is fine. Y'all just
6 stay for just a minute.

7 (Jury excused.)

8 (In open court. Jury not
9 present.)

12:09:16 10 THE COURT: I apologize. I have a
11 relapse. I was much better. But I am sick as a
12 dog today. And I called my doctor and asked if I
13 could see him at -- hopefully he can give me a
14 shot. Plan to be here tomorrow, just for your
12:09:30 15 information. I plan to be here Friday. I'm not
16 going to make anybody hang around because I have
17 the flu. I think they can work miracles with a
18 Z-pack and shot. So I'm going to have to stop at
19 3:30.

12:09:44 20 MR. BENNETT: I think we have
21 Mr. Brim and I don't know -- you know, over
22 lunch, we'll figure out whether we need the
23 credit reporting agencies' depositions. The main
24 purpose was to authenticate the documents that
12:09:58 25 are now in. If that's the case and the defendant

1 doesn't have a lot of evidence of its own, I
2 don't think.

3 MR. LANGLEY: With respect to the
4 credit reporting agencies?

12:10:08 5 MR. BENNETT: No. In general.
6 Hopefully we can be closed tomorrow.

7 THE COURT: Oh, I think we will,
8 too.

9 MR. LANGLEY: Our evidence will be
12:10:16 10 very short. If they don't offer the CRA
11 depositions, we may offer very limited portions.
12 But not lengthy.

13 THE COURT: That's okay. See
14 y'all in an hour and 15 minutes.

12:10:26 15 (Luncheon recess.)

16 (In open court. Jury present.)

17 THE COURT: Please be seated
18 everyone. And Mr. Sykstus, if you will start
19 being Angelique Danielle Ross, that would be
13:40:18 20 wonderful. And if you will read your questions,
21 that would be great.

22 MS. CAULEY: Yes.

23 **BY MS. CAULEY:**

24 Q If you'll go to Midland Document 91, which
13:40:40 25 is Exhibit 29 in the plaintiff's trial notebook,

1 these are the bureau reports by the reporting
2 data screens.

3 A Yes.

4 Q Is there a screen for each month that an
5 account is reported to the credit bureaus?

6 A Yes.

7 Q Does Midland report to all three of the
8 major credit reporting agencies?

9 A Yes.

10 Q This shows that began reporting on
11 November 16th, 2007?

12 A Yes.

13 Q It has an amount past due of \$1,587?

14 A Yes.

15 Q At the top, it looks like a balance of
16 \$1,799?

17 A Yes.

18 Q Do you know which balance was reporting,
19 or were both reporting to the credit report?

13:41:32 20 A This screen was printed on 6-7-10. The
21 information at the top would have been the
22 balance at the time that the screen was printed.
23 Whereas the information underneath, bureau
24 reports by reporting date, would have been
13:41:48 25 information reported to the credit bureaus as of

1 November.

2 Q November 16th, 2007, the balance reported
3 as unpaid and past due was \$1,587?

4 A Yes.

13:42:00 5 Q Then the following month, the balance
6 increased?

7 A Yes.

8 Q And in 2008, the information remained the
9 same except that the balance increased to \$1,602?

13:42:12 10 A Yes.

11 Q If you will, just review it. It looks
12 like each month the information remains the same
13 except the balance increases for February to
14 March, 2008, and then to April of 2008; is that
15 right?

13:42:26

16 A Yes.

17 Q March of 2008, it looks like there is an
18 address change?

19 A Yes.

13:42:40 20 Q And the balance increased in May of 2008?

21 A Yes.

22 Q The June to July balance remained the same
23 but in August, the address goes back to an
24 Alabama address but has the same unpaid balance;
13:42:54 25 is that right?

1 A Yes.

2 Q For every month after August of 2008, it
3 looks like everything remains the same except the
4 balance goes up each month until February, 2010?

13:43:18 5 A Yes.

6 Q And no monthly payments were ever recorded
7 on the account?

8 A That's correct.

9 Q Did your name used to be Purvis?

13:43:30 10 A Yes.

11 Q And your current last name is Ross?

12 A Ross.

13 Q Are you aware of -- you have already told
14 me the records indicate that Midland never
15 communicated with Dell regarding Mr. Brim's
16 dispute, correct?

13:43:48

17 A Correct.

18 Q Midland never communicated with Redstone
19 regarding it?

13:43:56 20 A Correct.

21 Q And the only communications with respect
22 to Mr. Brim's account with respect to the
23 reporting agencies are the ACDVs and the UDF
24 responses?

13:44:10 25 A Those and I guess the regular monthly

1 reporting.

2 Q The regular reporting is done monthly and
3 then the ACDVs and the UDFs?

4 A Yes.

13:44:18 5 Q There's no indication that telephone calls
6 were made to the reporting agencies, correct?

7 A Correct.

8 Q There is no record in Mr. Brim's account
9 notes that indicate Midland contacted any other
10 party regarding Mr. Brim's dispute?

