

In the Matter of:

MORTGAGE RESOLUTION SERVICING

VS

JPMORGAN CHASE

JOSEPH SMITH

February 09, 2017

LEGAL | MEDIA | EXPERTS

MORTGAGE RESOLUTION SERVICING vs JPMORGAN CHASE
SMITH, JOSEPH on 02/09/2017

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MORTGAGE RESOLUTION SERVICING,)
et al.,)
Plaintiffs,)
vs.)
JPMORGAN CHASE, N.A., et al.,)
Defendants.)
_____ /

Case No.
15-cv-00293-LTS-JCF

VIDEOTAPED DEPOSITION OF JOSEPH A. SMITH, JR.
(Taken by Plaintiffs)
Raleigh, North Carolina
Thursday, February 9th, 2017

Reported in Stenotype by
Amy A. Brauser, RPR, RMR, CLR
Transcript produced by computer-aided transcription

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 13 Laurence Schneider
 14 Dave Severance, Videographer
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1 VIDEOTAPED DEPOSITION OF JOSEPH A. SMITH,
 2 JR., a witness called on behalf of Plaintiffs, before
 3 Amy A. Brauser, Notary Public, in and for the State of
 4 North Carolina, at the Law Offices of Poyner Spruill,
 5 301 Fayetteville Street, Suite 1900, Raleigh, North
 6 Carolina, on Thursday, the 9th day of February, 2017,
 7 commencing at 9:31 a.m.
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<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This begins</p> <p>3 Volume 1, Tape Number 1 of the videotaped</p> <p>4 deposition of Joseph Smith, taken in the matter</p> <p>5 of Morgan Resolution Servicing, et al., versus</p> <p>6 JPMorgan Chase, NA, et al., in the United States</p> <p>7 District Southern -- sorry, in the United States</p> <p>8 Court, Southern District of New York, case</p> <p>9 number 12-CV-00293-LTS-JCF. This deposition is</p> <p>10 being held at Poyner and Spruill, located at 301</p> <p>11 Fayetteville Street, Suite 1900, Raleigh, North</p> <p>12 Carolina 27601, on February 9, 2017 at</p> <p>13 approximately 9:31 a.m.</p> <p>14 My name is Dave Severance with the firm</p> <p>15 of Legal Media Experts. I am the legal video</p> <p>16 specialist. The court reporter with us today,</p> <p>17 also in association with Legal Media Experts, is</p> <p>18 Amy Brauser.</p> <p>19 For the record, may I ask counsel to</p> <p>20 introduce themselves and whom they represent.</p> <p>21 MR. TANTILLO: Good morning, my name is</p> <p>22 Brent Tantillo. I represent Mortgage Resolution</p> <p>23 Servicing, LLC; S&A Capital Partners, Inc.; and</p> <p>24 1st Fidelity Loan Servicing, LLC.</p> <p>25 MR. PISTILLI: Chris Pistilli for</p>	<p style="text-align: right;">Page 9</p> <p>1 is you must answer the -- obviously, each question</p> <p>2 truthfully unless your attorney tells you clear --</p> <p>3 clearly not to do so. Although, as you know, there's</p> <p>4 no judge present, this is a formal legal proceeding</p> <p>5 just like testifying in court and you're under the</p> <p>6 same legal obligation to tell the truth as if you were</p> <p>7 testifying in court.</p> <p>8 If you do not understand anything I say,</p> <p>9 just ask me to rephrase the question. And before the</p> <p>10 deposition can be used in court, you will have the</p> <p>11 opportunity to amend or correct your statement. Do</p> <p>12 you understand this?</p> <p>13 A. I do.</p> <p>14 Q. Mr. Smith, we have received documentation</p> <p>15 production from your attorney, Mr. Epstein, of Poyner</p> <p>16 Spruill pursuant to our subpoena issued January 10th,</p> <p>17 2017. The documents you have produced are</p> <p>18 communications between your office and Wall Street</p> <p>19 Journal reporter, Emily Glazer, and your production</p> <p>20 regarding consumer complaints. Is that your</p> <p>21 understanding?</p> <p>22 A. Yes.</p> <p>23 Q. Did you communicate with anyone about the</p> <p>24 subpoena you received and your testimony today?</p> <p>25 A. I communicated with my counsel and with my</p>

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1 colleagues who I asked to do a document search
2 necessary to respond to your subpoena.
3 Q. And who -- what colleagues are you talking
4 about?
5 A. Ruth McCree who is a paralegal in the law
6 firm and Martha Svoboda, S-V-O-B-O-D-A, who is of
7 counsel in the firm.
8 Q. Did you review or prepare any documents in
9 preparation for this deposition?
10 A. No.
11 Q. Are you on any medication today that would
12 impair your testimony?
13 A. No, I'm not.
14 Q. What is your education, sir?
15 A. Well, I'm a graduate of the Kanawha County
16 public schools in West Virginia, Davidson College, and
17 the University of Virginia Law School.
18 Q. And where are you licensed to practice
19 law?
20 A. In New York and North Carolina.
21 Q. And how long have you -- oh, well, excuse
22 me, where do you currently work?
23 A. I'm a partner, an income partner I should
24 say, of Poyner Spruill, LLP, and I'm also president of
25 Office of Mortgage Settlement Oversight.

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1 Q. So that's its own separate corporation?
2 A. It is.
3 Q. And for how long have worked at Poyner
4 Spruill?
5 A. In my most recent employment by the firm,
6 it was after my -- it was from 2012, right before the
7 commencement of the National Mortgage Settlement.
8 Q. And where did you work prior to joining
9 Poyner Spruill?
10 A. I was North Carolina Commissioner of
11 Banks.
12 Q. Now, for which settlements do you serve as
13 the monitor?
14 A. I am monitor under consent judgments,
15 commonly called the National Mortgage Settlement
16 currently, with regard to Ocwen Loan Servicing, HSBC,
17 and SunTrust Banks. Prior, from -- from 2012 until
18 2015 -- '16, actually, finally was -- I completed my
19 work on five consent judgments, which ultimately
20 became six consent judgments, between Bank of --
21 between Bank of America, Wells Fargo, Chase, Citi, and
22 originally GMAC which then became Ocwen and Ditech.
23 Well, became Greentree which then became Ditech.
24 Those settlements were with 49 states and the United
25 States of America.

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1 Q. And those were regarding the National
2 Mortgage Settlement?
3 A. They were -- they were mortgage
4 settlements, yes. They were settlements of mortgage
5 issues, yes.
6 Q. Now, is -- was there another settlement
7 that you were previously a monitor for relating to
8 residential mortgage-backed securities?
9 A. Yes, I was monitor of the settlement
10 between the United States Department of Justice and
11 several states and JPMorgan Chase regarding
12 residential mortgage-backed securities.
13 Q. How were you chosen to become the monitor
14 of these settlements?
15 A. I was agreed to -- in the case of the --
16 in the case of the judgments commonly called the
17 National Mortgage Settlement, I was agreed to by the
18 parties.
19 Q. Was there like an application process?
20 A. No.
21 Q. You were just recommended?
22 A. I have no idea what happened. I -- I
23 don't. I was -- I was -- I was -- I received a
24 request -- a request for an indication of interest
25 and -- from the then Attorney General of North

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1 Carolina, and having said yes, I was then -- had
2 discussions with the governments and with the
3 servicers and was chosen.
4 Q. What day did you start as monitor for the
5 National Mortgage Settlement?
6 A. April 4th -- well, the -- the judgments
7 were filed April 4th and 5th of 2012.
8 Q. And what day did you start as the monitor
9 of the residential mortgage-backed security
10 settlement?
11 A. I honestly don't remember the date of that
12 settlement.
13 Q. How much was the total budget for the
14 monitor for the National Mortgage Settlement?
15 A. It varied over time. As it got -- in
16 recent -- during the time when the five original
17 consent judgments were ongoing, it was about
18 \$70 million a year. And in recent times, it is --
19 because there are fewer judgments now, it is a smaller
20 budget. It is still, in the last year, the year
21 just -- and we're on fiscal years ending June 30, it
22 was just under 60 million and it will go down from
23 there.
24 Q. Now, who pays this particular fee for
25 the -- I guess, for the monitoring of these

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1 settlements?
 2 A. The settlement -- the consent judgments
 3 for -- that comprise a settlement each require the
 4 adoption of a budget which has to be reviewed and
 5 approved. It has to be agreed to with the servicers
 6 and then reviewed and approved by a monitoring
 7 committee comprised of representatives of state and
 8 federal governments and -- so that's -- that's how it
 9 was -- was always done.
 10 Q. Now, do the banks pay for part of this --
 11 A. They paid the entire --
 12 Q. -- monitoring?
 13 A. -- they paid the -- they paid assessments
 14 under the budget.
 15 Q. And are you aware of the amount that
 16 JPMorgan Chase paid towards these budgets?
 17 A. I don't remember.
 18 Q. Now, how much were you personally
 19 compensated to be the monitor of these settlements?
 20 A. In the first year, it was around \$350,000
 21 and the subsequent years it was 650,000 per year.
 22 Q. And was that the same for the NMS and the
 23 RMBS settlements?
 24 A. No, um, no.
 25 Q. So the RMBS settlement, how much was --

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1 what's the budget for that and how much were you
 2 compensated?
 3 A. I don't remember exactly. I had a fee of
 4 200,000 per year of -- of work in that settlement.
 5 Q. Now, who were the third-party contractors
 6 and attorneys used by the Offices of the Monitor?
 7 A. I retained -- well, first, let me point
 8 out, I created the Office of Mortgage Settlement
 9 Oversight, Inc., which is a not-for-profit corporation
 10 through which I contracted with -- Poyner Spruill, LLP
 11 was a counsel -- one of my counsels. Smith Moore
 12 Leatherwood, which is another North Carolina firm, was
 13 another of my counsel. I then had -- I then -- OMSO
 14 contracted with six accounting firms, although they
 15 now call themselves professional services firms.
 16 Q. Right.
 17 A. One primary professional services firm
 18 which was BDO USA, which is a subsidiary of BDO
 19 Worldwide, I guess. That was the -- the primary firm.
 20 Then -- and that -- and then with Grant Thornton, Crow
 21 Horwath, Baker Tilly, and there -- there are longer
 22 strings of names that's on each of these firms, but
 23 there are -- there were six in all. RS -- what's now
 24 called RSM used to be called McGladrey. B -- BKD
 25 which is a large accounting firm from the midwest.

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1 And I think that's it.
 2 Q. Who are your primary contacts at BDO?
 3 A. Anthony Lendez was the engagement partner
 4 at BDO.
 5 Q. And how do spell his last name, do you
 6 know?
 7 A. L-E-N -- yes, I do. L-E-N-D-E-Z.
 8 Q. Who are your primary contacts at Grant
 9 Thornton?
 10 A. Oh, gosh, senior moment. Well, Dave
 11 Wedding is the chairman of Grant Thornton, but he was
 12 not my primary contact. I forget Aaron's last name,
 13 but I can -- I will correct it in my -- if allowed.
 14 Q. Who served as the outside counsel for
 15 OMSO?
 16 A. Poyner Spruill, LLP and Smith Moore
 17 Leatherwood.
 18 Q. And who were the primary individuals at
 19 Poyner Spruill that were handling your representation?
 20 MR. EPSTEIN: During what period of
 21 time are you referencing?
 22 MR. TANTILLO: From, I guess, the
 23 period of the settlement, 2012 until '14 or '15.
 24 THE WITNESS: The primary lawyers --
 25 lawyer at Poyner Spruill, LLP was William S.

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1 Cherry, Jr. There were a number of other
 2 lawyers from that firm who were engaged,
 3 involved.
 4 BY MR. TANTILLO:
 5 Q. Was -- you mentioned her name, Martha
 6 Svoboda, is that --
 7 A. Yes.
 8 Q. Was she also involved?
 9 A. Oh, yes, yes.
 10 Q. What about Scott Stein, was he also
 11 involved at some point?
 12 MR. EPSTEIN: You mean Josh Stein?
 13 BY MR. TANTILLO:
 14 Q. Excuse me, Josh Stein.
 15 A. Josh Stein was the primary lawyer or
 16 contact with Smith Moore Leatherwood, LLP which is a
 17 different law firm.
 18 Q. And what was the difference between what
 19 Smith Moore Leatherwood would do for OMSO versus
 20 Poyner Spruill?
 21 A. They both were part of a management group
 22 which helped me interpret the settlement documents and
 23 implement the settlement, so there was no -- there's
 24 no distinction of the kind of things they did.
 25 Q. Did you receive partnership compensation

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1 as a result of hiring Poyner Spruill for OMSO?
 2 A. No. I'm an income partner.
 3 Q. Was there any other compensation or
 4 referral fees?
 5 A. No.
 6 Q. Did the National Mortgage Settlement place
 7 a bar on you for not being retained by any party to
 8 settlement for a period of two years after the
 9 conclusion of the terms of the engagement?
 10 A. Yes.
 11 Q. Was Poyner Spruill or other professionals
 12 barred as well from serving for one year?
 13 A. Yes, although it's -- it's a more limited
 14 limitation than that, but yeah, and that year has
 15 passed, by the way.
 16 Q. If that's so, how are you able to be
 17 retained as the monitor of the -- of the RMBS
 18 settlement?
 19 A. It was the same -- it was not viewed by
 20 the parties of that settlement as being retention by
 21 Chase. Chase -- it's -- it's the same -- it was
 22 exactly the same kind of work that we did in the NMS,
 23 and so it was -- I was -- I was -- I was retained by
 24 agreement between the Justice Department and Chase and
 25 compensated by Chase, but I was -- I was to be

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1 independent.
 2 Q. What is the Monitoring Committee? I know
 3 you mentioned that previously.
 4 A. The Monitoring Committee is a committee
 5 provided for in the settlement documents that is
 6 comprised of representatives, at least in the
 7 original -- well, in the -- in the original five
 8 judgments, it was comprised of representatives of 15
 9 states and had federal government representation also
 10 from the Department of HUD and from the US Justice
 11 Department Trustee Program, which is a bankrupt --
 12 bankruptcy trustee program.
 13 Q. Do you remember who you dealt with at DOJ?
 14 A. Yes.
 15 Q. Who was that individual?
 16 A. Usually it was Diarmuid Gorham.
 17 Q. Do you remember who you dealt with
 18 regarding the state AGs?
 19 A. Well, there were again, it was a
 20 committee. The chairman of the committee was Patrick
 21 Madigan who is an assistant attorney general or deputy
 22 attorney general of Iowa and Richard Bischoff of
 23 Texas, they were cochairs.
 24 Q. And they were your two point people
 25 regarding the state AGs?

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1 A. Yes, although I met with that committee
 2 weekly to start and then biweekly for the entire
 3 period of the settlement.
 4 Q. Now, did the Monitor Committee change as
 5 people would leave government or not?
 6 A. Yes.
 7 Q. Do you remember any particular changes
 8 that occurred?
 9 A. No.
 10 MR. EPSTEIN: Objection to form.
 11 THE WITNESS: No. Yeah, no.
 12 BY MR. TANTILLO:
 13 Q. Was there a Monitoring Committee for the
 14 RMBS settlement?
 15 A. No.
 16 Q. Did you or your office participate in any
 17 cross servicer meetings?
 18 A. We had meetings with the servicers as a
 19 group.
 20 Q. So the meetings would be all the people
 21 involved in the National Mortgage Settlement together?
 22 A. Yes.
 23 Q. Who attended it and why? What was the
 24 purpose of those meetings?
 25 A. The purpose of the meetings was to

Page 21

1 establish uniform rules of performance and measurement
 2 for all the servicers and to work out disagreements
 3 over interpretations of the settlement doc --
 4 settlement -- the consent judgments, their terms.
 5 Q. So the different servicers, you want to
 6 make sure they were all on the same page?
 7 A. Yes.
 8 Q. In relation to your duties as monitor of
 9 the National Mortgage Settlement and the RMBS
 10 settlements, did you review JPMorgan Chase -- Chase's
 11 system of records?
 12 A. We did. I did and my colleagues did.
 13 Q. What did you do in order to review Chase's
 14 system of records?
 15 A. We met with the management, and by the
 16 way, we did this with every servicer, not just with
 17 Chase, with every servicer. We would meet with the
 18 management and with the people involved with the --
 19 the management of their mortgage servicing programs
 20 including the information technology people, and we
 21 would get a -- they would present to us the nature of
 22 their systems, and they all had several, the
 23 relationship with those systems, and we began with
 24 that process, a familiarization with those systems,
 25 which was preparatory to doing the work necessary to

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1 monitor the settlement.

