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

JAMON T. BRIM, \*  
Plaintiff, \* 10-CV-00369-IPJ  
vs. \* February 24, 2011  
\* Florence, Alabama  
\* 9:15 a.m.  
MIDLAND CREDIT MANAGEMENT, \*  
INC., \*  
Defendant. \*  
\*\*\*\*\*

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

**VOLUME III**

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1  
2 (In open court. Jury not  
3 present.)

4 MR. LANGLEY: We'd like to move to  
09:15:52 5 admit 21.

6 MR. BENNETT: No objection.

7 THE COURT: It's admitted.

8 MR. LANGLEY: Your Honor, we also  
9 put binders of the defendant's exhibits on the  
09:16:04 10 jurors chairs.

11 THE COURT: Okay. Let the record  
12 show this is February 24th, 2011. The parties  
13 and lawyers are here. And I don't think you  
14 got -- I didn't know we were going to put this on  
09:16:12 15 the record. But we are. The defense attorney  
16 said that they had discovered that Defendant's  
17 Exhibit 21, which was a redacted copy of the  
18 purchase contract, was actually put in  
19 unredacted. So the issue of whether it should be  
09:16:26 20 redacted or unredacted is moot, and it's in the  
21 defendant's binder, and it is admitted. And  
22 that's okay with the plaintiff, right?

23 MR. BENNETT: It is, Judge.

24 THE COURT: Okay. Now, I have  
09:16:36 25 something to take up with y'all, which I have

1 never had happen. And I have been a judge since  
2 January of 1979. So I want y'all to look at what  
3 one of the jurors gave Tammi. And just read it  
4 and let's discuss what to do with it. Because I  
09:17:00 5 need some suggestions.

6 MS. CAULEY: Should we read it out  
7 loud?

8 THE COURT: No. Just read it to  
9 yourself. It is from Mr. Bess, who is the  
09:17:14 10 heavyset gentleman, sitting on the front row.

11 MR. LANGLEY: Interesting.

12 MR. BENNETT: Good questions.

13 MR. LANGLEY: Yeah. They are.

14 MS. CAULEY: I read a lot slower  
09:17:52 15 than you guys.

16 THE COURT: Did you see it?

17 MR. BENNETT: Yes, Judge.

18 THE COURT: Do we want to make  
19 this Court's Exhibit Number 1 for the purpose of  
09:18:14 20 this hearing? Do we need to mark it?

21 MR. BENNETT: I think we should.

22 MR. LANGLEY: I think we probably  
23 should.

24 THE COURT: Mark it as Court's  
09:18:22 25 Exhibit A. Okay. And that's from Mr. Bess,

1 Tammi?

2 COURTROOM DEPUTY: Yes, ma'am.

3 MR. BENNETT: Your Honor, they're  
4 good questions. I think these are residual  
09:18:32 5 questions from when I examined the defendant's  
6 witness. The problem is that he can't -- he's  
7 not on the stand right now.

8 So the Court's position, I believe, should  
9 be that these are questions that appear intended  
09:18:48 10 for the defendant and if the defendant witness is  
11 re-presented or if a defendant witness is  
12 re-presented, that would be the appropriate time  
13 if the witness believes those questions  
14 appropriate for that witness. Unless you would  
09:19:06 15 like me to answer them, which I'm -- I suspect --

16 THE COURT: No. They had a  
17 question about whether they could ask you  
18 questions. Not you, but could we ask them  
19 questions, too, and get answers from them. And I  
09:19:20 20 said no.

21 MR. BENNETT: If they would  
22 stipulate, we would be happy to.

23 THE COURT: What do you say, Eric?

24 MR. LANGLEY: Well, I think at  
09:19:26 25 this point, it might be premature to decide what

1 to do about this. Those are fair questions.  
2 Because what they've done is tried to put the  
3 computer system on trial. I guess to preserve  
4 the record, we should move to excuss Mr. Bess.  
09:19:46 5 Because he's already demonstrated some outside  
6 knowledge about algorithms that may unfairly  
7 prejudice the remainder of the jury.

8 THE COURT: Mr. Bess, I think he  
9 was a math person already. So we already knew  
09:19:58 10 that information.

11 MS. CAULEY: He was an engineer.

12 THE COURT: Yeah. He's with  
13 Navistar. So y'all knew what he did for a living  
14 when you didn't strike him. And I'm not going to  
09:20:08 15 excuse him at this point. Okay?

16 MR. LANGLEY: You're overruling  
17 our objection?

18 THE COURT: Yeah. Your request to  
19 excuse him, I am.

09:20:16 20 Do you have any problems with me saying  
21 that at this time, those answers cannot be  
22 furnished?

23 MR. LANGLEY: No. We do not have  
24 a problem with that.

09:20:24 25 THE COURT: If I just say that. I

1 don't want to say that it's on their -- that it  
2 is their duty to answer them, because it's not.  
3 If they don't want them answered --

4 MR. BENNETT: Yes, Your Honor.

09:20:36 5 And that would be fair. But just to lay my cards  
6 out, Your Honor has seen, as we served it early  
7 this morning and sent to the defendant, we've  
8 asked for an adverse inference jury instruction.

9 We will ask the Court at charging  
09:20:50 10 conference to instruct the jury that a party that  
11 has control over witnesses or documents and fails  
12 to produce them that the jury can fairly conclude  
13 that those documents and witnesses would be  
14 adverse.

09:21:00 15 I think that protecting the record, making  
16 sure that there isn't -- to date, there's nothing  
17 that would be fairly appealable in our instance.  
18 And so a conservative take we understand except  
19 that it is the defendant's -- the questions are  
09:21:18 20 clearly targeted to the defendant. They're  
21 asking them --

22 THE COURT: Well, let me tell you  
23 this: I plan to tell the jury when they come  
24 back that I have this piece of paper and that  
09:21:28 25 they're not allowed to ask questions out of the



1 clear blue sky; that they were allowed to ask  
2 questions of live witnesses immediately after the  
3 witness testifies. And at this time, I have no  
4 intentions of attempting to get the information  
09:21:44 5 that he seeks. That's what I'm going to --  
6 because he doesn't have -- I didn't tell them  
7 they could do this. And it's inappropriate at  
8 this time to go any further with that. That's  
9 my --

09:21:56 10 MR. BENNETT: Yes, Judge.

11 THE COURT: And I -- you know,  
12 it's not their fault. It's not the defendant's  
13 fault that their key witness is on maternity  
14 leave.

09:22:08 15 MR. BENNETT: Yeah. True, Judge.  
16 That key witness would have --

17 THE COURT: That happened I would  
18 say approximately ten months ago. 11 months ago.

19 MR. BENNETT: That witness is just  
09:22:20 20 someone -- that is a litigation liaison. I mean,  
21 the key witness isn't part of the trial.

22 THE COURT: You say they failed to  
23 produce the witness. I mean, she is there. Her  
24 testimony has been taken. That the questions  
09:22:30 25 were not asked of her is not to be blamed on the

1 defendant.

2 MR. BENNETT: No. Judge, yes,  
3 Your Honor.

4 THE COURT: Okay. All right.

09:22:40 5 Okay.

6 MR. BENNETT: There is one other  
7 housekeeping matter, but it is not urgent. And I  
8 would just put it on the Court's agenda whenever  
9 the Court wants to consider it. The defendant  
09:22:52 10 will be calling Dell by video deposition, and  
11 that's okay.

12 And the -- given how long the deposition  
13 went yesterday with Transunion, for example,  
14 we're not going to go through the entire  
09:23:06 15 deposition; we're going to read it. Just the  
16 excerpts that have been disclosed. It should be  
17 half an hour instead of three hours.

18 With Dell, the defendant wants to play the  
19 entire video, and that's fine. We would like to  
09:23:16 20 not disrupt that process and stop it. And there  
21 are -- while there are several objections, there  
22 were three that were made by Ms. Cauley that we  
23 believe are of significant merit. And we believe  
24 that it would be most effective or efficient to  
09:23:32 25 address them with the Court given that we have

1 the transcripts; we already know the questions.

2 We are not suggesting -- it is okay -- we  
3 have engineers and jurors that are giving a fair  
4 hearing. We don't mind if they hear the  
09:23:44 5 question, hear the objection. But rather than  
6 argue it any further in front of Your Honor,  
7 pausing it, if Your Honor has already ruled,  
8 then --

9 THE COURT: You want me to rule on  
09:23:54 10 those three objections before the video?

11 MR. BENNETT: Yes, Your Honor.  
12 And we can be quiet.

13 THE COURT: I'll do that. Are you  
14 going to call Dell as the first witness?

09:24:06 15 MR. LANGLEY: Yes.

16 THE COURT: Well, just take a  
17 break before. I mean, we have to take a break  
18 anyway because we have motions after the  
19 plaintiff rests. So that will be fine. Okay.

09:24:14 20 Let me see that again before I tell the  
21 jury. And you can go get the jury.

22 MR. BENNETT: Judge, we have two  
23 exhibits that we've made the copies of now. When  
24 the jury is here, can we give them to the jury?

09:24:40 25 THE COURT: Yes. That will be

1 fine.

2 (Discussion off the record.)

3 (In open court. Jury present.)

4 THE COURT: Have a seat everyone.

09:28:52

5 MR. BENNETT: Your Honor, may we  
6 provide the copies we committed to?

7 THE COURT: Yes.

09:29:20

8 MR. BENNETT: These are exhibits  
9 42 and 82. They're not in use for the video  
10 deposition this morning.

09:29:36

11 THE COURT: Let the record show  
12 this is February the 24th, 2011. And this is the  
13 third day of the trial, CV-10-369, Jamon Brim  
14 versus Midland Credit Management, Inc. Let the  
15 record show that the parties are here. The  
16 lawyers are here. The jury is here. Good  
17 morning to everybody.

09:29:50

18 And I understand -- and I'm just going to  
19 put this on the record to make sure that you all  
20 hear what I have to say. I understand that one  
21 or two or some of the jurors asked Tammi if they  
22 could ask the lawyers questions. And you cannot.

09:30:12

23 Secondly, I understand -- I got a question  
24 or a list of questions from Mr. Bess; is that  
25 correct?

1 JUROR 2: Not me.

2 THE COURT: Well, who was it from?

3 Oh. From you. Hang on just a second. From  
4 Mr. Hines, right? Okay. Let me just say this.

09:30:44 5 I have shared those questions with the lawyers.  
6 But they really don't have a say-so in what I'm  
7 saying to you right now. I have not allowed  
8 y'all to ask questions -- just questions. I have  
9 allowed y'all to ask questions of a witness while  
09:30:58 10 the witness is on the witness stand and under  
11 oath. And that is the only thing I have allowed  
12 y'all to do.

13 So at this point, I'm not going to go any  
14 further with those questions. Okay?

09:31:12 15 JUROR 19: This was because of the  
16 deposition.

17 THE COURT: But just I'm not going  
18 to go any further with those questions.

19 JUROR 19: Okay.

09:31:18 20 THE COURT: All right. Thank you.  
21 And we were on the deposition of Equifax  
22 representative. And we were on the defendant's  
23 questions. And we are on Page 66, right?

24 MS. CAULEY: Yes, Your Honor.

09:31:34 25 Page 66.

1 THE COURT: All right. And you  
2 may proceed.

3 (Video played.)

4 MR. LANGLEY: Your Honor, can we  
09:32:48 5 pause it and get the volume straightened out?

6 THE COURT: Yeah.

7 COURTROOM DEPUTY: Go ahead.

8 (Video played.)

9 MR. LANGLEY: In view of this, can  
09:34:32 10 I put my colleague, Jason, on the stand to read  
11 the rest of this?

12 THE COURT: Sure. That will be  
13 fine. When Mr. Tompkins is reading the answers,  
14 you should consider that as if the person --  
09:34:58 15 obviously the same way the person is testifying  
16 on deposition. As if she were here in person,  
17 testifying under oath.

18 MR. LANGLEY: Your Honor, to make  
19 sure the context is straight, may I start on the  
09:35:16 20 preceding page, Line 19?

21 THE COURT: Yeah.

22 **CROSS-EXAMINATION**

23 **BY MR. LANGLEY:**

24 Q On the credit report within Exhibit 1,  
09:35:22 25 which is Plaintiff's 37, how many negative

1 accounts are there?

2 A Give me just a second. I can't see it on  
3 the copy. I can't see it on the copy. Yes.  
4 This is the one you gave me.

09:35:36 5 Q I can help you out by pointing you to, I  
6 believe, it's the fourth page of Exhibit 1.  
7 Plaintiff's 37.

8 A Thank you. Negative accounts I believe  
9 that's the three.

09:35:48 10 Q From this report, can you tell whether or  
11 not Midland was one of those negative accounts?

12 A Give me just a second. I'm going through  
13 the report. Yes. Midland is on the file. And  
14 I'm looking at Bates number --

09:36:02 15 Q And that was one of --

16 A I was looking at Bates Label 48 to show  
17 the Midland account.

18 Q And that's one of the three listed  
19 negative accounts?

09:36:12 20 A Yes.

21 Q What are the other two listed negative  
22 accounts?

23 A You're going to have to give me a second  
24 to go back through this report.

09:36:20 25 Q Take as much time as you need.

1 A There is a collection account for the U.S.  
2 Department of Education. And there is another  
3 for City Cards. No. I'm sorry. Not City Cards.  
4 I actually can't tell what the name of the  
09:36:34 5 company is. States charge-off. But you're  
6 right. But there are three.

7 Q And you can't say whether or to what  
8 extent the Midland account factored into the  
9 overall credit rating, can you?

09:36:46 10 A No, I can't.

11 Q Ms. Banks, I believe that's all I have at  
12 this time. Thank you.

13 A Thank you.

14 MS. CAULEY: We do have some  
09:36:52 15 redirect.

16 THE COURT: Okay.

17 MR. BENNETT: If opposing counsel  
18 would provide me the courtesy, may I borrow your  
19 copy, counsel?

09:37:02 20 THE COURT: Yeah. We actually  
21 have a copy of it, too, if you need it.

22 MR. BENNETT: Thank you.

23 THE COURT: Just the same thing  
24 I've already said. We're going to continue with  
09:37:24 25 this witness. And you're going to be her.



1 MR. BENNETT: I will do my best,  
2 Judge.

3 THE COURT: Okay.

4 **REDIRECT EXAMINATION**

09:37:28 5 **BY MS. CAULEY:**

6 Q Ms. Banks, I have a few more questions.  
7 With respect to Plaintiff's Exhibit 1 that  
8 Mr. Langley was just referring to, Midland Credit  
9 Management was reporting as a collection account  
09:37:40 10 on that credit report that was contained in  
11 Plaintiff's Exhibit 1; is that right?

12 A That's correct.

13 Q And certainly a collection account does  
14 have a negative impact on an individual's credit  
09:37:50 15 and credit score?

16 A It can.

17 Q Mr. Langley asked you if it was possible  
18 that a credit report that was provided to a  
19 potential creditor of Mr. Brim's would not have  
09:38:00 20 included the Midland Credit Management account.

21 It would also be possible that a credit  
22 report provided would have contained the Midland  
23 Credit Management report account; is that right?

24 A That's correct.

09:38:12 25 Q **When Equifax receives documentation from a**

1 consumer, does Equifax ever send those actual  
2 documents out to a furnisher of information?

09:38:30

3 A We do not. We utilize the FCRA relevant  
4 information field to notify the creditor specific  
5 information that the consumer has noted as part  
6 of their dispute.

09:38:44

7 Q And so Equifax's policy of not sending out  
8 the actual documents received from consumer does  
9 not indicate whether Equifax used the document --  
10 views the document as sufficient or not on an  
11 account; it's just that Equifax never actually  
12 sends out the documents?

13 A That would be --

14 Q Would that be true?

09:38:54

15 A That would be correct. And let me just  
16 state for the record Equifax does not gather an  
17 opinion one way or the other.

18 Q On documentation received from a consumer?

09:39:04

19 A Well, on whether the information is  
20 accurate or not. As previously testified, if we  
21 are able to accept the documents and we have  
22 received from the -- excuse me. From the  
23 consumer disclosure, we will update the file  
24 based on that. If they are not documents that we  
09:39:20 25 can use, we will contact the creditor.

1 Q When Equifax contacted Midland Credit  
2 Management in August of 2008, it was done  
3 electronically by ACDV; is that right?

4 A That's correct.

09:39:32 5 Q It's not actually a form that's sent  
6 through the mail that can be lost?

7 A No. It's not.

8 Q And I know we've been looking at  
9 Plaintiff's Exhibit 1. If you will look at Bates  
09:39:42 10 48 of Plaintiff's Exhibit 1.

11 A Okay. I have it available.

12 Q That's 37. As of the date on the credit  
13 report, which I believe you testified earlier was  
14 July 13th of 2008 -- at that time, was the  
09:40:00 15 Midland account reporting with a past due  
16 balance?

17 A Yes, it was.

18 Q 16 -- okay. And that balance that it was  
19 reporting as past due was \$1,617?

09:40:12 20 A That's correct.

21 Q And then if you go up to Plaintiff's  
22 Exhibit 4, we see that the current balance being  
23 reported at that time the ACDV was sent by  
24 Equifax was actually \$1,692?

09:40:24 25 A That's correct.

1 Q Is that right?

2 A Yes. That's correct.

3 Q And for the record, that's Plaintiff's  
4 Exhibit 40 in the notebook. So would it be true  
09:40:36 5 that when we can -- we can gather that from the  
6 July of 2008 credit report where Midland's  
7 account was reporting with a past due balance of  
8 \$1,681 and the date that Equifax sent out this  
9 ACDV where the balance was \$1,692 -- that at some  
09:40:56 10 point time in between July of 2008 and March of  
11 2009, Midland re-reported that account with an  
12 unpaid balance?

13 A That's correct.

14 Q Is it true that Equifax relies on its data  
09:41:10 15 furnishers to provide accurate information  
16 regarding an account?

17 A Yes, we do.

18 Q And in this instance, Equifax relied on  
19 Midland Credit Management to provide accurate  
09:41:22 20 information regarding Mr. Brim's account?

21 A Yes.

22 Q And did Equifax also rely on Midland  
23 Credit Management to investigate Mr. Brim's  
24 dispute regarding the balance of the account?

09:41:32 25 A Yes, we did.

1 Q And on Exhibit 6, which is Exhibit 42 in  
2 the notebook --

3 A Okay.

4 Q On the last two pages, we have the ACDV  
09:41:48 5 that was provided on February 25th of 2010.

6 A That's correct.

7 Q And at that time, Midland was continuing  
8 to report a balance due for Mr. Brim?

9 A That's also correct.

09:42:08 10 Q And that balance was \$1,774?

11 A Yes.

12 Q That's all I have.

13 A Okay. Thank you.

14 THE COURT: Anything else from the  
09:42:16 15 defendant?

16 MR. LANGLEY: No further  
17 questions.

18 THE COURT: Okay. Thank you.

19 (Witness steps down.)

09:42:26 20 THE COURT: Do y'all have copies  
21 for me of those two exhibits you put in the  
22 jurors' exhibit books? Have you gotten them,  
23 Tammi?

24 COURTROOM DEPUTY: No, ma'am.

09:42:44 25 (Discussion off the record.)

1 THE COURT: Thank you. All right.  
2 Call your next witness, please.

3 MR. BENNETT: Your Honor, having  
4 endured that intimidation already as the witness,  
09:43:06 5 I would like to reverse roles. I would like to  
6 ask Mr. Sykstus to take the stand on behalf of  
7 Transunion.

8 THE COURT: All right.

9 MR. BENNETT: Your Honor, this is  
09:43:18 10 a deposition I had promised to play by video, but  
11 we cut about half or more of it out. And the  
12 pace would be more expeditious if we read it, and  
13 that's the reason.

14 THE COURT: That's fine. Actually  
09:43:30 15 I think we can hear a little bit better, too.

16 MR. BENNETT: We have highlighted  
17 copies we will, I'm sure with agreement, leave  
18 with the court reporter, as well.

19 THE COURT: That's great. Thank  
09:43:46 20 you. And you should consider that as if the  
21 Transunion representative were here in person,  
22 testifying under oath.

23 MR. BENNETT: Your Honor, it was a  
24 videotaped deposition taken telephonically of  
09:43:58 25 Mr. Newnom, held on Tuesday, January 25th, 2011.

1 THE COURT: Okay.

2 MR. BENNETT: And I will play the  
3 role of Ms. Cauley, Judge.

4 THE COURT: Y'all really do switch  
09:44:18 5 roles today.

6 **DIRECT EXAMINATION**

7 **BY MR. BENNETT:**

8 Q Mr. Newnom, will you please state your  
9 full name for the record?

09:44:24 10 A Steven L. Newnom.

11 Q And if you're here -- and you're here  
12 pursuant to a trial subpoena today to give a  
13 deposition?

14 A Yes, I am.

09:44:30 15 Q By whom are you employed?

16 A Transunion.

17 Q And what is your position at Transunion?

18 A I am a team leader.

19 Q What do your duties include as a team  
09:44:42 20 leader?

21 A To oversee the daily functions of the  
22 department, help train, assist consumers, and do  
23 daily activity within -- with the associates.

24 Q What department are you a team leader for?

09:44:54 25 A The priority processing department.

1 Q What is priority processing?

2 A We handle files for attorneys, government  
3 agencies, such as better business bureaus,  
4 possibly escalating complaints from our corporate  
09:45:08 5 office, any third-party requests.

6 MR. BENNETT: Your Honor, we have  
7 determined the exhibits.

8 THE COURT: Okay.

9 MR. BENNETT: And I will -- the  
09:45:18 10 pattern that I will use is I will identify the --  
11 just for accuracy the exhibit here, tell the  
12 jury, for example, in this instance, Exhibit 1 is  
13 going to be Exhibit 43.

14 THE COURT: Okay.

09:45:30 15 MR. BENNETT: And then I will  
16 substitute in -- counsel has the transcript. I  
17 will not replay that explanation every time it's  
18 Exhibit 1. I will just substitute 43. Most of  
19 these are in sequence, starting at 43.

09:45:46 20 THE COURT: That's fine.

21 **BY MR. BENNETT:**

22 Q And have you had the opportunity to review  
23 the document that's been marked as Exhibit 1  
24 through 17 prior to the deposition? And then  
09:46:00 25 there will be an Exhibit 19, as well, that was



1 produced by Transunion this morning.

2 A Yes, I have.

3 Q And are these documents all documents that  
4 were created by, maintained by Transunion?

09:46:12 5 A Most of them, yes.

6 Q Those that weren't created by Transunion,  
7 those were documents received from Mr. Brim in  
8 response to disputes he filed with Transunion,  
9 and those documents were maintained as copies  
09:46:22 10 that were received?

11 A Correct.

12 Q Can you tell us, please, what is  
13 Transunion?

14 A We are a credit bureau.

09:46:28 15 Q And as a credit bureau, does Transunion  
16 receive information and compile information from  
17 various data furnishers on consumers?

18 A Yes, we do.

19 Q And then, in turn, does Transunion also  
09:46:44 20 provide consumers with copies of their credit  
21 report for them to review and correct if  
22 necessary?

23 A Yes. We do provide credit reports.

24 Q And does Transunion also provide credit  
09:46:54 25 reports to potential credit grantors on an

1 individual consumer?

2 A Yes, we do.

3 Q Are you familiar with Midland Credit  
4 Management?

09:47:02 5 A I have seen them before within the credit.

6 Q Are they a data furnisher for Transunion?

7 A They provide us information, yes.

8 Q And when a letter is received from a  
9 consumer, what is Transunion policy for handling  
10 a letter from a consumer?

09:47:16 11 A It is to review the letter and basically  
12 do what the consumer requests.

13 Q If that letter contains a dispute,  
14 regarding a specific account, how would  
09:47:28 15 Transunion handle that dispute?

16 A We would pull up the consumer's credit  
17 report. We would review the actual information,  
18 what they were disputing. And we'd initiate an  
19 investigation in -- where we would go back to the  
09:47:40 20 creditor to verify whatever the consumer was --  
21 had a dispute with.

22 Q As part of that investigation, how do you  
23 actually go back to the original creditor?

24 A Most of the time, it's done  
09:47:52 25 electronically.

1 Q And is that done pursuant to an ACDV?

2 A That is correct.

3 Q And will you tell the jury what an ACDV  
4 is?

09:48:00 5 A That is an automated consumer dispute  
6 verification form.

7 Q And those are all -- all sent  
8 electronically to the data furnisher?

9 A Yes, they are.

09:48:10 10 Q Does Transunion also maintain the original  
11 letter from the consumer disclosure?

12 A Yes, we do.

13 Q And how does Transunion do that?

14 A We scan that into our on-base database.

09:48:22 15 Q Mr. Newnom, can you identify what Page 1  
16 and 2 are of Plaintiff's Exhibit 43?

17 A This is an internal copy of our history of  
18 our communication with the consumer. It's  
19 actually -- the consumer contact is by telephone.  
09:48:40 20 And we pull the copy of the consumer's credit  
21 report for review.

22 Q And Plaintiff's Exhibit 43 indicates that  
23 Mr. Brim telephoned Transunion on July 29th,  
24 2008?

09:48:54 25 A Correct. Requesting a copy of his credit

1 report.

2 Q And at that time, did Mr. Brim indicate to  
3 Transunion that he had been denied credit?

09:49:04

4 A No. He did not. He came through the  
5 automated telephone system, requesting a copy of  
6 his report.

7 Q And do you see after it has the date and  
8 telephone it says consumer states and next to it  
9 says denied credit?

09:49:18

10 A Yes. That was selected.

11 Q Okay. So Mr. Brim indicated that he  
12 called in to the automated system that he had  
13 been denied credit?

14 A Correct.

09:49:28

15 Q And as a result of Mr. Brim's indication  
16 that he had been denied credit, did Transunion  
17 provide Mr. Brim with a free copy of his credit  
18 disclosure?