11 A Correct.

12 Q Let me hand you -- and it's going to be
13 Plaintiff's Exhibit 36. Let me hand you that.
14 We're looking at Document Number 206. Are you
13:45:28 15 familiar with what this document is?

16 A Yes.

17 Q Not going to mark it as an exhibit because
18 it does have Mr. Brim's social security number on
19 it. Is this a universal data form?

13:45:42 20 A Yes.

21 Q This is a form Midland sent in to the
22 credit bureaus?

23 A Yes.

24 Q Instructing them to delete Midland's
13:45:50 25 reporting of an account?

1 A Yes.

2 Q And what was the date of this universal
3 data form?

4 A 9-9-10.

13:45:56 5 Q As we sit here today, are you aware that
6 through documentation from Redstone Federal
7 Credit Union that Dell did verify it did receive
8 Mr. Brim's payment?

9 A I am aware of that, yes.

13:46:12 10 Q So there is no longer any dispute that the
11 payment was made by Mr. Brim and he did not owe
12 this debt?

13 A Correct.

14 Q Prior to July, 2010, when you told me
13:46:22 15 earlier today some changes may have been made
16 with respect to the Fair Credit Reporting Act
17 from October, 2007, up through July 1st, 2010,
18 were Midland's policies and procedures for
19 handling the ACDV the same?

13:46:38 20 A I believe so, yes.

21 Q As far as you are aware, there were no
22 changes in how ACDVs are responded to from
23 October of 2007 to July 1st, 2010?

24 A No. Not that I can recall.

13:46:52 25 Q Are there any type of reports maintained

1 on the consumer relations liaisons with respect
2 to the number of ACDVs they review or the number
3 of disputes they review on a weekly or monthly or
4 quarterly basis?

13:47:06

5 A Yes.

6 Q What are those reports?

7 A They are production reports.

8 Q How are they done? Monthly, quarterly?

13:47:18

9 A There's one report that is run daily and
10 another that is, I guess, weekly.

11 Q Are these production reports done by
12 employee or by department?

13 A By employee.

13:47:28

14 Q And what do they contain? What type of
15 information?

16 A How many accounts each person worked in a
17 certain time frame.

18 Q Are there goals for liaisons to meet with
19 respect to how many accounts they work?

13:47:38

20 A Per day, yes.

21 Q How many accounts is a liaison expected to
22 work per day?

23 A About 70 accounts.

13:47:48

24 Q Is there any type of incentive program or
25 compensation that is provided if they work more

1 than 70?

2 A No.

3 Q Is there any type of discipline or do they
4 receive any type of write-up if they do not meet
13:47:58 5 their quota?

6 A There could be. But generally, I would
7 say no because, depending on the volume or the
8 circumstances, there may be times when they need
9 to be lower than that number because of whatever
13:48:10 10 is going on at the time.

11 Q If it is just one day here or there or a
12 couple of days during a particularly busy time,
13 if the employee falls below the 70, there
14 wouldn't be disciplinary action necessarily?

13:48:24 15 A Correct.

16 Q Do the liaisons work 8:00 to 5:00, 9:00 to
17 5:00?

18 A Most of them work somewhere between --
19 some start earlier. 6:00 to 2:30. 7:00 to 3:30,
13:48:42 20 8:00 to 4:30.

21 Q Did they take a half-hour lunch, an hour
22 lunch?

23 A Most of the time, they take a half-hour
24 lunch.

13:48:52 25 Q Do they get any other breaks during the

1 day?

2 A Yes. Standard two 15-minute breaks.

3 Q None of the employees in consumer
4 relations actually ever responded to an ACDV with
13:49:02 5 respect to Mr. Brim?

6 A Correct.

7 Q Everything we've looked at with respect to
8 Mr. Brim's account was handled according to
9 Midland's policies and procedures at the time,
10 correct?

11 A Correct.

12 Q If ACDVs were received from other
13 consumers, alleging the same thing Mr. Brim was
14 alleging, they would have been handled the same
15 way Mr. Brim's ACDV was handled; is that correct?

16 A It would depend.

17 Q If everything were the same as Mr. Brim's
18 response, then the response to the ACDV would be
19 the same?

13:49:34 20 A That's probably likely.

21 MS. CAULEY: That's all we have,
22 Your Honor.

23 MR. LANGLEY: Your Honor, for
24 defendant's cross-examination of Angelique Ross,
13:49:50 25 Mr. Tompkins is going to take over the role of

1 Ms. Ross.

2 THE COURT: Okay. Neither one of
3 you look like you just had a baby. I'll tell you
4 that.

13:50:18 5 You're asking your own questions that you
6 asked on deposition?

7 MR. LANGLEY: Some were Penny's.
8 Some were mine.

9 **CROSS-EXAMINATION**

13:50:26 10 **BY MR. LANGLEY:**

11 Q Have you ever held any other positions at
12 Midland?

13 A Yes.

14 Q What were they?

13:50:30 15 A Consumer relations liaison and consumer
16 liaison lead.