2 Q. So would you actually go into the bank and

3 actually look at the various systems and they would

4 sort of walk you through that process?

5 A. We -- we would review the nature of the

6 systems themselves and had significant disclosures

7 about it. We never operated the system or in any way

8 took control of the system.

9 Q. Did your third-party representatives, such

10 as BDO and the various accounting firms, did they do a

11 process by which they would actually go into the

12 various system of records and perform various tests?

13 A. We didn't -- we never went into systems of

14 record. We would review output from systems of

15 record.

16 Q. And what was the nature of that output?

17 A. We would review the output to determine --

18 we would review with the managements the queries which

19 they would -- sent into the systems of record to -- to

20 extract, where necessary, populations of loans covered

21 by various metrics. And so it involved a long and

22 continuous, by my colleagues, interaction with the

23 managements of all the servicers and their technical

24 people to satisfy ourselves as best we could that we

25 were getting a complete population where needed.

Page 23

1 Q. Now, you mentioned various queries, what

2 type of queries were those?

3 A. I don't remember in detail. We have -- in

4 my reports to the court, we have fairly significant,

5 some discussions at least, of the kinds of things --

6 processes we went through.

7 Q. Would they be -- was there various types

8 of metric testing that was performed?

9 A. Well, the whole purpose -- the settlement

10 had two parts, one was consumer relief, the other was

11 servicing standards, measurement under metrics.

12 In the case of metrics, there was testing

13 which was provided for in the settle -- in the consent

14 judgment documents. They -- it was defined what we

15 were to do. And so this exercise I've just described

16 was in furtherance of implementing what the consent

17 judgments said.

18 Q. But you had to rely on what the various

19 servicers were providing to you?

20 A. Yes.

21 Q. So there was no independent process on

22 your part to verify the integrity of the systems of

23 records?

24 A. That is correct.

25 MR. PISTILLI: Objection.

Page 24

1 BY MR. TANTILLO:

2 Q. Can you -- let me just restate the

3 question because you answered it. So you said there's

4 no independent integrity?

5 MR. EPSTEIN: Objection to form.

6 THE WITNESS: No.

7 BY MR. TANTILLO:

8 Q. You had -- Mr. Smith, did you have a duty

9 to review the integrity of the systems of records?

10 A. We did not.

11 Q. Did any independent third party working

12 with OMSO review the integrity of the system of

13 records?

14 A. No.

15 Q. As monitor of the settlements, are you

16 responsible for reviewing the servicers' system of

17 records?

18 MR. EPSTEIN: Objection to form as to

19 what you mean by "records."

20 THE WITNESS: I actually don't

21 understand that question.

22 BY MR. TANTILLO:

23 Q. Under the National Mortgage Settle --

24 Settlement, who is responsible to review the

25 servicers' system of records?

Page 25

1 MR. EPSTEIN: Objection to form as to

2 what the word "reviewing" means.

3 MR. PISTILLI: Objection.

4 BY MR. TANTILLO:

5 Q. Let's move to IRG. What is the IRG, or

6 the Independent Review Group.

7 MR. EPSTEIN: Objection to form,

8 mischaracterizes the actual name of the group,

9 but go ahead.

10 THE WITNESS: Well, there is -- each of

11 the servicers was required by the consent

12 judgments to establish an independent review

13 group which was -- could be, and usually was,

14 employees of the servicers -- of the servicer

15 but who were independent of the mortgage

16 servicing operation. I would analogize that to

17 being independent in the way independent

18 auditors are -- are independent of management,

19 operating management, in another context. They

20 were to report in a way that was independent of

21 the -- of management such as to preserve their

22 independence. And they were review -- they were

23 the first review of management's submission of

24 its various proofs that it had complied.

25

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1 BY MR. TANTILLO:
2 Q. Mr. Smith, I'm going to show you what's
3 been marked as Exhibit Number 1.
4 (EXHIBIT NUMBER 1 WAS MARKED FOR IDENTIFICATION)
5 BY MR. TANTILLO:
6 Q. This is document Bates number
7 JPMC-MRS-00134158.
8 MR. TANTILLO: And I'll let counsel for
9 Chase review this.
10 MR. PISTILLI: Do you have copies?
11 MR. TANTILLO: Of course, I do.
12 MR. EPSTEIN: Do you have one for me as
13 well, please?
14 MR. TANTILLO: Yes, sir.
15 MR. EPSTEIN: Thank you.
16 BY MR. TANTILLO:
17 Q. Mr. Smith, if you could turn to page 2 of
18 this document.
19 MR. EPSTEIN: Oh, take whatever time
20 you need to review the document.
21 MR. PISTILLI: And sorry, do you have a
22 copy for me?
23 MR. TANTILLO: Yeah, of course.
24 MR. PISTILLI: Thank you.
25

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1 BY MR. TANTILLO:
2 Q. Please let me know when you've had a
3 chance to fully review the document.
4 (WITNESS REVIEWS DOCUMENT)
5 Mr. Smith, have you reviewed this
6 document, Exhibit Number 1?
7 A. Yes.
8 Q. Referring to page 2 of this document, you
9 just described how the IRG worked. Was this a fair
10 representation of your understanding of how this
11 particular process worked?
12 A. Well, it describes the organization
13 through which they did their work.
14 Q. And there is a -- sort of a dotted line
15 between the line of business and the IRG. Was that
16 the sort of the representation as you said previously
17 that there -- this group was supposed to be separate
18 from the line of business?
19 A. Yes.
20 Q. Thank you.
21 Let me ask you a question, what is the
22 work plan?
23 A. The work plan for each of the judgments
24 that comprised the settlement was a negotiated
25 document that outlined in some detail -- well, in

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1 detail the protocols under which the company, as I
2 recall, it would do its -- the IRG would do its work
3 in reviewing the company's performance and the
4 servicer's performance, and my colleagues and I would
5 do our work in validating or reviewing their work.
6 Q. And what type of items were inside a work
7 plan?
8 A. I don't remember the details of work
9 plans.
10 Q. Who would produce -- or who would create
11 this work plan?
12 A. It would be negotiated between the
13 servicer and my colleagues and me.
14 Q. And who created the final document itself
15 or what the work plan was?
16 A. I don't recall.
17 Q. Did the Department of Justice or the
18 Monitoring Committee see this work plan?
19 A. Yes.
20 Q. Does the work plan change any of the
21 requirements of the National Mortgage Settlement?
22 A. No.
23 Q. How about the HAMP, did it change any of
24 the requirements --
25 A. I'm sorry?

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1 Q. Did it change any of the requirements
2 regarding the HAMP?
3 A. We were not engaged in monitoring
4 conformity with HAMP.
5 MR. PISTILLI: I'm -- I'm just going to
6 make an objection. Just want to -- I've been
7 giving you some latitude to ask some background
8 questions, Brent, but as you know, the
9 magistrate judge on this case has entered an
10 order limiting discovery that can go forward at
11 this time. I've not yet heard a single question
12 that touches on any of the narrow issues on
13 which the magistrate judge has permitted
14 discovery. To the extent any of the questions
15 you've been asking so far have relevance to any
16 issues that I'm aware of would be relevant only
17 to the state portion of the MRS case or the now
18 dismissed DC action. So, you know, I'm really
19 going to have to insist as we move forward that
20 you comply with Judge Francis's order and limit
21 your questioning appropriately.
22 MR. TANTILLO: My response to that is
23 the following: The magistrate allowed us to
24 inquire into several areas. First of all, the
25 Recovery 1 system of records, the second lien

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1 extinguishment program, and the various lien
2 releases that occurred. I believe our position
3 is that all of this is relevant to those
4 particular claims that are within the -- Judge
5 Francis's order.
6 MR. PISTILLI: I disagree and I'm going
7 to continue to object, and if necessary, we'll
8 get Judge Francis on the phone to clarify.
9 THE WITNESS: May I consult with my
10 counsel for a minute?
11 (DISCUSSION HELD OFF THE RECORD)
12 THE VIDEOGRAPHER: The time is
13 9:59 a.m. We'll be going off record.
14 (RECESS TAKEN)
15 THE VIDEOGRAPHER: The time now is
16 10:05 a.m. We will be going back on record
17 after I offer a correction. I read the case
18 number incorrectly as 12-CV. It is
19 15-CV-00293-LTS-FCP. I apologize for that
20 error, and you may begin.
21 MR. TANTILLO: I want to go back to the
22 objection that Mr. Pistilli made. It's our
23 position that it's a standing objection that you
24 have at this point.
25 MR. PISTILLI: It's a standing

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1 objection, and I'll certainly object further
2 as -- you know, if the inappropriate questioning
3 continues.
4 MR. TANTILLO: Well, regarding that,
5 Mr. Pistilli, obviously, you are an invited
6 guest here. I believe that would be the
7 position Mr. Epstein would be able to object to
8 that. Under the local rules, that's my
9 understanding.
10 MR. PISTILLI: I -- I disagree. It is
11 Judge Francis's order in this case. Here to
12 represent Chase's interest in this case. I'm
13 entitled to object on the basis on your
14 continuing violation of a court order in this
15 case.
16 MR. EPSTEIN: And let me just -- since
17 you invoked my name, let me state for the
18 record, we view our position here today as -- as
19 a nonparty, and as a nonparty, we have not
20 studied the court's order, we have not studied
21 the Complaint, we have not studied what is or is
22 not relevant, and we're not here to make those
23 decisions today. And we will answer questions
24 that are calling for nonprivileged information
25 and we'll let the parties sort out the other

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1 issues that you all have been discussing.
2 MR. TANTILLO: Mr. Pistilli, I think
3 our position would be if there's any questions
4 in this deposition that you're opposed to, you
5 can move it to -- move to strike that testimony
6 at a later date.
7 MR. PISTILLI: So you'd violate the
8 court order now and then we move to strike
9 later? That -- that's unacceptable. We're
10 going to continue to object, and if the
11 inappropriate lines of questioning continue, we
12 reserve all rights to seek any appropriate
13 actions from the magistrate judge, either during
14 the course of the deposition or after.
15 MR. TANTILLO: That's reasonable, but I
16 think our position is that, obviously, we're
17 willing to allow you to move to strike the, you
18 know, matters and the questions later.
19 MR. PISTILLI: I understand your
20 position. Our position is that you may not ask
21 questions that violate a court order.
22 MR. TANTILLO: Well, obviously we have
23 a difference of opinion about that.
24 BY MR. TANTILLO:
25 Q. Regarding -- moving back to the systems of

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1 record, Mr. Smith, you stated you did not have the
2 ability to review the integrity of the systems of
3 record?
4 MR. PISTILLI: Objection, misstates
5 prior testimony.
6 MR. EPSTEIN: You can answer to the
7 extent you can.
8 THE WITNESS: We were not required to
9 do that and we were not under the orders under
10 the consent judgments given the authority to do
11 that. It was, one, we were allowed to receive
12 an independent report on the system of record
13 annually.
14 BY MR. TANTILLO:
15 Q. As part of the systems of record that you
16 reviewed, were you informed about a system of record
17 called Recovery 1?
18 A. Yes.
19 Q. As you understand it, what is Recovery 1?
20 A. I actually don't have a -- a -- a good
21 recollection of what Recovery 1 entails entirely.
22 I'm -- I'm aware it was one of the systems that Chase
23 had for managing the servicing portfolio.
24 Q. Mr. Smith, I'm showing you what has been
25 marked as Exhibit Number 2.

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1 (EXHIBIT NUMBER 2 WAS MARKED FOR IDENTIFICATION)
 2 MR. TANTILLO: Let me show it to Chase
 3 counsel.
 4 MR. PISTILLI: Could I have a copy,
 5 please?
 6 MR. TANTILLO: Of course.
 7 MR. EPSTEIN: Thank you.
 8 MR. TANTILLO: Yes, sir.
 9 (WITNESS REVIEWS DOCUMENT)
 10 BY MR. TANTILLO:
 11 Q. This document refers to a discovery by
 12 Grant Thorton. Were you aware of that, when Grant
 13 Thorton became aware of Recovery 1?
 14 A. Yes.
 15 MR. PISTILLI: Object to form.
 16 THE WITNESS: Well, no. I -- yeah, I
 17 was aware of the fact that Grant Thorton had
 18 determined that Recovery 1 loans were not being
 19 included in populations for metrics testing.
 20 BY MR. TANTILLO:
 21 Q. Would that surprise you?
 22 A. I don't remember whether it surprised me
 23 or not.
 24 Q. With regards to Grant Thorton's discovery,
 25 what actions did you take to resolve this particular

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1 problem?
 2 MR. EPSTEIN: Objection to the form of
 3 that question.
 4 MR. PISTILLI: Join.
 5 BY MR. TANTILLO:
 6 Q. What did you do when you learned of this
 7 discovery?
 8 A. I consulted with my colleagues about what
 9 an appropriate response would be. As this document
 10 suggests, there was an interpretative issue here and
 11 after consultation, determined that the loans in
 12 Recovery 1 should be included in populations and
 13 instructed -- in fact, instructed all parties to
 14 prospectively include these loans when defining
 15 populations for the metrics where they were -- could
 16 be included. Well, for all metrics, but they were in
 17 some and not others.
 18 Q. Now, you're referring to metrics, what is
 19 the metrics testing of the National Mortgage
 20 Settlement?
 21 A. Each -- the National Mortgage Settlement
 22 had about 300 -- just over 300 servicing standards.
 23 Measurement of performance of those standards was only
 24 to be done through metrics testing, that is to say the
 25 use of tests to determine whether the -- each of the

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1 servicers had -- had complied with the servicing
 2 standards that the metrics tested. We had originally
 3 29, that number grew to 33 for the original five over
 4 time, and so that was the -- by the way again, that
 5 was the only -- the only -- the extent of my authority
 6 to monitor compliance with the servicing standards was
 7 through this metrics testing.
 8 Q. How would the metrics testing work?
 9 A. The management in the first instance would
 10 determine a population of loans as to which the
 11 particular test applied. And this was all -- again,
 12 this was all included in both the consent judgment
 13 itself and in the work plans. I mean, they were --
 14 these were -- these were -- these weren't made up. I
 15 mean, these were determined when we started.
 16 They would conduct a series of queries --
 17 I mean, of -- there were actual test questions that
 18 had to be answered with regard to a -- well, to go
 19 back to a step. From the population, a statistically
 20 valid sample of loans would be extracted, and those
 21 loans would be subjected to a series of questions with
 22 regard to whether they -- they -- and -- and the
 23 answers to those questions would -- by -- through the
 24 answers to those questions, it would be determined
 25 whether the servicer had complied with the -- first of

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1 all, had passed the test. If it did not, there were
 2 consequences. But it would, thus, measure compliance
 3 with servicing standards through these various tests
 4 and then the IRG would review management's submission
 5 and would, if it agreed with management, assert that
 6 it -- on behalf of the company, that they had -- well,
 7 whatever the results were, that they had passed X
 8 number of tests and failed some others, not -- not --
 9 and the performance, by the way, is judged on the
 10 basis of a error rate. There was a permissible rate
 11 of error and it varied by metric, and if the company
 12 exceeded the error rate on a particular test, it did
 13 not pass the metrics, so the company would tell us how
 14 many they passed and how many they did not pass.
 15 The secondary professional firm would then
 16 essentially re-perform the same process to determine
 17 whether it agreed with management's assertions and BDO
 18 would do a final subtest of its -- of the SPF's work
 19 to determine whether it did. And once that had been
 20 done, I would report -- we would collate this for each
 21 of the servicers and I would report to the court on
 22 the -- on the -- on the results of those tests.
 23 Q. Was there a point in time when you
 24 reported to the court the exclusion of the Recovery 1
 25 population?