19 A Yes, we did.

09:49:38

20 Q If you'll turn to Page 3 of Plaintiff's  
21 Exhibit 43, it's actually on the bottom. Bates  
22 Number TU69. And following. Is that a copy of  
23 the credit disclosure, dated July 29, 2008, that  
24 was provided by Transunion to Mr. Brim?

09:50:00

25 A Yes. It is.

1 Q If you will turn to Bates Page 72 in that  
2 document.

3 A Yes.

4 Q There is an account identified as Midland  
09:50:14 5 Credit Management reporting on Page 72?

6 A Yes. There is.

7 Q Is that account reporting under the  
8 adverse account section of Mr. Brim's consumer  
9 disclosure?

09:50:28 10 A Yes, it is.

11 Q And that Midland Credit Management account  
12 is reporting as a collection account; is that  
13 correct?

14 A That is correct.

09:50:36 15 Q And could you tell us the balance that was  
16 reported on July 29, 2008?

17 A \$1,617.

18 Q And the date place for collection was  
19 October of 2007?

09:50:48 20 A That is correct.

21 Q When Mr. Brim telephoned Transunion on  
22 July 29, 2008, and indicated to the automated  
23 system that he had been denied credit, did  
24 Transunion undertake any investigation to  
09:51:06 25 determine whether Mr. Brim had, in fact, been

1 denied credit or whether his credit report had  
2 been viewed by a potential grantor?

3 A We would review if there was a recent  
4 inquiry and then provide him with an updated  
09:51:20 5 report. But that is all we would do.

6 Q Okay. And if we look at the inquiry on  
7 this July 29, 2008 disclosure, there is an  
8 inquiry from First Metropolitan, MOR via Credit  
9 Plus from July 28, 2008; is that right?

09:51:36 10 A Correct.

11 Q And can you tell the jury, please, what a  
12 regular inquiry is for a credit transaction?

13 A They view the credit information on the  
14 consumer's credit report. The account  
09:51:50 15 information and possibly scores, as well.

16 Q Would they have had access to view all  
17 account information being reported regarding  
18 Mr. Brim if they were under the regular inquiry  
19 section?

09:52:02 20 A Yes. They would.

21 Q Okay. Do you see that Midland Credit  
22 Management is showing as an account review  
23 inquiry in May of 2008?

24 A Yes. I do.

09:52:18 25 MR. BENNETT: And Your Honor, I

1 believe that's Bates Number 76.

2 THE COURT: Okay.

3 MR. BENNETT: And Judge, now we'll  
4 be turning to Exhibit 2 in the transcript, which  
09:52:44 5 is 44 in the plaintiff's book.

6 THE COURT: Okay.

7 **BY MR. BENNETT:**

8 Q If you look at Plaintiff's Exhibit 44,  
9 Page 78 and 79, would that, again, be Transunion  
09:52:56 10 computer history of contact by Mr. Brim?

11 A Correct.

12 Q And in Plaintiff's Exhibit 44, how did  
13 Mr. Brim contact Transunion on that occasion?

14 A Through the internet.

09:53:08 15 Q And on what day did he contact Transunion?

16 A Tuesday, July 29th, 2008.

17 Q And did he request a copy of his credit  
18 report via the internet, as well?

19 A Yes, he did.

09:53:20 20 Q And that was at that time through the  
21 internet he requested his fact act free  
22 disclosure?

23 A That is correct.

24 Q Did Transunion also provide him another  
09:53:30 25 copy pursuant to that request through the

1 internet of his consumer disclosure dated July  
2 29, 2008?

3 A He did view another report on line.

09:53:44

4 Q And would that have -- that report have  
5 been as set forth in Plaintiff's Exhibit 44 as  
6 that exact same report as was set forth in  
7 Plaintiff's Exhibit 44?

8 A Yes.

09:53:58

9 Q I'm sorry. The same report as in Exhibit  
10 43. Yes. Great. Can you please identify what  
11 Plaintiff's Exhibit 3, which is 45 -- what  
12 Plaintiff's Exhibit 45 is?

09:54:16

13 A This is a dispute request from the  
14 consumer, Mr. Brim -- or I'm sorry. Jamon Brim  
15 on 8-4, 2008.

16 Q Was this actually received in person as an  
17 actual document by Transunion as opposed to over  
18 the internet?

19 A We received it by mail, yes.

09:54:30

20 Q At that time, Mr. Brim provided his social  
21 security number, date of birth, and driver's  
22 license number for verification of his identity?

23 A Yes, he did.

24 Q And which account was Mr. Brim disputing?

09:54:42

25 A On the first page, Bates 89, Midland



1 Credit Management.

2 Q And what did he say was the reason he was  
3 disputing the account?

4 A That he had paid this account in full and  
09:54:52 5 that he paid it before it went to collection or  
6 before it was charged off.

7 Q Did Mr. Brim also dispute two other  
8 accounts as not being his accounts?

9 A Yes. He did. On Bates 90, Professional  
09:55:06 10 Finance and Texas, I believe, guaranteed student  
11 loan.

12 Q Then I believe the last item that Mr. Brim  
13 indicated is incorrect is he provided additional  
14 employment information at Target Distribution  
09:55:22 15 Center; is that right?

16 A That is correct.

17 Q Along with his request for investigation  
18 that Mr. Brim filled out, did he also provide  
19 Transunion a copy of his driver's license and  
09:55:34 20 social security card?

21 A Yes, he did.

22 Q And a copy also of the consumer disclosure  
23 that he had received from July 29th, 2008, where  
24 in he circled the Midland Credit Management  
09:55:44 25 account?

1 A Yes, he did.

2 Q After Transunion received Plaintiff's  
3 Exhibit 45, what action did Transunion take?

09:55:58

4 A We pull a copy of the consumer's credit  
5 report and initiate an investigation into the  
6 Midland Credit Management account.

7 Q Can you identify what Plaintiff's Exhibit  
8 4 is, which is 46? What Plaintiff's Exhibit 46  
9 is?

09:56:10

10 A This is another correspondence from the  
11 consumer, disputing information on his credit  
12 report that we received on July -- I'm sorry.  
13 August 4, 2008.

09:56:24

14 Q To your knowledge, was Plaintiff's Exhibit  
15 46 received separately from Plaintiff's Exhibit  
16 45?

17 A I believe it was.

09:56:34

18 Q And in this letter, Mr. Brim, again,  
19 disputed the Midland Credit Management account as  
20 well as the Texas guaranteed student loan and the  
21 Professional Finance account?

22 A Yes, he did.

23 Q Did Mr. Brim provide any documentation  
24 with his letter to Transunion?

09:56:48

25 A He provided a Redstone Federal Credit

1 Union printout.

2 Q And did Transunion also initiate an  
3 investigation after receipt of Plaintiff's  
4 Exhibit 46?

09:57:00 5 A I believe it was all done at the same  
6 time. The -- the other document was received, as  
7 well.

8 MR. BENNETT: Judge, we have  
9 pulled out 47 and 48 for expediency, and the next  
09:57:16 10 exhibit is 49, which is referred to as Exhibit 7.

11 THE COURT: Okay.

12 **BY MR. BENNETT:**

13 Q Can you please identify Plaintiff's  
14 Exhibit 49?

09:57:24 15 A This is an ACDV response from Midland  
16 Credit, reporting the consumer's information.

17 Q Does Transunion maintain a copy of the  
18 ACDV when it is sent out to a data furnisher or  
19 only once it's received back?

09:57:40 20 A I do not know if we keep a copy of the  
21 original sent out, but it just has the same  
22 information as the one received back except for  
23 the response from the creditor.

24 Q And can you tell me, please, what date  
09:57:52 25 Plaintiff's Exhibit 49 was sent out to Midland?

1 A That would be eight -- I'm sorry. What  
2 date was that? It would have been 8-4, 2008.

3 Q And this would have been ACDV sent in  
4 response to Mr. Brim's disputes that were  
09:58:08 5 received by Transunion on August 4, 2008?

6 A Correct.

7 Q In Plaintiff's Exhibit 49 is an ACDV that  
8 was sent to Midland on August 4, 2008; is that  
9 correct? Is that right?

09:58:22 10 A Yes.

11 Q And it was sent to Midland via electronic  
12 transmittal?

13 A Yes.

14 Q And the ACDV was sent by Transunion to  
09:58:30 15 Midland in response to Plaintiff's Exhibit 45 and  
16 46, which were the disputes received from  
17 Mr. Brim?

18 A Yes.

19 Q And what information did Transunion  
09:58:44 20 provide to Midland Credit Management regarding  
21 Mr. Brim's dispute?

22 A We provided what the consumer stated  
23 within his letters; that he claims he paid the  
24 original creditor before collection status or  
09:58:56 25 paid before charge-off and to verify the account

1 status, pay rating, current balance, amount past  
2 due, and payment history. And also we left a  
3 comment stating that the consumer stated he paid  
4 it on 11-8, 2004.

09:59:12 5 Q And what was Midland Credit Management's  
6 response to this ACDV?

7 A That they verified the information as  
8 being accurate and they also requested to have  
9 the remark changed from the collection status to  
09:59:24 10 account in dispute.

11 Q And as a result of Midland Credit  
12 Management's response to the ACDV by Transunion,  
13 the Midland Credit Management account remained on  
14 Mr. Brim's credit report?

09:59:34 15 A Correct.

16 Q And in response to the ACDV, Midland  
17 Credit Management indicated that the account was  
18 being reported correctly?

19 A Correct.

09:59:44 20 Q Now, can you please identify Plaintiff's  
21 Exhibit 50, referred to as Eight in your  
22 transcript?

23 A This is just a computer printout of the  
24 information regarding the dispute with Midland  
10:00:00 25 Credit that the consumer stated.

1 Q Does this show action taken by Transunion  
2 in response to Midland Credit Management's return  
3 of the ACDV?

4 A Yes. The first page prints out what was  
10:00:14 5 disputed, what was returned, and the second page  
6 is how the account looked before the  
7 investigation. And the change section states how  
8 it was modified after the investigation.

9 Q And if you look at Page 112, which is the  
10:00:34 10 second page of Exhibit 50, we see that the loan  
11 type went from factoring company account to  
12 collection agency/attorney.

13 A Correct.

14 Q Is that right?

10:00:46 15 A Yes, it is.

16 Q And that the account information disputed  
17 by consumer remark code was added?

18 A Yes, it was.

19 Q Okay. And then the date verified was  
10:00:56 20 updated from July of 2008 to August, 2008?

21 A Correct.

22 Q And it also is showing now as being  
23 verified as the account being verified?

24 A That verification states that we had  
10:01:10 25 communication with the creditor.

1 Q And that Midland Credit Management had  
2 verified the accuracy of the account that they  
3 were reporting?

4 A Based on the ACDV response, yes.

10:01:24 5 Q Can you tell me, please, what Exhibit 51  
6 is? 51 is referred to as Nine in the transcript.  
7 Can you tell me what Exhibit 51 is?

8 A This is an updated version of the  
9 consumer's credit report, based upon the  
10:01:38 10 investigation.

11 Q And after Transunion initiated its  
12 investigation and received an ACDV response from  
13 the data furnisher, does Transunion always send  
14 out an updated consumer disclosure to the  
10:01:54 15 consumer?

16 A Yes.

17 Q And in that consumer disclosure,  
18 Plaintiff's Exhibit 51, the employment  
19 information has been updated to show Target  
10:02:04 20 Distribution Center; is that correct?

21 A Yes.

22 Q And it also continues to show -- it also  
23 continues to contain the Midland Credit  
24 Management account?

10:02:14 25 A Yes.

1 Q Can you identify Plaintiff's Exhibit 10,  
2 which is 52?

3 A Yes. This is another written dispute  
4 communication with the consumer with Transunion.

10:02:32 5 Q What date was it received by Transunion?

6 A March 16, 2009.

7 Q What action did Transunion take upon  
8 receipt of Mr. Brim's letter?

9 A We would normally initiate an  
10:02:44 10 investigation into whatever information he was  
11 disputing within this document.

12 Q And along with Mr. Brim's letter, which is  
13 dated March 10th, 2009, he also included a copy  
14 of the previous letter from July 29th, 2008; is  
10:03:00 15 that right?

16 A On Bates 124, yes.

17 Q And a copy of the bank statement from  
18 Redstone Federal Credit Union, which is Bates  
19 125?

10:03:10 20 A Yes.

21 Q And a copy of the July 29, 2008, consumer  
22 disclosure that he had received from Transunion?

23 A That is correct.

24 Q Can you identify, please, what Exhibit 11  
10:03:26 25 is, which is 53?



1 A This is a copy of the consumer's report we  
2 pulled to actually view to initiate the  
3 investigation into his credit report.

4 Q Was Plaintiff's Exhibit 53 actually  
10:03:38 5 provided to Mr. Brim, or was it just a report  
6 that Transunion viewed?

7 A It's just a report Transunion viewed.

8 Q And on this March 18th, 2009, report, the  
9 Midland Credit Management account is still being  
10:03:52 10 reported on Mr. Brim's credit report?

11 A Yes, it is.

12 Q After Transunion pulled this credit report  
13 on March 18th, 2009, did Transunion also send a  
14 new ACDV to Midland Credit Management?

10:04:08 15 A I believe we did.

16 Q And if we look in this exhibit at the  
17 inquiry section, we can see that on January 15th,  
18 2009, 224 RBC USA obtained a copy of Mr. Brim's  
19 credit report.

10:04:34 20 MR. BENNETT: And I believe, Your  
21 Honor, that's on Page TU142.

22 A Yes. They did.

23 **BY MR. BENNETT:**

24 Q And on December 10th, 2008, Platinum  
10:04:48 25 Mortgage via Factual Data also obtained a copy of

1 Mr. Brim's credit report?

2 A Yes, they did.

3 Q And on September 19th, 2008, First  
4 Metropolitan Mortgage via Credit Plus and also  
10:05:04 5 Hometown Lenders via Landsafe Credit both  
6 obtained a copy of Mr. Brim's credit report?

7 A That is correct.

8 Q And when we looked at the August, 2008,  
9 consumer disclosure, the Midland Credit

10:05:16 10 Management account remained on Mr. Brim's credit  
11 report and credit disclosure; is that right?

12 A That is correct.

13 Q And there's no documentation that the  
14 Midland account was removed at any time between  
10:05:26 15 August, 2008, and this report dated March 18th,  
16 2009?

17 A No. I have no documentation stating that.

18 Q And if Transunion had actually removed the  
19 Midland Credit Management account from Mr. Brim's  
10:05:40 20 credit report, there would be some type of  
21 documentation, evidencing its removal; is that  
22 right?

23 A Yes.

24 Q All right. So when we are looking at the  
10:05:48 25 inquiry, these four inquiries that occurred

1 between August, 2008 and March 18th, 2009 -- we  
2 know that for each of these four inquiries, the  
3 Midland Credit Management account was reporting  
4 on Mr. Brim's credit report at the time that  
5 these reports were obtained?

10:06:04

6 A Yes.

7 Q Can you please identify Exhibit 12, which  
8 is 54?

9 A This is an ACDV response received back  
10 from Midland Credit regarding the consumer's  
11 dispute.

10:06:20

12 Q And, again, when Transunion sent this ACDV  
13 to Midland Credit Management, they indicated  
14 Mr. Brim was disputing the balance, the payment  
15 amount, amount past due, current balance, and  
16 charge-off amount?

10:06:32

17 A Yes.

18 Q And did Transunion also indicate to  
19 Midland Credit Management that Mr. Brim indicated  
20 the account had been paid on November 8th, 2004?

10:06:42

21 A Yes. We did.

22 Q And in response, did Midland Credit  
23 Management verify the account was reporting as  
24 accurate?

10:06:54

25 A Yes. They did. They also updated the

1 balance to \$1,698.

2 Q And was that the only change made, to  
3 update the balance?

4 A No. The date of first delinquency was  
10:07:10 5 updated to 10 of 2004. And the date verified  
6 March of -- of 2009.

7 Q And can you identify Plaintiff's Exhibit  
8 14, which is 56?

9 A The first page is an internal copy of the  
10:07:28 10 computer system, stating that a -- updated  
11 results were sent to the consumer.

12 Q Then beginning with Bates Pages 149  
13 through 151, is that the updated information that  
14 was provided to Mr. Brim?

10:07:44 15 A Yes. It was.

16 Q Can you identify, please, Plaintiff's  
17 Exhibit 15, which is 57?

18 A This is an internal copy of the history  
19 with the consumer that we pulled a copy of the  
10:08:04 20 credit report based on a telephone conversation.

21 Q So on February 24, 2010, Mr. Brim called  
22 in to Transunion?

23 A I believe so, yes.

24 Q At that time, was a new consumer  
10:08:18 25 disclosure provided to Mr. Brim?

1 A Actually, let me see. I believe it was.

2 Q If we look at Bates page beginning on  
3 Bates Page 154, is that a copy of the consumer  
4 disclosure that was mailed to Mr. Brim?

10:08:38 5 A I believe so.

6 Q If we look at Page 157, is the Midland  
7 Credit account continuing to be reported on  
8 Mr. Brim's credit report as of February 24, 2010?

9 A Yes, it is.

10:09:02 10 Q And it's being reported as an adverse  
11 account?

12 A Yes, it is.

13 Q If you will, please turn to Bates 159.

14 A Yes.

10:09:14 15 Q We see two new inquiries that were added.  
16 We have an American Express inquiry. We have an  
17 American Express inquiry that was dated May 14,  
18 2009, and a Wachovia inquiry, dated November 6,  
19 2009, which are now evidenced on this March 24,  
10:09:32 20 2010 disclosure.

21 A Yes.

22 Q And if you look at that document on Bates  
23 157, is the Midland Credit Management account  
24 still reporting as of February 24, 2010?

10:10:02 25 A Yes, it is.

1 Q Is that account reporting with a balance  
2 of 17 -- \$1,774?

3 A Yes, it is.

4 Q And the past due balance is also \$1,774?

10:10:18 5 A Yes, it is.

6 Q And also an inquiry from American Express  
7 from May 14th, 2009?

8 A Yes.

9 Q Can you tell me, please, or identify what  
10:10:34 10 Plaintiff's Exhibit 16, which is 58 -- what  
11 Plaintiff's Exhibit 58 is?

12 A Yes. I have it.

13 Q This -- can you please tell me or identify  
14 what Plaintiff's Exhibit 58 is?

10:10:56 15 MR. BENNETT: Page 54, Line 4.

16 A This is an ACDV response regarding the  
17 Midland Credit account.

18 **BY MR. BENNETT:**

19 Q What date was Plaintiff's Exhibit 58  
10:11:06 20 received back from Transunion?

21 A 2-26, 2010.

22 Q And at that time that Midland responded to  
23 this ACDV, the only change made was to update the  
24 balance owing and the past due amount; is that  
10:11:22 25 right?

1 A Yes.

2 Q As a result of Transunion receiving the  
3 ACDV response from Midland Credit Management, did  
4 Midland Credit Management account continue to be  
10:11:32 5 reported on Mr. Brim's credit report?

6 A Yes, it did.

7 MR. BENNETT: All right. And  
8 Plaintiff's Exhibit 59, for the record, which is  
9 17 in the transcript, begins with Bates Page 162  
10:11:46 10 and goes through 170.

11 **BY MR. BENNETT:**

12 Q And can you identify the first two pages  
13 of Exhibit 59?

14 A This is the internal copy of the  
10:11:56 15 information regarding the dispute with Midland  
16 Credit.

17 Q On Page 2, does that show the changes that  
18 were made, that were made by Transunion upon  
19 receipt of the ACDV response from Midland Credit  
10:12:10 20 Management?

21 A Yes.

22 Q And on Bates Page 163, it indicates that  
23 the account was verified and the balance was  
24 updated to \$1,775?

10:12:22 25 A Correct.

1 Q And that the past due balance was also  
2 updated to \$1,775?

3 A Correct.

4 Q Upon updating the account by Transunion,  
10:12:32 5 did Transunion then send out a new consumer  
6 disclosure to Mr. Brim?

7 A Yes. They did receive a full updated  
8 report.

9 Q And that report is dated March 1, 2010?

10:12:44 10 A Yes.

11 Q And on this March 1, 2010 report, Midland  
12 Credit Management continues to be reported as an  
13 adverse account; is that right?

14 A Yes, it is.

10:12:54 15 Q And the date verified is now showing as  
16 February, 2010?

17 A Yes.

18 Q When we first looked at Plaintiff's  
19 Exhibit 43, it contained a consumer disclosure  
10:13:08 20 for Mr. Brim, dated July 29, 2008. Do you recall  
21 that?

22 A Yes.

23 Q From July -- from at least July 29, 2008  
24 through September 10 of 2010, did the Midland  
10:13:22 25 Credit Management account remain on Mr. Brim's



1 Transunion credit report throughout that entire  
2 time?

3 A To my knowledge, I believe it did.

10:13:34

4 Q Mr. Newnom, does Transunion rely on its  
5 credit data furnishers to investigate consumer  
6 disputes when they are received regarding a  
7 specific account?

8 A Rely? They're required to look into the  
9 information.

10:13:44

10 Q And -- I'm sorry.

11 A I'm sorry. Yes. They are relied. To  
12 look into the account if the consumer disputes  
13 the information, yes.

10:13:58

14 Q In this particular case, did Transunion  
15 provide Midland Credit Management with Mr. Brim's  
16 disputes regarding the account?

17 A We relayed those disputes to Midland, yes.

10:14:10

18 Q And did Transunion rely on Midland Credit  
19 Management to investigate those disputes and  
20 respond?

21 A They were required to respond to the  
22 investigation, yes.

23 MR. BENNETT: And I think,  
24 Mr. Sykstus, we're at Page 72.

10:14:40

25 MR. SYKSTUS: That's what I show.

1 **BY MR. BENNETT:**

2 Q Let's go to the inquiry, and we'll come  
3 back to that question. If you'll look at Bates  
4 159, which is part of Exhibit 57.

10:14:54 5 A Yes.

6 Q Exhibit 57, Page 159.

7 MR. BENNETT: Mr. Sykstus,  
8 actually, I apologize. Would you please go back  
9 up to Page 65 at line -- I'm going to read the  
10 question at Line 7.

10:15:38

11 MR. SYKSTUS: Understood.

12 **BY MR. BENNETT:**

13 Q What is the impact in terms of credit  
14 score on an account being marked as disputed?

10:15:48 15 A It does not get factored into the credit  
16 score.

17 Q And so from early August, 2008 through  
18 September, 2010, the Midland account wouldn't  
19 have been factored into Mr. Brim's credit score?

10:16:02 20 A That is correct.

21 Q Page 72, we'll go to the inquiry and we'll  
22 come back to that question. If you will look at  
23 Bates Page 159, which is part of Plaintiff's  
24 exhibit 57.

10:16:16 25 A Yes.

1 Q The entities listed under regular inquiry,  
2 these entities received information regarding  
3 Mr. Brim and his credit from Transunion; is that  
4 correct?

10:16:26 5 A Yes.

6 Q And the entity would not be listed under  
7 the regular inquiry section if Transunion did not  
8 provide that entity with some information  
9 regarding Mr. Brim?

10:16:38 10 A Correct.

11 Q And the inquiries are actually contained  
12 on a consumer disclosure to educate and inform  
13 the consumer as to which entities have used his  
14 credit information?

10:16:50 15 A Yes.

16 Q And at the time of the inquiries that  
17 we've gone over from July 28, 2008 through  
18 November 6, 2009, during that time, the Midland  
19 Credit Management account was being reported on  
10:17:10 20 Mr. Brim's credit report?

21 A Yes, it was.

22 MR. BENNETT: I don't have any  
23 other -- I'm not sure if there are additional  
24 sections. The defendant has not designated any.

10:17:18 25 MR. LANGLEY: There are other

1 sections. We're going to try the video once. If  
2 it doesn't work, we'll do a read-in.

3 I'm not sure if the jury has been made  
4 aware of the white binders in their chair.

10:17:32 5 THE COURT: The white binders are  
6 the defendant's admitted exhibits.

7 So are you going to -- Mr. Langley, are  
8 you going to state when you get to your exhibit  
9 numbers in the deposition book what exhibit  
10:18:02 10 number they are in the handbook?

11 MR. LANGLEY: Yes.

12 THE COURT: Do y'all need a break  
13 first? Okay.

14 MR. BENNETT: We don't have any  
10:19:04 15 objection.

16 THE COURT: Okay.

17 MR. LANGLEY: Your Honor, some of  
18 the exhibits in the cross-examination are  
19 references to the plaintiff's exhibits. One of  
10:19:18 20 them is to our exhibit notebook.

21 THE COURT: Okay. Could you give  
22 me one?

23 MR. LANGLEY: Yes.

24 MR. BENNETT: Your Honor, while  
10:19:36 25 the video is loading, our final witness will be

1 Mr. Brim. And then we will rest. In terms of  
2 the Court's scheduling knowledge.

3 THE COURT: Okay.

4 MR. LANGLEY: Okay. We gave it  
10:20:22 5 one try. We'll read it in.

6 MR. BENNETT: I'm sure, Judge,  
7 both parties will agree at the end of the trial  
8 to give DVDs to the jury so they can cure  
9 insomnia on their own time.

10:20:46 10 THE COURT: Do what, now?

11 MR. BENNETT: I said, we can give  
12 the jury copies --

13 THE COURT: No. We certainly  
14 cannot. I told the jury to begin with what they  
10:20:54 15 hear in the courtroom is what they hear. I don't  
16 repeat. You weren't here. But I did say that.  
17 Your co-counsel will verify that. We may not  
18 give the jury anything except with my permission.

19 MR. BENNETT: Yes, Your Honor.

10:20:58 20 THE COURT: And you may not give  
21 them a DVD.