17 Q How long were you the liaison?

18 A Approximately six months.

19 Q And then I presume you were promoted to
13:50:42 20 consumer relations manager?

21 A I was the consumer liaison first. Then
22 promoted to lead. Then promoted to manager.

23 Q How long did you work as the lead?

24 A About two-and-a-half years.

13:50:52 25 Q Tell me approximately when you started at

1 Midland.

2 A It was March 17th, I believe, 2003.

3 Q As the consumer relations manager, did you
4 supervise other employees?

13:51:06 5 A Yes.

6 Q How many?

7 A I currently supervise, directly supervise
8 two. I have supervised up to nine.

9 Q In your position for the past four years,
13:51:16 10 have you always had responsibilities for
11 supervising employees in that position?

12 A Yes.

13 Q That would range currently at two. How
14 many was it in 2009?

13:51:28 15 A For most of 2009, it was between six and
16 seven employees.

17 Q Why the reduced number of employees?

18 A I managed two supervisors. They managed
19 the rest of that number of people. So those
13:51:40 20 seven that I previously managed, those two people
21 managed that group. And I managed the two
22 supervisors.

23 Q Who were the two supervisors that you
24 managed?

13:51:48 25 A Roque Faura, R-O-Q-U-E. The last name is

1 F-A-U-R-A. And Michelle Lusk.

2 Q What are their job titles?

3 A Consumer relations supervisor.

13:52:02

4 Q Then the two of those consumer relations
5 supervisor managed approximately seven employees?

6 A Total, yes.

7 Q What are the positions of those employees?

8 A Consumer relations liaison one and
9 consumer relations liaison two.

13:52:16

10 Q Are there still consumer relations leads?

11 A No.

12 Q Has that become the consumer relations
13 supervisor position?

14 A Basically. There is some difference, but
15 yes.

13:52:26

16 Q The consumer relations department is the
17 only department at Midland that is responsible
18 for the handling of consumer disputes either
19 directly through Midland or through the credit
20 bureaus?

13:52:40

21 A I'm not sure what you mean.

22 Q When a dispute comes in through a consumer
23 to Midland and it is a dispute regarding whether
24 or not they owe the account or owe the debt, what
25 department would that dispute go to for review?

13:52:50

1 A Any review of the dispute would come to
2 consumer relations.

3 Q What other duties do you have?

13:53:00

4 A Basically, the overall overseeing of the
5 operations of consumer relations.

6 Q Have your duties changed at all during the
7 four years you served as a consumer relations
8 manager?

9 A Yes.

13:53:08

10 Q What is different now?

11 A Initially, there were no consumer
12 relations supervisors. So I would handle all of
13 the escalated issues. Now that is split between
14 several people.

13:53:20

15 Q Would any other employees be responsible
16 other than those three individuals for handling
17 escalated disputes?

18 A Not responsible. There may be some that
19 could take an escalated call if the managers and
20 supervisors were not there.

13:53:32

21 Q Ultimately, it would come to a supervisor
22 or to you?

23 A Yes.

24 Q Any other changes in your duties over the
25 past four years?

13:53:40

1 A No.

2 Q What are the duties for the consumer
3 relations supervisors?

4 A They first have to manage the consumer
13:53:48 5 relations liaisons directly. They also respond
6 to escalated consumer issues. They also may
7 answer questions from their team members.

8 Q And that would be the liaisons?

9 A Yes.

13:54:00 10 Q Anything else?

11 A I'm responsible for the whole operation.
12 They are partly responsible for the day-to-day
13 operations of consumer relations.

14 Q The consumer correspondence that the
13:54:12 15 liaisons process, is that in response to
16 correspondence received directly from the
17 consumer?

18 A Yes.

19 Q And that is how it came to consumer
13:54:22 20 relations department in the first place?

21 A Correct.

22 Q If an ACDV comes in, claiming an account
23 has been paid in full, are those ACDVs also
24 handled by the batch interface system?

13:54:38 25 A It would depend.

1 Q What would it depend on?

2 A It would depend on information on the
3 actual Midland account. Not the ACDV itself.

4 Q Tell me what information on the Midland
5 system would cause an ACDV, claiming that its
6 debt had been paid in full, to be handled by an
7 individual versus the batch interface system.

8 A There may be specific codes on the account
9 or the account may reside in a specific location
10 in our system.

11 Q What would some of those codes on the
12 account be?

13 A For instance, if the account had a DIS
14 dispute code, the system could select that ACDV
15 for manual review.

16 Q What are the other codes where the system
17 can select an ACDV for manual review?

18 A I don't know off -- I can't think of
19 others offhand. It may select or move the
20 account for being in a specific location in our
21 system.

22 Q What would those locations be?

23 A It could be -- there are several. 45G,
24 45P, 45F.

25 Q What does 45G mean?

1 A It means the consumer disputed in writing
2 within 45 days that the validation letter and the
3 account is currently under an investigation. And
4 it was a general dispute. Non specific.

13:56:20 5 Q What about 45P?