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1 A. I don't recall that I did.
 2 Q. Why did you add the three metrics?
 3 A. It's -- I actually added four metrics.
 4 Four metrics are added. Well, let's start from the
 5 beginning.
 6 Of the 304 servicing standards, not all
 7 were covered by the -- by the 19 metrics. There --
 8 there were some that weren't. And as we got
 9 experience with measurement of these metrics and as we
 10 learned what was going on in the marketplace through
 11 our complaints and through my trips to ten states
 12 around the country to meet with attorneys general,
 13 advocates and the like, it was determined that there
 14 were some areas where we needed further testing and so
 15 the four metrics were negotiated between myself, the
 16 Monitoring Committee, and the servicers to address
 17 additional areas of concern.
 18 Q. Was the exclusion of the Recovery 1
 19 population from the metrics testing one of your areas
 20 of concern?
 21 A. No.
 22 Q. Upon learning of the exclusion of
 23 Recovery 1, did you provide JPMorgan Chase the time to
 24 cure these violations?
 25 MR. PISTILLI: Objection.

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1 MR. EPSTEIN: Objection to form.
 2 MR. PISTILLI: And lacks foundation.
 3 THE WITNESS: My only job was to
 4 measure performance under the settlement and so
 5 we revised our protocols to include Recovery 1
 6 and proceeded forward.
 7 BY MR. TANTILLO:
 8 Q. Mr. Smith, did you provide JPMorgan Chase
 9 with extensions of time to bring Recovery 1 into
 10 metrics testing?
 11 A. I don't recall.
 12 Q. Mr. Smith, did you tell JPMorgan Chase
 13 that so long as they released the first and second
 14 liens they would not have to be subject to metrics
 15 testing?
 16 A. Whether I told them or not, I don't know.
 17 I -- I -- there was -- I don't remember.
 18 Q. Was there a point in time regarding
 19 Recovery 1 population, and obviously in terms of
 20 bringing the metrics testing, that you directed them
 21 to release the first and second liens?
 22 A. What I remember is, we included Recovery 1
 23 loans in our considerations of metrics testing and
 24 proceeded on that protocol perspective from a date I
 25 don't recall. I don't recall much else.

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1 (EXHIBIT NUMBER 3 WAS MARKED FOR IDENTIFICATION)
 2 MR. PISTILLI: Do you have copies?
 3 MR. TANTILLO: Yeah, of course.
 4 (WITNESS REVIEWS DOCUMENT)
 5 BY MR. TANTILLO:
 6 Q. Did OMSO instruct JPMorgan Chase that so
 7 long as the JPM -- JP -- JPMC, excuse me, is releasing
 8 the first and second liens on the subject properties
 9 that RCBI loans could be excluded from metrics
 10 testing?
 11 A. Well, this document, Exhibit 3, you've
 12 just given me says that, and it is -- would be
 13 consistent with the fact that the settlement only
 14 applied to loans as to which a mortgage -- an existing
 15 mortgage and lien.
 16 Q. Did you know that this caused Chase to
 17 file lien releases on loans that were sold in note
 18 sales to companies like my client, Mortgage Resolution
 19 Servicing?
 20 A. No.
 21 MR. PISTILLI: Objection, lacks
 22 foundation.
 23 BY MR. TANTILLO:
 24 Q. Was the intent of this directive that OMSO
 25 provided, was it to apply to all loans in Recovery 1

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1 or was it to apply just to occupied properties?
 2 MR. EPSTEIN: Objection to form.
 3 MR. PISTILLI: Join the objection.
 4 MR. EPSTEIN: You can answer to the
 5 extent you can.
 6 THE WITNESS: Yeah, I don't have
 7 anything to add to Exhibit 3.
 8 BY MR. TANTILLO:
 9 Q. Did you analyze the effects of such lien
 10 release on municipalities?
 11 A. No.
 12 Q. Did any municipalities contact you
 13 regarding their concerns?
 14 A. Could you be more specific? I mean, I
 15 don't --
 16 Q. Sure.
 17 A. -- about --
 18 Q. Did any municipalities contact you
 19 regarding their concerns and the impact of such lien
 20 releases in their communities?
 21 A. I don't recall that.
 22 (EXHIBIT NUMBER 4 WAS MARKED FOR IDENTIFICATION)
 23 BY MR. TANTILLO:
 24 Q. Mr. Smith, I'm going to show you what's
 25 been marked as Plaintiffs' Exhibit Number 4.

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1 A. Uh-huh.
 2 MR. TANTILLO: Excuse me, Chris.
 3 MR. PISTILLI: I'm just, at this point,
 4 going to renew my continuing objection that this
 5 line of questioning violates Judge Francis's
 6 order limiting discovery in this case. I can't
 7 see how any of this has any conceivable
 8 relevance to any of the issues that the court
 9 determined were appropriate subjects of
 10 discovery at this time, and certainly invite you
 11 to make a proffer, but, you know, this line of
 12 questioning is highly improper, in violation of
 13 Judge Francis's order as near as I can tell.
 14 MR. TANTILLO: I believe your objection
 15 is duly noted.
 16 MR. PISTILLI: You're declining my
 17 opportunity to explain what conceivable
 18 relevance this line of questioning has to issues
 19 that are permitted within the scope of Judge
 20 Francis's order limiting discovery?
 21 MR. TANTILLO: Judge Francis, in his
 22 order, said that anything regarding lien
 23 releases was applicable to the case that -- as
 24 it stands.
 25 MR. PISTILLI: Anything regarding

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1 releases of liens involving your client. None
 2 of this has any relevance to any of the
 3 commercial disputes between the parties in this
 4 case.
 5 MR. TANTILLO: Our position --
 6 MR. PISTILLI: I will continue my
 7 objection, reserve all rights to seek
 8 appropriate relief from the court.
 9 (WITNESS REVIEWS DOCUMENT)
 10 THE WITNESS: I was -- is there a
 11 question?
 12 BY MR. TANTILLO:
 13 Q. Yes, sir.
 14 Do you remember receiving this letter?
 15 A. I do, or letters like it, there were
 16 several.
 17 Q. What municipalities contacted you
 18 regarding letters like this?
 19 A. Milwaukee was the one I remember.
 20 Q. And upon receiving this letter, what was
 21 your response?
 22 A. I don't recall.
 23 Q. The City of Milwaukee, in this letter, was
 24 concerned, obviously, about the lien releases. And
 25 did the Office of the Monitor, I'm sorry, Office of

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1 Mortgage Settlement, did they do anything in terms of
 2 trying to relieve the concerns of cities like
 3 Milwaukee?
 4 A. No.
 5 Q. Mr. Smith, do you know what the pre DOJ
 6 lien release project was?
 7 A. No.
 8 Q. Did JPMorgan Chase inform you that they
 9 released liens prior to October 1st of 2012?
 10 A. I don't recall if they did.
 11 Q. Were you informed of the fact that lien
 12 releases were occurring by JPMorgan Chase through the
 13 crediting process of these various settlements?
 14 MR. EPSTEIN: Objection to form.
 15 THE WITNESS: Could you -- could you be
 16 a little more specific of what . . .
 17 BY MR. TANTILLO:
 18 Q. Yes, sir.
 19 Why would JPMorgan Chase release these
 20 liens, did you know?
 21 A. I'm not sure --
 22 MR. PISTILLI: Objection.
 23 THE WITNESS: I'm not sure I know what
 24 liens we're discussing.
 25

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1 BY MR. TANTILLO:
 2 Q. In Recovery 1?
 3 A. Oh, I don't know.
 4 Q. I'm going to show you a document marked
 5 Government Exhibit Number 5.
 6 MR. TANTILLO: Would it be 5 or 6?
 7 MR. EPSTEIN: 5.
 8 THE VIDEOGRAPHER: 5.
 9 MR. PISTILLI: Is the highlighting on
 10 this document yours or is it . . .
 11 MR. TANTILLO: I don't know.
 12 MR. PISTILLI: Copy, please.
 13 MR. TANTILLO: Sure.
 14 (EXHIBIT NUMBER 5 WAS MARKED FOR IDENTIFICATION)
 15 (WITNESS REVIEWS DOCUMENT)
 16 BY MR. TANTILLO:
 17 Q. This document refers to a date of
 18 April 1st, 2014.
 19 A. Uh-huh.
 20 Q. Do you recall OMSO providing a date of
 21 April 1st, 2014 for the Recovery 1 population to be --
 22 A. I don't recall that personally, no.
 23 Q. -- in compliance.
 24 I'm going to show you what's marked as
 25 Government's -- excuse me, Plaintiffs' Exhibit

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1 Number 6.
2 Will you hold them for me?
3 (EXHIBIT NUMBER 6 WAS MARKED FOR IDENTIFICATION)
4 MR. TANTILLO: I will show you that,
5 Chris, before I show it to him.
6 MR. EPSTEIN: Thank you.
7 MR. TANTILLO: Yes, sir.
8 MR. PISTILLI: Thanks.
9 THE WITNESS: I'm going to review this
10 with this one.
11 (WITNESS REVIEWS DOCUMENT)
12 BY MR. TANTILLO:
13 Q. On the first page of Exhibit Number 6, do
14 you see where it appears that there was an extension
15 for Recovery 1 that's on 5/1 of '14?
16 A. There was a -- I'm sorry, would you --
17 Q. There was an extension that was provided
18 by yourself in order for them to come into metrics
19 testing?
20 A. This is --
21 MR. PISTILLI: Objection, foundation.
22 THE WITNESS: Well, I don't -- this
23 page relates to Metric 31. That was one of the
24 additional metrics that were added after
25 experience with the original 19 -- 29 metrics,

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1 rather, I said 19 earlier, 29.
2 I don't know -- I don't know that
3 this -- well, I would not -- I don't know that I
4 can agree with your characterization of this as
5 an extension. This may well have been when we
6 began testing, but I don't know that either.
7 This was an added metric.
8 BY MR. TANTILLO:
9 Q. Mr. Smith, what constitutes borrower
10 remediation when there's a potential violation within
11 the settlements?
12 A. If a servicer had an error rate on a
13 metric that exceeded the error rate permitted by the
14 consent judgments and they were established by a
15 schedule in the consent judgments, there was a
16 remediation obligation. It -- the amount of the --
17 extent of the obligation depended on whether I
18 determined separately that the failure to pass the
19 test was a widespread error or merely -- or was not an
20 error.
21 So if there were a 5 percent error rate
22 and the actual error rate determined by test was
23 5.7 percent, that would not, as a rule, had been
24 determined by me to be widespread. In that case,
25 remediation would be done under the terms of the

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1 settlement for the borrowers in the sample who --
2 whose loans had not been properly dealt with.
3 If a failure was widespread, a servicer
4 would be required to determine the totality of the
5 remediation required for all borrowers in the
6 population affected by the metric.
7 Q. Was there ever a borrower remediation that
8 you filed or you courted regarding the Recovery 1
9 loans?
10 A. I -- any remediation activities for any
11 servicer would have been publicly disclosed in our
12 reports. The -- the failures did not have to do with
13 particular portfolios, it had to do with the entire
14 population, so it -- it -- so I can't really answer
15 your question.
16 Well, I can answer your question that
17 it -- that the remediation would be for all loans in
18 the population that was tested or for only in the --
19 in the sample or in the case of widespread error in
20 the total population.
21 Q. So if the total number of loans, for
22 example, was 8 million, hypothetically.
23 A. Yes, all right.
24 Q. But it's around that, let's say. If the
25 pool of loans, let's say hypothetically Recovery 1,

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1 was below the threshold error rate then --
2 A. Well --
3 MR. PISTILLI: Object to the form,
4 lacks foundation, calls for speculation.
5 THE WITNESS: -- each -- let me -- let
6 me restate it.
7 Each metric, there were 29 metrics, I
8 misstated earlier and I apologize, it went on up
9 to 33 in the case of Chase, ultimately. All but
10 three of those metrics did not involve testing.
11 They were so-called policy and procedures
12 metrics. Those, you either passed or failed --
13 the service either passed or failed by either
14 having done what the metric required or not
15 done, and it was pretty binary.
16 For the metrics that required testing,
17 sampling, in each case we would -- the servicer
18 first, then reviewed by IRG, then reviewed by us
19 twice, would determine a population of loans.
20 Those loans could be extracted -- depending on
21 the metric, could be extracted from any one of a
22 number of systems that the servicer operated.
23 There wasn't -- there weren't tests for
24 particular systems, they were -- it was for
25 loans covered by the metrics.

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1 If -- if a failure was not determined
2 to be widespread, if -- if the servicer exceeded
3 the threshold error rate but not to an extent
4 that caused me to determine it was widespread,
5 and I did in every case determine that, one way
6 or the other, the remediation would be given
7 only to the loans in the sample where the --
8 where the -- where there had been -- where the
9 company had not handled the loan -- or the
10 servicer had not handled the loan appropriately.
11 If I determined the failure to be
12 widespread, the servicer was required to look at
13 the entire population of loans covered by the
14 metric and to determine what the -- what the
15 remediation was required for all loans in that
16 population.
17 BY MR. TANTILLO:
18 Q. Does the settlement require you to go
19 beyond sample testing if there's an indication that
20 there may be a pattern of noncompliance?
21 A. If there is a pattern of -- if I
22 determined -- if -- if the servicer tells me there's a
23 pattern of noncompliance or if I determine in some way
24 there is a pattern of noncompliance, I have authority
25 to do additional investigation.

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1 Q. So the servicer was mainly responsible for
2 telling you if they were not in noncompliance?
3 MR. PISTILLI: Objection, misstates
4 prior testimony.
5 THE WITNESS: The settlement itself --
6 and again, noncompliance is with the servicing
7 standards, the 304 servicing standards. So if I
8 determined there was a pattern of noncompliance
9 with the servicing standard, what the -- what
10 the -- what I was allowed to do was create
11 another metric, by the way, not an open-ended --
12 not a -- not an investigation of a kind that
13 would lead to specific sanctions.
14 BY MR. TANTILLO:
15 Q. Was the threshold error rate applied on a
16 metric-by-metric bases?
17 A. Yes.
18 Q. Okay. So it wasn't applied to a
19 population as a whole?
20 MR. PISTILLI: Object to the form.
21 THE WITNESS: I don't understand -- I
22 don't understand the question.
23 BY MR. TANTILLO:
24 Q. For example, let's say, going back to
25 Metric 31.