22 MR. BENNETT: Yes, Your Honor.

23 THE COURT: All right.

24 Mr. Tompkins, are you ready? Are you going to be  
25 Mr. Newnom?

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MR. TOMPKINS: I am.

THE COURT: All right.

**CROSS-EXAMINATION**

**BY MR. LANGLEY:**

10:21:18 Q Can you identify, please, what Defendant's Exhibit 19 is?

A 19 is an AUD, an automated update to the consumer's credit report.

10:21:34 Q Is that also known as a universal data form?

A Yes, it is.

10:21:46 Q And can data furnishers or credit data furnishers provide universal data forms to a credit reporting agency in order to change or remove an account from a consumer's credit report?

A Yes, they can.

10:21:54 Q And did Transunion actually receive this universal data form from Midland Credit Management?

A Yes. We did.

Q And if you would, look at Plaintiff's Exhibit 19.

A Yes.

10:22:14 Q Can you identify Plaintiff's Exhibit 19,

1 please?

2 A This is an internal copy of the automated  
3 universal data form.

10:22:26

4 Q And what actions did Transunion take upon  
5 receipt of the universal data form?

6 A We removed the Midland Credit account from  
7 the consumer's credit report.

10:22:38

8 Q And what date did Transunion remove the  
9 Midland Credit Management account from Mr. Brim's  
10 credit report?

11 A 9-10, 2010.

12 MR. LANGLEY: Moving to Page 62,  
13 Line 15.

14 **BY MR. LANGLEY:**

10:22:56

15 Q Thank you. Mr. Newnom, Ms. Cauley asked  
16 you some questions about the period of time  
17 during which Transunion reported the Midland  
18 account and the dates July 29, 2008 through  
19 September 10, 2010 were identified. Do you  
20 remember those questions?

10:23:10

21 A Yes.

22 Q At what point during that time period did  
23 the account begin to report as a disputed  
24 account?

10:23:18

25 A I believe it was right after the first

1 investigation we initiated. So I believe it was  
2 still in July or August of 2008.

3 Q Let me direct your attention to  
4 Plaintiff's Exhibit 49. Earlier this document  
10:23:40 5 was characterized as the ACDV that was sent to  
6 Midland. Do you remember that conversation?

7 A Yes. I do.

8 Q Is this the actual document sent to  
9 Midland, or is it a summary of the information  
10:23:52 10 sent to Midland?

11 A It is a summary of the information. An  
12 actual printout of the computer transaction.

13 Q Would any information sent to Midland in  
14 connection with this dispute be included within  
10:24:04 15 Exhibit 7?

16 A That we --

17 Q Which is Plaintiff's 49?

18 A That we -- Midland was sent back to  
19 Transunion or we sent to Transunion, I mean --  
10:24:14 20 I'm sorry. What we sent to Midland?

21 Q Is there any information that Transunion  
22 sent to Midland that is not reflected in  
23 Plaintiff's Exhibit 49?

24 A No. There is not.

10:24:26 25 Q I think Ms. Cauley asked you at one point



1 did you agree that there was a statement in the  
2 ACDV reflecting that the consumer claimed the  
3 debt was paid on November 8, 2004. Do you  
4 remember that?

10:24:38 5 A Yes, I do.

6 Q Where is that reflected in exhibit --  
7 Plaintiff's Exhibit 49, if at all?

8 A It is actually reflected right between the  
9 two dotted lines where it says consumer message  
10 on the left-hand side.

11 Q Is that information that is actually  
12 transmitted to Midland or just information that  
13 Transunion retains internally?

14 A It is information that is relayed to  
15 Midland.

16 Q Do you know if any supporting  
17 documentation was sent to Midland in connection  
18 with the dispute represented on Plaintiff's  
19 Exhibit 49?

10:25:12 20 A No. It was not.

21 Q Was it in response to this ACDV that  
22 the -- that Mr. Brim's account was updated to  
23 report as disputed?

24 A Yes.

10:25:22 25 Q And this was in early August, 2008?

1 A Yes, it was.

2 Q And at any point prior to the actual  
3 deletion of the account in September of 2010, did  
4 the account report as anything other than  
10:25:38 5 disputed?

6 A To my knowledge, it did not.

7 Q What is the impact in terms of credit  
8 score on an account being marked as disputed?

9 A It does not get factored into the credit  
10:25:48 10 score.

11 Q And so from early August, 2008 through  
12 September, 2010, the Midland account would not  
13 have been factored into Mr. Brim's credit score?

14 A That is correct.

10:26:02 15 Q Would you please look at Plaintiff's  
16 Exhibit 51? On the second page of Plaintiff's  
17 Exhibit 51, there is a cover letter dated August  
18 7, 2008. Is this the cover letter transmitting  
19 to Mr. Brim the updated credit report following  
10:26:28 20 the investigation of his initial dispute?

21 A Yes. It is.

22 Q In the second paragraph of that letter,  
23 there is a sentence that reads, if our  
24 investigation has not resolved your dispute, you  
10:26:40 25 may add a 100-word statement to your report. Do

1 you see that?

2 A Yes, I do.

3 Q Did Mr. Brim ever avail himself of that  
4 opportunity?

10:26:50 5 A I have no knowledge that he did.

6 Q Is there any document that you're aware of  
7 that would suggest that he at any time during  
8 this entire process availed himself of that  
9 opportunity?

10:27:00 10 A No. I do not have anything in regards to  
11 that.

12 Q If you would, please, turn to Plaintiff's  
13 Exhibit 53.

14 A Yes. I have it.

10:27:08 15 Q And specifically -- specifically, would  
16 you look at the third-from-the-last page, which  
17 bears the Bates Number TU142?

18 A Yes. I have it.

19 Q Under the regular, regular inquiry  
10:27:32 20 section, Ms. Cauley had asked you some questions  
21 about the top four inquiries underneath that  
22 heading. Do you remember those questions?

23 A Yes. I do.

24 Q And those inquiries were from RBC Bank,  
10:27:44 25 First Metropolitan, Platinum Mortgage, and

1 Hometown Lenders. Do you see those inquiries on  
2 Plaintiff's Exhibit 53?

3 A Yes, I do.

4 Q Do you know why any of these entities were  
10:27:58 5 requesting information from Transunion?

6 A I don't know specifically why. But it was  
7 for some credit transaction.

8 Q Do you know what type of information  
9 specifically they requested?

10:28:08 10 A No. I do not.

11 Q Do you know what type of information they  
12 were seeking?

13 A No. I do not.

14 Q Do you know how they used it, if at all,  
10:28:18 15 any of the information they may have received  
16 from Transunion?

17 A No. I do not.

18 Q And if you would, please, turn to  
19 Plaintiff's Exhibit 57. And specifically, I want  
10:28:36 20 to ask you about the second-from-the-last page,  
21 which bears a Bates Label TU159.

22 A Yes.

23 Q Under regular inquiries, there is listed  
24 an inquiry from Wachovia and American Express at  
10:28:52 25 the top. Do you see that?

1 A Yes, I do.

2 Q Do you know what information Wachovia or  
3 American Express requested?

4 A No, I do not.

10:29:00 5 Q Do you know specifically what information  
6 Transunion sent, if any, to Wachovia and American  
7 Express?

8 A No. I do not.

9 Q Do you know why Wachovia or American  
10:29:10 10 Express may have been requesting information from  
11 Transunion?

12 A No. I do not.

13 Q If Transunion provided any information at  
14 all to Wachovia or American Express, do you have  
10:29:22 15 any knowledge of how they used it, if at all?

16 A No. I do not.

17 Q Staying with Plaintiff's Exhibit 57 for a  
18 moment and looking at the pages bearing Bates  
19 Label 156 through 157?

10:29:36 20 A Yes.

21 Q How many adverse accounts are reflected in  
22 this report marked as Plaintiff's Exhibit 57?

23 A I'm showing three.

24 Q And if we go back to Plaintiff's Exhibit  
10:29:56 25 53 for just a moment and look specifically at

1 Bates Label 139 and 140, how many adverse  
2 accounts are reflected in the report marked as  
3 Plaintiff's Exhibit 53?

4 A Three.

10:30:18 5 Q Mr. Newnom, can you say whether the  
6 Midland Credit Management account -- if any  
7 creditors saw it at all actually mattered to  
8 them?

9 A What they actually viewed as to what they  
10:30:32 10 actually physically saw, no, I cannot. Or how  
11 they determined it.

12 Q And can you -- can you say with any degree  
13 of certainty whether it mattered if they saw it?

14 A No. I cannot.

10:30:44 15 Q To know whether or not it mattered, we  
16 would have to ask the entities making the  
17 inquiry?

18 A Yes. You would.

19 MR. LANGLEY: That's all I have.

10:30:52 20 THE COURT: Okay. Anything else?

21 MR. BENNETT: No, Judge.

22 THE COURT: Okay. We're going to  
23 take a morning break. While you're on break,  
24 don't discuss the case among yourselves. And  
10:31:00 25 don't let anyone discuss it in your hearing or

1 your presence. And come back in 20 minutes.

2 (Jury excused.)

3 (Short recess.)

4 (In open court. Jury present.)

10:57:42 5 THE COURT: Have a seat. You  
6 ready for your next witness?

7 MS. CAULEY: Yes, Your Honor. The  
8 plaintiff calls Jamon Brim.

9 (Witness sworn.)

10:58:04 10 THE COURT: Good morning.

11 THE WITNESS: Good morning.

12 COURTROOM DEPUTY: Will you state  
13 your first and last name?

14 THE WITNESS: My name is Jamon  
10:58:24 15 Brim. J-A-M-O-N B-R-I-M.

16 COURTROOM DEPUTY: Thank you.

17 **DIRECT EXAMINATION**

18 **BY MS. CAULEY:**

19 Q Mr. Brim, can you tell us, please, your  
10:58:38 20 address?

21 A My address is 2426 Autumn Ridge Drive,  
22 Southwest, Huntsville, Alabama 35803.

23 Q And how long have you lived in the  
24 Huntsville area?

10:58:48 25 A I have lived in Huntsville for

1 approximately 11 years.

2 Q What --

3 A On my own.

4 Q What brought you to Huntsville?

10:58:58 5 A I first came to Huntsville, Alabama in  
6 1996 when I attended -- when I started Alabama  
7 A & M. But I left and -- in, I think, '98 or '99  
8 to go back home to work. I think I took two  
9 jobs. Because at school, I was broke, basically,  
10:59:20 10 to be honest.

11 Q And after you went back home, did you come  
12 back to the Huntsville area?

13 A I did come back to go to school. And I  
14 think I came back in 2000.

10:59:30 15 Q Have you been in Huntsville ever since  
16 2000, then?

17 A I have.

18 Q Do you consider Huntsville home now?

19 A I do.

10:59:36 20 Q When you came back to Huntsville, did you  
21 go back to Alabama A & M?

22 A I did.

23 Q And did you finish school there?

24 A I finished school at Alabama A & M.

10:59:46 25 Q What kind of degree do you have from



1 Alabama A & M?

2 A I have a degree in -- I'm sorry. I have a  
3 bachelor of science in business administration,  
4 concentration in management with a minor in  
10:59:58 5 accounting.

6 Q And while you were attending school at  
7 Alabama A & M, did you have to work several  
8 part-time jobs at the same time?

9 A I did. I worked the whole time I was at  
11:00:10 10 school, I think. What -- would you like to know  
11 each job?

12 Q No.

13 A I worked the whole time I was in school.

14 Q Okay. And what year did you graduate from  
11:00:20 15 Alabama A & M?

16 A I graduated in 2004.

17 Q Okay. And what did you do when you  
18 graduated from school?

19 A I worked and went to school. I started  
11:00:34 20 school at University of Maryland University  
21 College after I graduated from Alabama A & M.  
22 And I worked at Target Distribution Center.

23 Q Were you working at Target full time when  
24 you started at the University of Maryland  
11:00:48 25 University College?

1 A I was.

2 Q That's a hard name.

3 And how were you attending that school?

4 A It was on line. It was an on line,  
11:00:56 5 working on my master's. A dual master's in  
6 accounting and information technology.

7 Q And when you started attending that school  
8 on line, is that what prompted you to purchase  
9 the computer?

10 A That was. I needed the computer to attend  
11 school on line.

12 Q And I'm going to come back to the  
13 purchasing of the computer. But can you tell us  
14 where you're employed now?

11:01:20 15 A I am now employed with Yellow Book USA.

16 Q And how long have you been working for  
17 Yellow Book?

18 A I have been working with Yellow Book since  
19 June of 2005. June 22nd, actually, 2005.

11:01:34 20 Q What do you do for them?

21 A I am a regional distribution manager.  
22 Would you like to have a description?

23 Q Yes.

24 A I am a regional distribution manager. I  
11:01:48 25 just travel around and hire independent

1 contractors to deliver phone directories. And I  
2 recruit, train people how to deliver phone  
3 directories. I also am responsible for people  
4 who are hired to work inside the warehouse, like,  
11:02:04 5 as far as dock workers who hand the people the  
6 phonebooks to put in their car. We used to have  
7 verification operators who verified that people  
8 received their phonebooks. I used to have to  
9 train them and were responsible for them.

11:02:18 10 Q And what is your -- you said you were  
11 regional distribution manager. What region do  
12 you cover now?

13 A I am responsible for all of Alabama.  
14 Recently, a young lady was promoted in Pensacola,  
11:02:32 15 Florida, let's say, a month ago. Now she also  
16 covers the lower part of Alabama. So I am  
17 responsible from north Alabama to Montgomery,  
18 basically.

19 Q Because you have such a broad territory,  
11:02:50 20 does your job require that you travel a good bit?

21 A I travel 90 percent of the time.

22 Q And when you travel, how does that work?

23 Do you stay in hotels or --

24 A I am. I stay in hotels for the duration  
11:03:06 25 of the project. We call the markets, which is

1 the phone directory -- whenever we're delivering,  
2 we call that project. So I stay in the project  
3 from start to end, finish.

4 Q And when you travel and you have to stay  
11:03:22 5 in those hotels, do you pay for those expenses  
6 out of your pocket first or how does that work?

7 A I do. We have to pay for our expenses  
8 first. Say, for instance, I have to rent a hotel  
9 or buy food. In the instance, I might have to go  
11:03:38 10 to Florida. So I would have to rent a hotel and  
11 rent a car because they fly us to Florida or  
12 Iowa. And rent everything upfront. And then we  
13 submit expense reports, and then they reimburse  
14 us.

11:03:54 15 Q Now, let's go back to the Dell computer.

16 A Okay.

17 Q And could you tell us in 2004 -- can you  
18 just describe the process about how you went  
19 about purchasing the computer?

11:04:10 20 A I did. In 2004, the only reason I  
21 purchased the computer with Dell is because we  
22 had a discount -- an employee discount program  
23 with Target. So it allowed me to purchase a  
24 computer at a discount rate. So when I bought  
11:04:24 25 the computer in 2004, I wanted to establish

1 credit to get my credit on track. So I purchased  
2 a computer on credit. But I knew I was going to  
3 pay for the whole thing within 30 days before  
4 they started charging interest.

11:04:42 5 So I ordered the computer. And I shortly  
6 received it after. And I think -- would you like  
7 to know how I paid and everything right now?

8 Q Well --

9 A I mean, because I --

11:04:56 10 THE COURT: It's all right if you  
11 just tell us. She will stop you.

12 A You asked me --

13 THE COURT: It's fine. Just tell  
14 me what you did.

11:05:04 15 THE WITNESS: I'll go into  
16 everything. It comes to me, and I remember.

17 THE COURT: Just tell us where you  
18 ordered the computer and how you went about  
19 paying for it.

11:05:12 20 THE WITNESS: When I ordered the  
21 computer, I called in and told them on November  
22 that I wanted to pay because I knew that I wanted  
23 to pay within 30 days. So I called in. And I  
24 spoke with -- it was a lady at the time. And I  
11:05:26 25 called --

1 THE COURT: At Dell's?

2 THE WITNESS: Yes. At Dell. And

3 she -- she told me how to -- she told me -- she

4 added in a surge protector and everything. So I

11:05:38 5 bought everything. She told me the price. She

6 told me I could pay by check. And I did not pay

7 by check because I didn't have any checks. I had

8 a bank account, though. So I paid by check over

9 the phone, which was the easiest thing. So I

11:05:50 10 paid by check for the balance over the phone for

11 the computer.

12 **BY MR. CAULEY:**

13 Q When the Dell representative told you you

14 could pay by check or check over the phone, did

11:06:00 15 she tell you the exact amount to -- that they

16 were going to transfer as check by phone?

17 A She did. I think it was -- I might be

18 wrong, but I think it was \$954.12. Close to it.

19 Q And after you sent in the -- that payment

11:06:18 20 by check over the phone, were the funds withdrawn

21 from your bank account?

22 A They were.

23 Q Was that in November of 2004?

24 A That was in November of 2004. Maybe I

11:06:28 25 purchased it on November the 4th, but the funds

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1 didn't come out of the bank until November the  
2 8th.

3 THE COURT: Of 2004?

4 THE WITNESS: Of 2004.

11:06:38

5 **BY MS. CAULEY:**

6 Q After you made the payment and the funds  
7 were withdrawn from your bank, did you receive  
8 any communications from Dell on that computer  
9 bill?

11:06:44

10 A After I purchased the computer, I started  
11 receiving bills from Dell.

12 Q What did you do when you started getting  
13 bills from Dell?

11:06:58

14 A At first I was, like, what is this? I  
15 paid for my computer. Then I -- I thought they  
16 were wrong. So I called in. And they asked  
17 me -- they transferred me to the finance  
18 department. I told them that the computer was  
19 paid for. And they asked me for a receipt. I

11:07:14

20 didn't have a receipt. And then they asked me  
21 for a check it was, I think. So I told them I  
22 didn't pay by check, but I paid by check over the  
23 phone. And I said, I can provide my bank  
24 statement. So they said that was fine. So that

11:07:28

25 was the end of that phone call. But I went to

1 the bank and obtained --

2 Q Mr. Brim, when they said you could provide  
3 a bank statement, did you actually provide a copy  
4 of your bank statement to Dell?

11:07:40 5 A I did.

6 Q Did you mail that in or fax it in? How  
7 did that work?

8 A I faxed that in at first.

9 THE COURT: Did you go to the bank  
10 to get it? Is that what you were about to say?

11 THE WITNESS: I did. I went to  
12 the bank to get the bank statement because I  
13 didn't have it.

14 **BY MS. CAULEY:**

11:07:54 15 Q I'm sorry. So you actually had to go to  
16 Redstone to get a copy of the bank statement?

17 A I did.

18 Q And after you did that is when you faxed  
19 it in to Dell?

11:08:04 20 A I did.

21 Q After you faxed in that bank statement to  
22 Dell, did you continue to receive bills from  
23 Dell?

24 A I did.

11:08:10 25 Q Tell us what you did when you continued to



1 receive bills from Dell.

2 A I sent them bank statements. I called in  
3 again. And they asked me for -- they said --  
4 they asked for a transactional detail report. So  
11:08:26 5 at that time, I didn't have a clue what a  
6 transactional detail report was.

7 So I went to the Madison branch of  
8 Redstone Federal Credit Union, and I asked for a  
9 transactional detail report. I had my bank  
11:08:40 10 statement with me. The lady who I spoke with at  
11 that branch told me that she didn't know what a  
12 transactional detail report was. And then she  
13 looked at my bank statement. She said, this is  
14 it.

11:08:50 15 I said, I bought a computer from Dell.  
16 And they're saying they never received the funds.  
17 She said, this is it right here. She pointed at  
18 the specific account and she said, this is a  
19 transactional detail report. This shows you that  
11:09:04 20 the money came out of the account; that it was  
21 paid.

22 Q And after you had been to Redstone Federal  
23 Credit Union and been informed that your bank  
24 statement was a transactional detail report, did  
11:09:14 25 you contact Dell and tell them that same thing?

1 A I did contact them. And I let her know  
2 that my bank told me -- that lady told me that  
3 that was a transactional detail report.

4 Q And at that time, did Dell ever explain to  
11:09:28 5 you that anything else was necessary in order to  
6 get this taken care of?

7 A They did not.

8 Q Did you continue to receive bills from  
9 Dell?

11:09:36 10 A I did.

11 Q And did you make any other phone calls to  
12 Dell and try to talk to someone about the  
13 problem?

14 A I think I worked with someone in the  
11:09:44 15 recovery department, which basically the same  
16 thing happened. I sent my bank statement in.

17 Q Did you have problems getting this matter  
18 resolved with Dell?

19 A I did.

11:09:54 20 Q And did you end up having to file a  
21 complaint with the Better Business Bureau?

22 A I did.

23 Q And was the complaint with the Better  
24 Business Bureau, was that done on line?

11:10:08 25 A It was.

1 Q We're going to take a look at something in  
2 the defendant's book.

3 A Okay.

4 Q Exhibit 8. Do you have Exhibit 8?

11:10:48 5 A I do. I do. This is the complaint I  
6 filed with the Better Business Bureau.

7 Q If you will look under the entry for  
8 October 29th, 2005 --

9 A Okay.

11:11:06 10 Q Can you read -- it's consumer rebuttal to  
11 business response. And can you read what you  
12 entered on October 29th, 2005?

13 A Okay. The received business rebuttal  
14 response is did -- this statement here? I'm  
11:11:28 15 sorry. This the one you want me to read?

16 THE COURT: From 11-04, 2005?

17 **BY MS. CAULEY:**

18 Q No. 10-29. Do you see it? Middle of the  
19 page.

11:11:36 20 A I see it. Consumer rebuttal to business  
21 response. The consumer indicated he/she did  
22 not --

23 Q Right under that is actually your entry.  
24 It starts with I have.

11:11:54 25 A I am writing in response -- right there?

1 Q No. Right above that. Under October  
2 29th.

3 A Are we on the same page?

4 Q Let me show it to you.

11:12:04 5 THE COURT: There's actually a  
6 hole.

7 THE WITNESS: It is.

8 THE COURT: You can't see what it  
9 says.

11:12:10 10 THE WITNESS: You can't see.

11 **BY MS. CAULEY:**

12 Q I'll give you my copy. It's right here.

13 A Yes. That's where the hole is.

14 I have sent several bank statements, and  
11:12:22 15 the problem still has not been resolved. I sent  
16 a statement with the bank letterhead and still  
17 nothing happened. The bank stated that they did  
18 not know what a transactional detail report was  
19 but showed the payment on their end. The bank is  
11:12:42 20 Redstone Federal Credit Union in Huntsville,  
21 Alabama, and the telephone number is  
22 (256) 327-1625.

23 Q Thank you, Mr. Brim.

24 A You're welcome.

11:13:04 25 Q That was actually your response to the

1 Better Business Bureau in October of 2005?

2 A Okay.

3 Q Is that right?

4 A That is. I mean, that's kind of fuzzy.

11:13:16 5 That is quite a few years ago.

6 Q After you had sent this in to the Better  
7 Business Bureau and notified them that your bank  
8 had indicated a transactional detail report was  
9 the same as your bank statement?

11:13:30 10 A Correct.

11 Q Did you receive any other documentation  
12 from Dell where you were able to resolve the  
13 dispute?

14 A No.

11:13:40 15 Q I'm sorry?

16 A I just received a bill.

17 Q Did you ever have any difficulties  
18 communicating with Dell with their telephone  
19 operators, maybe?

11:13:52 20 A We did. Every time I called in, it would  
21 be foreign guys. I think they were Indian. So  
22 we had a language barrier problem.

23 Q And were you ever able to work out the  
24 dispute you had with Dell prior to the account  
11:14:10 25 being sold to Midland?

1 A I did not.

2 Q How did you learn that Dell had sold your  
3 account to Midland?

4 A I received a bill from Midland -- a letter  
11:14:24 5 from Midland, letting me know that they have  
6 taken over the account from Dell.

7 Q Do you recall approximately when you  
8 received that first letter from Midland?

9 A If I -- I think it was maybe October, '07.  
11:14:44 10 Maybe.

11 Q Okay. And in October of 2007, do you  
12 recall what that letter from Midland stated?

13 A It stated that I owed a balance for a  
14 computer from Dell, and that I had 30 days to  
11:15:00 15 respond to the letter -- to the letter and deny  
16 the balance.

17 Q Did you respond to that letter from  
18 Midland in October of 2007?

19 A I did. Because I actually received a call  
11:15:14 20 from Midland. And I spoke to a lady. When she  
21 did call, she told me about the balance. We  
22 discussed everything about the balance with Dell.  
23 And I told her that it was paid. She asked me  
24 for a check by phone. I told her that I did not  
11:15:32 25 have a check -- a cancelled check, but I could

1 provide her my bank statement. And she  
2 transferred me to a supervisor, a manager. And  
3 this was a guy at that time. And I told him that  
4 I had a bank statement. So I faxed it in to him  
11:15:48 5 because he asked for a bank statement. So I  
6 faxed it in.

7 Q Okay. Now, this call you received, was  
8 that, like, a collection call from Midland?

9 A It was a collection call. It was a  
11:15:58 10 collection call from Midland.

11 Q They were trying to get payment from you?

12 A They were.

13 Q And that -- you think that call that you  
14 had with Midland or that you received from  
11:16:08 15 Midland -- was it within the 30 days of the  
16 letter you had gotten from Midland?

17 MR. LANGLEY: Objection. Leading.

18 THE COURT: Overruled.

19 A I received a call in 2007 between -- if it  
11:16:20 20 had to be October, I would say maybe in November.

21 **BY MS. CAULEY:**

22 Q And at the time that you spoke with the  
23 manager from Midland and you faxed in your  
24 statement, did you receive any other  
11:16:30 25 communication from Midland?

1 A I did.

2 Q What's the next communication you received  
3 from Midland?

4 A Another bill.

11:16:38 5 Q Do you recall when that was?