6 A So it means all of the same things except
7 this dispute. The dispute was that the account
8 was paid prior.

9 Q Paid prior to Midland purchasing the
10 account?

11 A Yes.

12 Q What about F?

13 A All of the same. The account or the
14 dispute is that the account is fraudulent.

13:56:38 15 Q If a consumer sends a letter within 45
16 days of the validation letter, that goes out on
17 the account with a general dispute. A code of
18 45G is placed on that account; is that right?

19 A Yes. Well, that's actually the location
13:56:54 20 it is moved to. The code would be the DIS code.

21 Q So the account itself is moved to a 45G
22 location in the system?

23 A Yes.

24 Q Meaning the computer system?

13:57:04 25 A Yes.

1 Q What happens if a consumer sends in a
2 dispute in writing but it's not within the 45
3 days of the validation letter?

13:57:18

4 A It would depend on exactly what they sent
5 in.

6 Q Can you tell me what the options are?

7 A If the consumer -- I'm sorry. For general
8 or just --

9 Q Let's start with general.

13:57:24

10 A Okay. If the consumer only sends in a
11 letter with their general dispute outside of the
12 45-day period, the consumer would receive a
13 letter, stating that we need additional
14 information related to their dispute.

13:57:36

15 Q Does that letter have a code that is
16 referred to or refers to it?

17 A Yes.

18 Q What is that code?

19 A QCPP.

13:57:44

20 Q Does that stand for something?

21 A QC stands for quality control. I don't
22 know what the first P is. But the second P is
23 for proof. So I think it is provide proof.

13:58:00

24 Q If a consumer sends a letter, disputing an
25 account, but there's no documentation included

1 with the letter and it is outside the 45 days of
2 the first letter from Midland, Midland will send
3 out a form letter which is the QCPP letter,
4 stating to the consumer that additional
13:58:12 5 information is needed?

6 A That's correct. As long as the consumer
7 has not requested that we cease contact with
8 them.

9 Q If a letter contains a dispute and also
13:58:22 10 requests that Midland cease contact, is that same
11 form letter sent out?

12 A No.

13 Q Is any form letter sent out?

14 A No.

13:58:30 15 Q What happens to the account?

16 A The account is marked as disputed.
17 Annotated with what was received from the
18 consumer. And another code is placed on the
19 account to indicate that the consumer wants no
13:58:42 20 further contact.

21 Q What is that code?

22 A 026.

23 Q Are there any policies or procedures that
24 instruct the consumer relations employees on how
13:58:54 25 to review the documentation that's supplied with

1 respect to a dispute?

2 A Yes.

3 Q Where are those policies maintained?

4 A That would be in the consumer relations
13:59:04 5 manual.

6 MR. LANGLEY: Your Honor, may I
7 walk around to use the Elmo?

8 THE COURT: Sure.

9 (Discussion off the record.)

10 MR. LANGLEY: This is Plaintiff's
11 34.

12 **BY MR. LANGLEY:**

13 Q Pages 168 through 169, that's the
14 guidelines for handling written disputes that it
14:00:52 15 has been paid prior; is that correct?

16 A Correct.

17 Q The liaison is to review the account and
18 verify that the social, name, and address match?

19 A Yes. If they can. Consumers don't always
14:01:06 20 put all the information on their correspondence.

21 Q They're also looking for proof. Here it
22 says it could be the front and back of a
23 cancelled check with a settlement offer letter or
24 paid letter with matching account number?

14:01:16 25 A Yes.

1 Q That matching account number matching
2 Midland's account number or the original
3 creditor's account number?

4 A It should be with the original creditor's
14:01:32 5 account number.

6 Q If the account is referred to ACQ, then a
7 different warning code, which is 286, is entered
8 on the account; is that right?

9 A That's actually when the account is
14:01:46 10 deleted. So that would be where it says if proof
11 is valid, update to delete. And then that code
12 would be added.

13 THE COURT: Let me just tell the
14 jury when they refer to page number, it's the
14:02:00 15 number in the bottom right hand of the document.
16 Sometimes it's hard to read because there might
17 be holes punched in it.

18 **BY MR. LANGLEY:**

19 Q If an ACDV is not handled automatically
14:02:14 20 through the batch interface system, are there
21 steps contained in any type of manual or policy,
22 whether it is printed or just a note on the
23 system, that tells an individual in consumer
24 relations how to investigate that credit dispute?

14:02:28 25 A Well, as far as using the actual system,

1 there's a tutorial that is available through the
2 E-Oscar system to show them how to actually put
3 information in. Other than that, we just have
4 some screen prints that show the screen in order
14:02:40 5 to find the information on our system.

6 Q You lost me just a little bit. You have
7 screen prints that tell the employees where to
8 find the information on your system. Can you
9 explain that more for me?

14:02:52 10 Does consumer relations have the same
11 computer system that the collections department
12 might have?

13 A Yes.

14 Q They have access -- consumer relations has
14:03:02 15 access to the same screens as the collections
16 department?

17 A Yes.

18 Q So the information would be that there
19 might be a screen that would tell them where to
14:03:10 20 find the payment history or previous addresses or
21 something of that nature?