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1 A. Uh-huh.
2 Q. If -- if they violate -- if they did -- if
3 they were within Metric 31 in terms of the sample that
4 was provided but perhaps they violated Metric 29, was
5 the -- the threshold error rate applied by each sample
6 or was it applied as a whole to all the loans?
7 MR. EPSTEIN: Objection to form.
8 MR. PISTILLI: Join.
9 THE WITNESS: A population was pooled
10 for each metric. A separate population was
11 pooled for each metric, and the sample was drawn
12 from each population separately and the testing
13 was done in each case for that metric only.
14 BY MR. TANTILLO:
15 Q. Who was responsible for pulling together
16 those sample pools?
17 A. The samples were drawn -- the
18 populations -- the populations were determined by the
19 operating management, reviewed by the IRG, and
20 reviewed by us. The samples were generally randomized
21 samples that were pooled using a software tool and it
22 varied and I can't name them, but we named them in our
23 reports. Each -- each sample was drawn by random,
24 not -- not -- not selected. In other words, it was --
25 the population was -- was developed and a randomized

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1 sample was drawn in a way we found satisfactory and
2 reviewed. That's what -- and it was from that sample
3 that the testing -- that sample was tested and then we
4 determined whether the threshold error rate had been
5 exceeded or not.
6 Q. If Chase had made a determination that a
7 certain group of loans, let's say Recovery 1, was not
8 subject to the servicing standards, would you have
9 ever received a sample pool?
10 MR. PISTILLI: Objection.
11 MR. EPSTEIN: Objection to form.
12 THE WITNESS: Yeah. We received, in
13 each case, populations developed by the company
14 on bases that we have reviewed. We have gone
15 through the -- the methodology they had used
16 to -- to determine the populations because all
17 this was done through computer query. And we
18 would then -- as I follow again, I'm getting to
19 be a broken record, but we would do the same
20 thing, we would -- we -- once the population was
21 agreed, the population would be pooled, the
22 sample would be drawn from the population by
23 randomization, and the testing would be done.
24 BY MR. TANTILLO:
25 Q. Let's turn to the RMBS settlement.

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1 A. Uh-huh.

2 Q. Did loans that were being credited

3 pursuant to the RMBS settlement have to have an intact

4 lien?

5 A. At the -- yes, before the relief was

6 given, yes.

7 Q. And after they did a validation of an

8 intact lien, at that point in time would the servicer

9 release the lien?

10 A. It depends on the form of relief they were

11 using. The -- the -- the RMBS settlement, like the

12 consent judgments that formed the National Mortgage

13 Settlement, had a -- what was called a menu of relief

14 options and it included a variety of -- of things.

15 First lien mortgage modification or forgiveness,

16 second lien mortgage modification or forgiveness,

17 short sale assistance. There were a number of others,

18 and, in fact, in the Chase matter, also included

19 things like loans to first-time home buyers or

20 included for credit. There was a list of things they

21 could do and so there might have been some relief

22 where a lien release was part of the relief, but it

23 wasn't mandated.

24 MR. PISTILLI: Just at this time, can I

25 reassert, again, my continuing objection to this

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1 line of questioning in that it blatantly, in my

2 opinion, violates Judge Francis's order in this

3 case limiting discovery.

4 Again, I would invite counsel for

5 Plaintiffs to make a proffer as to what

6 conceivable relevance this line of questioning

7 has to the commercial dispute between the

8 parties as brought in Plaintiffs' tort and

9 contract claims. I see absolutely no relevance

10 to any of the issues in this case that are not

11 subject to the discovery stay. I continue to

12 believe that this entire line of questioning is

13 in direct violation of Judge Francis's order.

14 MR. TANTILLO: Mr. Pistilli, my clients

15 were harmed by the various lien release

16 processes that occurred because Chase was

17 seeking consumer relief credit.

18 MR. PISTILLI: Whether your clients

19 were or weren't harmed by lien releases, your

20 entire line of questioning to Mr. Smith has no

21 relevance to either the fact of the harm or any

22 other pleaded issue in your claims.

23 MR. TANTILLO: We'd obviously beg to

24 differ. The fact and the circumstance and the

25 intent of why Chase was releasing my client's

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1 loans are particularly applicable to our causes

2 of action that are currently not stayed and

3 without the background information as about what

4 happened, we're -- all we're left with is the

5 fact that liens were released.

6 MR. PISTILLI: My continuing objection

7 stands and we reserve all rights to seek

8 appropriate sanctions from Judge Francis.

9 MR. TANTILLO: Break? We're going to

10 take a few-minute break.

11 THE VIDEOGRAPHER: The time now is

12 10:52 and we will be going off record. We're

13 off record at 10:52.

14 (RECESS TAKEN)

15 THE VIDEOGRAPHER: The time now is

16 11:15 a.m., and we are back on the record. You

17 may begin.

18 MR. TANTILLO: Before we begin, as we

19 were reviewing our exhibits I noticed that we

20 did have a privileged document that was from

21 Chase counsel to, I guess, various employees at

22 Chase. We have not used it, but I wanted to

23 hand it over to Mr. Pistilli. And we'll,

24 obviously, destroy that or any copies we have.

25 MR. PISTILLI: Great.

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1 MR. TANTILLO: Thank you. It's from

2 Mr. Wick.

3 MR. PISTILLI: Thank you.

4 MR. TANTILLO: Chris, you okay for us

5 to proceed?

6 MR. PISTILLI: Yes, go ahead.

7 BY MR. TANTILLO:

8 Q. Mr. Smith, can you tell us what is the

9 intact lien validation process?

10 A. No.

11 Q. As we stated earlier, there was a

12 requirement for the liens to be intact, I guess, in

13 order to receive credit. Was that for just the RMBS

14 settlement or also for the NMS settlement as well?

15 A. It was required -- determination that a

16 lien was intact was required for some forms of relief

17 in both the NMS and the RMBS settlement.

18 Q. Were there instances in both settlements

19 where a servicer could obtain credit if the loans were

20 charged off?

21 A. Yes. I believe so, yes.

22 Q. What instances come to mind to you?

23 A. Well, there was a form of relief, several

24 forms of relief, where liens were released to -- that

25 come to mind. There was actually a lien release form

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1 of relief in the NMS consent judgments. I'm not sure
2 that there was such a thing in -- I just don't
3 remember whether there's a similar one in Chase.
4 There were a variety of -- in second lien
5 relief there was -- release of the lien was not always
6 required, it depended -- the bank could elect -- the
7 servicer could elect to do it or not. There was
8 some -- there was an option to do a modification of a
9 second lien loan.
10 But in a substantial number of cases it
11 was easier for the servicers, frankly, to expunge the
12 lien and release -- expunge the loan, write it off, if
13 you call it, and release the lien. And there may have
14 been -- or there was a need to release the lien in
15 cases where there was a short sale.
16 Q. Let's dig into that further. What were
17 the instances in which they were required to release a
18 lien in a short sale? And do you remember the
19 provision for that?
20 MR. PISTILLI: Object to the form.
21 THE WITNESS: Well, by its vary nature
22 a short sale required that all liens on the
23 property be released.
24 BY MR. TANTILLO:
25 Q. What is the second lien extinguishment

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1 program, are you familiar with that?
2 A. I'm not.
3 Q. Are you familiar with the process of
4 sending letters to borrowers to say that we're
5 releasing your lien in order to obtain credit?
6 A. Letters to borrowers notifying them of a
7 release of lien were included in some of the
8 documentation that we reviewed in order to validate
9 relief.
10 Q. Do you know whether or not it was a
11 requirement that the debt actually be forgiven?
12 A. Some forms of relief gave credit for
13 forgiveness of loan amounts. It depends on the form
14 of relief we're talking about.
15 Q. Are there forms of relief that allow the
16 banks to continue to collect on the debt after they
17 release a lien or they send an extinguishment letter?
18 MR. PISTILLI: Object to the form.
19 THE WITNESS: In cases where we gave --
20 my recollection is that in cases where we gave
21 credit for relief where a lien was released -- I
22 better take that back.
23 There was -- there was a question of
24 whether a deficiency still remained or not. And
25 I don't want to generalize. I -- I can't recall

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1 a situation where we didn't require a waiver of
2 the deficiency. But I'm not -- I cannot tell
3 you right now that I remember with my own
4 knowledge whether that was required for all or
5 not.
6 BY MR. TANTILLO:
7 Q. Was it possible to do a loan modification
8 on loans in the RCD1 system?
9 A. I don't know.
10 Q. Were there instances in which a lien
11 release was considered a modification?
12 A. My recollection is that modifications were
13 generally done as to first lien loans, and that a
14 modification generally did not release a lien, it
15 merely reduced the principal amount of and/or extended
16 the time of payment.
17 Q. So you're not -- go ahead, I'm sorry.
18 A. I will say, in addition, there were
19 situations where if -- if there was a first and second
20 lien loan, there were times when it was required to
21 modify both to give the borrower relief in terms of
22 payment burden.
23 Q. And how would they achieve that, through
24 an application process?
25 A. In general, yes. Although, again,

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1 I -- yes.
2 Q. Were there instances where an application
3 process was not used?
4 A. I don't know. I don't recall.
5 Q. What is the alternative foreclosure
6 process? Are you familiar with that?
7 A. No.
8 Q. Are you familiar with the anti-blight
9 provisions of the various agreements?
10 A. I'm aware of them, yes.
11 Q. Could you tell us how those worked in --
12 regarding to the --
13 A. I will have a difficult time doing that,
14 because I don't believe any of the servicers availed
15 themselves of the anti-blight provisions. To my -- I
16 don't recall one.
17 Q. What is Regulation X?
18 A. This is very hard for me to say this, I
19 don't know. I can't describe it to you right now.
20 Q. Did -- did OMSO ever -- ever require the
21 servicers to release liens in order to be compliant
22 with Regulation X?
23 A. OMSO didn't require servicers to do
24 anything with regard to relief. The servicers granted
25 relief and presented it, first of all, to their IRG

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1 for validation, then to us for validation.
 2 Q. Did OMSO ever provide counsel regarding
 3 ways to be in compliance with Regulation X?
 4 A. I'm not aware of that, no.
 5 (EXHIBIT NUMBER 7 WAS MARKED FOR IDENTIFICATION)
 6 MR. PISTILLI: So the same question
 7 about this document, it's got some yellow
 8 highlighting on certain portions. Was that
 9 highlighting applied by Plaintiffs' counsel?
 10 MR. TANTILLO: I don't know, Chris.
 11 MR. PISTILLI: So you're not sure what
 12 the yellow highlighting is?
 13 MR. TANTILLO: Actually, not.
 14 MR. PISTILLI: Okay. Just want that
 15 clear for the record.
 16 BY MR. TANTILLO:
 17 Q. Mr. Smith, I'm handing you what's been
 18 marked as Plaintiffs' Exhibit Number 7. Could you
 19 please review that?
 20 (WITNESS REVIEWS DOCUMENT)
 21 Q. Have you reviewed the document, Mr. Smith?
 22 A. I have.
 23 Q. Do you recall providing Chase, the
 24 servicer in this particular situation, providing them
 25 with approval or guidance to release the liens in

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1 order to be compliant with the Regulation X?
 2 A. No.
 3 Q. Do you know anybody in your office who
 4 would have provided that kind of guidance?
 5 A. I'm not aware of anybody who did.
 6 Q. And that particular document does state
 7 that through speaking with somebody in your office
 8 they were provided guidance to do that?
 9 MR. EPSTEIN: Objection, was that a
 10 question?
 11 MR. TANTILLO: Yes, sir.
 12 MR. EPSTEIN: You can answer that
 13 question.
 14 THE WITNESS: The answer is that I
 15 don't know that we did this, and I don't know --
 16 if we did it, I don't know who did it, who gave
 17 this alleged guidance.
 18 BY MR. TANTILLO:
 19 Q. Would it -- would the individuals
 20 potentially be outside counsel that we've spoken about
 21 before either Mr. Josh Stein or Martha, was it
 22 Svobada?
 23 A. Svobada.
 24 Q. Svobada, excuse me.
 25 A. If this was given, it was given by one of

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1 those people.
 2 Q. Mr. Smith, what constitutes a de minimis
 3 violation pursuant to the settlements?
 4 A. Well, de minimis is not a term of -- of
 5 art in the settlement, so I don't have an answer to
 6 that -- or a defined term, I should say.
 7 Q. Are you aware of instances where various
 8 servicers would present to OMSO arguments to the
 9 degree that violation was quote/unquote de minimis
 10 and, therefore, not a violation of the agreements --
 11 or the judgments, excuse me?
 12 A. Well, the discussions we would have had
 13 with servicers would be about whether they had
 14 exceeded the threshold error rate or not.
 15 Q. Did you see your role as monitor as a
 16 regulatory function?
 17 MR. EPSTEIN: Objection to form.
 18 THE WITNESS: I saw my role as being a
 19 defined and specific one in the enforcement of
 20 an agreed consent judgment.
 21 BY MR. TANTILLO:
 22 Q. I'm going to turn back to -- you
 23 mentioned, I believe, three or four metrics that were
 24 binary in scope. Even though you -- you --
 25 A. Yeah, right.

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1 Q. When you're -- when the OMSO was
 2 evaluating those metrics, were those metrics done on a
 3 entire loan population, or were they done on various
 4 pools, for example, maybe MSP, VLS, Recovery 1?
 5 MR. PISTILLI: Objection to form.
 6 MR. EPSTEIN: Objection to form.
 7 THE WITNESS: The policies and
 8 procedures metrics that I can remember were
 9 metrics with regard to the entire mortgage
 10 servicing operation of the -- each servicer.
 11 BY MR. TANTILLO:
 12 Q. So either yes or no, they would -- they
 13 were in compliance or they weren't regarding those?
 14 A. Yes.
 15 Q. For example, somebody -- a single point of
 16 contact or --
 17 A. There was -- single point of contact was
 18 one, as I recall it. There were two others and,
 19 I'm -- third-party vendors was one, and I forget the
 20 third.
 21 Q. Do you know if the Recovery 1 system of
 22 records was able to have a single point of contact?
 23 MR. EPSTEIN: Objection to form.
 24 MR. PISTILLI: Join.
 25 THE WITNESS: I only know what we

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1 tested, and what we tested was overall policy
2 with -- with the -- all servicers.
3 BY MR. TANTILLO:
4 Q. Did you have a custom or customary way in
5 which you would work with various IRGs, various
6 servicers, to negotiate the work plans?
7 A. Well, first and foremost, we negotiated
8 the basic work plan template with all servicers
9 together. The entire -- well, the protocols that we
10 employed -- by "we" I mean myself and my colleagues
11 and -- and counsel, particularly counsel -- was to
12 negotiate a broad overall set of protocols under which
13 we would implement our monitoring function. We fine
14 tuned, somewhat, in the case of each servicer to the
15 extent necessary to reflect differences in their
16 systems.
17 Q. And was it for OMISO to determine who was
18 in compliance with these various servicing standards
19 of metrics in the way you were talking about?
20 MR. EPSTEIN: Objection to form.
21 THE WITNESS: Well, as I said to you
22 before, we determined compliance with the
23 servicing standards through the metrics testing
24 I described previously.
25

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1 BY MR. TANTILLO:
2 Q. Did OMISO require the servicers to undergo
3 what may be called a lien scrub?
4 A. No.
5 Q. So that was something that the servicers
6 would do on their own?
7 MR. PISTILLI: Objection, foundation.
8 THE WITNESS: I don't know.
9 BY MR. TANTILLO:
10 Q. What was the sequence of events or
11 requirements to enable a loan that, let's say, was
12 charged off to obtain credits under the various
13 settlements?
14 A. It would depend. It would depend on the
15 nature of the loan itself, when the relief was
16 granted, what category of relief was being sought. It
17 was -- and it was a variety of -- and whether the
18 relief had been granted appropriately and credited --
19 and properly credited.
20 Q. Was it possible for RCV1 loans or liens to
21 be intact and then released at the same time? Were
22 there -- was that a possibility?
23 MR. PISTILLI: Objection to form.
24 MR. EPSTEIN: Objection to form.
25 THE WITNESS: I don't understand the

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1 question.
2 BY MR. TANTILLO:
3 Q. The liens, obviously, at RC -- excuse me.
4 The liens at RCV1 were released. Was
5 the -- was it possible for Chase, for example, to
6 obtain credit on these lien in both settlements?
7 MR. EPSTEIN: Objection to form.
8 MR. PISTILLI: Join.
9 THE WITNESS: I can't answer that
10 question, because it's -- it's -- it was --
11 Chase sought -- and there's a public record on
12 this. We have -- we have published -- a
13 published report to the court on consumer relief
14 for all servicers, and I've published public
15 reports about all servicers and the forms of
16 relief they sought and the amounts they were
17 granted is public.
18 And that's -- the source of those loans
19 were -- were looked at at the time we did the
20 validation work. But it was a question -- what
21 we reported on was the overall result. If
22 you're asking whether the same loan could be
23 credited in both, the answer -- for the same
24 relief, the answer to that would be no.
25

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1 BY MR. TANTILLO:
2 Q. So it was not possible for one loan
3 number, let's say 1234, to receive credit in the
4 National Mortgage Settlement and then 1234 to receive
5 credit in the RMBS settlement?
6 MR. PISTILLI: Objection, misstates
7 prior testimony.
8 THE WITNESS: This is all very
9 hypothetical. It would depend, frankly. There
10 were some loans as -- if a short -- if a second
11 lien was expunged in connection with a short
12 sale, there may have been instances where short
13 sale relief was granted and second lien
14 expungement relief was granted. And it's
15 possible it could have been the two different
16 settlements, but I -- I don't know whether it
17 was or not.
18 BY MR. TANTILLO:
19 Q. Were bankruptcy loans subject to consumer
20 relief credit?
21 A. Loans of debtors in bankruptcy could
22 receive consumer relief credit.
23 Q. And were you aware of any RCD1 loans or
24 Recovery 1 system loans that received credit that were
25 in bankruptcy?