6 A I would think maybe another one -- I  
7 received one between two calls -- between the  
8 call after the first bill. So I think I received  
9 another one in either December or January. I  
10 can't remember.

11 Q That would have been December of 2007,  
12 January, 2008?

13 A Yes.

14 Q And after you received that letter, did  
11:17:08 15 you take any steps to contact Midland or provide  
16 them another bank statement?

17 A I provided them another bank statement.

18 Q If you will, look in the black binder  
19 that's up there, the plaintiff's exhibits, and  
11:17:32 20 look at Plaintiff's Exhibit 3.

21 A Which exhibit?

22 Q Three.

23 A Okay.

24 Q Mr. Brim, I told you the wrong number. I  
11:17:54 25 meant Number 2.



1 A Okay.

2 Q Mr. Brim, let me ask you this: Have you  
3 ever testified in court before?

4 A I have not.

11:18:08 5 Q Are you nervous?

6 A A little bit.

7 Q I understand. If you'll look at  
8 Plaintiff's Exhibit 2 --

9 A Okay.

11:18:18 10 Q And turn to Page 2.

11 A Okay.

12 Q Is this a copy of the bank statement that  
13 you provided to both Dell and to Midland?

14 A It is.

11:18:34 15 Q So this is the bank statement we've been  
16 referring to?

17 A This is the bank statement.

18 Q Now, if you'll turn, please, to Exhibit  
19 Number 11 --

11:18:46 20 THE COURT: Let me ask you  
21 something. Is the statement that is on Page 2 of  
22 that exhibit where it says 11-08 Dell Financial  
23 Payment 041106 \$954.12 -- is that what you sent  
24 to them?

11:18:58 25 THE WITNESS: Yes, ma'am. And I

1 circled it. I actually circled the payment.

2 THE COURT: All right. So this is  
3 just a different copy than the copy you sent?

4 THE WITNESS: This is the  
5 different copy.  
11:19:14

6 MS. CAULEY: Your Honor, this is  
7 the actual certified copy from Redstone.

8 THE COURT: Next exhibit?

9 MS. CAULEY: Number 11. I'm  
10 getting ahead of myself. Number 10.  
11:19:30

11 THE WITNESS: Okay.

12 MS. CAULEY: Apparently I can't  
13 count this morning.

14 **BY MS. CAULEY:**

15 Q Exhibit 10 is a letter from Midland, dated  
16 January 22nd, 2008. Do you recall if you ever  
17 received this letter?

18 A I did receive this letter.

19 Q And what happened when you got Plaintiff's  
20 Exhibit 10?  
11:19:58

21 A The first thing that I did was thought  
22 that how did a 900-dollar computer become \$1,600.  
23 And then I wondered why am I still receiving a  
24 bill for this.

25 Q At the time that you received Plaintiff's  
11:20:16

1 Exhibit 10, had you already forwarded a bank  
2 statement to Midland on two previous occasions?

3 A I did.

4 Q And will you read the -- under the current  
11:20:30 5 owner section where it sort of is indented, under  
6 that, there is a statement.

7 A Original --

8 Q Starts with this letter?

9 A Okay.

11:20:42 10 Q Can you read that?

11 A This letter is to inform you that Midland  
12 Credit Management, Incorporation is considering  
13 forwarding this account to an attorney with the  
14 intent to initiate legal action to satisfy the  
11:20:54 15 debt.

16 Q How did you feel when you got this letter  
17 that says they were intending to sue you?

18 A Very upset. Highly upset. I was upset  
19 when I received this letter. It felt like  
11:21:08 20 talking to a wall, sending bank statements to  
21 people who obviously did not do anything with the  
22 bank statement. I mean, didn't let me know what  
23 else I needed to send.

24 Q Did you contact Midland after you received  
11:21:22 25 this letter?

1 A After this one, I don't think I did.  
2 Because -- after this letter, I think I was  
3 traveling at the time.

4 Q When you're traveling, are you gone for  
11:21:40 5 weeks at a time?

6 A Months. Weeks, months at a time.

7 Q When you got back from traveling, did you  
8 have any other communication regarding Midland or  
9 from Midland?

11:21:50 10 A I did. I think at that time I was gone  
11 until maybe midsummer. And I received -- I got  
12 home, and it was a card on my door from a  
13 sheriff. And after I saw the card, I pulled the  
14 card out of my door. And I looked at the -- I  
11:22:12 15 checked my mail. And it was a -- I was sued by  
16 Midland, represented by a law firm, Schwartz it  
17 was, I remember.

18 Q Let me ask you if you will turn to  
19 Plaintiff's Exhibit 17.

11:22:34 20 A Okay.

21 Q Did you receive a copy of this letter  
22 that's Plaintiff's Exhibit 17?

23 A This is the letter that I received.

24 Q When you came back from traveling for  
11:22:46 25 work, you had a card on your door from the

1 sheriff and this letter, as well?

2 A I did.

3 Q And what steps did you take after you had  
4 the letter from the attorneys and the notice from  
11:23:06 5 the sheriff and card from the sheriff to contact  
6 Midland?

7 A At this point, I think this was mid July  
8 or when was this? When I received this letter,  
9 April, I think I was out of town still. So I  
11:23:28 10 didn't respond to this letter.

11 Q And if you look at Plaintiff's Exhibit 18,  
12 that's actually a copy of the lawsuit that was  
13 filed against you in May of 2008. Did you ever  
14 actually get a copy of that lawsuit personally?

11:23:50 15 A I didn't because I was out of town.

16 Q During this same time frame in the summer  
17 of 2008, were you applying for credit at all?

18 A I was.

19 Q What reasons were you applying for credit?

11:24:04 20 A I wanted to get a house in 2008.

21 Q Why were you looking for a house?

22 A Because I wanted -- I wanted a yard. I  
23 have two children, ages seven and four. I wanted  
24 a yard that my kids can play in, to grow up in a  
11:24:20 25 house.

1 Q Have you ever owned your own home before?

2 A Never.

3 Q And so in summer of 2008, you had started  
4 that process of trying to --

11:24:30 5 A I did. I wanted to get the financing  
6 first because I thought that that would be  
7 easier.

8 Q And where did you go initially to try and  
9 get financing for a home?

11:24:38 10 A I think it was several lenders at that  
11 time. I think Lending Tree was one. First  
12 Metropolitan was one. Countrywide was one. And  
13 Platinum Mortgage was one.

14 Q And are those places that you had gone at  
11:25:02 15 various times in 2008 to apply for a mortgage?

16 A It was.

17 Q In July of 2009, do you recall if you were  
18 denied a mortgage?

19 A I was.

11:25:10 20 Q I'm sorry. 2008.

21 A Oh. I'm sorry. I didn't even hear -- did  
22 you say another year?

23 Q I did. In July of 2008, were you denied a  
24 mortgage?

11:25:20 25 A I was.

1 Q As a result, did you request copies of  
2 your credit report?

3 A I did.

4 Q Can you tell us about that process, how  
11:25:28 5 you went about obtaining copies of your credit  
6 reports?

7 A I did that on line with Equifax. Maybe I  
8 paid for one. Equifax. I can't remember. And  
9 then I called Transunion. And I did it on line,  
11:25:48 10 as well. And I did it on line with Experian.

11 Q And did you actually receive copies of  
12 your credit reports in July of 2008?

13 A I did.

14 Q What did you do when you received those  
11:26:00 15 copies?

16 A I looked at the credit report thoroughly.  
17 And I had a few disputes.

18 Q Did you prepare a letter to send to the  
19 credit reporting agencies?

11:26:14 20 A I did. I had to -- I did a little bit of  
21 research to find, you know, dispute letters for  
22 credit reporting. And I also used a couple of  
23 business communication books that I had.

24 Q Is that how you drafted your dispute  
11:26:30 25 letter?

1 A It is.

2 Q All right. And if you'll look in your  
3 notebook to Plaintiff's Exhibit 37. Do you have  
4 that?

11:26:58 5 A I do. Is it the letter that I sent?

6 Q Right. Is this -- can you tell us,  
7 please, what Plaintiff's Exhibit 37 is?

8 A This is the dispute -- it looks like the  
9 dispute that I sent to Equifax.

11:27:12 10 Q And in your letter to Equifax, what  
11 account did you dispute?

12 A I disputed the Midland Credit Management  
13 account.

14 Q And did you give a reason of why you were  
11:27:24 15 disputing that account?

16 A I did. Let's see. Because the account  
17 was paid on November the 8th, 2004.

18 Q When you sent -- did you mail this letter  
19 to Equifax?

11:27:36 20 A I did mail this letter.

21 Q When you sent this letter to Equifax, did  
22 you send any other documentation with it?

23 A I sent along with this my credit report  
24 that came with it, and I think I sent my driver's  
11:27:54 25 license.



1 Q Did you include a copy of your bank  
2 statement, as well?

3 A I did.

4 Q Do you recall how you mailed your dispute  
11:28:04 5 letter to Equifax?

6 A Certified mail.

7 Q If you'll turn back to Plaintiff's Exhibit  
8 4.

9 A Okay.

11:28:38 10 Q Is Plaintiff's Exhibit 4 the green card  
11 you got back from your certified mail?

12 A This is a copy of it.

13 Q On Page 2, can you tell us what that is?

14 A Page 2 is the certified receipt that I  
11:28:54 15 sent.

16 Q It looks like it cost \$6.41 to mail your  
17 letter to Equifax?

18 A It did cost that.

19 Q Did you actually pay all these charges  
11:29:06 20 yourself to mail these --

21 A I did pay these charges.

22 Q In addition to writing Equifax, did you  
23 write anyone else a dispute letter in July of  
24 2008?

11:29:18 25 A I did. I wrote a letter to Transunion,

1 Experian, and also Midland.

2 Q All right. Let's look at your letter to  
3 Transunion first. And that is page -- Exhibit  
4 46.

11:29:42 5 A 40 --

6 Q 46.

7 A Okay. Okay.

8 Q When you sent your letter to Transunion,  
9 what accounts did you dispute on your Transunion  
10 credit report?

11 A I disputed Midland Credit Management,  
12 Texas Guaranteed Student Loan, and Professional  
13 Finance.

14 Q What reason did you give for disputing the  
11:30:20 15 Midland account?

16 A Because the bill was paid on November the  
17 8th, 2004.

18 Q And what reason was given for the two  
19 other accounts that you disputed?

11:30:26 20 A They were my brother's.

21 Q Did you include a bank statement with your  
22 letter to Transunion?

23 A I did. I included by bank statement, my  
24 social security card, and driver's license.

11:30:44 25 Q And if you'll look at Plaintiff's Exhibit

1 45?

2 A Okay.

3 Q Do you recognize Exhibit 45?

4 A I do.

11:31:02 5 Q Can you tell us what that is?

6 A This is a letter that came along with my  
7 credit report that I filled out.

8 Q Did Plaintiff's Exhibit 45 go to  
9 Transunion, as well?

11:31:16 10 A I did.

11 Q On that, what accounts did you dispute?

12 A Midland Credit Management.

13 Q What reason did you give for disputing the  
14 Midland Credit Management?

11:31:30 15 A That I paid this account in full, and I  
16 paid this before it went to collection or before  
17 it was charged off.

18 Q And then if you'll please turn to  
19 Plaintiff's Exhibit 63.

11:31:52 20 A I have it.

21 Q Can you tell us what Plaintiff's Exhibit  
22 63 is?

23 A This is the dispute that I sent to  
24 Experian.

11:32:18 25 Q And with the dispute to Experian, did you

1 continue to dispute the Midland account?

2 A I did.

3 Q Did you include any documentation with  
4 your dispute letter to Experian?

11:32:30 5 A I did. It's transactional detail report  
6 from my bank and a copy of my social security  
7 card and my driver's license.

8 Q At the time that you were sending in the  
9 disputes to Transunion, Equifax, and Experian,  
11:32:46 10 did you send a dispute letter to any other  
11 company?

12 A I sent a dispute letter to Midland.

13 Q And that's going to be Plaintiff's Exhibit  
14 11.

11:33:04 15 A Okay.

16 Q If you'll turn to that, please.

17 A Okay.

18 Q Is Plaintiff's Exhibit 11 a copy of the  
19 letter that you sent to Midland in July of 2008?

11:33:40 20 A It is.

21 Q Can you read what you put in your letter  
22 to Midland, please?

23 A Dear sir or ma'am, I am writing to you in  
24 response to the recent communication I received  
11:33:52 25 from your office regarding this alleged debt. I

1 refuse to pay this debt. And I will not pay this  
2 debt. I dispute this debt. Please do not  
3 contact me again by phone or in writing. The  
4 reason I dispute this debt is because this debt  
11:34:04 5 was paid on November the 8th, 2004. Accompanied  
6 is a transactional detail report from my bank,  
7 showing the payment and transaction number.

8 Q At the time that you sent this letter, had  
9 you received additional telephone calls from  
11:34:22 10 Midland to collect the account?

11 A I don't think so at that time.

12 Q And when you sent this letter, did you  
13 include anything other than the transactional  
14 detail report from Redstone?

11:34:36 15 A Did I include anything with this? I think  
16 it was maybe my driver's license copy.

17 Q But you at least sent the transactional  
18 detail report from Redstone?

19 A I did send that transactional detail  
11:34:52 20 report.

21 Q After your letter to Midland in July of  
22 2008, did you receive any response back from  
23 Midland?

24 A In 2008?

11:35:02 25 Q Yes. After your letter of July 29th,

1 2008.

2 A Not right offhand, I didn't.

3 Q Did you receive any telephone calls from  
4 Midland?

11:35:10 5 A I didn't.

6 Q After you sent in your dispute letters to  
7 the credit bureaus, did you receive an updated  
8 credit report from each of the three credit  
9 reporting agencies?

11:35:22 10 A I did.

11 Q And do you recall if in response to your  
12 letter to Transunion -- what was the outcome of  
13 your dispute regarding the Midland account?

14 A That they did not take it off; that the  
11:35:40 15 account was valid. Midland reported the account  
16 as valid, and they kept it on there.

17 Q And what about with Equifax? Do you  
18 recall what happened with Equifax?

19 A Equifax -- I think they -- I think they  
11:35:54 20 left it on there. But I think they -- the  
21 balance was zero with Equifax.

22 Q And what about Experian? What was the  
23 result of your dispute with Experian?

24 A It was still on there as collection  
11:36:06 25 account.

1 Q Were the other two accounts that you  
2 disputed with Experian and Transunion, were those  
3 off of your credit when you got the results?

4 A They were off.

11:36:18 5 Q How did you feel when you got these  
6 updated credit reports from Equifax and  
7 Transunion and Experian with the Midland account  
8 still appearing?

9 A I felt helpless because I sent bank  
11:36:32 10 statements. No one told me to send anything  
11 else. So I sent bank statements over and over  
12 and over. I didn't know what else to do. It was  
13 just -- I felt like it was a lost cause.

14 Q After the credit reports came back, did  
11:36:48 15 you continue to apply for a mortgage?

16 A I did.

17 Q And at the time that you were applying for  
18 the mortgages, were any of those mortgages given  
19 to you in 2008?

11:36:58 20 A No.

21 Q And when you applied for those mortgages,  
22 did you understand the mortgage companies would  
23 look at your credit?

24 A I did.

11:37:08 25 Q At the time that you were denied those

1 mortgages, were you aware of any other reason you  
2 would have been denied credit?

3 A No.

4 Q From August of 2008 until the end of 2008,  
11:37:26 5 December 31st, 2008, did you ever receive any  
6 letter from Midland, stating they needed some  
7 specific item from you in order to clear this up?

8 A I didn't.

9 Q In 2009, did you continue to apply for  
11:37:44 10 credit?

11 A I did.

12 Q And what was the results of your attempts  
13 to get credit?

14 A Denied.

11:37:50 15 Q Did you take any steps to dispute again  
16 with the credit reporting agencies?

17 A In -- when, now?

18 Q In 2009.

19 A I did.

11:38:00 20 Q And can you tell us when you disputed  
21 again with the credit reporting agencies?

22 A It was at the time that I was looking to  
23 purchase a house.

24 Q Had you actually found a house that you  
11:38:12 25 liked?



1 A I did. I found a house that I wanted. It  
2 was a foreclosed home in a nice neighborhood. So  
3 I found a house that I wanted.

11:38:24

4 Q Is that the house that you're currently  
5 living in?

6 A It is.

7 Q And so what happened when you found that  
8 house? Did you take some steps to try and get  
9 approved for your mortgage?

11:38:32

10 A I did. I disputed the account with the  
11 credit bureaus, and then I sent dispute letters  
12 again. And then I sent dispute letters to  
13 Midland.

14 (Discussion off the record.)

11:39:18

15 **BY MS. CAULEY:**

16 Q Let's look at Plaintiff's Exhibit 12.

17 A Okay.

18 Q Can you identify Plaintiff's Exhibit 12?

11:39:40

19 A Looks like the letter that I sent to  
20 Midland.

21 Q And can you tell us what you said to  
22 Midland on March 10th of 2009?

11:39:54

23 A Dear sir, ma'am, I am writing you again to  
24 specifically dispute this debt. I do not owe  
25 this debt. And I specifically do not owe any

1 debt to Dell which you are collecting on. I  
2 refuse to pay this debt. And I will not pay this  
3 debt. I dispute this debt. Please do not  
4 contact me again in any manner by phone or in  
11:40:08 5 writing. This debt was paid in full on November  
6 the 8th, 2004. I have enclosed a copy of my bank  
7 statement, showing that this debt was paid --  
8 this debt was for.

9 Please immediately correct my credit  
11:40:24 10 report with all three credit reporting agencies  
11 to specifically show a zero balance and no  
12 derogatory or negative information at all.

13 Thank you for your immediate attention to  
14 this matter.

11:40:36 15 Q When you sent Plaintiff's Exhibit 12, did  
16 you include another copy of your bank statement  
17 from Redstone?

18 A I did.

19 Q And do you recall how you actually mailed  
11:40:50 20 Plaintiff's Exhibit 12?

21 A I think I overnighted this.

22 Q And if you will, look at Plaintiff's  
23 Exhibit 6.

24 A Okay.

11:41:10 25 Q Can you tell us what Plaintiff's Exhibit 6

1 is?

2 A This is the receipt from the overnight  
3 that I sent to Midland.

4 Q That cost you \$17.50?

11:41:24 5 A It did.

6 Q Why did you overnight your dispute to  
7 Midland?

8 A Because I actually spoke with them at this  
9 time. I called in Midland. And I told them that  
11:41:34 10 I needed that off because I found a house. It  
11 was March. I was trying to get my house with  
12 Platinum Mortgage. And I needed this to come off  
13 my account. And I told them that I -- that it  
14 was paid. They told me to send a copy of my bank  
11:41:54 15 statement. So I overnighted that to them. And  
16 they received it. I called them the next day and  
17 asked them did they receive it. They received  
18 it.

19 Q And why were you choosing Platinum to get  
11:42:06 20 your mortgage with?

21 A Because they were the only ones working  
22 with me because I could show them my bank  
23 statement and they would understand that it was  
24 paid.

11:42:18 25 Q Platinum was actually trying to work with

1 you?

2 A It was. They were.

3 Q In March of '09, you actually contacted  
4 Midland prior to mailing your overnight letter?

11:42:30 5 A In when?

6 Q When did you contact Midland with respect  
7 to your overnight letter?

8 THE COURT: He's already testified  
9 he contacted them by phone before the letter.

11:42:40 10 A I did. I contacted them the day before I  
11 sent the letter.

12 **BY MS. CAULEY:**

13 Q Did you contact them any other times after  
14 you had sent the dispute letter in March of 2009?

11:42:50 15 A I didn't.

16 Q At the time you spoke with the Midland  
17 representative, did the Midland representative  
18 request any other documentation from you?

19 A No. They told me to send my bank  
11:43:02 20 statement. That's why I overnighted my bank  
21 statement to them.

22 Q At the same time that you sent this  
23 dispute letter in with Midland, did you send  
24 dispute letters to the credit reporting agencies?

11:43:10 25 A I did.

1 Q And I believe the first one to Equifax is  
2 Plaintiff's Exhibit 39.

3 A Okay.

4 Q Can you read what you wrote to Equifax on  
11:43:38 5 March 10th, 2009, please?

6 A To whom it may concern, please immediately  
7 correct the dispute information on Page 17 of my  
8 credit report under Midland Credit Management,  
9 Incorporation collecting for the original  
11:43:54 10 creditor, Dell Financial Services. I do not owe  
11 this debt. And it should be listed as a zero  
12 balance.

13 I have been disputing this for a long time  
14 without success. I have enclosed a copy of the  
11:44:08 15 previous letter I have sent to you on this.

16 Please immediately correct this to show a  
17 zero balance and that I do not owe anything and  
18 delete any negative comments information on this.

19 Again, I paid this debt in full on  
11:44:22 20 November the 8th, 2004. I have enclosed a copy  
21 of my bank statement, showing a payment to Dell  
22 Financial. I am sending a copy of this by  
23 certified mail return receipt requested to both  
24 Midland Credit Management, Incorporation and Dell  
11:44:42 25 Financial Service to also request their immediate

1 attention.

2 Q Did you mail a copy of your Equifax letter  
3 to Midland?

4 A I did. No. What's that?

11:44:56 5 Q I'm sorry. You indicated in the letter of  
6 March 10th, 2009, to Equifax that you were  
7 sending a copy to Midland?

8 A Yes.

9 Q Did you actually mail a copy to Midland?

11:45:04 10 A I did.

11 Q What response did you receive from Equifax  
12 to your dispute letter of March 10th, 2009?

13 A That it was -- I don't think they took it  
14 off right then. Because they reported it as  
11:45:28 15 collection account.

16 Q So in 2009 when you got your response back  
17 to Equifax, was Equifax reporting it with a  
18 balance at that time?

19 A It was a balance then. They returned the  
11:45:40 20 balance.

21 Q If you'll turn to Plaintiff's Exhibit 52.

22 A Okay.

23 Q Is this a copy of the letter you sent to  
24 Transunion?

11:46:24 25 A This is.

1 Q Is it basically the same letter that you  
2 read that you had mailed to Equifax?

3 A It is.

4 Q And did you receive any type of response  
11:46:34 5 from Transunion to your letter of March 10th,  
6 2009?

7 A That it was still a collection account.

8 Q Did you also send a letter to Experian?

9 A I did.

11:46:44 10 Q And did you receive any response from  
11 Experian?

12 A That it was a collection account.

13 Q In July of 2008 when you were preparing  
14 your dispute letters and making copies of your  
11:46:58 15 credit reports and everything, can you give us  
16 your best judgment as to how much time you spent  
17 preparing your dispute letters in July of 2008?

18 THE COURT: Eight?

19 MS. CAULEY: Eight.

11:47:12 20 A In 2008, I had spent time researching  
21 the -- to draft a template for the disputes. And  
22 then I -- I had to drive to my office, actually,  
23 to print the documents off because the printer at  
24 my office could print front and back side,  
11:47:36 25 two-sided page. And let's see. And I had to

1 mail -- go to the post office. So total in 2008,  
2 I'd say about ten hours doing all of that.

3 **BY MS. CAULEY:**

4 Q And in March of 2009 when you sent your  
11:47:52 5 dispute letters to Midland and the credit  
6 reporting agencies, can you give us your best  
7 judgment as to how much time you spent then  
8 creating these dispute letters?

9 A I spent a little less time on researching  
11:48:04 10 the letters. So I used those as a template. So  
11 I think it took about six hours, maybe.

12 Q And what do you earn an hour?

13 A \$17 at the time.

14 Q In 2009?

11:48:20 15 A Yes.

16 Q In 2008, as well?

17 A Yes.

18 Q Now, if you'll turn to Page 57 --

19 MR. LANGLEY: Exhibit 57?

11:48:42 20 MS. CAULEY: Yes. Exhibit 57.

21 **BY MS. CAULEY:**

22 Q If you'll turn, please, to  
23 next-to-the-last page, it's Transunion 159.

24 A Okay.

11:49:08 25 Q Do you see the section called regular



1 inquiries?

2 A I do.

3 Q And it indicates in July 28th, 2008, there  
4 is an inquiry from First Metropolitan Mortgage.

11:49:32 5 Had you applied for a mortgage with First  
6 Metropolitan?

7 A I did.

8 Q And on September 19th, 2008, there is an  
9 inquiry again from First Metropolitan Mortgage.

11:49:46 10 Did you go back to First Metropolitan Mortgage  
11 and apply again?

12 A Let's see. I might have. I might have  
13 called. I might have called.

14 Q Called by phone and applied?

11:50:00 15 A The first time, I might have called and  
16 then the second time I might have took them some  
17 documents, I guess, or vice versa.

18 Q There's also on September 19th, 2008, an  
19 inquiry from Hometown Lenders. Did you apply for

11:50:16 20 a mortgage with Hometown Lenders?

21 A Maybe Lending Tree. If that's Lending  
22 Tree.

23 Q Did you apply for a mortgage with Lending  
24 Tree?

11:50:28 25 A I think I did.

1 Q And were you granted a mortgage from First  
2 Metropolitan or Lending Tree?

3 A No.

4 Q There's also an application for Platinum  
11:50:48 5 in December, 2008. Did you apply for a mortgage  
6 from Platinum in December, 2008?

7 A I did.

8 Q What was the result of that application?

9 A I didn't get it then.

11:50:56 10 Q Did you apply for a mortgage with RBC Bank  
11 in January of 2009?

12 A With RBC, not that I can recall. I don't  
13 remember RBC.

14 Q There's also an inquiry from American  
11:51:16 15 Express on May 14th of 2009. Did you apply for  
16 American Express?