22 A Yes.

23 Q There are quite a few screens in the
24 system?

14:03:20 25 A Right.

1 Q Judging from the documents that were
2 produced. To sort of make that easier for the
3 person in consumer relations to actually find
4 which screen to go to?

14:03:28 5 A Yes.

6 Q Like a cheat sheet, for lack of a better
7 term?

8 A Yes.

9 Q Is the E-Oscar tutorial also something
10 that can be printed?

11 A Yeah. You can print it.

12 Q Do all employees in the consumer relations
13 department take the E-Oscar tutorial?

14 A Yes.

14:03:46 15 Q Since January of 2008, you have been in
16 charge of overseeing the handling of ACDVs?

17 A Yes.

18 Q Did you or the supervisors that are under
19 you conduct any type of review of responses to
14:03:58 20 ACDVs?

21 A We may review non-submitted responses.
22 But if there's a question about a response, we
23 review the account and the ACDV to look at the
24 most appropriate response.

14:04:16 25 Q The next document we're looking at is

1 Plaintiff's 15. Specifically the second page.

2 Are you at the bottom where it says received
3 certified letter?

4 A Yes.

14:05:42 5 Q It is postmarked July 30th. How do you
6 know who received it?

7 A There is a code that's three columns over
8 from that notation.

9 Q Is that the WGC or the BU8?

14:05:54 10 A It is the BU8.

11 Q Who is represented by the BU8?

12 A Melanie Bloome.

13 Q Is she in the St. Cloud office or San
14 Diego?

14:06:06 15 A San Diego.

16 Q Is she a liaison or supervisor?

17 A Liaison.

18 Q Still with Plaintiff's Exhibit 15, if you
19 go back to the collection detail, what was the
14:06:18 20 date upon receipt of this letter?

21 A The account is noted. It would have
22 already had cease and desist codes on there. So
23 the information would have been noted and then
24 scanned.

14:06:30 25 Q Who handled this letter that was received?

1 A Melanie Bloome.

2 Q I see it is on the 13th?

3 A Yes.

14:06:46

4 Q It has BU8. Ms. Bloome got this second
5 letter from Mr. Brim?

6 A Yes.

7 Q Do you know if Ms. Bloome is the person
8 who has the handwritten notes on Page 5?

9 A It looks like her handwriting.

14:06:54

10 Q What does that represent?

11 A The Midland account number.

12 Q That was not on the letter; she would have
13 had to look that up in the system?

14 A Yes.

14:07:10

15 Q Midland did not consider the payment of
16 \$954.12 as even a partial payment on the account?

17 A Midland didn't. Well, we don't -- we
18 wouldn't necessarily credit that payment to the
19 account or proof of that payment generally. The
14:07:30 20 payments made like that, the actual payment would
21 be sent to Midland.

22 Q Page 79, Line 2. So basically, the ACDV
23 comes in from Transunion. The data matches. And
24 it is verified as accurate by the system?

14:07:46

25 A It probably would have been verified.

1 Probably modified to show that there was a
2 dispute. And based on the codes and the queue
3 location, the information compared and then
4 responded to is modified.

14:08:04 5 Q The notes do say account dispute modified
6 E-Oscar dispute type 12. What is that?

7 A I don't remember offhand, but it is
8 dispute type that Mr. Brim would have selected
9 when submitting his dispute through the credit
10 bureau.

11 Q So it would have been -- the type would
12 come through the credit bureau itself; that's not
13 a type that Midland would have selected?

14 A Correct.

14:08:34 15 Q Transunion, upon receipt of that ACDV --
16 Dell was not contacted?

17 A No.

18 Q Redstone Federal Credit Union, where the
19 bank statement was from, was not contacted to
14:08:46 20 verify whether that bank statement was valid or
21 whether a payment had been made?

22 A No.

23 Q Does Midland not have a copy of that ACDV
24 response? Do they?

14:08:54 25 A I don't think so.

1 Q They can print from the system but only
2 for a period of time; is that right?

3 A Yes.

4 Q Is it six months?

14:09:02 5 A 120 days.

6 Q So after 120 days, any ACDV response would
7 not be available for print by Midland?

8 A That's correct.

9 Q Skip forward to Page 90, Line 5. This
14:09:28 10 will be reference to Defendant's 15.

11 (Discussion off the record.)

12 MR. BENNETT: Your Honor,
13 Plaintiff's 57 is the same document.

14 MS. CAULEY: It's 58. I can't
14:10:32 15 read.

16 MR. BENNETT: 58. Oh, I'm sorry.
17 It's not. It is a different screen print. Your
18 Honor, it looks -- it is just a different print
19 version of the same document, but it isn't
14:10:54 20 exactly the same one.

21 THE COURT: Which one? 58 or 59?

22 MR. BENNETT: 58, Your Honor. 58
23 is the Transunion printout. And I think what you
24 have is Midland's printout, right?

14:11:04 25 MR. LANGLEY: That's correct.

1 **BY MR. LANGLEY:**

2 Q Page 38, that is a copy of the actual ACDV
3 response on February 25th, 2010, correct?

4 A Correct.

14:11:16 5 Q And that was in response to an ACDV from
6 Transunion?