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1 A. I'm not aware of that, no. That's to say
2 I don't know.

3 Q. With regards to the Recovery 1 system of
4 loans, did you ever at any time notify other
5 regulators such as Department of Justice or the
6 Consumer Financial Protection Bureau of the fact that
7 the Recovery 1 loans were not being serviced?
8 MR. EPSTEIN: Objection to form.
9 MR. PISTILLI: Join.
10 THE WITNESS: No.

11 BY MR. TANTILLO:

12 Q. Was there a reason why you didn't do so?
13 MR. EPSTEIN: Same objection.
14 THE WITNESS: I didn't -- your question
15 is about did I know they weren't being serviced,
16 and the answer is I didn't know that.

17 BY MR. TANTILLO:

18 Q. You previously stated that only loans that
19 have an intact lien can be serviced; is that correct?
20 MR. EPSTEIN: Objection to form.
21 THE WITNESS: What was said was a
22 predicate of the servicing -- the application of
23 servicing standards was that there be, yeah, an
24 intact lien, that it be -- there be a mortgage.
25 It was a mortgage settlement, and so there had

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1 to be a mortgage.
2 BY MR. TANTILLO:

3 Q. So under that theory, loans that were
4 within the Recovery 1 system that were lien released
5 could have not received consumer relief credit?
6 MR. PISTILLI: Object to the form,
7 misstates prior testimony, calls for a legal
8 conclusion.
9 THE WITNESS: That, it depends on
10 when -- I don't think I can say that, no. If --
11 if there was -- if there was a valid lien that
12 was released, a servicer could obtain credit for
13 the release of that loan. Now, it wasn't a
14 significant amount of release. It was -- if
15 that was all there was, it was pretty -- it was
16 a very, very -- on the scoring system was a very
17 small amount of credit.
18 You had to have an existing loan, an
19 intact loan, before the relief was given and
20 claimed, and the -- and then you could claim the
21 relief if it were within -- granted within the
22 time periods.

23 BY MR. TANTILLO:

24 Q. So if the lien was intact during the time
25 periods of the settlement, were they able to obtain

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1 relief?
2 A. It was --
3 MR. PISTILLI: Object to the form.
4 THE WITNESS: It was -- it was possible
5 to do that.
6 BY MR. TANTILLO:
7 Q. And if they had released the liens prior
8 to the beginning of the settlement, wouldn't they have
9 been able to obtain consumer relief on those releases?
10 A. No.
11 Q. Did you see a equivalent system of records
12 similar to Recovery 1 with other banks?
13 A. We did a thorough review of the systems of
14 all of the servicers as part of our -- our --
15 establishment of our protocols, our infrastructure. I
16 don't recall the structure, myself, of any of the
17 other servicers.
18 Q. So you weren't aware of other servicers
19 having a system of records of charge-off loans
20 or . . .
21 Let's leave the question.
22 MR. PISTILLI: I object to the form,
23 misstates prior testimony.
24 THE WITNESS: Well, each of the
25 servicers charged off loans, and they were

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1 accounted for in a system that each of them had.
2 But the precise nature of those systems and how
3 they did it would vary between servicers,
4 probably. I say "probably," again, because I
5 don't recall the specifics.
6 BY MR. TANTILLO:
7 Q. Were you aware of instances where prior to
8 the entry of the starting date of the NMS and the RMBS
9 settlements that servicers would release loans so they
10 would not be subject to metric testing?
11 A. I don't remember specifics. We -- in each
12 case of each servicer we did a -- we did a careful
13 review to make sure that they -- we did not give
14 credit for that kind of situation.
15 Q. So in the event that they had done that,
16 they would not receive credit for those loans?
17 A. They should not receive credit.
18 Q. Would you -- would it have surprised you
19 if various servicers had released liens prior to entry
20 into the National Mortgage Settlement?
21 A. I don't -- well, I don't think "surprised"
22 is the right word. Our job was to determine that we
23 did not give credit in those circumstances.
24 Q. And let me ask you, how would you do that?
25 How would you know if a servicer had previously

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1 released a lien and then subsequently tried to obtain
2 credit for it?
3 A. All the information we had that we used,
4 and there was an extensive protocol developed with
5 each servicer to determine whether and how much credit
6 should be given, was gone through in each case. But
7 in each case, it was determined with regard -- by
8 reference to the system of record itself.
9 Q. Was it possible to compare the loan data
10 based on loan numbers, or how was that done? Was
11 it -- was it done through a particular identification
12 requirement?
13 A. Both.
14 MR. PISTILLI: Object to the form.
15 THE WITNESS: Both.
16 BY MR. TANTILLO:
17 Q. It was done through loan number and what
18 other method?
19 A. We had -- it was mainly through loan
20 number. But we took careful steps to assure that we
21 knew -- we -- to identify a loan and to follow its
22 history through the servicer's system of record. But
23 we -- and we would rely on the -- and if necessary,
24 and I don't know in this case what else we -- whether
25 we did something else, I don't remember that we did --

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1 perhaps, require additional information to assure
2 ourselves that the loan was intact, for example, and a
3 bunch -- and a number of other things. Then determine
4 how much relief had been given and -- and whether the
5 credit was proper -- the amount of the credit was
6 proper.
7 Q. And how would a servicer either notify you
8 or certify that, for example, a lien was intact, as
9 just one example?
10 A. I can't give you details about that. It
11 was -- we would do it by reference, again, through our
12 agreed protocols, to the corporate records of the
13 servicer through which we would determine that the
14 lien had been intact.
15 Q. Did the various servicers require -- did
16 you require them to file certifications from various
17 individuals?
18 A. There were circumstances where we did. I
19 don't recall all of them.
20 Q. And why would they need to file a type of
21 certification with the --
22 A. It depends. It varies. And I don't
23 recall the details.
24 (EXHIBIT NUMBER 8 WAS MARKED FOR IDENTIFICATION)
25

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1 BY MR. TANTILLO:
2 Q. Mr. Smith, have you reviewed Plaintiffs'
3 Exhibit Number 7?
4 MR. EPSTEIN: 8.
5 THE WITNESS: 8.
6 MR. TANTILLO: 8, I apologize.
7 BY MR. TANTILLO:
8 Q. Was this the type of certification that
9 you would receive?
10 A. This appears to be a certification that --
11 it's actually not addressed to me, but it does refer
12 to the National Mortgage Settlement.
13 Q. Was this similar to the types of
14 certifications that you would receive from time to
15 time?
16 A. This is a certification we received.
17 Q. And within that certification it,
18 obviously, talks about various things that they did in
19 order to comply with the settlement, obviously, in
20 terms of intact lien validations. Was that a
21 requirement that your office had in order for them to
22 ensure the various systems of record were being
23 reviewed and, obviously, in terms of the fact that
24 there was actually an intact lien?
25 MR. EPSTEIN: Objection to form.

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1 MR. PISTILLI: Objection to form.
2 THE WITNESS: I'm not going to
3 speculate on this. It's, clearly, we had --
4 there was a purpose for which we had -- we may
5 well have sought assurance that liens had been
6 released. It is not clear to me -- well, it
7 says -- this probably does refer -- I don't want
8 to speculate -- to eCredit as a specific kind
9 of -- of consumer relief credit.
10 BY MR. TANTILLO:
11 Q. What was --
12 A. Second lien -- yeah, okay, for second
13 lien -- second lien extinguishments. The issue was
14 how to establish for second liens that had been
15 extinguished -- where they claimed credit for an
16 extinguishment of a second lien, how to -- how to
17 determine that the lien had been valid -- intact to
18 start and had, then, been completely -- well, had been
19 released.
20 Q. And what was the concern for OMSO
21 regarding that?
22 MR. PISTILLI: Object to the form.
23 THE WITNESS: It was merely -- it was
24 merely a form of evidence to assure ourselves
25 that the actions that had been taken under

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1 Section 2E of the consumer relief menu or,
2 perhaps, the consumer relief exhibit had been
3 done.
4 BY MR. TANTILLO:
5 Q. And in order for a servicer to obtain
6 relief under 2E, what requirements were required?
7 A. I'd have to look at the -- at the, you
8 know, the schedule again. I'm reasonably confident
9 that this is -- this regards seeking credit for the
10 expungement of a loan. And I don't recall whether
11 it's -- whether this -- this relief relates also to
12 the -- how far past due it was. 2E, as I recall it,
13 was 180 days past due, and the relief was -- the
14 amount of relief was fairly small.
15 Q. Was there a provision in either the
16 National Mortgage Settlement or in the RMBS settlement
17 where a servicer could obtain relief under what this
18 document calls HUD Consumer Relief Program?
19 A. The National Mortgage Settlement contained
20 a menu -- well, first of all, it had a -- it had a --
21 an exhibit that described in detail the kinds of
22 consumer relief for which credit would be given. It,
23 then, had a menu attached to that exhibit which gave
24 some additional detail and also disclosed how much --
25 how much credit would be given for each category of

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1 relief.
2 Q. However, was there a particular part of --
3 either of the RMBS settlement or the National Mortgage
4 Settlement that related to something called HUD
5 Consumer Relief?
6 MR. PISTILLI: Objection.
7 THE WITNESS: I don't recall -- I don't
8 recall that it was.
9 MR. PISTILLI: And that -- the
10 objection was it calls for a legal conclusion.
11 BY MR. TANTILLO:
12 Q. Regarding the RMBS settlements, was Chase
13 able to receive credit for lien releases in what's
14 called hardest hit areas?
15 A. Chase was able to receive credit for -- I
16 thought it was -- my recollection is for credit
17 extended in hardest hit areas.
18 Q. And "credit extended" meaning what?
19 A. Meaning new loans.
20 Q. New loans?
21 A. Yes. Or -- but I -- again, I'd -- I would
22 rather refer to the document itself. There was --
23 there was credit allowed for relief in hardest hit
24 areas.
25 Q. And was a lien release part of that

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1 relief?
2 A. May have been, I don't recall.
3 (EXHIBIT NUMBER 9 WAS MARKED FOR IDENTIFICATION)
4 MR. EPSTEIN: Thank you.
5 MR. TANTILLO: Yes, sir.
6 THE WITNESS: I take it you want me to
7 review this?
8 BY MR. TANTILLO:
9 Q. Yes, sir, I apologize.
10 (WITNESS REVIEWS DOCUMENT)
11 A. Yes.
12 Q. Mr. Smith, do you recognize Government's
13 Exhibit Number 9 -- I'm sorry, as Government --
14 A. I'm sorry?
15 Q. Sorry, Prosecutor.
16 Do you remember -- have you -- have you
17 reviewed that document -- I'm sorry, have reviewed --
18 A. Yes.
19 Q. -- Plaintiffs' Exhibit Number 9?
20 A. I have.
21 Q. And it mentions in there, once again, this
22 HUD Consumer Relief Program.
23 MR. EPSTEIN: Wait, wait for a
24 question.
25 THE WITNESS: Thank you.

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1 BY MR. TANTILLO:
2 Q. The HUD Consumer Relief Program, do you
3 know what they're talking about here?
4 A. I believe that they are talking about the
5 RMBS settlement. They distinguished between the NMS
6 settlement which they called the DOJ settlement and
7 the RMBS settlement which they called the HUD
8 settlement. They called the internal review group in
9 the NMS the internal review group -- I've been
10 chastised by Mr. Epstein about this -- the IRG. And
11 they called it the -- it's equivalent in the Chase
12 document, the HRG for HUD.
13 Q. So, once again, they -- you were -- your
14 office was requiring them to ensure that they had lien
15 validations over various periods of time, because
16 it's -- obviously, this is a different date than
17 Plaintiffs' Exhibit Number, I believe, 8?
18 MR. PISTILLI: Objection to form and --
19 MR. EPSTEIN: Objection to form.
20 THE WITNESS: Well, it's --
21 MR. PISTILLI: -- also lacks
22 foundation.
23 THE WITNESS: This was a document,
24 clearly, delivered in -- well, clearly, probably
25 delivered in connection with the RMBS settlement

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1 and deals with the validation of liens.
 2 BY MR. TANTILLO:
 3 Q. And under the RMBS settlement, how --
 4 obviously, there was a menu of options that -- that
 5 Chase had to obtain credit. One of those menu options
 6 was releasing the first lien?
 7 A. Although, it's -- in -- in almost every
 8 case in almost every settlement first lien loans were
 9 modified. There may have been some cases where a
 10 first lien was expunged, but they're very few. Most
 11 of the -- most of the expungement activity was for
 12 second lien loans.
 13 (EXHIBIT NUMBER 10 WAS MARKED FOR IDENTIFICATION)
 14 MR. PISTILLI: Same question. The
 15 yellow highlighting on this document, do you
 16 know where that comes from?
 17 MR. TANTILLO: I don't, but I'll make
 18 sure that it doesn't happen again.
 19 (WITNESS REVIEWS DOCUMENT)
 20 BY MR. TANTILLO:
 21 Q. Mr. Smith, have you reviewed Plaintiffs'
 22 Exhibit Number 10?
 23 A. Yes.
 24 Q. Regarding this document, it states that:
 25 (Reading)

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1 There is approximately 699,000
 2 loans that are still in the Recovery 1
 3 on or about October 1st of 2014.
 4 Was there a directive by your office to
 5 release these liens?
 6 MR. PISTILLI: Object to the form.
 7 THE WITNESS: As I believe I said
 8 before, I don't know that we directed any
 9 release of liens. There may have been an
 10 agreement to -- for release of liens. I don't
 11 know what purpose this -- this certification --
 12 or this document has been generated for. If --
 13 some prior exhibits discussed an agreement
 14 regarding inclusion or noninclusion in metrics
 15 testing, but it's not clear to me why this was
 16 prepared.
 17 BY MR. TANTILLO:
 18 Q. Did the -- do you recall whether or not
 19 the Office of Mortgage Settlement required Chase to
 20 bring the entire Recovery 1 population in on
 21 September 30th of 2014?
 22 A. I do not recall that.
 23 Q. Was there a period of time in which your
 24 office counseled, obviously not directed, Chase to
 25 bring these loans into metric testing?