17 A I did.

18 Q Can you tell us about that?

19 A I needed -- at that time, I was in  
11:51:26 20 Birmingham, which I'm always in Birmingham in  
21 March. But I was trying to get a hotel room  
22 because I had a Capital One credit card. I tried  
23 to get an increase in limit with them. I  
24 couldn't. So I tried to get an American Express  
11:51:46 25 to pay for my hotel. And I got declined.

1 Q All right. I'm going to come back to  
2 Capital One, but how did you apply for the  
3 American Express account?

4 A On line.

11:52:00 5 Q On line? And what was the purpose of that  
6 account?

7 A The purpose to have the American Express?

8 Q Yes.

9 A To pay for my hotel room because at the  
11:52:10 10 time, I didn't have any money to rent my hotel  
11 for the week.

12 Q How does that work at Yellow Book? Do you  
13 have to pay your expenses upfront?

14 A I have to pay all of my expenses upfront.  
11:52:22 15 And then I have two kids I have to take care of.  
16 So they come first before a hotel room.

17 Q In response to your application for  
18 American Express account, did you receive a  
19 letter from American Express regarding that  
11:52:42 20 application?

21 A Did I receive a letter?

22 Q From American Express?

23 A I did. Saying that I didn't get the  
24 credit card. Declined.

11:52:52 25 Q At the time you applied for the American

1 Express account, did you understand that they  
2 would look at your credit report?

3 A I did.

4 Q Are you aware of any other reason that you  
11:53:04 5 were denied credit other than the credit report  
6 with American Express?

7 A No.

8 Q If you will, look at Plaintiff's Exhibit  
9 7, Mr. Brim.

11:53:40 10 A Which one?

11 Q Seven. If you will go to Page 3, it is  
12 the actual document from American Express.

13 A Okay.

14 Q Do you see that?

11:53:54 15 A I do.

16 Q And how did you feel when you got this  
17 letter from American Express?

18 A I was kind of saddened, because I did need  
19 that money at the time. I think my Capital  
11:54:12 20 One -- I had reached the limit. So I needed --  
21 and I needed to stay another week. Maybe a  
22 couple of weeks, really, before I got my  
23 expenses. Because that's in -- well, that's in  
24 March. It's -- the way our expense reports come,  
11:54:32 25 it depends on the time and manner we get them to

1 the senior manager when we get our money back.  
2 So at that time, I really needed that money.

3 Q What did you have to do in order to pay  
4 for your hotel room?

11:54:44 5 A Had to borrow money from my mom, which  
6 was --

7 Q How did that make you feel?

8 A That was rough, because I am a grown man,  
9 and I had to depend on my mother.

11:54:54 10 Q If you look at Plaintiff's Exhibit 7, that  
11 American Express letter, and come down to the  
12 second paragraph?

13 A Okay.

14 Q What were the four reasons that American  
11:55:10 15 Express provided to you for your denial?

16 MR. LANGLEY: Your Honor, I  
17 object. That calls for a mischaracterization of  
18 the document. There's one reason stated in the  
19 letter.

11:55:34 20 MS. CAULEY: Your Honor, there are  
21 four --

22 THE COURT: Hang on just a second.  
23 Overruled.

24 **BY MS. CAULEY:**

11:55:46 25 Q What were the four items listed in the

1 American Express letter for your credit denial?

11:56:06

2 A Serious delinquency and public record or  
3 collection file, time since derogatory or public  
4 record or collection is too short, time since  
5 delinquency is too recent or unknown, too many  
6 inquiries last 12 months.

7 Q And on the next page, it tells us American  
8 Express looked at all three of your credit  
9 reports. Do you see that?

11:56:22

10 A Yes.

11 Q In May of 2009, did you have any other  
12 collection account on your credit report other  
13 than the Midland account?

14 A In '09, I don't think so.

11:56:40

15 Q Since March of '09, have you sent in any  
16 further disputes to Midland in the mail?

17 A I have not.

18 Q And have you disputed with the credit  
19 reporting agencies any further since March of  
20 '09?

11:56:56

21 A I have not.

22 Q Is there some reason that you didn't  
23 continue to dispute the Midland account on your  
24 credit reports?

11:57:02

25 A Because I obviously wasn't getting

1 anywhere with the disputes. It just wasn't  
2 working.

3 Q Since March of '09 when you sent your  
4 letter to Midland, have you received any letter  
11:57:18 5 from Midland, indicating they needed any other  
6 documentation in order to correct this account?

7 A No.

8 THE COURT: Are you at a good  
9 stopping point?

10 11:57:42 MS. CAULEY: I am. I can stop.

11 THE COURT: Let's stop for lunch.

12 Ladies and gentlemen, please observe the  
13 instruction I've given you. And please be back  
14 in one hour and 15 minutes. Thank you.

15 11:57:54 (Jury excused.)

16 THE COURT: Thank you. You take a  
17 break, too.

18 THE WITNESS: Thank you.

19 (Witness steps down.)

20 11:58:04 (Luncheon recess.)

21 (In open court. Jury not  
22 present.)

23 THE COURT: Do you have more than  
24 one witness?

25 13:20:12 MR. LANGLEY: Yes, we do.

1 THE COURT: Who do you have  
2 besides Dell?

3 MR. LANGLEY: We will have Dell,  
4 Mr. Edrozo.

5 THE COURT: You're going to call  
6 him back?

7 MR. LANGLEY: Very briefly just  
8 for about four points.

9 THE COURT: Okay.

10 13:20:20 MR. LANGLEY: Then we'll have  
11 Redstone Federal Credit Union.

12 THE COURT: Live?

13 MR. LANGLEY: Live.

14 THE COURT: Okay. I want to have  
15 13:20:34 a charge conference today since you've gotten a  
16 copy of it. You know, I charge the jury before  
17 argument. I was hoping I could do it tonight  
18 before I leave. If I can't, I want to at least  
19 have it ready to go. Because we need to make 12  
20 13:20:46 copies. And it takes time. All right?

21 Are you going to have the lady from  
22 Redstone Federal Credit Union that said she  
23 didn't know that was a transactional detail  
24 report?

25 13:21:00 MR. LANGLEY: Jason, what's your



1 gentleman's name?

2 THE COURT: Oh. That was a lady.

3 THE WITNESS: It was a lady.

4 MR. LANGLEY: No. Someone from  
13:21:10 5 the ACH department at Redstone Federal Credit  
6 Union.

7 MR. BENNETT: I've offered a  
8 stipulation. Whatever it is they were going to  
9 say, I'm sure we will stipulate to it.

10 MR. LANGLEY: I'm pretty sure they  
11 would not stipulate to what the witness is going  
12 to say.

13 THE COURT: What's the witness  
14 going to say?

15 MR. LANGLEY: Jason?

16 MR. TOMPKINS: That had Mr. Brim  
17 requested a transactional detail report, he would  
18 have been provided with the ACH report that was  
19 ultimately obtained in August, 2010.

13:21:42 20 Had he advised that Dell said the bank  
21 statement was not sufficient proof, he would have  
22 been supplied with that same report.

23 THE COURT: Okay.

24 MR. BENNETT: I mean, we can  
13:21:52 25 stipulate that their witness would --

1 THE COURT: That that's what that  
2 witness would say?

3 MR. BENNETT: Would say.

4 THE COURT: I don't know why you  
13:22:00 5 wouldn't. He didn't talk to that witness. He  
6 talked to another witness at Redstone Federal  
7 Credit Union who said, this is the transactional  
8 detail report.

9 MR. TOMPKINS: He will also  
13:22:10 10 testify that had Midland --

11 THE COURT: That that person has  
12 been fired?

13 MR. TOMPKINS: I don't know about  
14 that. He may. But he will also testify that had  
13:22:18 15 Midland contacted Redstone to try to determine  
16 either that the bank statement was legitimate or  
17 to confirm that transaction, that Redstone would  
18 not have talked to Midland at all. Would not  
19 give Midland any information whatsoever.

13:22:38 20 MR. BENNETT: We don't have --

21 THE COURT: He will also testify  
22 that had Midland contacted Redstone -- had  
23 Midland contacted Redstone to try to determine  
24 either that the bank statement was legitimate or  
13:22:54 25 to confirm that transaction --

1 MR. TOMPKINS: Mr. Bennett had  
2 argued Midland should have contacted Redstone as  
3 part of the investigation.

4 THE COURT: Okay. I'm not ruling  
13:23:04 5 on objections in advance. We'll see what  
6 happens.

7 MS. CAULEY: I shouldn't be much  
8 longer.

9 THE COURT: Are you calling them  
13:23:16 10 here for this afternoon? They better be here  
11 this afternoon.

12 MR. TOMPKINS: Okay.

13 MR. LANGLEY: Go call them.

14 THE COURT: We just have Mr. Brim  
13:23:24 15 left, right?

16 MS. CAULEY: I have probably less  
17 than 30 minutes.

18 THE COURT: Then you have cross?

19 MR. LANGLEY: Yes.

13:23:30 20 THE COURT: And are you going to  
21 read Dell's deposition today?

22 MR. LANGLEY: We're going to play  
23 Dell's deposition today, yes.

24 THE COURT: And that's how long?

13:23:38 25 MR. LANGLEY: An hour and five

1 minutes.

2 THE COURT: And then you're going  
3 to call Edrozo today?

4 MR. LANGLEY: Very briefly.

13:23:50 5 THE COURT: We might need that man  
6 here today. We might.

7 MR. LANGLEY: Jason is going to  
8 call him.

9 THE COURT: Tell him to be here by  
13:23:58 10 3:30. Tell him to be here by 3:30.

11 MR. LANGLEY: And what we can do,  
12 Your Honor, if he's going to be here, then we may  
13 go ahead and put him up this afternoon before  
14 Mr. Edrozo.

13:24:12 15 THE COURT: I say the latest by  
16 3:30.

17 MR. TOMPKINS: I think he has a  
18 two-hour drive.

19 THE COURT: From Huntsville? No.  
13:24:22 20 That's not two hours, I can assure you. I drive  
21 there all the time.

22 MR. TOMPKINS: He may not be in  
23 Huntsville today.

24 THE COURT: Well, tell him to get  
13:24:30 25 on the road.

1 (Discussion off the record.)

2 (In open court. Jury present.)

3 (Witness resumes stand.)

4 THE COURT: Okay. Let the record  
13:25:30 5 show the jury is back after lunch. The parties  
6 are here. Mr. Brim is back on the stand. And  
7 you may continue.

8 MS. CAULEY: Thank you, Your  
9 Honor. We are going to try to expedite things  
13:25:40 10 just a little bit. We won't go through anything  
11 we've already covered, certainly, and we'll try  
12 to eliminate some of the duplicates.

13 **BY MS. CAULEY:**

14 Q Mr. Brim, you mentioned before we left for  
13:25:48 15 lunch and we were talking about your American  
16 Express denial -- do you remember that?

17 A Correct.

18 Q Other than the mortgages we've already  
19 talked about and the American Express denial, did  
13:25:58 20 you have any other credit denials during this  
21 time between July, 2008, and the present?

22 A Yes. I tried to get an increase with  
23 Capital One.

24 Q At the time do you recall when you  
13:26:18 25 requested a credit limit increase with Capital

1 One?

2 A Once in 2008 because I needed that for  
3 tuition. I also go to Athens State University on  
4 line. So I pay for my tuition. So I needed it  
13:26:32 5 to pay tuition for that.

6 Q Were you approved for the Capital One  
7 credit limit increase?

8 A I was not.

9 Q And was there another Capital One request  
13:26:42 10 for a limit increase?

11 A It was.

12 Q And when was that second one?

13 A That was in 2009.

14 Q And were you approved for that credit  
13:26:50 15 limit increase?

16 A I was not.

17 Q Was there a reason that you requested the  
18 credit limit increase from Capital One at the  
19 time that you -- other than the paying the  
13:26:58 20 tuition?

21 A In 2009?

22 Q Yes, sir.

23 A I needed that for -- I was in March in  
24 Birmingham. I'm sorry. At the hotel, trying to  
13:27:08 25 pay for the hotel.

1 Q Was that request from Capital One at about  
2 the same time as the American Express?

3 A It was.

4 Q I want to clarify for the jury in March of  
13:27:22 5 2009, were you actually able to buy your home?

6 A I was.

7 Q And who was the mortgage company that --

8 A With Platinum Mortgage.

9 Q What did you have to do, if anything, with  
13:27:32 10 Platinum Mortgage to get that mortgage approved?

11 A I had to -- I showed the guy where I was  
12 disputing it. I showed him my dispute letters  
13 with the credit bureau with Midland. And I also  
14 showed him my bank statement.

13:27:48 15 Q Was Platinum Mortgage just able to  
16 disregard the Midland account so you could be  
17 approved?

18 A They were. He had to talk to his boss and  
19 show him all the information. And then --

13:28:00 20 THE COURT: And then did they  
21 approve it?

22 THE WITNESS: They approved it.

23 THE COURT: Okay.

24 **BY MS. CAULEY:**

13:28:08 25 Q Mr. Brim, if you will, turn to Plaintiff's

1 Exhibit 3, please.

2 A Yes.

3 Q After this lawsuit was filed -- and I  
4 don't want you to go into anything that your  
13:28:32 5 lawyers may have told you. But after this  
6 lawsuit was filed, did you ever go back to  
7 Redstone Federal Credit Union?

8 A I did.

9 Q And when you went back to Redstone Federal  
13:28:40 10 Credit Union, what did you request?

11 A I went in there to -- and I asked them to  
12 specifically trace where this money went. And I  
13 pointed out that money on that statement.

14 Q And at the time that you were at Redstone  
13:28:56 15 Federal Credit Union, were they able just to  
16 provide you a document right then?

17 A No, they weren't. They told me that they  
18 had to do research on this. And I -- that the  
19 manager had to do it. And she would call me back  
13:29:08 20 when she had it. And they called me a week  
21 later.

22 Q Is Plaintiff's Exhibit 3 the document that  
23 you were able to go and pick up from Redstone  
24 Federal Credit Union?

13:29:18 25 A This is.



1 Q I'm going to talk just a little bit about  
2 your damages.

3 Can you tell us how the Midland account  
4 being on your credit report and you being denied  
13:29:46 5 credit has affected you?

6 A It added a lot of stress on me.  
7 Especially in -- at the times I was trying to get  
8 a house, which is 2008. Basically 2008 through  
9 2009 until March until I finally got my house.  
10 It was, like, loss of sleep because worrying  
11 about trying to get a loan to get a house -- I  
12 mean, if you all have tried to get a house,  
13 basically, that's trying -- that's a headache in  
14 itself, trying to get a house. So when I  
13:30:04 15 couldn't get a loan to get a house, that was a  
16 headache in itself.

17 So it caused a lot of anxiety on me which  
18 prevented me from sleeping some nights. So I  
19 would take Nyquil basically to kind of relax me  
13:30:36 20 and help me sleep.

21 Q How often was the stress affecting your  
22 ability to sleep?

23 A Oh, out of a month, I would say at least  
24 one week, maybe.

13:30:48 25 Q So it would be more than a couple of times

1 a week?

2 A It would. I would say a week straight.  
3 Because on top of -- I mean, I have a lot of  
4 work, work with my job. Not only worrying about  
13:31:04 5 trying to get a house, trying to get my credit  
6 cleared. And school. It was a lot on my plate.  
7 So it was -- I mean, it was hectic.

8 Q Other than the -- it affecting your sleep,  
9 did the stress have any other impact on you  
13:31:18 10 physically?

11 A Physically, I just had headaches,  
12 basically. A lot of headaches.

13 Q Were you taking any medications or over  
14 the counter --

13:31:28 15 A I took BC.

16 Q BC?

17 A BC.

18 Q And is that a headache medicine?

19 A That is a headache medicine.

13:31:36 20 Q How often in a given month would you take  
21 BC for your headaches?

22 A I would at least take that seven days out  
23 of the week. BC. Because it -- lack of rest and  
24 my workload. So I had headaches. So I would  
13:31:50 25 take the BC to kind of ease the pain.

1 Q Did the Midland account being on your  
2 credit report ever affect your ability to focus  
3 or actually do your job?

4 A It did. Because I wanted to get it  
5 cleared.

13:32:06

6 Q Can you tell us in your best judgment from  
7 July, 2008, when you first started disputing with  
8 the credit reporting agencies up until today a  
9 total amount of time that you have expended in  
10 correcting your credit report?

13:32:34

11 A That is quite a bit of time put in.  
12 Finding documents, going to deposition, court,  
13 mediation, today. Court. I mean, I had to  
14 take -- I only get two weeks of vacation out of  
15 the year. I'm taking one now. One week this  
16 week. I'd say easily a month. Easily.

13:33:04

17 Q A month of time, total?

18 A A month of time.

19 Q And are you still making 17.50 an hour?

13:33:20

20 A I am making a little bit more now.

21 Q What do you make now?

22 A I make at least \$22 an hour.

23 Q When did that change occur?

24 A It was right after I bought my house.

13:33:34

25 Q So spring of 2009?

1 A Yes.

2 (Discussion off the record.)

3 MS. CAULEY: Your Honor, that's  
4 all the questions I have at this time.

13:33:52 5 THE COURT: Okay.

6 **CROSS-EXAMINATION**

7 **BY MR. LANGLEY:**

8 Q Mr. Brim, good afternoon.

9 A Good afternoon.

13:33:58 10 Q You are aware that this Midland account  
11 was deleted from your credit reports in September  
12 of 2010?

13 A September, yes. 2010.

14 Q And so any stress that you felt as a  
13:34:12 15 result of the reporting would have been gone by  
16 September, 2010, correct?

17 A By September of '10? I didn't realize it  
18 then because I didn't look at my credit report in  
19 September.

13:34:22 20 Q You weren't told in September of 2010 that  
21 this had been deleted?

22 A September, '10? I don't think around that  
23 time -- I wasn't really speaking with anyone.

24 Q Well, Mr. Brim, you remember when  
13:34:34 25 Mr. Tompkins took your deposition in October of

1 2010, don't you?

2 A Uh-huh (indicating yes).

3 Q You remember meeting him in deposition?

4 A I do.

13:34:40 5 Q And at that time, Mr. Brim, you were aware  
6 that the item had been deleted from your credit  
7 reports, weren't you?

8 A I think I found out that day, actually.

9 That is true. I found out that day.

13:34:52 10 Q Was it actually Mr. Tompkins that told you  
11 that it had been deleted?

12 A No. It was not. It was not.

13 Q Mr. Brim, if I understood you correctly,  
14 you were attributing your stress during this  
13:35:08 15 July, 2008, through at some point in 2009 time  
16 frame to your inability to get a home mortgage.  
17 Did I hear you correctly?

18 A Correct.

19 Q And to make sure that I'm perfectly clear  
13:35:22 20 about where you applied for a mortgage, I want to  
21 name off what I heard. And you tell me if I've  
22 missed something. First Metropolitan?

23 A Correct.

24 Q Lending Tree?

13:35:32 25 A Correct.

1 Q Platinum Mortgage?

2 A Correct. I think it was one more.

3 Q Was it RBC Bank?

4 A No.

13:35:40 5 Q Do you remember what the other one was?

6 A I do not.

7 Q So right now, the only three that you  
8 remember are First Metropolitan, Lending Tree,  
9 and Platinum Mortgage?

13:35:50 10 A Correct.

11 Q And you actually got a mortgage in March  
12 or April, 2009, from Platinum Mortgage, didn't  
13 you?

14 A March.

13:35:56 15 Q So your stress associated with wondering  
16 whether or not you were going to get a home  
17 mortgage would have ended in March or April,  
18 2009?

19 A That's not correct. Because it was still  
13:36:06 20 on my credit.

21 Q But the stress associated with worrying  
22 about whether you were going to get a home  
23 mortgage would have ended in March or April,  
24 2009?

13:36:14 25 A My home, yes. But my credit, no.

1 Q I understand that. What I was asking  
2 about is your home mortgage. All right. First  
3 met --

13:36:26

4 THE COURT: Wait. Was that a  
5 question?

6 MR. LANGLEY: No. It wasn't.  
7 I'll withdraw it, then.

8 THE COURT: Okay.

9 **BY MR. LANGLEY:**

13:36:30

10 Q Mr. Brim, did you apply for a mortgage  
11 with First Metropolitan?

12 A I think I did.

13 Q You think you did?

14 A I think I did.

13:36:40

15 Q Do you know when you think you applied for  
16 a mortgage with First Metropolitan?

17 A I do not remember.

18 Q Do you even remember the year?

19 A I did not.

13:36:48

20 Q Could have been 2007?

21 A I don't think so.

22 Q Do you remember speaking with anyone from  
23 First Metropolitan?

13:37:00

24 A I think it was a guy by the name of John,  
25 I think it was.

1 Q Do you remember a last name?

2 A I do not.

3 Q Do you have any communication with him in  
4 writing?

13:37:06 5 A In writing? I don't think so.

6 Q Was this all over the telephone?

7 A I think it was.

8 Q And you don't remember when this was?

9 A I do not.

13:37:14 10 Q Do you ever remember getting a denial  
11 letter from First Metropolitan?

12 A I don't think so.

13 Q Do you remember ever being told that you  
14 were denied a loan from First Metropolitan?

13:37:30 15 A At that time, I cannot remember, but I  
16 didn't get the loan.

17 Q If I understood you correctly just a  
18 second ago, you weren't even sure you had  
19 actually applied for a loan with First

13:37:50 20 Metropolitan?

21 A I think I just said I did.

22 Q I thought you said that you weren't sure  
23 whether you did or not.

24 A Then I said I think I did.

13:37:56 25 Q You think you applied for a loan with



1 First Metropolitan?

2 A Uh-huh (indicating yes).

3 Q But you don't have any documents,  
4 evidencing the fact that you applied for a loan,  
13:38:02 5 do you?

6 A I don't.

7 Q You don't have any documents, evidencing  
8 the fact that they denied you a loan?

9 A I don't.

13:38:10 10 Q All right. Then the second one you  
11 mentioned was Lending Tree. Did you apply for a  
12 loan with Lending Tree?

13 A I did.

14 Q When was that?

13:38:16 15 A I do not remember.

16 Q Do you remember speaking to anyone?

17 A That was on line.

18 Q That was on line. So there would have  
19 been written communications regarding that  
13:38:26 20 application?

21 A Correct.

22 Q And do you still have those?

23 A I didn't print it out.

24 Q Are they still available on your computer?

13:38:34 25 A No. They're not. That computer is broke

1 down. The motherboard went bad on it.

2 Q When did the motherboard go bad on your  
3 computer?

4 A I do not remember. I've had four  
13:38:50 5 computers since.

6 THE COURT: Since 2004?

7 THE WITNESS: At least four. Two  
8 laptops.

9 THE COURT: Since 2004?

10 13:39:00 THE WITNESS: Since 2004.

11 THE COURT: Okay.

12 **BY MR. LANGLEY:**

13 Q Do you remember what year it was that the  
14 motherboard --

15 13:39:08 A I do not.

16 Q -- went down? But presumably, whenever  
17 your motherboard went down, you wouldn't be able  
18 to retrieve any other emails from that time  
19 period, would you?

20 13:39:20 A No.

21 Q Did anyone from Lending Tree or First  
22 Metropolitan ever tell you that the reason you  
23 didn't get a mortgage --

24 A No.

25 13:39:34 Q -- was because of Midland?

1 A No.

2 Q And in March or April, 2009, you did get a  
3 mortgage from Platinum Mortgage, right?

4 A In March, 2009? I did.

13:39:46 5 Q Yes, sir. All right. Have we covered all  
6 of the entities to whom you applied for a  
7 mortgage?

8 A I'd say we did.

9 Q You also mentioned that you were denied  
10 credit by American Express?

11 A Correct.

12 Q And that was in May of 2009?

13 A Correct.

14 Q Mr. Brim, were you seeking to obtain that  
15 card for business purposes?

16 A Correct.

17 Q And that was not going to be a personal  
18 credit card, was it?

19 A No.

13:40:16 20 THE COURT: Would it not be issued  
21 to you?

22 THE WITNESS: It would be issued  
23 to me. So I guess that would be my personal  
24 card.

13:40:22 25 THE COURT: I mean, well, let me

1 just ask you this: Does Yellow Book furnish you  
2 with a credit card?

3 THE WITNESS: Oh, no. No, ma'am.

4 THE COURT: So --

13:40:30 5 THE WITNESS: I pay for everything  
6 in advance. And then we submit expense reports.  
7 And then we get our money back.

8 THE COURT: But you don't have a  
9 card from Capital One, or anyone else for that  
10 matter, that says this is for business only?

11 THE WITNESS: No.

12 THE COURT: Okay.

13 **BY MR. LANGLEY:**

14 Q Mr. Brim, your purpose in obtaining the  
13:40:48 15 American Express was for business expenses?

16 A Yes.

17 Q And your transaction with American Express  
18 was completely on line, correct?

19 A It was.

13:40:56 20 Q You never talked with anyone from American  
21 Express about this, did you?

22 A No.

23 Q And if you would, please, turn to  
24 Plaintiff's Exhibit 7.

13:41:16 25 A Okay.

1 Q Mr. Brim, is Plaintiff's Exhibit 7 the  
2 only correspondence or writing you received from  
3 American Express?

4 A Wait. Seven?

13:41:30 5 Q Yes.

6 A Which page?

7 Q I'm actually looking at the first page of  
8 Plaintiff's Exhibit 7. It's the beginning of the  
9 letter from American Express.

13:41:48 10 MS. CAULEY: Mr. Brim, it's  
11 actually in the black notebook. Not the white  
12 notebook.

13 THE WITNESS: Oh, okay. All  
14 right. Okay.

13:42:00 15 **BY MR. LANGLEY:**

16 Q Let me ask my question again. Is this the  
17 only letter or writing of any sort that you  
18 received from American Express?

19 A It is.

13:42:10 20 Q And this letter doesn't mention Midland  
21 Credit Management anywhere in it, does it?