7 A Yes.

8 Q This was handled by the batch interface
9 system?

14:11:24 10 A Yes.

11 Q Which is why it is signed by Midland
12 rather than by an individual; is that correct?

13 A That's correct.

14 Q Next document we'll be referencing is
14:11:34 15 Plaintiff's 24. We'll start with Midland
16 Document 49 through 51. Please tell me what that
17 document is.

18 A It is the customer additional data screen.

19 Q Is that just another view of the customer
14:12:18 20 additional data that we looked at earlier? If
21 you don't remember, it's okay.

22 A I believe so. Yeah. I believe it is just
23 printed on a different date.

24 Q So Page 49, 351 -- through 51 is the same
14:12:34 25 as what is represented on Page 7 except the date

1 printed?

2 A Yeah. It is actually a different view.
3 It is the same information. But on Page 45, if
4 you see in the middle where it says click to view
14:12:48 5 printable version, if you click on that, you get
6 Page 7.

7 Q Okay. Then if you'll go on to Page 55
8 through 57, is the portfolio master information?

9 A Yes.

14:13:00 10 Q Do you know what that is?

11 A Yes. It is another screen in our system
12 that gives account information.

13 Q Does this information refer to the
14 portfolio within which Mr. Brim's account was
14:13:14 15 obtained by Midland?

16 A Yes.

17 Q And it has a purchase date of October 10,
18 2007?

19 A Yes.

14:13:20 20 Q And account type -- do you know what CL
21 represents?

22 A I don't know.

23 Q The seller is identified as Dell Financial
24 Services?

14:13:28 25 A Yes.

1 Q Number of accounts, 63,346?

2 A Yes.

3 Q Mr. Brim's account was purchased in a
4 portfolio that contained 63,346 accounts?

14:13:42 5 A Yes.

6 Q August of 2008 is also when the XF dispute
7 code was added?

8 A Yes.

9 Q Going back to Plaintiff's 34. Second
14:14:16 10 page. Will you look at document 169? It's
11 within the consumer relations operations manual.
12 Look at Box Number 5, which is on Page 169.

13 A Okay.

14 Q In the action column, it says, if unable
14:14:38 15 to determine if proof is valid, account will be
16 reported to ACQ, which is acquisitions; is that
17 right?

18 A Yes.

19 Q If consumer relations determines proof is
14:14:50 20 invalid, is the account referred to acquisitions?

21 A No.

22 MR. LANGLEY: Nothing further.

23 THE COURT: Okay. Thank you. You
24 can't ask questions because she's not here. Not
14:15:10 25 this witness.

1 MS. CAULEY: Your Honor, the
2 plaintiff is going to read from the deposition of
3 Kimberly Hughes from Experian. Also, Your Honor,
4 this morning we inadvertently pulled out
14:15:34 5 Plaintiff's Exhibit 70, which is a credit report
6 from Experian, which was at the deposition and
7 which is referred to in what we're going the
8 read. So we will actually get those Exhibit 70s
9 back and provide copies to the jurors.

14:15:50 10 MR. BENNETT: Move for admission.

11 MS. CAULEY: We do ask the Court
12 to admit Plaintiff's Exhibit 70.

13 THE COURT: It is admitted.

14 MS. CAULEY: Thank you.

14:15:56 15 THE COURT: And you're now
16 Ms. Hughes?

17 MR. SYKSTUS: That's correct, Your
18 Honor.

19 THE COURT: And you should
14:16:00 20 consider this as if she was here in person,
21 testifying under oath today.

22 **DIRECT EXAMINATION**

23 **BY MS. CAULEY:**

24 Q Will you please state your name for the
14:16:10 25 record?

1 A Kimberly Hughes.

2 Q Ms. Hughes, are you here pursuant today to
3 a trial deposition subpoena that was served on
4 Experian?

14:16:18 5 A That is my understanding.

6 Q Are you currently employed by Experian?

7 A Yes, I am.

8 Q Can you tell us, please, what your
9 position is there?

14:16:26 10 A I am a clients and litigation analyst in
11 the regulatory compliance for Experian Solutions,
12 Inc.

13 Q And can you please tell the jury what your
14 duties in that position include?

14:16:38 15 A Well, I'm currently transitioning into
16 that role. For purposes of this deposition and
17 testimony, I am testifying as a corporate
18 representative in my capacity. My previous
19 capacity as a litigation and compliance
14:16:52 20 specialist in consumer affairs whereby I assisted
21 consumers with questions or concerns they had
22 with information appearing on their Experian
23 credit report and also assist with litigation
24 research for Experian and sometimes providing
14:17:20 25 testimony in litigation matters.

1 Q And can you tell me, please, what type of
2 business Experian is?

3 A Experian is a credit reporting agency.

4 Q And as part of its duties as a credit
14:17:34 5 reporting agency, does Experian compile
6 information from various credit data furnishers
7 on specific consumers?