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1 A. As previously -- as I have previously
 2 testified, there was a determination to include
 3 Recovery 1 loans in metrics testing if they had,
 4 according to the documentation, if they had an extent
 5 lien, an existing lien.
 6 Q. So long as there was not an extent lien,
 7 the lien you released, these loans would have not have
 8 been subject to metrics testing?
 9 A. That's correct.
 10 (EXHIBIT NUMBER 11 WAS MARKED FOR IDENTIFICATION)
 11 MR. PISTILLI: Same question regarding
 12 the yellow highlighting, and I assume the same
 13 answer unless you tell me otherwise.
 14 MR. TANTILLO: It's the same answer,
 15 Mr. Pistilli. But as I assure you, it won't
 16 happen again.
 17 MR. PISTILLI: Yellow highlighting is
 18 not a problem, I just want to establish my
 19 record that the document that's being shown has
 20 been changed from the version in which it was
 21 produced.
 22 (WITNESS REVIEWS DOCUMENT)
 23 BY MR. TANTILLO:
 24 Q. Mr. Smith, have you had a chance to review
 25 Exhibit Number 11?

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1 A. Yes.
 2 Q. Does that document in any way refresh your
 3 recollection at all about the inclusion of these loans
 4 into metrics testing?
 5 A. As regards what we did, the answer is no.
 6 (EXHIBIT NUMBER 12 WAS MARKED FOR IDENTIFICATION)
 7 MR. PISTILLI: This is my copy.
 8 MR. TANTILLO: Let you label it.
 9 MR. PISTILLI: Same observation
 10 regarding the highlighting of the document.
 11 MR. TANTILLO: I'll have the same
 12 response.
 13 MR. PISTILLI: Is this the same as
 14 Exhibit 5, Counsel?
 15 MR. EPSTEIN: I was thinking --
 16 THE WITNESS: This looks very similar
 17 to a document we've already gone over.
 18 MR. EPSTEIN: It is.
 19 MR. TANTILLO: I apologize.
 20 Yes, it is, sir.
 21 BY MR. TANTILLO:
 22 Q. Regarding -- I'm sure you just reviewed
 23 this document again.
 24 A. Well, actually not.
 25 Q. Oh, Number 12. All right. I'll let you

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1 take a look, Mr. Smith.
 2 (WITNESS REVIEWS DOCUMENT)
 3 A. Yes, all right.
 4 Q. Mr. Smith, this document refers to an
 5 extension of a date and to April 1st of 2014. Do you
 6 recall that at all?
 7 A. No.
 8 Q. Do you know who in your office would have
 9 provided an extension?
 10 A. Well, I would have done it on the basis of
 11 discussion with counsel.
 12 Q. And that would have been either somebody
 13 from this office, Poyner Spruill, or was it
 14 Leatherwood?
 15 MR. EPSTEIN: Smith Moore.
 16 THE WITNESS: Smith Moore Leatherwood,
 17 yeah.
 18 BY MR. TANTILLO:
 19 Q. And beyond those individuals, would you
 20 have also asked your third-party servicers, the people
 21 at BDO or Grant Thornton --
 22 A. No.
 23 Q. -- about that decision?
 24 A. No.
 25 Q. Now, was it customary or common for your

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1 office to be in direct contact with the servicer
 2 regarding issues like these?
 3 A. We were in contact with all servicers on a
 4 regular basis. First of all, we did -- the validation
 5 process itself had us in almost continuous contact
 6 with the servicers. If there were issues of policy,
 7 we, generally, dealt with all of them together, not
 8 individually.
 9 Q. Was there a particular flow of information
 10 and how it would reach to you? Would it go from the
 11 IRG to BDO to Grant Thornton to you, or was there a
 12 way that the servicers could contact you directly and
 13 ask these sorts of questions about metrics testing?
 14 MR. EPSTEIN: Well, objection to form.
 15 By "you" do you mean you Joe Smith, or do you
 16 mean OMSO?
 17 MR. TANTILLO: You Joe Smith and OMSO.
 18 THE WITNESS: There was a constant flow
 19 of discussion about issues regarding the
 20 implementation of the settlement. And the
 21 initial contacts could have come either --
 22 probably would have -- could have come through a
 23 number of those channels you just mentioned.
 24 BY MR. TANTILLO:
 25 Q. Now, were you only able to interact with

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1 IRG representatives of the servicer, or could you be
 2 in direct contact with people at the line of business
 3 level?
 4 MR. PISTILLI: Object to the form.
 5 MR. EPSTEIN: And, again, by "you" you
 6 mean Joe Smith, OMSO and all affiliated people?
 7 MR. TANTILLO: Yes, sir.
 8 THE WITNESS: In most -- in the
 9 majority of cases my colleagues were in contact
 10 with the internal review groups, the people
 11 outside the operation. There were some meetings
 12 where my operational people met with both the
 13 IRG and the servicer operations personnel. But
 14 that was to iron out tech -- any technical --
 15 those were very technical meetings, iron out
 16 technical issues.
 17 BY MR. TANTILLO:
 18 Q. So would it be fair to say, generally, you
 19 were in communication with representatives of the
 20 servicers' IRG?
 21 A. Yes. In general, yes.
 22 Q. Now, were you aware of any sort of cross
 23 communication with sort of the IRG and the line of
 24 business people in relation to the duties to fulfill
 25 these settlements?

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1 MR. EPSTEIN: Objection to form.
 2 MR. PISTILLI: Join.
 3 THE WITNESS: There did have to be
 4 contact between the IRG and the -- and the --
 5 and the management to assure that the -- that
 6 the management understood what it was supposed
 7 to do, because the initial presentation of
 8 information was from the management's
 9 information. So there were contacts.
 10 BY MR. TANTILLO:
 11 Q. As you understand it and from your own
 12 experience, was the data that you were receiving from
 13 the various servicers as well as Chase, in particular,
 14 was that being done in an independent way with --
 15 inside the bank or the servicer, or was it being drawn
 16 from the management and line of business?
 17 MR. PISTILLI: Objection to form.
 18 MR. EPSTEIN: Objection to form.
 19 THE WITNESS: All information that was
 20 used to develop populations, to develop the
 21 background information on the basis of which
 22 both monitoring was done and consumer relief was
 23 done, was developed through management
 24 information systems that were under control of
 25 the management. There was contact between the

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<p style="text-align: right;">Page 90</p> <p>1 IRG and the management to determine the 2 populations were correctly defined and that the 3 populations were correctly pooled and the -- and 4 to determine -- and there were also issues when 5 the IRG found, and this was for all servicers as 6 they often -- well, not often, but sometimes 7 did, that a loan had not passed, was not able -- 8 for metrics testing had not passed.</p> <p>9 There were discussions between the -- 10 the IRG and the servicer and management about 11 whether that was a correct determination or not. 12 And we reviewed all that. I mean, we were aware 13 of those conversations. And then we did our own 14 validation which was entirely separate from 15 either of those two entities.</p> <p>16 BY MR. TANTILLO: 17 Q. The samples that you just spoke of, was 18 there a certain percentage of loans that were sampled 19 from various buckets or various systems of record, or 20 was it just -- 21 A. What -- 22 MR. EPSTEIN: Let him finish his 23 question. 24 BY MR. TANTILLO: 25 Q. -- or hypothetically 1 percent of all</p>	<p style="text-align: right;">Page 92</p> <p>1 ourselves and my people who know this stuff satisfied 2 themselves, that the samples were drawn in a random 3 method from a properly -- as far -- as best we could 4 tell a properly determined population, and the test -- 5 the testing was then applied to that random sample.</p> <p>6 Q. Understood. 7 Was there a certain percentage that was 8 used? 9 A. It -- the number depended -- no. The 10 short answer to that is no. 11 Q. Was it proportionally done by the number 12 of loans that were in the population? 13 A. Yes. 14 Q. And let's move to consumer relief. Was a 15 similar type of sampling process used for consumer 16 relief? 17 A. In consumer relief the management would 18 assert that it had given relief on a defined number of 19 loans which I guess you would also call a -- a 20 population. It would be divided by forms of relief. 21 So first lien relief, they would submit. That was one 22 population. Second lien relief or expungement is 23 another population. Short sales and other was a third 24 population. 25 And a statistically valid random sample</p>
<p style="text-align: right;">Page 91</p> <p>1 loans in Chase's system of records. 2 MR. PISTILLI: Object to the form. 3 THE WITNESS: I will need you to be 4 more specific about that. Are we talking about 5 metrics testing or consumer relief? 6 BY MR. TANTILLO: 7 Q. I'm talking about metrics testing, and 8 then we can go to consumer relief. 9 In terms of metrics testing, when you 10 received a sample, do you know the sample size in 11 terms of percentages that were used in order to 12 conduct the metrics testing? 13 A. Yes. 14 Q. And what was that sample size? 15 A. The sample size would depend on the 16 population, the number of total loans in the 17 population. The sample was then drawn based on an 18 agreed protocol between the operating management, the 19 IRG and the SPF and PPF, my people, to -- to derive a 20 random -- randomized sample -- statistically valid 21 randomized sample from the population for the metric 22 in question. 23 And that the statistical analysts had an 24 agreed protocol which is apparently is -- and this is 25 not my field, but I was satisfied and we satisfied</p>	<p style="text-align: right;">Page 93</p> <p>1 was drawn for each of those separate populations, and 2 it was -- it was tested to determine whether the loan 3 was an appropriate loan for relief of any kind or of 4 the kind given, whether the kind of relief given was 5 given within the time frame for which was authorized 6 and -- and was done in accordance with the 7 requirements of the settlement. There were 8 requirements about what kinds of loans could be 9 included and how much relief -- how the relief had to 10 be given. 11 And the third thing was, had the -- had 12 the management and the IRG given the proper amount of 13 credit with regard to each of the loans for which 14 relief had been granted. And if, in this case, the 15 error -- the total error rate for any of those 16 populations exceeded 1 percent, they would turn -- 17 they were returned and not -- credit was not given for 18 the entire population. They had to do it over. 19 That's for all servicers. 20 Q. Did OMSO ever receive from a servicer all 21 of the raw data of every single loan that, let's say 22 Chase for example, took credit for? 23 A. I don't know what you mean. 24 Q. Do you have in your possession or does one 25 of your third-party servicer-type people, do they have</p>

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1 in their possession a list of every single lien for
2 which Chase took credit?
3 A. Chase has that information.
4 Q. But you do not?
5 A. I do not believe we have it now.
6 Q. Was there a point in time when you did
7 have that information?
8 A. We never took possession of information,
9 data, specific information regarding any of the loans.
10 We reviewed them in data rooms, and we did not -- and
11 this is, by the way, is all in our published reports.
12 We made it clear we did not take possession, we
13 reviewed it through -- through review, I think were
14 called review rooms that were set up in the data
15 system of the -- all the servicers.
16 Q. In order for you and OMSO to feel as if
17 the credit -- the crediting process was appropriate,
18 you relied on the samples they provided you of the
19 crediting?
20 MR. PISTILLI: Objection.
21 THE WITNESS: We determined that the
22 sample had been properly pooled, and we -- and
23 we -- we, then, did testing based on the data
24 that was given to us, yes.
25 MR. TANTILLO: One moment, please.

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1 MR. SCHNEIDER: Everybody waiting on
2 me, sorry.
3 BY MR. TANTILLO:
4 Q. Do you know if the sampling that was done
5 and the crediting that was done in any way violated
6 the Equal Credit Opportunity Act?
7 MR. PISTILLI: Object to the form.
8 THE WITNESS: For what? What are we --
9 again, you have to be more specific. Are you
10 talking about consumer relief or metrics?
11 BY MR. TANTILLO:
12 Q. Consumer relief.
13 A. The consumer relief that was granted was
14 not the -- on the entire portfolio that Chase had. It
15 was a -- it was selected -- I mean, it was -- it was a
16 significant but not the complete sample of -- I mean,
17 it wasn't every loan they had. We were not -- and we
18 were not empowered and did not do a fair lending test.
19 Q. So you weren't aware if -- yeah, you said
20 there was no fair lending test done --
21 A. No.
22 Q. -- on what was done in consumer relief.
23 How about the metrics testing, was there a fair
24 lending test on those?
25 A. There was not.

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1 Q. All right.
2 MR. TANTILLO: Do you guys want to
3 break for lunch?
4 THE WITNESS: How much more?
5 MR. EPSTEIN: That's the question, if
6 you're going to be another 30 minutes, no. If
7 you're going to be more than 30 minutes, then,
8 yes.
9 MR. DI MARCO: More than 30.
10 THE VIDEOGRAPHER: The time now is
11 12:21 p.m., and we will be going off record.
12 (RECESS TAKEN)
13 THE VIDEOGRAPHER: The time now is
14 1:32 p.m., and we are back on record. You may
15 begin.
16 BY MR. TANTILLO:
17 Q. Mr. Smith, I want to show you what we've
18 marked as Plaintiffs' Number 13, and let counsel for
19 Defendants review the document.
20 (EXHIBIT NUMBER 13 WAS MARKED FOR IDENTIFICATION)
21 MR. PISTILLI: I will just comment
22 again that it has the yellow highlighting that
23 was not in the produced version.
24 MR. TANTILLO: Our position, as I said
25 previously --

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1 MR. PISTILLI: You don't need a
2 position on it. I'm just noting for the record
3 what the document is --
4 MR. EPSTEIN: Can I get a copy, please?
5 MR. PISTILLI: -- as well.
6 (WITNESS REVIEWS DOCUMENT)
7 BY MR. TANTILLO:
8 Q. Mr. Smith, have you reviewed Number 13?
9 A. I have.
10 Q. Towards the bottom of the page highlighted
11 there for you, sir, there's a statement which states
12 in effect, I'm paraphrasing, that until the lien is
13 released, the requirements of there being a single
14 point of contact is still necessary. Is that your
15 understanding as well?
16 MR. PISTILLI: Objection --
17 THE WITNESS: No, that's what this --
18 MR. PISTILLI: Pardon me -- objection,
19 lacks foundation and calls for a legal
20 conclusion.
21 THE WITNESS: That's what this says.
22 BY MR. TANTILLO:
23 Q. Was that the -- was that the law or was
24 that the provision of the National Mortgage
25 Settlement, was that the -- was the National Mortgage

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1 **Settlement required?**

2 A. It required a single point of contact

3 for -- at the very least, for applications for loan

4 modification. And I don't have it here in front of

5 me, obviously, but it may have well gone beyond that.

6 This also does -- yeah -- yes. So the short answer,

7 yes.

8 **Q. So for loans that -- but you said that for**

9 **loans that needed to be modified or -- was there an**

10 **application necessary for that?**

11 A. Well, no, it did -- it required -- and,

12 again, it's been a while since I've read through the

13 SPOC provisions, single point of contact, but the --

14 the settlement required the availability of a single

15 point of contact. It was mainly, again, in the

16 context of the application for relief.

17 I will say that Reg X which is the Real

18 Estate Settlement Procedure Act, is much of what's

19 referred to in this memo. And so I think they may

20 well be talking also and even more about compliance

21 with the CFPB rules than about the settlement.

22 MR. PISTILLI: And I'm just now, again,

23 going to renew with increased vigor my objection

24 regarding Counsel's continued violation of

25 Judge Francis's order limiting regarding

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1 discovery in this case. I, frankly, can't see

2 what relevance this line of questioning has to

3 any pleaded issue in this case. And it,

4 clearly, is not relevant to any of the narrower

5 issues that are not subject to a stay of

6 discovery.