22 A It doesn't. But that was the only thing  
23 on my credit.

24 Q Mr. Brim, would you please read for me the  
13:42:28 25 first paragraph of the letter? Right underneath

1 Dear Jamon T. Brim.

2 A Thank you for your recent application for  
3 Blue Sky for American Express. After reviewing  
4 your request, regrettably, we were unable to open  
13:42:38 5 an account for you at this time for the following  
6 reasons.

7 Q And it actually has the S inside  
8 parentheticals, doesn't it?

9 A Yes.

13:42:46 10 Q What does it state, Mr. Brim, as the  
11 reason that your credit card with American  
12 Express was denied?

13 A All four?

14 Q Well, Mr. Brim, look at the first line of  
13:42:58 15 the second paragraph.

16 A Of the second -- consumer credit bureau  
17 score from Transunion is too low.

18 Q And Mr. Brim, you understand that the  
19 sentence that follows is explaining why the  
13:43:12 20 credit score may have been too low, correct?

21 MS. CAULEY: Object to the form,  
22 Your Honor. And calls for speculation by this  
23 witness.

24 THE COURT: Overruled. How did  
13:43:24 25 you read it to mean?

1 THE WITNESS: Read this -- the  
2 second sentence?

3 THE COURT: No. How do you  
4 understand where it says see below? Do you see  
13:43:36 5 the place where it says see below?

6 THE WITNESS: Yes.

7 THE COURT: Below that, there's a  
8 sentence and four other sentences. What did you  
9 understand them to mean?

13:43:48 10 THE WITNESS: That my credit score  
11 was low.

12 **BY MR. LANGLEY:**

13 Q So Mr. Brim, you understood that American  
14 Express was denying your credit card because your  
13:43:58 15 Transunion score was too low, correct?

16 A Correct.

17 Q And that the reasons they listed beneath  
18 were the reasons that your credit score with  
19 Transunion may have been too low?

13:44:08 20 A Correct.

21 Q All right. Capital One -- you actually  
22 had a credit card with Capital One, didn't you?

23 A Yes.

24 Q And if I understood your testimony  
13:44:20 25 correctly earlier, you applied in 2008 and again

1 in 2009 for an increase?

2 A Correct.

3 Q On your credit limit. Are you sure that  
4 that first one was in 2008?

13:44:32 5 A I think it was.

6 Q Do you know for sure?

7 A I do not until I maybe look at the credit  
8 report.

9 Q Well, why don't we start by looking at  
13:44:44 10 Plaintiff's Exhibit 44? And if you would,  
11 please, look at the page that has the number in  
12 the bottom TU85.

13 A Okay.

14 Q In the bottom, left corner, you see that  
13:45:16 15 entry for Capital One?

16 A Yes.

17 Q You see that date there of 9-25, 2007?

18 A Correct.

19 Q Do you think it was actually September of  
13:45:22 20 2007 when you made that first --

21 A Maybe could have been.

22 Q Could have been. And Mr. Brim, your  
23 second application for increase from Capital One  
24 was in 2009, correct?

13:45:34 25 A Okay.



1 Q Is that correct?

2 A Correct.

3 Q Did you actually speak to someone from  
4 Capital One at that time?

13:45:48 5 A I did.

6 Q They didn't tell you anything about your  
7 denial being related to Midland Credit  
8 Management, did they?

9 A They didn't.

13:45:58 10 Q Excuse me?

11 A They didn't.

12 Q They did not?

13 A Did not.

14 Q So you don't know why they denied it?

13:46:06 15 A No.

16 Q So you can't say that it was because of  
17 Midland Credit Management?

18 A No.

19 Q Earlier, your lawyer had asked you some  
13:46:18 20 questions or asked you a question -- and I think  
21 I heard it correctly. It went something like the  
22 only adverse account on your report at the time  
23 of these applications was the Midland Credit  
24 Management item. Did I hear that correctly?

13:46:34 25 A Maybe.

1 Q Well, let me ask you this question: At  
2 the time you were making these applications for  
3 mortgages and your application to American  
4 Express and for an increase in limits from  
13:46:46 5 Capital One, there were other negative items on  
6 your credit report, weren't there?

7 A I'd have to look to see.

8 Q Okay. Let's do that. Let's start with  
9 Plaintiff's Exhibit 37.

13:47:00 10 A Okay.

11 Q And if you would, start with the document  
12 that has the Number 52 at the bottom.

13 A Okay.

14 Q And this is a page from an Equifax report,  
13:47:32 15 dated July 28th, 2008, correct?

16 A Correct.

17 Q All right. On Page 52 under negative  
18 accounts, we see that there's one from Alabama  
19 A & M University, correct?

13:47:44 20 A Correct.

21 Q And then if we flip the page, we see that  
22 there's one from G.E.M.B. Sam's?

23 A Correct. That is. That was zero balance.  
24 And Alabama A & M, I was attending school, that  
13:48:04 25 should have been deferred with the other two.

1 Q I understand. I'm just asking about what  
2 was on the credit report at the time.

3 A Oh, it does, with the zero balance.

4 Q That's under the negative accounts?

13:48:12 5 A It is.

6 Q And then the third one is the Midland  
7 Credit Management account?

8 A Correct.

9 Q So that was Equifax in July of 2008?

13:48:18 10 A Correct. With the 1,600, correct.

11 Q Let's look at Plaintiff's Exhibit 43.

12 A Okay.

13 Q And specifically, let's go to Page 71 of  
14 that exhibit. The document bears the number, 71.

13:48:40 15 A Okay.

16 Q This is a report from Transunion, correct?

17 A Correct.

18 Q Dated same day, July 29th, 2008?

19 A Okay.

13:48:54 20 Q And do you see where it says adverse  
21 accounts on the page marked as TU71?

22 A I do.

23 Q And on the Transunion report, we have an  
24 adverse account from Direct Loan Service System,  
13:49:08 25 correct?

1 A Correct.

2 Q And then we see the G.E.M.B. Sam's Club  
3 account, correct?

4 A Yes. Zero balance.

13:49:18 5 Q But, Mr. Brim, it's listed under adverse  
6 accounts, isn't it?

7 A Yes. And I was in school for Direct Loan  
8 Service, as well.

9 Q Same thing with that one. It was still  
13:49:28 10 listed under adverse accounts?

11 A That's true.

12 Q And then the last one we see is the  
13 Midland Credit Management account, correct?

14 A With the 1,600 balance, correct.

13:49:36 15 Q All right. Let's go now to the 2009 time  
16 frame. Let's look at Plaintiff's Exhibit 53.

17 A Okay.

18 Q I think it's four pages in. It's the page  
19 bearing the number, TU139.

13:50:02 20 A Bear with me. My book -- you said 54?

21 Q 53, Mr. Brim.

22 A Okay.

23 THE COURT: TU what?

24 MR. LANGLEY: 139.

13:50:18 25 A 139. Okay.

1 **BY MR. LANGLEY:**

2 Q This is a Transunion report from March 18,  
3 2009, correct?

4 A Correct.

13:50:24 5 Q All right. On Page TU139, under adverse  
6 accounts, we again see Direct Loan Service  
7 System, G.E.M.B. Sam's Club and Midland Credit  
8 Management, correct?

9 A Correct.

13:50:40 10 Q So the same three accounts in March of  
11 2009 are listing as adverse?

12 A With no balance.

13 Q But listing as adverse?

14 A But -- correct.

13:50:50 15 Q Mr. Brim, correct?

16 A Correct.

17 Q Let's go to Plaintiff's Exhibit 70. And  
18 it is, I believe, the second page of Exhibit 70,  
19 which is an Experian credit report, dated  
13:51:20 20 February 18, 2010. Are you with me on that one?

21 A I'm with you.

22 Q Then on the second page at the top left,  
23 it says, potentially negative items or items for  
24 further review. Do you see that?

13:51:30 25 A Potentially negative -- I don't see that.

1 I think I'm on the right page.

2 THE COURT: On the very top line.

3 THE WITNESS: Oh. Okay. I see  
4 it.

13:51:44 5 **BY MR. LANGLEY:**

6 Q And under potentially negative items, it  
7 lists, again, the Sam's Club, G.E. Money Bank and  
8 the Midland Credit Management account?

9 A Correct.

13:51:54 10 Q So during this entire period of time,  
11 there was at least one other adverse account on  
12 your credit report and, for most of the time,  
13 there were two, correct?

14 A Without a balance.

13:52:04 15 Q But listed under negative accounts,  
16 Mr. Brim, correct?

17 A Correct.

18 Q You're not a credit expert, are you?

19 A No. Never claimed to be.

13:52:12 20 Q So you don't know what it is that  
21 creditors are looking for or why they're looking  
22 at it?

23 A What's that, now?

24 Q You don't know what creditors are looking  
13:52:22 25 for or why they're looking at it when they look

1 at your report?

2 A No.

3 THE COURT: Did you answer?

4 THE WITNESS: I did. I said no.

13:52:32

5 THE COURT: Okay.

6 **BY MR. LANGLEY:**

7 Q Ms. Cauley asked you some questions about  
8 headaches and loss of sleep. Do you remember  
9 those?

13:52:44

10 A Correct.

11 Q Mr. Brim, you never saw a doctor for any  
12 of those, did you?

13 A I didn't.

13:52:56

14 Q And you never saw any other kind of health  
15 professional for those symptoms, did you?

16 A I didn't.

17 Q Never had any prescription medication for  
18 those?

19 A Prescribed? No, I didn't.

13:53:06

20 Q Ms. Cauley also asked you some questions  
21 about collection lawsuit that Midland Funding,  
22 L.L.C. filed against you. Do you remember those  
23 questions?

24 A Yes. That is a public record that's on.

13:53:22

25 Q And you were never actually served with a

1 copy of that complaint, were you?

2 A I wasn't.

3 Q And you're aware that that complaint was  
4 dismissed?

13:53:30 5 A But it's still public record. So you  
6 could go and see it.

7 Q You can go and see it today?

8 A It's public record. So, I mean, I'm  
9 pretty sure you can see it. It was a suit filed  
10 against me. You can see that.

11 Q Do you know when it was dismissed,  
12 Mr. Brim?

13 A I do not.

14 Q You do know that it was dismissed, though?

13:53:52 15 A It obviously had to be, because I didn't  
16 receive anything else about it. So I assume.

17 Q You also testified earlier that you had  
18 received some letters both directly from Midland  
19 and then from a law firm that was representing  
13:54:06 20 Midland Funding?

21 A I did.

22 Q Let's talk about those letters very  
23 briefly. First, let's look at Plaintiff's  
24 Exhibit 10.

13:54:20 25 But before we get there, there was some



1 testimony earlier about a letter you may have  
2 received in October of 2007. Do you remember  
3 that testimony?

4 A Yes.

13:54:28 5 Q And I believe you testified that you  
6 actually sent something to Midland that was --

7 A I faxed a bank statement in.

8 Q Did you retain a copy of that fax cover  
9 sheet?

13:54:40 10 A The fax -- at the time, I was ignorant of  
11 the fact that I needed to keep copies.

12 Q When was it that you started keeping  
13 copies?

14 A When I started certified mail.

13:54:50 15 Q And the next letter that you received from  
16 Midland was in January of 2008, correct?

17 A Correct.

18 Q And that's the letter that's marked as  
19 Plaintiff's Exhibit 10. Did you receive that  
13:55:18 20 one, Mr. Brim?

21 A Wait. Wait. Wait.

22 Q I'm sorry.

23 A I think I have too many pages. Let's see.

24 Yes.

13:55:34 25 Q But you didn't send a response to that

1 letter, did you?

2 A I didn't.

3 Q Now let's look at Plaintiff's Exhibit 17.

4 A Okay.

13:55:54 5 Q Did you receive this letter?

6 A I did.

7 Q But you didn't respond to it, did you?

8 A I was out of town, working.

9 Q When you got back in town, did you respond  
10 to it?

11 A I didn't.

12 THE COURT: Now, you got the --  
13 you got that letter and the sheriff's note at the  
14 same time?

13:56:22 15 THE WITNESS: Yes, ma'am. When I  
16 got home, they were on my door. I read it for a  
17 while.

18 THE COURT: What was it the  
19 sheriff's notice said?

13:56:30 20 THE WITNESS: It said his card  
21 with his name and it said call me. So I just put  
22 two and two together.

23 THE COURT: Okay.

24 **BY MR. LANGLEY:**

13:56:38 25 Q Mr. Brim, that was all before you sent

1 your first dispute to the credit reporting  
2 agencies regarding the Midland account, correct?

3 A That is -- when I got back home, that is  
4 the same time I sent my dispute.

13:56:48 5 Q So you got back home. You saw these  
6 things. And then after that, you sent your  
7 dispute to the credit reporting agencies?

8 A Correct. And Midland.

9 Q Right. And we'll get to that in a second.  
13:57:00 10 Mr. Brim, I want to go back and talk a little bit  
11 about your Dell purchase when you purchased a  
12 Dell computer.

13 A Okay.

14 Q And I understood you testified earlier  
13:57:10 15 that you purchased that computer for purposes of  
16 taking courses on line?

17 A Correct.

18 Q And that you opened up a finance account  
19 with Dell Financial Services to purchase it?

13:57:26 20 A Correct.

21 Q And that you paid it off via phone  
22 check --

23 A Correct.

24 Q And that was about 30 days or shortly  
13:57:34 25 thereafter?

1 A Correct.

2 Q Was this the first time that you had made  
3 a payment by phone check?

4 A It was.

13:57:42 5 Q Was that uncomfortable?

6 A Paying a check -- that was. I mean, I  
7 don't really -- didn't really want to give  
8 information over like that.

9 Q Did you ask for a confirmation number?

13:57:54 10 A A confirmation? I just assumed that it  
11 would take care of it. At the time, I was  
12 ignorant of the fact.

13 Q You did not ask for a confirmation number?

14 A I did not.

13:58:04 15 Q Did you ask for a receipt?

16 A I thought they would just email it to me,  
17 because I asked her if she had my email at the  
18 time. She said yes. Would you email me a  
19 receipt. We had that conversation.

13:58:16 20 THE COURT: Are you talking to  
21 Dell?

22 THE WITNESS: Dell. I thought  
23 they would email a receipt. They didn't.

24 **BY MR. LANGLEY:**

13:58:26 25 Q This was back in '04?

1 A '04.

2 THE COURT: Well, when you made  
3 that check by phone, did you give Dell your bank  
4 account number?

13:58:36 5 THE WITNESS: I gave them -- I  
6 don't think it was the -- I might have. But I  
7 had a blank check -- you know, when you start  
8 your account. And then it had the routing  
9 number. And I think it was a check number on it.

13:58:50 10 THE COURT: Okay.

11 **BY MR. LANGLEY:**

12 Q Mr. Brim, shortly after you made that  
13 payment via phone draft to Dell, you actually  
14 continued getting bills from Dell?

13:59:10 15 A I did.

16 Q And that's when you knew there was a  
17 problem?

18 A Yes.

19 Q And was it shortly thereafter that you  
13:59:20 20 first sent a bank statement to Dell Financial  
21 Services?

22 A I did.

23 Q If you would, please, turn to Plaintiff's  
24 Exhibit 2. And I'm looking at the second page.

13:59:52 25 It's the statement.

1 A Okay.

2 Q To be clear, this is not the copy of the  
3 statement that you actually sent to Dell, is it?

4 A No. I circled it.

14:00:04 5 Q There was some handwriting on the copy  
6 that you sent to Dell?

7 A Yes.

8 Q Did you just go to the bank one time to  
9 get a statement, and did you continue to use the  
14:00:12 10 same statement over and over?

11 A No. The first time, it was another  
12 statement that I -- another copy of a bank  
13 statement that I got from the bank.

14 Q Mr. Brim, would you turn to Plaintiff's  
14:00:24 15 Exhibit 11, please?

16 A Okay.

17 Q And this is a copy of the dispute letter  
18 that you sent to Midland in July of 2008,  
19 correct?

14:00:42 20 A Correct.

21 Q And you included a copy of your bank  
22 statement?

23 A Yes. Transactional detail report.

24 Q Is the document that is behind the letter,  
14:00:54 25 is that the actual copy that you sent to Midland

1 to --

2 A That is the transactional detail report.

3 Q Mr. Brim, is the underlining under  
4 \$954.12 -- is that your handwriting?

14:01:06 5 A That could be. That's just a line. I  
6 mean, if it was numbers or words, I could tell  
7 you better.

8 Q Okay. Well, let's look at the words  
9 actually at the top of the page. Do you see  
14:01:18 10 those?

11 A I do.

12 Q Whose handwriting is that?

13 A Maybe the bank. I didn't -- that's not my  
14 writing.

14:01:24 15 Q Well, it looks like something has been cut  
16 off the top of that page. Can you tell us what  
17 it was?

18 A Automated out something.

19 Q Was it automated operations? Does that  
14:01:40 20 ring a bell?

21 A I don't remember. I can't read it.

22 Q The term, "automated operations," doesn't  
23 mean anything to you as we sit here today?

24 A It doesn't, because I don't --

14:01:56 25 Q Do you know what's written next to

1 automated operations?

2 THE COURT: Wait. We haven't  
3 established that the second word is operations.

4 MR. LANGLEY: Let's try that then.

14:02:04 5 THE COURT: Okay.

6 MR. LANGLEY: May I approach the  
7 witness?

8 THE COURT: Sure.

9 MR. LANGLEY: I'll show Your  
10 Honor.

11 THE COURT: Yes.

12 **BY MR. LANGLEY:**

13 Q Mr. Brim, I am showing you what I have  
14 marked as Defendant's Exhibit 24.

14:02:36 15 A Okay.

16 Q Is that one of the copies of the bank  
17 statements you got from Redstone Federal Credit  
18 Union?

19 A This is a copy.

14:02:42 20 Q Can you now tell from the handwriting at  
21 the top of the page that that says automated  
22 operations?

23 A It says automated. I would assume that  
24 that's operations. I mean, you really can't see  
14:02:56 25 the word. But I would assume.



1 Q Did you keep your original copy?

2 A Of the -- they gave me a copy just like  
3 this.

14:03:06

4 Q Did you keep your original copy of the  
5 document that your --

6 A Maybe I do.

7 MR. LANGLEY: Your Honor, I'd like  
8 to move to admit Defendant's Exhibit 24.

9 THE COURT: Any objection?

14:03:14

10 MS. CAULEY: Yes, Your Honor.

11 Just if they're going to try and argue what the  
12 words are at the top since Mr. Brim has testified  
13 he couldn't read them.

14:03:28

14 THE COURT: Well, I'll be glad to  
15 admit it. It's not been established that the  
16 word is what you say it is. Okay? But it's  
17 admitted for whatever it is.

18 JUROR 2: Your Honor, we don't  
19 have 24.

14:03:42

20 THE COURT: Oh. You don't have a  
21 copy to --

22 MR. LANGLEY: No. We have not put  
23 it in. I was --

14:03:46

24 THE COURT: It is admitted. And  
25 we can make -- you can make copies of it in your

1 break.

2 MR. LANGLEY: Okay.

3 THE COURT: Unless you're going to  
4 ask more questions about it at this point.

14:03:56 5 MR. LANGLEY: I'm going to ask  
6 just a couple more questions.

7 THE COURT: Okay. Why don't you  
8 go make the 12 copies?

9 MR. LANGLEY: Should we take a  
14:04:04 10 short break?

11 THE COURT: Yeah. We'll wait.

12 (Short recess.)

13 MR. LANGLEY: Your Honor, if it's  
14 all right with the Court, I'll just come back to  
14:04:34 15 that.

16 THE COURT: Okay.

17 **BY MR. LANGLEY:**

18 Q Mr. Brim, in the 2004, late 2004, early  
19 2005 time frame, you were working with Dell to  
14:04:42 20 try to resolve this, correct?

21 A Correct.

22 Q And you sent them the bank statement at  
23 least one time, didn't you?

24 A Correct.

14:04:50 25 Q Did you send it two times?

1 A Yes.

2 Q And that did not resolve the issue on Dell  
3 side, did it?

4 A It didn't. It did not.

14:05:02 5 Q They continued to ask you for additional  
6 types of proof?

7 A They asked -- like, in the Better Business  
8 Bureau complaint, they asked for a transactional  
9 detail report, which I went to the Madison branch  
10 and asked for a transactional detail report. The  
11 lady that I spoke with said, this is the  
12 transactional detail report. And it was  
13 basically the statement which is what it was.  
14 And that's what I --

14:05:28 15 Q Do you remember that conversation with  
16 Redstone pretty clearly?

17 A Yes, I do. That was that lady.

18 MR. LANGLEY: May I approach the  
19 witness?

14:06:04 20 THE COURT: Yes.

21 **BY MR. LANGLEY:**

22 Q Mr. Brim, I'm handing you a copy of the  
23 deposition Mr. Tompkins took of you in October of  
24 2010. Do you remember that?

14:06:12 25 A Yes.

1 Q If you would, please, turn to Page 48.

2 A Okay.

3 Q On Line 8, Mr. Tompkins asked you: If you  
4 look with me on Defendant's Exhibit 6, Page 2,  
14:06:34 5 describing the responses in the Better Business  
6 Bureau, the one in the middle appears to be a  
7 response from you; is that correct? Answer:  
8 Right here? Question: Yes. Answer: Yes.  
9 Question: Do you see where it says the bank  
14:06:52 10 stated they did not know what a transactional  
11 detail report was? Answer: Yes. Question: Do  
12 you remember that conversation with your bank?  
13 Answer: I do not.

14 Did I read that correctly?

14:07:06 15 A You do. But I remember now.

16 Q You remember now. You didn't remember  
17 when Mr. Tompkins took your deposition, though?

18 A No.

19 Q It's something that's come to you between  
14:07:14 20 October and today?

21 A Uh-huh (indicating yes).

22 Q Let's look at Defendant's Exhibit 20.  
23 This will be in the white binder. You can keep  
24 that up there. We may need it.

14:07:32 25 A Okay.

1 Q Defendant's Exhibit 20 is a two-page  
2 document that includes a cover letter from the  
3 Better Business Bureau and a complaint activity  
4 report from the Better Business Bureau, isn't it?

14:08:02 5 A It is.

6 Q And these were records that you actually  
7 retained?

8 A Correct.

9 Q Going back all the way to November of  
14:08:08 10 2005?

11 A Correct.

12 Q This is when you were still trying to work  
13 things out with Dell Financial Services?

14 A Correct.

14:08:16 15 Q And Mr. Brim, if you would, please, look  
16 at the entry on October 21st, 2005. It says DSF  
17 records indicate Mr. Brim is working with Angela  
18 with our recovery department. It shows she is  
19 waiting for a transactional detail report from  
14:08:42 20 Mr. Brim's bank in order to research the payment.  
21 Did I read that correctly?

22 A You did.

23 Q And that was information that you had in  
24 October, 2005, correct?

14:08:52 25 A Correct.

1 Q And by that time, you had already sent the  
2 bank statement to Dell on two separate occasions?

3 A Correct.

4 Q And so you knew that the bank statement  
14:09:00 5 alone was not going to get it done, didn't you?

6 A I didn't. Because they told me that was a  
7 transactional detail report. I took her at her  
8 word. I didn't know -- that's what they told me  
9 it was.

14:09:16 10 THE COURT: Now, is Angela the  
11 lady you spoke to at Redstone?

12 THE WITNESS: No. That's Dell. I  
13 do not remember her name.

14 THE COURT: And she didn't speak  
14:09:24 15 English?

16 THE WITNESS: She did. She  
17 said -- I said that Dell needs -- saying they  
18 need a transactional detail report. She said, I  
19 don't know what that is. This is a bank  
14:09:36 20 statement. She said, this is it. This is  
21 everything we can give you. This explains that  
22 it was paid. So I took her at that.

23 THE COURT: Okay. Well, when you  
24 talked to Angela at Dell -- did you talk to  
14:09:54 25 somebody named Angela.

1 THE WITNESS: I did at Dell. And  
2 I told her that's what my bank gave me. So she  
3 took that at that time. She took that.

4 THE COURT: Okay. Angela did?

14:10:04 5 THE WITNESS: Angela took that.

6 **BY MR. LANGLEY:**

7 Q Mr. Brim, Redstone told you, though, that  
8 if you needed anything other than the bank  
9 statement to come back to them, didn't they?

14:10:14 10 A To call them, yes.

11 Q And you never did, did you?

12 A Because she told me it was a transactional  
13 detail report.

14 Q But you never called Redstone back and  
15 said, this document isn't getting it done; I need  
16 something else? You never did that, did you?

17 A I was gone by then. I was traveling.

18 Q And Mr. Brim, when you disputed this  
19 account directly with Midland in late July of  
14:10:42 20 2008 and at the same time with the consumer  
21 reporting agencies, you sent the exact same  
22 document to Midland, didn't you?

23 A I did. I actually called Midland. So  
24 Midland at that time -- I called them two days in  
14:10:58 25 a row. At that time, I called them to tell them

1 I was sending that. And then I called them the  
2 next day to verify that they received it. So at  
3 that time, I would assume that they would have  
4 told me that they needed something else. When  
14:11:12 5 they told me that they received it.

6 Q To make sure that it's clear, the document  
7 that you sent to Midland in July of 2008 was the  
8 same thing that you had been sending to Dell?

9 A Correct.

14:11:22 10 Q And the same is true when you wrote  
11 letters to Midland and the credit reporting  
12 agencies in March of 2009, correct?

13 A Correct. No one ever told me that they  
14 needed anything else.

14:11:36 15 Q Well, Dell did, didn't they?

16 A Which my bank told me that was a  
17 transactional detail report.

18 Q But Mr. Brim, you just said nobody told  
19 you you needed anything else. And the truth is,  
14:11:48 20 Mr. Brim, Dell told you they needed something  
21 else.