8 A Yes.

9 Q Does Experian also create credit reports
14:17:46 10 on the consumers?

11 A Experian creates and stores credit
12 information from public records and other
13 subscribers of information. And when a third
14 party requests the contents of those files, they
14:17:58 15 are compiled in the form of a credit report.

16 Q Okay. And those credit reports -- once
17 they're compiled -- can be provided to potential
18 credit grantors?

19 A Yes. Yes, ma'am.

14:18:10 20 Q And are they also provided to potential
21 employers?

22 A If a potential employer certifies and
23 meets certain requirements, Experian does release
24 credit information for the purposes of employment
14:18:24 25 verification.

1 Q And as an employee of Experian, are you
2 familiar with a furnisher, Midland Credit
3 Management?

4 A I know of Midland. I don't know what I
14:18:34 5 would say that -- I don't know that I would say
6 that I am familiar with Midland.

7 Q Does Midland Credit Management furnish
8 credit information regarding consumers to
9 Experian?

14:18:44 10 A Yes, they do.

11 MR. BENNETT: Your Honor, we cut
12 out huge chunks of this for expediency.

13 THE COURT: All right. That's
14 good.

14:19:04 15 **BY MS. CAULEY:**

16 Q Page 38. Okay. From July 29th through
17 February 17th, 2010, did the Midland Credit
18 Management account continue to be reported by
19 Midland Credit Management as a collection account
14:19:18 20 during that time period?

21 A Based on review of the records Experian
22 has available, I believe that to be correct.

23 Q If you will go back to Plaintiff's 11,
24 which for purposes of this trial is Plaintiff's
14:19:32 25 Exhibit 70, and please turn to Page 7 of that

1 consumer disclosure, which is Bates Page 136.

2 A Yes, ma'am.

3 Q Can you tell the jury, please, what
4 inquiries are that display on a consumer
14:19:48 5 disclosure report?

6 MR. BENNETT: Judge, again, you
7 don't have a copy of this. We'll give it to the
8 jury tomorrow.

9 THE COURT: You will have it with
14:19:58 10 you in the jury room. But you can see it on the
11 screen.

12 A Well, inquiries are a record of
13 information about the consumer being shared with
14 a third party. Specifically, the inquiries that
14:20:10 15 you're looking at on this Bates Label 136, these
16 are inquiries shared with others which means that
17 these are -- were companies who have reviewed
18 credit information about Mr. Brim based on some
19 action he took such as applying for credit or
14:20:26 20 financing.

21 Q And if we look at those inquiries, we see
22 that American Express obtained information
23 regarding Mr. Brim on May 14th, 2009?

24 A That's correct.

14:20:40 25 Q And CBC Innovis obtained information

1 regarding Mr. Brim on January 15th, 2009?

2 A That's correct.

3 Q And if you look at the CBC inquiry, does
4 it tell you the reason the inquiry was made?

14:20:56 5 A Yes.

6 Q What reason was given?

7 A Our records indicate that the CBC Innovis
8 inquiry was for a conventional mortgage on behalf
9 of 224 RBC Bank USA.

14:21:12 10 Q And if you come down to the next entry,
11 there is a Croll Factual Data that had an inquiry
12 December 10th, 2008. Do you see that?

13 A Yes, ma'am.

14 Q What was the reason for that inquiry by
14:21:24 15 Croll Factual Data?

16 A The document indicates it was for real
17 estate loan on behalf -- the document indicates
18 that it was for real estate loan on behalf of
19 0102 Platinum Mortgage.

14:21:40 20 Q And when these entities have an inquiry
21 regarding a specific consumer or their credit,
22 are they required under the Fair Credit Reporting
23 Act to provide a reason for that inquiry?

24 A Experian will not release information to
14:21:54 25 an entity about a consumer unless that entity

1 certifies that they have a permissible purpose.

14:22:08

2 Q So the reasons provided that are
3 documented by Experian in Plaintiff's Exhibit 70
4 are those reasons that were provided by the
5 entity making the inquiry?

6 A Yes, ma'am.

7 Q And if you come down to the fourth entity,
8 it says, Credit Plus. And that inquiry was made
9 on September 19th, 2008?

14:22:20

10 A That's correct.

11 Q And was that also an inquiry for a real
12 estate loan on behalf of First Metropolitan
13 Mortgage?

14 A That's what the document indicates.

14:22:30

15 Q And then there was an inquiry by Land Safe
16 Credit also on September 19th, 2008?

17 A That's correct.

18 Q And what reason was provided to Experian
19 for that inquiry?

14:22:44

20 A The document indicates the reason provided
21 was real estate loan on behalf of Hometown
22 Lenders, L.L.C.

23 Q And the -- if we come down one more to
24 Credit Plus on July 28th, 2008, that inquiry,

14:22:58

25 again, indicates it was for a real estate loan on

1 behalf of First Metropolitan Mortgage?

2 A Yes, ma'am. That's what is indicated on
3 the document.

4 MS. CAULEY: That's all we have of
14:23:18 5 this witness, Your Honor.

6 THE COURT: Okay.

7 MR. LANGLEY: Your Honor, could
8 you indulge us a moment? This is slightly
9 different from what we had discussed yesterday.
14:23:32 10 So we need a moment.