7 I'd, again, invite Plaintiffs' Counsel

8 to make a proffer if he believes that this is

9 somehow relevant to any of the pleaded issues in

10 the case that are not subject to the discovery

11 stay and reserve all of Chase's rights to seek

12 relief from Judge Francis either during the

13 course of this deposition or thereafter.

14 MR. TANTILLO: Thank you, Chris. I

15 appreciate your objection. Our proffer

16 regarding this is two-fold. I renew my response

17 to you regarding the fact that we -- it was

18 Chase's violations of various federal and state

19 laws which within the master loan purchase

20 agreement stated that, very clearly, that Chase

21 was in conformance with all of these laws. And

22 it's our --

23 MR. PISTILLI: Sorry, no connection

24 with this line of questioning. I'm sorry, go

25 ahead.

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1 MR. TANTILLO: And secondarily,

2 obviously, it was the lien releases and the

3 processes and the various things that happened

4 pursuant to these settlements which caused the

5 harm to my clients.

6 MR. PISTILLI: Chase's position is that

7 you have not adequately stated any basis for

8 pursuing this discovery at this time. It's a

9 violation of Judge Francis's order, and we

10 reserve all rights.

11 But if you insist on continuing despite

12 that fact, go ahead.

13 BY MR. TANTILLO:

14 **Q. With regards to -- you mentioned Reg X and**

15 **the substances that was within, I believe it was**

16 **Number 13. I previously asked you about Reg X,**

17 **obviously. And my question was, in order to comply**

18 **with Regulation X, did there come a point in time when**

19 **the servicers may have asked you whether or not they**

20 **needed to release their first and second liens. Now**

21 **having known what Reg X is, do you have any response**

22 **to that?**

23 A. The answer to that question is -- I'm

24 sorry.

25 MR. PISTILLI: Object to form.

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1 THE WITNESS: The answer to that

2 question is no.

3 BY MR. TANTILLO:

4 **Q. Now, the National Mortgage Settlement and**

5 **RMBS settlement were pursuant and subject to the**

6 **various SPAs that were implemented by the Treasury; is**

7 **that correct?**

8 A. I don't understand that question.

9 **Q. Was there various regulations, for**

10 **example, the HAMP and various Treasury regulations**

11 **that were subsumed under the National Mortgage**

12 **Settlement?**

13 MR. PISTILLI: Object to the form.

14 THE WITNESS: The National Mortgage

15 Settlement settled a number of claims under

16 federal law relating, primarily, and I don't

17 have them here with me, but they were federal

18 consumer compliance claims and state claims

19 regarding the handling of these loans.

20 HAMP regulations were referred to in

21 some provisions of the settlement, but the

22 settlement did not enforce any HAMP requirements

23 directly. It had its own explicit requirements

24 which may or may not have been consistent with

25 HAMP.

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1 BY MR. TANTILLO:
 2 Q. So it's your --
 3 A. And -- and -- and the -- and the RMBS
 4 settlement was about allegations of misconduct, shall
 5 we say, in the -- in the -- in the original -- in the
 6 pooling together and selling of mortgage-backed
 7 securities.
 8 Q. So it's your position that nothing within
 9 the National Mortgage Settlement required compliance
 10 with HAMP or any servicer participation agreements?
 11 A. The National Mortgage Settlement required
 12 compliance with the servicing standards set forth in
 13 the -- in the consent judgments. Any other -- any
 14 other legal requirements were not -- some legal
 15 requirements were stayed -- not stayed, but were
 16 settled by -- alleged violations of some legal
 17 requirements were settled by this compliance, but
 18 other outstanding legal obligations of mortgage
 19 lenders and servicers generally were not settled.
 20 (EXHIBIT NUMBER 14 WAS MARKED FOR IDENTIFICATION)
 21 BY MR. TANTILLO:
 22 Q. Mr. Smith, I'm going to show you what's
 23 been marked as Plaintiffs' Exhibit Number 14. I'm
 24 going to ask you to read number 11 of this.
 25 MR. EPSTEIN: Can I get a copy?

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1 MR. TANTILLO: Yes, sir.
 2 (WITNESS REVIEWS DOCUMENT)
 3 THE WITNESS: Yes, I'm familiar with
 4 this.
 5 BY MR. TANTILLO:
 6 Q. So that states that the National Mortgage
 7 Settlement was pursuant, obviously, to the HAMP and
 8 the servicers --
 9 A. No -- no, it doesn't.
 10 MR. PISTILLI: Object to the form, it
 11 calls for a legal conclusion.
 12 THE WITNESS: With respect, it does
 13 not. This provision deals with -- applicable
 14 requirements means requirements of -- from
 15 outside the settlement that could toll or limit
 16 compliance with the settlement's terms. So,
 17 yeah, if there was a conflict between the
 18 requirements of the settlement and the law
 19 referred to in this paragraph, this law
 20 prevailed. And we were required -- authorized,
 21 certainly, and probably required to amend our
 22 protocols in order to comply with the other --
 23 with the other law.
 24 BY MR. TANTILLO:
 25 Q. So which came first, the other law or the

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1 National Mortgage Settlement?
 2 MR. PISTILLI: Object to the form.
 3 THE WITNESS: I believe I just said,
 4 the other law prevailed. In other words, the
 5 National Mortgage Settlement provisions had to
 6 be modified or the enforcement of them had to be
 7 modified to comply with other law.
 8 BY MR. TANTILLO:
 9 Q. Was there any metrics that would determine
 10 whether or not there was compliance with the other
 11 law, the applicable laws, i.e., the service
 12 participation agreements and the HAMP?
 13 MR. PISTILLI: Object to the form.
 14 THE WITNESS: No.
 15 BY MR. TANTILLO:
 16 Q. And did your office and/or you do anything
 17 to ensure compliance with the HAMP and the service
 18 participation agreements?
 19 A. What we did with all servicers was to meet
 20 and require them to provide to us their assessment of
 21 what the applicable requirements we've just
 22 discussed -- applicable to their compliance with the
 23 settlement were. And we worked through a series of
 24 protocols and adjustments. We sought to work through
 25 protocols and adjustments necessary to ensure that we

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1 wouldn't cause them not to comply.
 2 The issue really was whether compliance
 3 with the National Mortgage Settlement would require
 4 that a servicer put itself in a position of default or
 5 where it could be penalized.
 6 Q. Is there any documents which show this
 7 type of protocol to ensure that they weren't going to
 8 be in default of that service participation agreement
 9 and/or HAMP?
 10 A. We had a written protocol -- we had a
 11 written protocol, it was reviewed and agreed by all
 12 servicers and my people and me that -- that
 13 specified -- that specified where -- what the
 14 applicable requirements were. And it changed from
 15 time to time. If there were new regulations or a
 16 change in regulations, there could be a change.
 17 And there were some individual cases, not
 18 many, where applicable requirements were alleged as a
 19 basis for noncompliance or for -- or the compliance
 20 should either be waived or that it should be altered,
 21 but not many.
 22 Q. Is there a certain title for that
 23 document?
 24 A. I don't know. I don't recall. If there
 25 is, I don't recall it.

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1 Q. And who would be in possession of such a
2 document?
3 A. It would have been in -- it might -- it
4 was in the possession of my colleagues and of me.
5 Whether it is still in our possession, I don't know.
6 Settlements are completed.
7 Q. I want to turn to -- you previously
8 brought up or I previously brought up and you answered
9 me, the anti-blight provisions of the settlement, and
10 I think your response was to the consumer relief
11 aspect of it. Was there a metrics testing aspect of
12 the anti-blight requirements?
13 A. No.
14 Q. So there was no metric that -- that took
15 into effect whether or not either the consumer relief
16 or the actions of the National Mortgage Settlement
17 caused blight of any sort?
18 A. Yes, that's correct.
19 Q. Is there a servicing standard under the
20 National Mortgage Settlement for blight?
21 A. Servicing standards I believe do
22 include -- there are some servicing standards that
23 apply. I'm not sure whether the term "blight" is
24 used, but to distressed areas. I -- I can't remember.
25 There were just a few. They are not covered by a

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1 metric, and we didn't -- it's not that we paid no
2 attention to them, it's just we -- they weren't --
3 they weren't what we were testing or we weren't
4 required to do anything about them.
5 Q. Do you know whether or not, under those
6 requirements you just mentioned, if there were lien
7 releases whether or not borrowers would have to be
8 notified of these releases?
9 MR. PISTILLI: Object to the form.
10 THE WITNESS: Again, I need you to be a
11 little more -- I'm sorry.
12 BY MR. TANTILLO:
13 Q. Okay. Let's ask -- let's say there's a
14 second lien release on a second mortgage. After a
15 letter was sent to or if there was a letter sent, in
16 order for them -- in order for them to receive
17 consumer relief credit, would they have to notify the
18 borrower or the municipalities?
19 MR. PISTILLI: Object to the form.
20 THE WITNESS: They notified the
21 borrowers, whether they were required to do so I
22 just don't recall now. They were not required
23 to notify the municipalities. "They" being the
24 servicers.
25 (EXHIBIT NUMBER 15 WAS MARKED FOR IDENTIFICATION)

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1 BY MR. TANTILLO:
2 Q. I'm going to ask you to review Plaintiffs'
3 Exhibit Number 15.
4 A. Yes, sir.
5 (WITNESS REVIEWS DOCUMENT)
6 Q. Mr. Smith, you've had a chance to review
7 Plaintiffs' Exhibit Number 16 -- excuse me, 15?
8 A. 15, yes, I have.
9 Q. What is this, do you know? Have you
10 recognized something like this?
11 A. Well, it's entitled Request for Mortgage
12 Assistance Form.
13 Q. Have you seen these types of forms before?
14 A. No.
15 Q. Was there supposed to be a form such as a
16 Request for Mortgage Assistance filed to obtain
17 various types of consumer relief?
18 A. Consumer relief credit was obtained under
19 the settlement by the servicer after the servicer
20 showed us that it had given -- granted relief to
21 borrowers on loans that qualified for relief under the
22 definitions set forth in the settlement, that the
23 relief had been done in a manner consistent with the
24 settlement and that the credit sought was consistent
25 with the amount the settlement allowed. The

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1 formalities -- for this purpose, the formalities of
2 how the relief was sought were not our concern.
3 Q. So there was no determination on your part
4 whether or not a borrower even wanted consumer -- even
5 wanted to have their mortgage modified?
6 MR. PISTILLI: Object to the form.
7 THE WITNESS: Well, if a mortgage --
8 again, there were various forms of consumer
9 relief. If the form of relief you're talking
10 about is mortgage loan modification, change of
11 the payment terms, we did always have in the --
12 in our review if not -- yes, if not an
13 application, an agreement under which the
14 modification was to be given. It varied by
15 servicer. And we did have to determine for some
16 forms of relief that the house was
17 owner-occupied, and there were times we did;
18 times we didn't.
19 But if we did, we had to -- we had
20 documentation that the -- the relief had been
21 sought -- or the relief had been grounded based
22 on documentation that showed that it was -- the
23 loan was qualified for whatever the relief we're
24 talking about was.
25

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1 BY MR. TANTILLO:
 2 Q. As you know, my client bought thousands of
 3 mortgages from Chase, as you may know. Many of his
 4 borrowers received lien releases, and also his
 5 borrowers received second lien extinguishment letters.
 6 Based on what you just said there, how would that be
 7 possible if these individuals never asked for any kind
 8 of modification?
 9 MR. PISTILLI: Object to the form.
 10 MR. EPSTEIN: Object to the form.
 11 MR. PISTILLI: Lacks foundation.
 12 THE WITNESS: As I said to you, that --
 13 my prior answer was about first lien mortgage
 14 modifications. There may have been
 15 circumstances where if a loan was being
 16 expunged, the amount of proof required under
 17 the -- under the protocols that we'd agreed with
 18 all servicers may have been less. I don't
 19 recall whether we required notice to the
 20 borrower and consent of the borrower or not.
 21 BY MR. TANTILLO:
 22 Q. So with regards to second lien
 23 extinguishments or second lien releases, what kind of
 24 proof did you require?
 25 A. I don't remember if there was a --

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1 Q. Is there anybody in your office who would
 2 know that?
 3 A. Well, in the first place, there's a
 4 document that's a public document called -- which is
 5 an exhibit to the consent judgment itself, which
 6 discusses in some detail what's required. There is
 7 also attached to that a -- a schedule showing the
 8 credits we give for various kinds of relief. And we
 9 do have work plan and test scripts which follow which
 10 show how we went through the various steps to
 11 determine that relief was, in fact, granted and
 12 consistent with the settlement. And who would have it
 13 would be -- it would still be in our files if we kept
 14 those files.
 15 Q. Was there a certain period of time in
 16 which you're required to keep the files?
 17 A. No. Although, Chase also has those
 18 agreements. They were done, basically, to an agreed
 19 set of protocols.
 20 Q. However, how would it be possible under
 21 the various rubrics that you had in terms -- in order
 22 to determine if a borrower sought some kind of relief
 23 for modification that the individuals such as my
 24 clients, his borrowers, how would they conceivably be
 25 able to, using all the various safeguards that you had

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1 in place, have second lien extinguishments sent to
 2 them?
 3 MR. EPSTEIN: Objection to form.
 4 MR. PISTILLI: Object to the form.
 5 THE WITNESS: What I know is second
 6 liens were extinguished, the borrowers were
 7 notified. That's what I know sitting here right
 8 now.
 9 BY MR. TANTILLO:
 10 Q. You previously stated that there was a
 11 minimal amount of first liens that received credit
 12 under the settlements; is that correct?
 13 A. No. I don't know that I did say that. In
 14 fact, I'm sure I didn't say that, or if I did say
 15 that, I was incorrect.
 16 Q. Well, we can go back to that.
 17 But, nevertheless, what were the
 18 parameters in order to obtain a first lien credit
 19 under the RMBS settlement?
 20 MR. PISTILLI: Object to the form.
 21 THE WITNESS: Those parameters are set
 22 out in, again, agreed protocols we had with
 23 them. There was -- it was not a -- there was a
 24 publicly filed -- for a prosecution agreement, I
 25 don't think we had the same kind of backup to

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1 that that we had on the NMS, but it was done on
 2 roughly the same basis.
 3 And relief was granted based on the
 4 nature of the loan, was it a distressed loan,
 5 generally, although it could have been
 6 otherwise, and did it -- were payments under the
 7 loan reduced in a way -- manner sufficient to
 8 justify credit. But there's -- there was a
 9 whole set of protocols developed to implement
 10 this. Some of it, I believe, was in the
 11 deferred prosecution agreement, we fleshed it
 12 out and when -- in more -- more -- much more
 13 detailed agreements when we implemented it.
 14 BY MR. TANTILLO:
 15 Q. Now, in order for a first lien loan to be
 16 taken for credit, did the occupancy have to be
 17 verified?
 18 A. I'm sorry?
 19 Q. Would occupancy have to be verified?
 20 A. In some -- at least in some of the cases,
 21 yes.
 22 Q. And what were the cases where it did not
 23 have to be?
 24 A. I don't know. I can't remember the exact
 25 details. For most of the credits we got, to get the

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1 maximum credit a loan had to be owned by the servicer,
2 serviced by the servicer and owner -- owner-occupied.
3 Q. And they were able to take credit for
4 loans that also were not occupied under a different
5 rubric?
6 A. There may well have been some of those for
7 less credit.
8 MR. TANTILLO: One moment.
9 BY MR. TANTILLO:
10 Q. Under the situation where owner-occupancy
11 was required, what type of servicing standards were
12 the banks held to?
13 MR. PISTILLI: Object to the form.
14 THE WITNESS: Are we talking now about
15 National Mortgage Settlement servicing
16 standards?
17 BY MR. TANTILLO:
18 Q. Let's start with the National Mortgage --
19 National Mortgage Settlement.
20 A. It would depend on the metric. And I'm
21 not sure how many if -- of the mortgage -- of the
22 metrics -- the servicing standard -- the metrics that
23 measured servicing standard compliance required
24 owner-occupancy. There was -- there was
25 owner-occupancy -- some owner-occupancy requirement