22 A And that's what I -- that's what they told  
23 me it was.

24 THE COURT: Wait. Are you talking  
14:11:56 25 about the conversation you had with Angela?



1 THE WITNESS: No. With -- yes.  
2 She told me she needed a transactional detail  
3 report. And I went to the Madison branch bank.  
4 And she told me it was a transactional detail  
14:12:08 5 report.

6 THE COURT: So did you call Angela  
7 back?

8 THE WITNESS: I told her, and I  
9 faxed that to her. And I -- after that, I was  
14:12:14 10 traveling.

11 THE COURT: Okay.

12 THE WITNESS: So I didn't hear  
13 back from her.

14 **BY MR. LANGLEY:**

14:12:18 15 Q Mr. Brim, let's look at Plaintiff's  
16 Exhibit 11 again.

17 A In the black book?

18 Q Yes. In the black book. The first page  
19 of Defendant's Exhibit 11 -- excuse me.  
14:12:46 20 Plaintiff's Exhibit 11. This is a letter that  
21 you wrote, isn't it?

22 A Correct.

23 Q And so where it says, please do not  
24 contact me again by phone or in writing, those  
14:12:54 25 are your words?

1 A Those are. But I actually called them.

2 Q You called them?

3 A I called Midland.

14:13:02

4 Q But you had asked Midland not to contact  
5 you?

14:13:12

6 A No. I called them to let them know that  
7 they need to take this off my account and that I  
8 was sending a bank statement. And at that time,  
9 they could have told me anything that they  
10 needed.

11 Q How did you know what to say about not  
12 contacting you again by phone or in writing? Had  
13 you talked to anyone at that point?

14:13:24

14 A That's common sense. I did not want  
15 them -- I mean, that's a simple request. Please  
16 don't call me or don't write me.

17 Q So you expected Midland to heed that?

18 A Of course. It's a request.

14:13:36

19 Q Okay. Let's look at Plaintiff's Exhibit  
20 12. The first page of Plaintiff's Exhibit 12,  
21 that's a letter that you wrote to Midland in  
22 March of 2009, correct?

23 A Correct.

14:13:54

24 Q And, again, the middle paragraph, please  
25 do not contact me again in any manner by phone or

1 in writing, those are your words, correct?

2 A Those are.

3 Q And it is a simple request?

4 A Uh-huh (indicating yes).

14:14:02 5 Q Correct?

6 A It is.

7 Q And a request you expected Midland to  
8 heed?

9 A To heed.

14:14:10 10 Q Mr. Brim, to make sure, you had just  
11 mentioned that you actually spoke to someone from  
12 Midland.

13 A I did.

14 Q How many times did you speak to a person  
14:14:20 15 at Midland?

16 A It was two times around this time when I  
17 was getting my house. I called them, and I told  
18 them that I wanted that off of my credit report.  
19 And I actually called them to tell them that I  
14:14:32 20 was sending in some proof. I might have even  
21 asked them what did they need. I don't remember  
22 exact words. And then I sent in a bank statement  
23 and a dispute letter. And I mean, we had a  
24 discussion. So, I mean, there wasn't a hello,  
14:14:48 25 bye.

1 Q And that was back in late, 2007, wasn't  
2 it?

3 A No.

4 THE COURT: He just testified this  
14:14:56 5 was around this time.

6 **BY MR. LANGLEY:**

7 Q Oh, I'm sorry. Mr. Brim, I thought  
8 earlier you had said in response to the first  
9 letter you got from Midland --

14:15:04 10 A Oh, I did. In '07, I did. I spoke with a  
11 lady. And she transferred me to the supervisor.  
12 And then at that time, I faxed in a bank  
13 statement.

14 Q Mr. Brim, after your first letter to  
14:15:18 15 Midland, which was -- excuse me. Your first  
16 dispute letter, which was July 29, 2008, how many  
17 times did you speak to someone from Midland?

18 A One time. The first time.

19 Q And that's until today?

14:15:36 20 A Until today that what?

21 Q I mean, you haven't spoken to anyone from  
22 Midland at any time since then, have you?

23 A In 2009?

24 Q Right. That's the one time.

14:15:46 25 A You mean since then. All right. I

1 thought you said since 2008.

2 Q I may have asked you a bad question. Let  
3 me start over and see if I can do it again.

14:15:56

4 THE COURT: When is the last time  
5 you spoke to anyone from Midland?

6 THE WITNESS: In March of '09.

7 **BY MR. LANGLEY:**

14:16:04

8 Q And that was the only occasion after late  
9 July of 2008 that you ever actually spoke to  
10 anyone from Midland, correct?

11 A Repeat that.

12 Q March of 2009 was the only time you  
13 actually spoke to someone from Midland after July  
14 29, 2008?

14:16:18

15 A Correct.

16 Q And there were only two pieces of written  
17 correspondence that you sent to Midland,  
18 including the one on July 29, 2008, correct?

19 A What's that, now?

14:16:36

20 THE COURT: Were there more than  
21 two letters you sent to Midland?

22 THE WITNESS: No. Disputing --  
23 just disputing --

14:16:46

24 THE COURT: The correctness of the  
25 report.

1 THE WITNESS: Yes. That's it.

2 **BY MR. LANGLEY:**

3 Q So there were two letters, disputing the  
4 correctness of the report, correct?

14:16:52 5 A Correct.

6 Q And one phone call?

7 A Total?

8 Q Total after July of 2008?

9 A Correct.

14:17:10 10 Q So when you said earlier that you  
11 estimated you had devoted a month to this, you  
12 weren't referring to a month of dealing with  
13 Midland, were you?

14 A At least a month dealing with -- I mean, I  
14:17:24 15 put in a lot of time getting my credit reports,  
16 getting research for information to dispute it,  
17 and write dispute letters, going back to my --  
18 printing everything off. I mean, I did. I spent  
19 a lot of time.

14:17:36 20 Q Let's talk about the credit reports that  
21 you've got. I assume you've produced everything,  
22 all the credit reports that you had, haven't you?

23 A That I produced everything?

24 Q There's none sitting at your home that you  
14:17:48 25 didn't give to your lawyers?

1 A Oh, credit reports, no.

2 Q And the credit reports we have are from  
3 July, 2008, March of 2009, and February, 2010,  
4 correct?

14:17:58 5 A Maybe. I don't recall getting them  
6 February of 2010. Maybe so.

7 Q I'm just trying to make sure that there  
8 aren't other credit reports you were getting  
9 during those gaps in time.

14:18:10 10 A Oh, no.

11 Q So there were really two, maybe three  
12 occasions where you went and got credit reports,  
13 correct?

14 A At the time I was trying to get a house?

14:18:20 15 Q Well --

16 THE COURT: Are there anymore  
17 credit reports that you worked on other than the  
18 ones -- or that you obtained other than the ones  
19 that are in these notebooks?

14:18:30 20 THE WITNESS: No.

21 THE COURT: Okay.

22 MR. LANGLEY: Nothing further at  
23 this time. Thank you, Mr. Brim.

24 THE WITNESS: Thank you.

14:18:56 25 THE COURT: Anything else on

1 redirect?

2 MS. CAULEY: Yes, Your Honor.

3 THE COURT: Okay.

4 **REDIRECT EXAMINATION**

14:19:02 5 **BY MS. CAULEY:**

6 Q Mr. Brim, if you will pick up that  
7 deposition that Mr. Langley came up and read to  
8 you from, please.

9 A Okay. I have it.

14:19:10 10 Q And he was on Page 48. And if you'll just  
11 go two more pages to Page 50.

12 A Page 50.

13 Q At the very top of the page, can you read  
14 the question that Mr. Tompkins asked you?

14:19:30 15 A Is a transactional detail report different  
16 from the bank statement?

17 Q And what answer did you give Mr. Tompkins?

18 A No. Because I went into the branch and  
19 asked for a transactional detail report. I had  
14:19:44 20 a -- I think it was a copy of this. And she  
21 said, this is a transactional detail report.  
22 This is all we can provide. If you need anything  
23 else, call us.

24 Q And on that same page, did you tell  
14:19:56 25 Mr. Tompkins exactly what branch that you went



1 to?

2 A I did. I told him I went into the Madison  
3 branch.

4 Q Mr. Langley asked you about your letters  
14:20:14 5 to Midland, if you expected Midland to heed your  
6 request to not call you and not write you, right?  
7 Do you remember that?

8 A Correct.

9 Q And in your letter to Midland, Plaintiff's  
14:20:28 10 Exhibit 12, did you ask them in that letter to  
11 immediately correct your credit report?

12 A I did.

13 Q And did you expect that they would honor  
14 that request, too?

14:20:40 15 A I did.

16 MS. CAULEY: That's all I had.

17 THE COURT: Anything in re-cross?

18 MR. LANGLEY: No, Your Honor.

19 THE COURT: Okay. Thank you,

14:20:46 20 Mr. Brim. Wait. Do y'all have any questions?

21 All right. Let's get the questions first. I

22 need to see y'all in chambers.

23 (Bench discussion in chambers

24 outside the hearing and presence of jury.)

14:22:58 25 (End of bench discussion.)

1 (In open court. Jury present.)

2 THE COURT: Okay. This is a  
3 question from the juror.

4 Mr. Brim, by your own admission, you  
14:25:52 5 stated in writing not to be contacted by phone  
6 nor in writing. How did you expect resolution  
7 without any correspondence via phone or written  
8 communication?

9 THE WITNESS: Because I called  
14:26:04 10 in -- when I called in, they could have at least  
11 told me what they needed.

12 THE COURT: Okay. Did you seek  
13 any other alternative resolutions?

14 THE WITNESS: Besides the bank  
14:26:14 15 statement, that's all they told me they needed.  
16 Detailed transactional detail report, and that's  
17 what I told that's what it was.

18 THE COURT: Okay. In reference to  
19 honoring do not call, what else was expected  
14:26:32 20 from -- I guess by you from the dispute letter?

21 THE WITNESS: To at least let me  
22 know when I called in what else did they need. I  
23 mean, because if I speak to you, of course, if  
24 someone calls me, I would let them know what I  
14:26:46 25 want, basically.

1 THE COURT: Did Midland Credit  
2 Management comply with all of what you --

3 THE WITNESS: Asked for? They  
4 didn't. Because it didn't come off my credit  
14:27:00 5 report. It did not come off my credit report  
6 even when I filed this suit, so --

7 THE COURT: Okay. What  
8 documentation did you have to provide to get your  
9 brother's accounts off your credit report?

10 THE WITNESS: I just provided my  
11 social security card and my driver's license,  
12 because my brother's name is similar to mine.  
13 And our social security numbers are different by  
14 one number. So I provided my social security  
14:27:28 15 card.

16 THE COURT: Did you receive any  
17 reasons from the mortgage companies, either  
18 verbally or by letter, that stated why you were  
19 denied?

14:27:36 20 THE WITNESS: I didn't.

21 THE COURT: Why is the address  
22 different on the bank statement?

23 THE WITNESS: From the bank that I  
24 went in?

14:27:44 25 THE COURT: I don't know.

1 THE WITNESS: From the bank that I  
2 went in?

3 THE COURT: No. Let me just see.

4 THE WITNESS: Wynn Drive,  
14:28:02 5 basically?

6 THE COURT: Did you move?

7 THE WITNESS: No. The Wynn Drive  
8 I would assume is the headquarters because I  
9 don't recall going into the Wynn Drive --

10 THE COURT: What are you reading  
11 from right now?

12 THE WITNESS: Well, I'm looking at  
13 the -- I'm assuming the address of Redstone  
14 Federal Credit Union.

14:28:22 15 THE COURT: Okay.

16 THE WITNESS: Or my address?

17 THE COURT: Are you looking at  
18 Exhibit 24?

19 THE WITNESS: The one he gave me  
14:28:28 20 last. I'm sorry.

21 THE COURT: Is that what you have  
22 right there?

23 THE WITNESS: Yes, it is.

24 THE COURT: And it says Wynn  
14:28:34 25 Drive?

1 THE WITNESS: That's the biggest  
2 Redstone that I've seen. I'm assuming that's the  
3 headquarters because that's the biggest Redstone.  
4 It is.

14:28:42 5 THE COURT: Hang on just a second.

6 THE WITNESS: This one says Wynn  
7 Drive, as well.

8 JUROR 16: Can I clarify?

9 THE COURT: Yeah.

14:29:02 10 JUROR 16: In Exhibit 2 on the  
11 plaintiff, his address is listed as 4134 South  
12 Memorial. But everything else is the  
13 apartment --

14 THE WITNESS: Golf Road.

14:29:10 15 JUROR 16: -- Golf Road.

16 THE WITNESS: Yeah. When I bought  
17 the computer, that is where I lived. 4134H South  
18 Memorial Parkway.

19 THE COURT: And then you moved?

14:29:24 20 THE WITNESS: And then I moved to  
21 2225 Golf Road, Unit 106.

22 THE COURT: All right. Thank you.

23 THE WITNESS: You're welcome.

24 THE COURT: You may have a seat by  
14:29:32 25 your counsel.

1 THE WITNESS: Thank you.

2 (Witness steps down.)

3 THE COURT: Anything else?

4 MR. BENNETT: Judge, and I

14:29:46 5 apologize. The Court recalls that there was a  
6 defense exhibit that was added today. After I  
7 had had an opportunity to examine the witness in  
8 opening. If the Court would indulge I think,  
9 literally, three or four questions solely related  
14:30:02 10 to the number in that contract, I would like to  
11 recall the defendant's witness. I didn't that  
12 document in front of me. They gave it to us  
13 today.

14 THE COURT: Okay.

14:30:14 15 MR. LANGLEY: Your Honor, they did  
16 have that document. It has been in the  
17 binder since we handed it to them the first day  
18 of trial.

19 MR. BENNETT: This morning the  
14:30:20 20 Court recalls counsel said, I made a mistake. It  
21 was actually there and it was provided --

22 THE COURT: It was admitted this  
23 morning. And you may proceed.

24 MR. BENNETT: Thank you.

14:30:28 25 THE COURT: And you have not even

1 rested yet. So you can call any witness you  
2 want.

3 MR. BENNETT: Thank you.

4 THE COURT: Who are you calling?

14:30:36

5 MR. BENNETT: I would call the  
6 defendant's representative now. Mr. Edrozo.

7 (Witness sworn.)

8 COURTROOM DEPUTY: Will you state  
9 your name?

14:30:58

10 THE WITNESS: Gabriel Edrozo.

11 THE COURT: And you're the same  
12 Mr. Edrozo that testified earlier in this case?

13 THE WITNESS: I am.

14 THE COURT: All right.

14:31:14

15 MR. BENNETT: Your Honor, may I  
16 approach the witness to give the defendant this  
17 exhibit?

18 THE COURT: Sure.

14:31:24

19 MR. BENNETT: And Your Honor, I  
20 have Exhibit 21. And I have it opened to Page  
21 32, which is Exhibit D.

22 **REDIRECT EXAMINATION**

23 **BY MR. BENNETT:**

14:31:40

24 Q Sir, you're aware that Midland purchased  
25 this account as part of a portfolio of

1 60-some-thousand other accounts from Dell  
2 Financial?

3 A Correct.

4 Q And it was pursuant to this contract you  
14:31:54 5 provided to us in this litigation, Midland has  
6 provided?

7 A It was part of this contract?

8 Q Yes.

9 A Yes.

14:32:02 10 Q And there are various terms in front of  
11 that contract, but this is the page that outlines  
12 the actual dollars and cents of the purchase,  
13 correct?

14 A I'm not sure. I couldn't speak to that.  
14:32:12 15 I'm not part of purchasing portfolio.

16 Q I thought you had been in the factoring  
17 business for -- I'm sorry. 15 years, you said?

18 A Correct.

19 Q And so there is a percentage of the total  
14:32:24 20 outstanding balances, and that percentage is the  
21 purchase price, correct?

22 A I have never been part of purchasing.

23 THE COURT: Well, just look at the  
24 document and see if you could tell anything from  
14:32:32 25 the document.



1 **BY MR. BENNETT:**

2 Q What is the percentage that was paid --  
3 first of all, what is the total value of  
4 principal of this portfolio that Midland  
14:32:46 5 purchased from Dell?

6 A This document lists the unpaid -- total  
7 unpaid balance of \$117,139,081.44.

8 Q Are you okay at math? I made a joke  
9 earlier. I'm a finance undergraduate which  
14:33:18 10 means --

11 A Not as good as you.

12 Q I'm horrible at math.

13 A I'm horrible.

14 Q What is the percentage of total principal  
14:33:28 15 that is paid for that amount? Is it .05?

16 A 32 is what's listed, yes.

17 Q And the balance on the Midland purchase or  
18 the account from Dell related to Mr. Brim when it  
19 was sold was \$1,600 or \$1,300?

14:33:50 20 A 13. I believe it was 1,354, if I'm not  
21 mistaken.

22 Q Can you help me because of my math  
23 limitation? I know we have a lot of engineers.  
24 Do the math of .0532 from \$1,300?

14:34:02 25 A I could not.

1 MR. BENNETT: Your Honor, may I  
2 get my calculator?

3 THE COURT: Yes.

4 **BY MR. BENNETT:**

14:34:30 5 Q Are you familiar with an iPhone  
6 calculator?

7 A Yes.

8 MR. BENNETT: Your Honor, may I  
9 approach?

14:34:38 10 THE COURT: Yes.

11 MR. BENNETT: Okay.

12 **BY MR. BENNETT:**

13 Q I have the calculator function. And I'm  
14 not a witness, so I can't testify. But if you  
14:34:44 15 could do the math on \$1,330 for me and tell me  
16 what .0532 -- the amount Midland paid for this  
17 account would be.

18 A That's not right. One more time. It's  
19 not calculating right. I'm getting 25,451.

14:35:22 20 So --

21 THE COURT: Look. This is very  
22 simple. Okay? You can do it in your head.

23 THE WITNESS: Okay.

24 THE COURT: If we just rounded off  
14:35:30 25 to \$1,300, take one percent, how much -- I mean,

1 one thousandth --

2 THE WITNESS: Thousandth of a  
3 percent.

4 THE COURT: How much is that?

14:35:40 5 THE WITNESS: 13.

6 THE COURT: No. It's 1.3, isn't  
7 it?

8 THE WITNESS: Thousandths of  
9 percent, yes. 1.3.

14:35:46 10 THE COURT: And you multiply by  
11 five, how much is that?

12 THE WITNESS: Multiply by five?

13 THE COURT: Is it 6.5?

14 THE WITNESS: Yes.

14:35:56 15 THE COURT: \$6.50. Round it off.

16 THE WITNESS: 6.50.

17 THE COURT: I am a math major.

18 THE WITNESS: I'm not.

19 MR. LANGLEY: Your Honor, I hate  
14:36:02 20 to object to that, but the percentage is actually  
21 five percent in the contract.

22 THE COURT: No, it's not. Sorry.

23 You're wrong.

24 **BY MR. BENNETT:**

14:36:18 25 Q And did you hear how much my client paid

1 for postage to make his disputes?

2 A I do. I don't recall the number.

3 MR. BENNETT: I don't have any  
4 other questions, Judge. Thank you.

14:36:26

5 **CROSS-EXAMINATION**

6 **BY MR. LANGLEY:**

7 Q Mr. Edrozo, would you please turn to Page  
8 5 of the document Mr. Bennett showed you?

9 A Okay.

14:36:50

10 Q At the bottom of the page, do you see  
11 where it says purchase price as set forth in the  
12 closing statement attached hereto as Exhibit D?

13 A I'm sorry. Exhibit --

14:37:04

14 Q Exhibit D. See where it says Exhibit D at  
15 the bottom of Page 5?

16 A Okay. I apologize. What exhibit number  
17 are you looking at?

18 Q The same document Mr. Bennett was just  
19 asking you.

14:37:16

20 A I'm sorry. I switched pages. I moved to  
21 Exhibit 5.

22 Q It's Exhibit 21.

23 A Okay. Okay. I'm on Page 5.

14:37:52

24 Q Would you please read the parenthetical  
25 after the word, Exhibit D?

1 A Which amount shall be determined by  
2 multiplying the total unpaid balance of the  
3 charge-off accounts as of the file creation date  
4 being sold by .0532.

14:38:06 5 Q And what's your understanding of .0532?

6 THE COURT: I'm wrong. I admit.  
7 You're absolutely right. It is five percent.  
8 And actually -- it's .05, which is five percent.  
9 So if you multiply that by 1.3, can you get it?  
10 Is it \$65?

14:38:22

11 MR. LANGLEY: Actually I haven't  
12 done that math.

13 THE COURT: Is it \$65?

14:38:32

14 THE WITNESS: I'm not good at  
15 math.

16 THE COURT: You're absolutely  
17 right. I'm wrong. Objection is sustained. But  
18 it is five percent.

14:38:42

19 MR. BENNETT: Judge, we would  
20 stipulate that they paid \$65 for this account.

21 THE COURT: Okay.

14:38:52

22 MR. LANGLEY: Your Honor, we're  
23 not seeking to reach a stipulation on that.  
24 Because I don't know the accounts can be isolated  
25 in that way, but I think what is an undisputed

1 fact here is that the portfolio was purchased for  
2 5.3-something percent of the face value.

3 THE COURT: I think you're right.  
4 Okay. Anything else from this witness?

14:39:06 5 MR. BENNETT: No, Your Honor.

6 THE COURT: Okay.

7 (Witness steps down.)

8 THE COURT: Thank you Mr. Edrozo.  
9 Wait. Do y'all have any questions? You had some  
10 questions. And if you want to ask any questions  
11 of Mr. Edrozo, you have a right to do it now.

12 JUROR 16: Any questions, even  
13 from previous?

14 THE COURT: Yes.

14:39:30 15 JUROR 16: Do you want me to write  
16 it down or ask it?

17 THE COURT: I don't know which  
18 ones were yours. But if you have any questions,  
19 you may ask them.

14:41:22 20 (Bench discussion in chambers out  
21 of the presence and hearing of jury.)

22 (End of bench discussion.)

23 (Bench discussion:)

24 THE COURT: Put in that defense  
14:43:14 25 objects to those two questions. I have told her

1 that you all have objected to that. And I've  
2 overruled the objection. Because the rule was  
3 that everybody agreed to that if there were any  
4 objections to any of the questions the Court  
14:43:48 5 asked, they could follow up to those questions  
6 that there were objections to. And I have  
7 allowed the defendant to follow up with any  
8 questions if they have any after I ask the  
9 witness that. Okay?

14:44:02 10 (End of bench discussion.)

11 (In open court. Jury present.)

12 THE COURT: The first question is  
13 are there any other training documents prior to  
14 the 2010 printing that Midland employees would  
14:44:26 15 follow?

16 THE WITNESS: I would have to  
17 refer to Angelique's testimony. I believe the  
18 training documents were within that testimony.

19 THE COURT: What information did  
14:44:40 20 Midland Credit Management seek from Dell  
21 concerning this dispute?

22 THE WITNESS: No information.

23 THE COURT: And why was the  
24 greater burden placed on Mr. Brim to produce  
14:44:56 25 evidence to close the account?

1 THE WITNESS: We were unable to  
2 contact Mr. Brim based on receiving the cease and  
3 desist.

4 THE COURT: Okay. Any follow-up  
14:45:14 5 questions?

6 MR. LANGLEY: No, Your Honor.

7 THE COURT: Okay. Thank you.

8 MR. BENNETT: Your Honor, may I  
9 follow up with that one question?

14:45:24 10 THE COURT: Yeah. Everybody can  
11 follow up to these particular two questions.

12 **FURTHER REDIRECT EXAMINATION**

13 **BY MR. BENNETT:**

14 Q Not to be repetitive, but you've heard a  
14:45:36 15 lot of about transaction logs and the argument  
16 that my client sent a cease and desist. That was  
17 your answer. You said the problem Midland had  
18 was it couldn't do anything more because my  
19 client had locked it out from contacting him with  
14:45:54 20 a cease and desist. That's essentially what you  
21 just said, right?

22 A Right.

23 Q And you heard your counsel make those same  
24 kind of arguments when he was talking with my  
14:46:04 25 client?



1 A Correct.

2 Q Let's put this in the context of the real  
3 world.

4 What would Midland have done differently  
14:46:12 5 had there not been a cease and desist letter, had  
6 my client not said, quit your harassing debt  
7 collector calls or whatever else he was doing?  
8 What would you have done differently if this  
9 theoretical obstacle didn't exist?

10 A We would have had a conversation with him  
11 our first contact.

12 Q And that conversation would have done  
13 what?

14 A Would have --

14:46:36 15 Q It wouldn't have mentioned transactional  
16 detail log, right? You've already said there's  
17 nothing in your policy that permits that  
18 to matter.

19 A No. But request the front and back of the  
14:46:46 20 check.

21 THE COURT: For the front and back  
22 of the check?

23 THE WITNESS: Of the check.

24 **BY MR. BENNETT:**

14:46:48 25 Q But accompanied by a settlement letter

1 from Dell; that's what the policy is?

2 A Correct.

3 Q Not just the front and back of a check?

4 A Correct.

14:46:56 5 Q So if he had submitted a transactional  
6 detail log or a bank statement or a front and  
7 back of a check, they all would have been treated  
8 exactly the same; that is, they all would have  
9 been dependent on whether Dell had given  
14:47:10 10 permission to release this account through this  
11 settlement letter, right?

12 A I don't know.

13 Q Well, there's nothing in any of these  
14 procedures, 2010, before 2010, after 2010 --  
14:47:24 15 there's nothing in your procedures that would  
16 have allowed the deletion of this account, based  
17 on any telephone communications that you might  
18 have had with my client, unless he had a Dell  
19 letter, saying it was okay to release this  
14:47:36 20 account, right?