11 THE COURT: Sure.

12 (Discussion off the record.)

13 MR. LANGLEY: Your Honor,
14 Mr. Tompkins will again play the role of female
14:25:02 15 this time, Ms. Kimberly Hughes.

16 THE COURT: All right. Have a
17 seat Ms. Hughes.

18 MR. LANGLEY: This is with
19 reference to Plaintiff's Exhibit 70, February,
14:26:02 20 2010, Experian report. Bates number is cut off
21 on this, but it's Page 8 of 12 in the report that
22 you were just discussing. Excuse me. Seven of
23 12.

24 **CROSS-EXAMINATION**

14:27:04 25 **BY MR. LANGLEY:**

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1 Q If you would turn to Exhibit 11, which
2 is --

3 THE COURT: 11?

4 MR. LANGLEY: This is the way it
14:27:12 5 reads in the deposition transcript.

6 A What page?

7 Q Page 55, Line 16. And what is described
8 in the deposition as Exhibit 11 is actually
9 Plaintiff's Exhibit 70.

14:27:24 10 THE COURT: Yeah.

11 **BY MR. LANGLEY:**

12 Q If you would, turn to Exhibit 11, please.
13 And specifically, look at the page that bears the
14 Bates Number 136.

14:27:32 15 A Yes, sir.

16 Q Ms. Cauley asked you some questions about
17 inquiries from American Express, CBC Innovis,
18 Croll Factual Data, Credit Plus, and Land Safe
19 Credit. Do you remember those questions?

14:27:48 20 A Generally, yes.

21 Q Do you know what specific information any
22 of these entities sought from Experian?

23 A No, sir. Other than generally credit
24 information about this consumer.

14:27:58 25 Q But you can't say what specific credit

1 information they sought?

2 A That's correct. I cannot.

3 Q Do you know what specific credit
4 information was provided to these entities by
14:28:12 5 Experian?

6 A No, sir.

7 Q And assuming any information was provided,
8 do you have any idea how any of these entities
9 used that information?

14:28:20 10 A No, sir.

11 MR. LANGLEY: That's all I have.

12 THE COURT: All right. Thank you.
13 Are you ready to proceed tomorrow, not today? Or
14 what do you want to do?

14:28:54 15 MS. CAULEY: We have Ms. Banks
16 we're ready to play that will take about 40, 45
17 minutes.

18 THE COURT: Okay. That's good.
19 Y'all need a break? It is a video deposition.
14:29:02 20 You should consider that as if Ms. Banks was
21 here, testifying under oath.

22 MR. BENNETT: Your Honor, we
23 haven't edited anything yet.

24 THE COURT: Does Cheryl have to
14:29:12 25 take that down, or will you make that available?

1 MR. BENNETT: We will make it
2 available. I think Ms. Cauley already discussed
3 it.

4 THE COURT: Okay.

14:29:22 5 (Videotape played.)

6 MR. BENNETT: Judge, we would ask
7 that Exhibit 40 be put in the jury's binders
8 overnight.

9 THE COURT: Okay. It is admitted.
15:08:40 10 And it can be put in overnight.

11 MR. BENNETT: When the jury sees
12 it, it would be 42 in their book.

13 THE COURT: Right.

14 (Videotape played.)

15:16:50 15 MR. BENNETT: The remaining of
16 this requires going through documents the jury
17 doesn't have. It's a list of member numbers and
18 the dates of pulls that are in other documents.
19 We would ask to advance to the end of our
15:17:00 20 examination to Mr. Langley's, which would be at,
21 Eric, at Page 43. And that will cut some time.

22 THE COURT: Okay.

23 (Videotape played.)

24 THE COURT: How much more do you
15:33:26 25 have? Because I really do have to leave.

1 MR. LANGLEY: Probably three pages
2 worth.

3 THE COURT: Okay.

4 (Videotape played.)

15:37:02 5 THE COURT: We really do have to
6 stop. Just stop. We'll continue with this in
7 the morning. Just remember you are on Page 66,
8 Line 2.

9 MS. CAULEY: Yes, ma'am.

15:37:12 10 THE COURT: I hope you'll have a
11 good night. While you're out, please remember
12 the instruction I've given you about not
13 discussing the case among yourself, not to let
14 anyone discuss in it your presence. Not to put
15:37:24 15 anything on Facebook or Twitter, or whatever you
16 do on the computer while you're seated on this
17 case about this case. And I will see you at 9:00
18 o'clock in the morning I hope. She has your
19 telephone numbers. And I'm planning on being
15:37:36 20 here at 9:00. Okay?

21 (Jury excused.)

22 (The Proceedings were recessed at
23 approximately 3:37 p.m. on February 23, 2011.)

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C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 12th day of February of 2011.

Cheryl K Powell

Cheryl Renae King Powell, CCR, RPR, FCRR
Federal Certified Realtime Reporter

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