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1 and -- for much -- for some of the credit for consumer
2 relief under both the NMS and the RMBS settlement.
3 Q. Do you know or have any idea how the
4 servicers would determine owner-occupied? What they
5 would do to determine whether or not there was
6 somebody living in the residence?
7 A. A form, I don't know -- I'm not sure I can
8 tell you all -- don't know today all the forms. One
9 was to simply -- when the -- there -- there was
10 documentation in terms of consumer relief of the
11 agreement with regard to modification, and among the
12 evidence we looked at for those loans was an agreement
13 where the borrower had checked a box, essentially,
14 saying they were resident in the -- in the -- in the
15 premises. There was some additional bits of
16 information you would see from time to time when
17 addresses were -- correspondence was sent different
18 from the address on the -- on the loan -- on the
19 premises where the loan was located. But it varied,
20 so we did do some follow-up on that if it was
21 required.
22 Q. Do you know if owner-occupancy was
23 required for a first lien extinguishment?
24 MR. PISTILLI: Object to the form.
25 THE WITNESS: Let's be clear. What I

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1 said to you before was, there were very few, if
2 any, first lien extinguishments.
3 BY MR. TANTILLO:
4 Q. I apologize.
5 A. We did not -- the difference there --
6 there's a difference between that, and I'm -- just for
7 the record, between that and a loan modification where
8 you reduce or defer payment of principal where you
9 either forgive the payment of principal or reduce it
10 for a period -- forbear on it for a period in order to
11 reduce the cost -- the cost of ownership.
12 Again, I -- there may well -- there may
13 have been -- I hate to say never with the settlement,
14 because we ran into a lot of different things -- but
15 for all servicers, I think that it was very seldom
16 if -- very seldom, at the most, we ever ran into a
17 extinguishment of a first lien loan. I can't say
18 never, because I don't know that. But I think it was
19 very -- the majority of modifications were
20 reductions -- were either -- were forgiveness of loan
21 principal or in some cases forbearance of loan
22 principal, in other words, just -- just not collecting
23 on a portion of the loan.
24 Q. Were there first lien extinguishments
25 under the RMBS settlement?

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1 A. Again, I don't -- I don't know that there
2 were, but I'm -- I hate to say it, I don't know for
3 sure. But I -- if there were, it was -- it was very
4 few if any.
5 Q. Was there a reason why the servicers did
6 not use that provision?
7 A. Well, in general, the category of
8 relief -- the objective of many of these -- of these
9 settlements was to keep families in their homes and to
10 put the -- based on repayment. I mean, putting them
11 in a position where they could actually repay the loan
12 based on -- on their income levels and so forth.
13 Forgiveness of a first lien was more than, I think,
14 the parties had bargained for and more than most
15 servicers were willing to do. I mean, theoretically,
16 I guess they could have done it. But, again, they
17 almost never did that.
18 Q. Was it possible for a servicer under,
19 let's start with, the National Mortgage Settlement to
20 provide consumer relief without providing notice to
21 the borrower?
22 MR. PISTILLI: Object to the form.
23 THE WITNESS: Well, again, there are
24 different forms of consumer relief. For
25 example, in a short sale the borrower actually

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1 asks for it, so there's notice there. In the --
 2 in the case of most of the first lien
 3 forgivenesses we were just talking about there
 4 had been -- there had been a request for
 5 forgiveness for -- for a forgiveness of
 6 principal or a -- or a request for modification
 7 is generally what was done. In the case of
 8 second liens it -- I think it really did vary.
 9 BY MR. TANTILLO:
 10 Q. So there was a possibility that the
 11 borrower would never know --
 12 A. Oh, the borrower --
 13 Q. -- until they sold their house or
 14 something like --
 15 A. Oh, no, the borrower would know, because
 16 one of the evidences that we have that the forgiveness
 17 had actually been made was the providing to the
 18 borrower of a 1099 for forgiveness -- forgiveness
 19 income.
 20 Q. But it was possible that for a period of
 21 time, at least until they receive a 1099, that they
 22 could still be paying on that second lien?
 23 A. I would have to speculate to say that,
 24 I -- but it's -- I -- I can't -- I don't know for
 25 sure.

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1 Q. Just one moment, sir.
 2 (EXHIBIT NUMBER 16 WAS MARKED FOR IDENTIFICATION)
 3 MR. PISTILLI: Copy, please?
 4 MR. TANTILLO: Yes, sir.
 5 BY MR. TANTILLO:
 6 Q. Mr. Smith, have you had a chance to
 7 review --
 8 A. Yes.
 9 Q. -- Plaintiffs' Number 16?
 10 A. Yes, sir, I have.
 11 Q. The first highlighted part talks about the
 12 releasing of liens so they would not be included in
 13 the DOJ metrics. Was that something that you were
 14 aware of?
 15 MR. PISTILLI: Objection, lacks
 16 foundation.
 17 THE WITNESS: You're asking was I
 18 personally aware of it, the answer is no.
 19 BY MR. TANTILLO:
 20 Q. Was your office aware?
 21 A. Given what we have reviewed until now, I
 22 think there was an understanding -- there was an
 23 understanding that releases of liens would take when
 24 it was out of -- out of the populations for metrics
 25 testing. And so I -- I suppose in that sense I was

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1 institutionally aware of it, yes.
 2 Q. Do you know who in your office is
 3 personally aware of the fact that they were releasing
 4 liens to take them out of metrics testing?
 5 A. Well --
 6 MR. EPSTEIN: Are you saying -- you
 7 said "they," they being Chase?
 8 MR. TANTILLO: Yes.
 9 THE WITNESS: It would have been my
 10 counsel.
 11 BY MR. TANTILLO:
 12 Q. So it did come as a surprise to you when
 13 you learned that they were releasing liens to take
 14 them out of the metrics?
 15 A. Well, I didn't -- I didn't know that I
 16 learn or needed to learn any of that. The documents
 17 we've looked at before show that we had agreed that if
 18 they did that, which their -- was at their discretion,
 19 not mine. We didn't direct them to do anything. If
 20 they did that, loans that did not have a lien
 21 applicable to them were not subject to the settlement.
 22 Q. With regards to loan level data, and I
 23 know we spoke about this before, did the Office of
 24 Mortgage Settlement have the ability to review loan
 25 level data?

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1 A. What do you mean by that?
 2 Q. Did they have the ability to review the
 3 actual -- not just the systems of record, but, you
 4 know, payment history, escrow and taxes, all the types
 5 of things that are required under various laws for
 6 servicing?
 7 MR. PISTILLI: Object to the form.
 8 THE WITNESS: In assessing compliance
 9 with the metrics and in consumer relief we used
 10 loan level data with regard to loans in the
 11 sample populations, and we derived that from the
 12 systems of record of all the -- of each of the
 13 servicers.
 14 BY MR. TANTILLO:
 15 Q. But -- so loan level data was used to
 16 determine the samples?
 17 A. No.
 18 MR. PISTILLI: Object to the form.
 19 THE WITNESS: No. The samples -- as I
 20 said before, we went through a very long -- "we"
 21 being my colleagues including both counsel and
 22 the professional firms -- went through a long
 23 series of discussions and protocol development
 24 activities with the IRG and in some cases with
 25 the -- with the operations of the -- servicer --

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1 operations of the servicers to determine that
2 the population -- to determine a population of
3 loans as to which a metric applied. There were
4 different populations -- well, not obviously,
5 there were different populations for different
6 metrics.

7 A statistically valid sample was
8 selected in each case from the population for a
9 particular metric. Compliance by the servicer
10 with the -- with settlement was measured by the
11 application of tests included in the metric
12 definition to the loans in the statistically
13 valid sample. And the basis for determining
14 whether or not there had been compliance was
15 loan level data drawn from the system of record
16 of the servicer.

17 BY MR. TANTILLO:

18 Q. So if a metric did not apply, then the
19 loan data or the -- anything related to that
20 particular loan would never appear or never come
21 before you?

22 A. If a loan was not in the population
23 covered by a metric, no data -- well, we would -- they
24 would not be in the population. It would not -- none
25 of the -- and it would not be selected in the

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1 statistically valid sample, and so we would not -- we
2 would not see that information.

3 Q. Would this explain why a system of record
4 such as Recovery 1, perhaps, didn't appear in your
5 system of record until a certain period of time?

6 MR. PISTILLI: Object to the form,
7 misstates prior testimony, lacks foundation.

8 THE WITNESS: First, I don't know that
9 you -- I don't know the system -- that the
10 Recovery 1 didn't exist in the those systems.
11 And in our -- it was known to us. The question
12 was did we query -- did we include that -- that
13 system in queries for metrics when we were
14 deriving populations from which to draw
15 statistically valid samples to test.

16 And so the -- so if there were no loans
17 and if it were established that there were no
18 loans in a system of a servicer, they would --
19 there would be no query extended to that system
20 or there would be no response from that system.
21 It wouldn't be included in the population by
22 the -- by the population draw. It wouldn't --
23 there would be -- if there was no -- if there
24 was no mortgage which would -- which I expect
25 was in the system request, then no loans from

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1 that -- that loan that didn't have a lien
2 attached to it would not be in the population.

3 BY MR. TANTILLO:

4 Q. So if there was a lien attached to it,
5 then it should have shown up at the population?

6 A. It might have, it depends on the metric.

7 MR. TANTILLO: All right. We're going
8 to finish up. Could we take a break just for
9 five minutes to see if we have any last
10 questions?

11 THE WITNESS: Sure.

12 THE VIDEOGRAPHER: The time now is
13 2:13 p.m., and we will be going off record.
14 (RECESS TAKEN)

15 THE VIDEOGRAPHER: The time now is
16 2:25 p.m., and we are back on record. You may
17 begin.

18 MR. TANTILLO: Thank you.

19 BY MR. TANTILLO:

20 Q. Mr. Smith, who on the Chase IRG was your
21 or OMSO's primary contact?

22 A. Nikki -- gosh, I hope I can pronounce it
23 right -- Hops.

24 Q. Holsopple?

25 A. Holsopple.

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1 Q. And who in the line of business was your
2 primary contact or OMSO's?

3 A. I'm actually trying to remember. I don't
4 remember in their operation, I just can't -- I just
5 can't remember.

6 Q. As the monitor of the National Mortgage
7 Settlement, who was the supervising entity for your
8 work?

9 MR. EPSTEIN: Objection to form.

10 THE WITNESS: Well, I -- I was
11 monitored, for want of a better word, by the
12 monitoring committee, which we have just
13 discussed, which was provided for in each of the
14 consent judgments. And I believe I described
15 that previously in this testimony. And I guess,
16 theoretically, by Judge Rosemary Collyer with
17 whom the settlement documents were filed.

18 BY MR. TANTILLO:

19 Q. As the monitor of the Residential Mortgage
20 Backed Security Settlement, who was your supervising
21 entity for your work there?

22 MR. EPSTEIN: Objection to form.

23 THE WITNESS: In that case, I was in
24 communication both with Chase and with the
25 Justice Department. There was no oversight,

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1 formal oversight, of the kind that was presently
2 at NMS.
3 BY MR. TANTILLO:
4 Q. Before we broke, you mentioned that there
5 was a deferred prosecution agreement?
6 A. I'm -- that -- it -- there was an
7 agreement between the -- a settlement agreement
8 between the parties, that's a public document you can
9 get on the Justice web site. This was a kind of --
10 this was a settlement that stayed prosecution. There
11 was no filing with the court. So it was never -- it
12 was never under -- under judicial oversight. And
13 there were some provisions, ongoing provisions, in
14 the -- in the agreement, but it was much less detailed
15 than the NMS had been. And the relief was only --
16 there was no -- there was no -- it's -- well, was --
17 now, was no equivalent of metric, you know, compliance
18 metrics, there was only consumer relief. There had
19 been -- there were other provisions, but I was not
20 involved with them.
21 Q. Who was your primary contact or the Office
22 of Mortgage Settlement's primary contact at the
23 Department of Justice?
24 A. Well, first and foremost, OMSO did not
25 do -- was not the entity through which I conducted the

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1 RMBS settlement. It was the internationally famous
2 firm Joseph A. Smith, Jr. Monitoring Limited which was
3 a Subchapter S corporation.
4 And what was -- the question, who were my
5 contacts?
6 Q. Yes, sir.
7 A. My contacts at Justice changed, I had
8 several assistant US Deputy Attorney's General. And
9 there has been a change there, and so I don't think
10 any of them are still -- in fact, I know my last
11 contact was -- has gone into private practice.
12 At Chase, did you ask me about Chase, I'm
13 sorry?
14 Q. Well, you already asked -- you already
15 answered about Chase previously, you said Nikki
16 Holsopple?
17 A. Well, it actually it turns out she was --
18 didn't have to be, but she was. She was in charge
19 of -- of the -- where they call the HRG for that
20 settlement which -- and it was the same -- and, yeah,
21 she is the same contact.
22 Q. Had there been a violation of the deferred
23 prosecution agreement or the agreement between DOJ and
24 Chase, who would have enforced it, or what was the
25 provision to --

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1 MR. PISTILLI: Objection.
2 THE WITNESS: You would have to read --
3 you're the lawyer -- you're the Justice lawyer,
4 you would have to read this and determine it.
5 I -- there was -- it was an agreement not to
6 prosecute, and the parties are all stated there.
7 There was -- and it was -- it didn't happen, so
8 I don't know.
9 MR. TANTILLO: Tender the witness.
10 MR. PISTILLI: No questions.
11 MR. EPSTEIN: All right. You're done.
12 THE WITNESS: Thank you all very much.
13 Hope you have a safe trip home.
14 THE VIDEOGRAPHER: The time now is
15 2:30 p.m. This concludes the videotaped
16 deposition of Joseph Smith. We are going off
17 record, once again, at 2:30 p.m.
18 (SIGNATURE RESERVED)
19 (DEPOSITION CONCLUDED AT 2:30 P.M.)
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1 CHANGES AND SIGNATURE
2 Witness Name: Joseph A. Smith, Jr. February 9, 2017
3 Page Line Change Reason
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16
17 I, Joseph A. Smith, Jr., have read the foregoing
18 deposition and hereby affix my signature that same is
19 true and correct, except as noted above.
20 Joseph A. Smith, Jr.
21 Sworn to and Subscribed before me
22 _____, Notary Public.
23 This _____ day of _____, 20____.
24 My Commission Expires:
25

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<p>1 STATE OF NORTH CAROLINA 2 COUNTY OF DAVIDSON 3 4 C E R T I F I C A T E 5 I, Amy A. Brauser, RPR RMR CLR, the officer 6 before whom the foregoing deposition was taken, do 7 hereby certify that the witness was duly sworn by me 8 prior to the taking of the foregoing deposition; that 9 the testimony of said witness was taken by me to the 10 best of my ability and thereafter reduced to 11 typewriting under my direction; that I am neither 12 counsel for, related to, nor employed by any of the 13 parties to the action in which this deposition was 14 taken, and further that I am not a relative or 15 employee of any attorney or counsel employed by the 16 parties thereto, nor financially or otherwise interest 17 in the outcome of the action. 18 19 This is the 10th day of February, 2017. 20 21 22 _____ Amy A. Brauser, RPR RMR CLR Notary Public # 20023030055 23 24 25</p>	<p>Page 130</p>

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SMITH, JOSEPH on 02/09/2017

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