21 A Or the copy of the front and back of the  
22 check along with the letter, correct.

23 Q With the paid-in-full letter?

24 A Uh-huh (indicating yes).

14:47:44 25 Q Both. Both are necessary conditions,

1 correct; we already went through that in your  
2 first testimony.

3 A Correct.

4 THE COURT: I thought you said or.  
14:47:54 5 So do you have to have both? A settlement letter  
6 and a front and back of a check, paying that  
7 amount?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

14:48:02 10 **BY MR. BENNETT:**

11 Q And a settlement letter and/or a  
12 transactional detail log, right?

13 A Correct.

14 Q Now, are you aware -- if you could turn to  
14:48:14 15 Plaintiff's Exhibit 4. I'm sorry. Not Four.  
16 Two. Three. Three. No. Again, my apologizes.  
17 Two. Plaintiff's Exhibit 2.

18 Are you aware, as the representative from  
19 Midland, that in this litigation, this exhibit  
14:48:50 20 was provided by Redstone in response to your  
21 attorney's subpoena?

22 A I am now, yes.

23 Q What's the date that Redstone -- the date  
24 of their affidavit for this document they  
14:49:10 25 provided?

1 A I believe March 7th, 2011. That's what's  
2 stamped on it.

3 Q I'm sorry. If you look at the date of the  
4 sworn to and subscribed before me. That was June  
14:49:22 5 18th, 2010, correct? The affidavit, first page,  
6 Exhibit 2.

7 THE COURT: It's Exhibit 2.  
8 That's in defendant's.

9 THE WITNESS: Oh. I'm sorry. I  
14:49:36 10 don't have mine.

11 THE COURT: Here. You can have  
12 mine. That's all right.

13 **BY MR. BENNETT:**

14 Q While I'm walking, you are aware, of  
14:49:46 15 course, your client didn't delete this until mid  
16 September, 2010, correct?

17 A I believe it's September 9th, 2010.

18 Q Oh. September 9, 2010. But, again --

19 THE COURT: Let him answer the  
14:50:02 20 question he didn't answer. Can you tell the date  
21 of the affidavit of Redstone? And that's  
22 Plaintiff's Exhibit 2. That's the question that  
23 wasn't answered.

24 **BY MR. BENNETT:**

14:50:18 25 Q The first page of it.

1 A Yeah. I'm trying to make out the month.  
2 Looks like 10 of 2010. I'm not sure what month.

3 THE COURT: No. Exhibit 2. This  
4 is Exhibit 3.

14:50:30 5 THE WITNESS: I'm sorry. I'm  
6 getting mixed up here.

7 THE COURT: Right here.

8 THE WITNESS: June 18th, 2010?

9 **BY MR. BENNETT:**

14:50:36 10 Q Yeah. Do you have an explanation for why  
11 after your lawyers had a subpoena response from  
12 June that it still took three months before it  
13 was taken out?

14 A I don't, no.

14:50:50 15 Q If this subpoena response with the  
16 affidavit from Redstone had been provided by my  
17 client but he did not give you a paid letter from  
18 Dell, it would have been treated exactly as an  
19 unattested, unauthenticated bank statement,  
14:51:16 20 correct?

21 A I don't know.

22 Q Well, if you were following your  
23 procedures?

24 A I don't know. There may be other  
14:51:24 25 procedures in other departments I'm not aware of.

1 We're talking about a legal document.

2 MR. BENNETT: I don't have any  
3 other questions, Your Honor.

4 THE COURT: Do you have followup?

14:51:32 5 MR. LANGLEY: I do.

6 **RECROSS-EXAMINATION**

7 **BY MR. LANGLEY:**

8 Q Mr. Edrozo, would you look at Plaintiff's  
9 Exhibit 3, which is the transactional detail  
10 report that Mr. Brim provided in August of 2010?  
11 This should be the black binder.

12 A Okay. I do not have that black binder up  
13 here.

14 THE COURT: Here. You can use  
14:52:04 15 mine.

16 THE WITNESS: Thank you very much,  
17 Judge. Thank you.

18 **BY MR. LANGLEY:**

19 Q Have you seen that document before today?

14:52:14 20 A Yes.

21 Q Now, if you would, please, Mr. Edrozo,  
22 look at Defendant's Exhibit 17.

23 THE COURT: Defendant's. It's in  
24 the white book.

14:52:30 25 THE WITNESS: It's in the white

1 book? Okay.

2 **BY MR. LANGLEY:**

3 Q And look at the very last page of  
4 Defendant's Exhibit 17.

14:52:52 5 A Okay.

6 Q And you see where it says Box 5?

7 A Yes.

8 Q If the consumer provided written dispute  
9 with proof -- that's the situation being  
10 addressed, correct?

11 A Uh-huh (indicating yes). Correct.

12 Q And it says, if proof is valid, update to  
13 delete, correct?

14 A Correct.

14:53:10 15 Q Then it says, if unable to determine if  
16 proof is valid, account will be referred to ACQ.  
17 What is ACQ?

18 A That is acquisitions.

19 Q But if Midland determines that proof is  
14:53:24 20 insufficient, you don't reach that step, do you?

21 THE COURT: What?

22 **BY MR. LANGLEY:**

23 Q If Midland -- Mr. Edrozo, there are  
24 essentially three options, aren't there? Proof  
14:53:42 25 is valid, invalid, or they can't tell?

1 A Correct.

2 Q If Midland had received the transactional  
3 detail report marked as Plaintiff's Exhibit 3,  
4 would that have been sent to acquisitions?

14:53:56 5 A It may have, yes.

6 MR. LANGLEY: Nothing further.

7 **FURTHER REDIRECT EXAMINATION**

8 **BY MR. BENNETT:**

9 Q So the three options were valid, invalid,  
10 and can't tell?  
14:54:08

11 A Correct.

12 Q And if it's can't tell, that's -- then  
13 Midland would send it to acquisitions, correct?

14 A Correct. Depending on who's looking at it  
15 or what they understand they read.  
14:54:20

16 Q That's not what you said. Because you  
17 know the next question, correct, which is, why  
18 didn't you send this the acquisitions. And you  
19 didn't send it to acquisitions, did you?

14:54:30 20 A No.

21 Q So that means that Midland's policy is to  
22 find a bank statement, per se, invalid. Not  
23 can't tell. Invalid, correct? I don't mean to  
24 pick on you. You're put up as their  
14:54:44 25 representative.



1 A No. Correct. I don't know who received  
2 this document. If it was sent to counsel. I  
3 don't know how --

4 THE COURT: No. Wait. We're not  
14:54:52 5 talking about what was sent to counsel.

6 THE WITNESS: Okay.

7 THE COURT: We're talking about  
8 Midland's policy. Mr. Bennett asked you if the  
9 bank statement, such as the one that was sent by  
10 Mr. Brim to Midland, is deemed invalid, according  
11 to Midland's training policies.

12 THE WITNESS: Yes, it is.

13 THE COURT: Okay.

14 MR. BENNETT: Thank you.

14:55:08 15 MR. LANGLEY: I think there's some  
16 confusion on this document. I think the witness  
17 was referring to Plaintiff's Exhibit 3. And  
18 Mr. Bennett was referring to the bank statement.

19 MR. BENNETT: I was referring to  
14:55:18 20 the procedures that --

21 THE COURT: He was -- I asked you  
22 about the bank statement.

23 THE WITNESS: And I agree about  
24 the bank statement.

14:55:24 25 THE COURT: So there is no

1 confusion, I don't think. At least not on my  
2 part. If there is on yours, you have an  
3 opportunity to clear it up. Clear it up.

4 MR. LANGLEY: I think it's cleared  
14:55:34 5 up. Thank you.

6 MR. BENNETT: No other questions.

7 THE COURT: Okay. Thank you.

8 MR. BENNETT: And plaintiff would  
9 rest, Your Honor.

14:55:38 10 THE COURT: Okay. We're going to  
11 take up a matter outside your presence and  
12 hearing. So why don't you just enjoy a nice  
13 break and be back in here in about 20 minutes.  
14 Don't discuss the case while you're on break.

14:55:52 15 (Jury excused.)

16 (In open court. Jury not  
17 present.)

18 THE COURT: Okay. Plaintiff has  
19 rested.

14:56:56 20 MR. LANGLEY: I believe Jason has  
21 a motion he's going to make and argue and file  
22 with the Court.

23 THE COURT: Okay. Do you have a  
24 written motion or just oral?

14:57:04 25 MR. TOMPKINS: I have a written

1 motion.

2 THE COURT: Okay. Let me have it.  
3 Let Tammi have it first to mark it filed. And  
4 let me read it before I decide whether I want to  
14:57:14 5 hear argument on it. Okay?

6 MR. TOMPKINS: Okay.

7 THE COURT: Thanks. Okay. You  
8 can argue.

9 MR. TOMPKINS: Thank you, Your  
14:58:24 10 Honor. Defendant would move for judgment as a  
11 matter of law in whole or in part.

12 And first, I would say that we move for  
13 judgment as a matter of law on the willfulness  
14 claim in this case. I've cited to Your Honor in  
14:58:38 15 the written motion a number of cases stating the  
16 type of evidence that are necessary to rise to  
17 the level of willfulness. And I do not believe  
18 the plaintiff has offered any evidence that  
19 Midland's actions in this case rose to a  
14:58:54 20 conscious or reckless disregard of rights under  
21 the law.

22 THE COURT: Okay.

23 MR. TOMPKINS: And ask for a  
24 judgment as a matter of law on all claims, both  
14:59:08 25 negligence and willfulness, because the plaintiff

1 has not presented any evidence of the standard of  
2 care for a reasonable investigation, which is, of  
3 course, the plaintiff's burden.

4 In addition, plaintiff has presented  
14:59:26 5 insufficient evidence of injury, which is an  
6 essential element of the claim under the FCRA.

7 The only evidence we have heard has been  
8 from the plaintiff himself. And in the written  
9 motion, we have cited Your Honor a number of  
14:59:40 10 cases requiring corroboration. And I have heard  
11 no other evidence that Mr. Brim suffered mental  
12 or emotional distress.

13 Finally, Your Honor, we move for a  
14 judgment as a matter of law on the basis the  
14:59:56 15 plaintiff has not presented sufficient evidence  
16 of causation for any injuries.

17 For the economic -- alleged economic  
18 injuries, you have the American Express denial.  
19 We heard testimony from Transunion, stating that  
15:00:10 20 the Midland account did not affect his credit  
21 score. And the American Express denial letter  
22 expressly states he was denied when his  
23 Transunion score was too low.

24 THE COURT: No. That's not what  
15:00:26 25 the testimony was. The testimony was the

1 disputed account was not counted in his credit  
2 score. If it had not been disputed, you can  
3 infer that his credit score would have been  
4 higher, or at least that's an inference you can  
15:00:40 5 have from the evidence.

6 MR. TOMPKINS: I'm not sure I  
7 follow Your Honor.

8 THE COURT: That's all right.

9 MR. TOMPKINS: Sorry. In  
15:00:46 10 addition, Mr. Brim testified that the American  
11 Express credit card was going to be obtained for  
12 use for business purposes, which means that the  
13 FCRA would not govern that credit denial. And we  
14 have heard absolutely no evidence other than  
15:01:08 15 Mr. Brim's own testimony about other denials.  
16 We've seen no denial letters, much less any  
17 evidence --

18 THE COURT: I'm sorry. I can't  
19 hear you.

15:01:20 20 MR. TOMPKINS: We've seen no  
21 denial letters or any other credit applications.  
22 And Mr. Brim himself was unable to say anyone  
23 that told him his credit report, much less the  
24 Midland entry on his credit report, caused any of  
15:01:28 25 those denials.

1 I'll be happy to address any questions you  
2 have, Your Honor.

3 THE COURT: No. I'll let  
4 plaintiff respond.

15:01:38 5 MR. BENNETT: Your Honor, we would  
6 respond in order.

7 Judge, the heading in their first  
8 argument, insisting that, I guess, there be a  
9 standard of care -- maybe an expert witness -- is  
10 not the law.

11 There is a case which I, by tomorrow  
12 morning if the Court needs it, can provide you  
13 that you do not need an expert witness to  
14 establish standard of care.

15:02:02 15 The standard in *Johnson V MBNA*, which has  
16 been cited without any negative authority since  
17 its 2004 adopted in Fourth Circuit, is that it  
18 must be reasonable standard.

19 The Court has already provided its draft  
15:02:18 20 of the jury charges that state the reasonableness  
21 standard that has been delivered in nearly every  
22 furnisher case that it's a -- as in all  
23 reasonableness, it is a question of the  
24 circumstance and some other factors. But there  
15:02:32 25 isn't a standard of care.

1 It also suggests, Judge -- and at the end  
2 of our evidence we'll make our motion that the --  
3 there is no evidence that any investigation was  
4 done at all. So that is, you have two possible  
15:02:44 5 violation.

6 The one violation is that what was done  
7 was an inadequate investigation. It didn't go  
8 far enough. It wasn't as thorough as it needs to  
9 be. But if you imagine a defendant taking a  
15:02:58 10 piece of paper and putting it in a trash can and  
11 when they received a dispute, that's no  
12 investigation. It's not an unreasonable one.  
13 It's none at all.

14 In the case of the Equifax ACDV, there's  
15:03:10 15 evidence that Equifax sent an ACDV in August of  
16 '08, and there was zero investigation done by  
17 Midland. With respect to all the others, there  
18 is evidence only that the automated interface,  
19 which is not an investigation under -- it's not a  
15:03:26 20 bad investigation or mediocre and unreasonable.  
21 It is not investigation.

22 You have two reasons. First, this isn't  
23 the law. And second, they don't even get to  
24 argue that their investigation was reasonable on  
15:03:40 25 the evidence if this was the evidence that

1 existed at the end of the trial. There wasn't an  
2 investigation done.

3 The second -- and by the way, *Chiang* has  
4 been cited here. *Chiang* is a bad case for  
15:03:56 5 consumers but not on this issue. *Chiang* is bad  
6 because it holds the principle that you can't use  
7 the Fair Credit Reporting Act as a declaratory  
8 judgment method when there's a legal dispute  
9 about a debt. And if you look at *Chiang*, this is  
10 like the anti-*Chiang*. This is no legal dispute.  
11 There never has been.

12 There's no question in *Chiang* there is an  
13 affirmative defense. But then *Chiang* sites  
14 another Second Circuit case in which there was an  
15 affirmative defense under the Truth in Lending  
15:04:32 16 Act and for fraud. And in both of those  
17 instances, the Second Circuit said that's a legal  
18 defense; not a factual one. That's different  
19 than, say, *Cushman* where the consumer said they  
15:04:48 20 never signed the account.

21 And certainly in this case, this is  
22 clearly factual. So it's odd to site the case  
23 that says exactly the opposite of what you would  
24 suggest. But in this instance, certainly we  
15:04:58 25 don't have to prove a standard of care. No Court



1 ever. Not one. I don't need to say take the  
2 majority path. I can say no Court has done this.  
3 And I can say that with some authority as one of  
4 the contributing authors in the FCRA manual.

15:05:14

5 The second argument is plaintiff has not  
6 offered any evidence --

7 THE COURT: You can skip that one.

8 MR. BENNETT: I would just note,

15:05:26

9 Judge, we would adopt our omnibus brief, which we  
10 detailed at length on this.

11 Number 3, plaintiff has presented  
12 insufficient evidence of injury. No evidence of  
13 economic injury. And Judge, again, we would  
14 adopt that.

15:05:34

15 But the standard for economic injury is  
16 more than simply proving a specific higher  
17 interest rate. And in fact, both in the jury  
18 instruction cites as well as the omnibus  
19 memorandum, the -- you can establish the loss of  
15:05:52 20 credit opportunities a deterrent from applying  
21 for credit. And you can prove, as I'll address  
22 in the last motion in limine, that by  
23 circumstantial evidence -- and this is the reason  
24 we asked for the circumstantial evidence  
15:06:08 25 instruction. The cites that we offer in our

1 omnibus memo -- I don't need to repeat it.

2 They're all there -- is if our client can show

3 they applied for -- he applied for credit -- and

4 we know that because there are the inquiries that

15:06:22 5 are uncontested -- he did not get the loan. And

6 there's no other explanation that would defeat

7 that my client's Midland account was a

8 substantial factor.

9 The jury is entitled to make an inference.

15:06:38 10 A common sense inference that this would have

11 been a substantial factor. And that on the --

12 uniformly, and I cited all the case, that's been

13 addressed.

14 The other issue is the American Express

15:06:50 15 argument where they're saying, well, they have

16 one witness from Transunion, a litigation

17 liaison, who was subject to a subpoena who made a

18 comment that says, account that is noted disputed

19 doesn't affect a score. That's what they have.

15:07:04 20 In the face of an authenticated letter from

21 American Express that says, this was denied

22 because of your score which was low because --

23 and the first one is a collection. The second is

24 a recent derogatory.

15:07:22 25 If you look at the Transunion credit

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1 report at the time, Exhibit 57, there is no  
2 collection but this one. There never was in  
3 Transunion's file. There is no recent credit.  
4 The two old ones they're talking about was a late  
15:07:36 5 credit card payment from 2007. And the student  
6 loan issue was 2005. Both were current.

7 THE COURT: You're talking about  
8 the Sam's?

9 MR. BENNETT: Sam's Club was a  
15:07:46 10 late credit card payment, Exhibit 57.

11 THE COURT: Well, actually it says  
12 in the credit report under pay status paid or  
13 paid as agreed even if it is shown as a -- and  
14 it's shown with a zero balance.

15:08:00 15 MR. BENNETT: Yes, Your Honor.  
16 Page 7 of our omnibus, we also cite the Second  
17 Circuit decision --

18 THE COURT: Okay. Wait. Look.  
19 Just address theirs. Don't start reading from  
15:08:14 20 your brief. That would be helpful. Let me just  
21 tell you what else. That deals with the economic  
22 injury. And B you don't have to address. Mental  
23 anguish. Okay. Talk to me about Three.

24 MR. BENNETT: Your Honor, the  
15:08:42 25 standard in -- the history under Safeco reduced

1 the threshold. The Fourth and the Fifth and the  
2 Eleventh had all adopted a conscious disregard  
3 knowing standard. The Supreme Court adopted  
4 Third Circuit and Ninth Circuits, reckless or  
15:09:00 5 knowing. And reckless, you have the case cites.

6 The jury instruction that we have asked  
7 for, which we will argue for, is taken verbatim  
8 from those. Recklessness -- and from the *Safeco*  
9 decision -- is a balancing test of whether or not  
15:09:16 10 under the circumstances the defendant took an  
11 unjustifiable risk of violating the law.

12 In this instance, they adopted a procedure  
13 that for either 95 or 99 percent of the 8,000  
14 disputes they receive a week, they do no  
15:09:30 15 investigation whatsoever. They have a procedure  
16 which says they will completely default to the  
17 original source, and they will not make any  
18 corrections themselves ever. That is reckless.

19 The other factors for recklessness are how  
15:09:44 20 long it occurred. And to be candid, having done  
21 all these, I have never once had a defendant keep  
22 a derogatory item on a credit report nine months  
23 into litigation. It's audacious. I've never had  
24 that.

15:10:00 25 The reason the credit bureaus reacted the

1 way they did in this case with the early  
2 disputes, they sent ACDVs upon filing to the  
3 defendant so they could cover themselves. But  
4 that itself is reckless.

15:10:14 5 You're sued. June 2010, your attorneys  
6 obtain an attested document that says this bank  
7 statement is accurate. And they continue to keep  
8 it on for another three months. That's reckless.

9 This is -- I just don't think reckless is  
15:10:32 10 available as a matter of summary judgment for a  
11 plaintiff because it's such a hard standard. But  
12 if any case, this should be it.

13 THE COURT: Okay. Is that the end  
14 of it?

15:10:44 15 Can you refer me to your exhibit which is  
16 the policies and procedures and training manual?  
17 What exhibit number is that?

18 MR. LANGLEY: Talking about  
19 Midland's?

15:10:56 20 THE COURT: Midland's.

21 MR. LANGLEY: I think it's Exhibit  
22 17. The one I was asking Mr. Edrozo about?  
23 That's Exhibit 17.

24 THE COURT: No. I'm not talking  
15:11:06 25 about that one. It is a thick one.

1 MR. BENNETT: The Module 6.

2 MS. CAULEY: It's 35 in the  
3 plaintiff's book.

4 THE COURT: Do you have anything  
15:11:16 5 you want to say in response, Mr. Tompkins? This  
6 is your motion.

7 MR. TOMPKINS: Well, I do, Your  
8 Honor.

9 I think the fact that Midland did not  
15:11:24 10 delete this as soon as the lawsuit was filed  
11 actually slants the other way. Because they  
12 still had no evidence until that transactional  
13 detail report was provided to Dell and Dell was  
14 able to trace the account and determine that they  
15:11:40 15 had misapplied Mr. Brim's payment to another  
16 customer that this was not an unpaid account.  
17 And they did not delete it until they actually  
18 found that out. And they weren't going to just  
19 delete it because they were sued. I don't think  
15:11:58 20 that rises to recklessness.

21 THE COURT: Okay. Naomi, I need  
22 to see you right quick about something.

23 (Short recess.)

24 THE COURT: Okay. Have a seat.  
15:17:04 25 I'm going to deny the motion. I'm also going to

1 deny the motion with respect to willful conduct,  
2 which I think is a jury question under the facts  
3 presented by the plaintiff in this case.

4 But I did look at Plaintiff's Exhibit 35,  
15:17:22 5 which is Midland's procedures for what a consumer  
6 must do to validate a dispute claim after the 45  
7 days. And it goes on the burden of proof on the  
8 consumer -- it lists what the consumer should do.  
9 And under Five over on the left side, it says pay  
15:17:52 10 prior to purchase, ask for method, amount, and  
11 date of payment, which he furnished, verify  
12 payment was made before accounts purchase date.  
13 He did that. If payment made after purchase  
14 date, process as a direct pay. And I'm not sure  
15:18:08 15 what that is.

16 But I do know that by virtue of Midland  
17 limiting this to a check, front and back, plus a  
18 settlement letter is something that the plaintiff  
19 could never have done in this case because he  
15:18:24 20 didn't even have a check.

21 And the defendant's representative has  
22 testified here in open court that he didn't know  
23 what a transactional detail report was until five  
24 months ago.

15:18:42 25 I will also say the fact that Midland

1 wrote Equifax back after Equifax had corrected  
2 its credit report to reflect that it was zero and  
3 reported it back, as it was, with a higher  
4 balance, I think to at least -- well, I think  
15:18:58 5 that's willful, but that's up to the jury to  
6 decide. I think there's enough to go to the jury  
7 on this issue.

8 And finally, I know that Mr. Brim did not  
9 get or did not look at the complaint he was sued  
15:19:14 10 with in small claims court. But he did say it  
11 worried him that he knew he had gotten sued  
12 because he put the letter together with -- the  
13 letter from Gloria Schwartz together with the  
14 sheriff's note.

15:19:54 15 But to that suit, which is in evidence,  
16 there is an affidavit by Midland. And it's  
17 Plaintiff's Exhibit 17 that says, by virtue of  
18 her relationship with Midland, I have personal  
19 knowledge of all relevant financial information.  
15:20:14 20 All relevant financial information concerning  
21 Midland Credit Management, Inc.'s Account Number  
22 8525203719, which includes the following  
23 information: That the defendant -- that would be  
24 Mr. Brim -- did fail to make payments on the  
15:20:34 25 account and that demand has been made for



1 defendant to make payment of the balance owing on  
2 the account described above more than 30 days  
3 prior to the making of this affidavit.

4 And then it goes on about the lawyers.

15:20:56 5 And the amount is \$1,381. And she states that  
6 under oath in April of 2008, which was after  
7 Mr. Brim had gotten the -- called them -- after  
8 he finally received the letter that was sent  
9 within the 45-day period and told them that it  
10 was incorrect.

11 And I find there is sufficient evidence  
12 for it to go to the jury on the issue of  
13 willfulness, and I'm going to overrule motion.

14 And you need to call your first witness  
15:21:32 15 when you take a break. Do you need a ten-minute  
16 break?

17 MR. LANGLEY: We're going to find  
18 out if Redstone is here. If so, we'll put them  
19 up first.

15:21:54 20 (Short recess.)

21 (In open court. Jury present.)

22 MR. TOMPKINS: Defendant calls  
23 Redstone Federal Credit Union.

24 THE COURT: Okay.

15:31:08 25 (Witness sworn.)

1 COURTROOM DEPUTY: Will you state  
2 your first and last name?

3 THE WITNESS: Anthony Cox.

4 COURTROOM DEPUTY: Thank you.

15:31:36

5 **DIRECT EXAMINATION**

6 **BY MR. TOMPKINS:**

7 Q Mr. Cox, what is your position at Redstone  
8 Federal Credit Union?

9 A I am manager of automated operations.

15:31:44 10 Q How long have you held that position?

11 A Three-and-a-half years.

12 Q What was your position prior to manager of  
13 automated operations?

14 A Branch manager of Madison branch.

15:31:54 15 Q And how long did you hold that position?

16 A I held a manager position -- a branch  
17 manager position for 15 years.

18 Q How long have you been at Redstone Federal  
19 Credit Union?

15:32:06 20 A 25-and-a-half years.

21 Q Could you tell the jury what the function  
22 of the automated operations group is?

23 A We have several functions. One of the  
24 main functions is ACH. Automated clearinghouse.

15:32:20 25 That's where we receive electronic credits and

1 debits for our members' accounts. We also do  
2 wires. We receive all the mail. We post mail  
3 payments. We also do charge-backs on checks. We  
4 send out returned checks. We process checks from  
15:32:38 5 the branches that come in, and we send those out  
6 for collection.

7 Q You mentioned the ACH or automated  
8 clearinghouse. Can you describe what that is?

9 A It's an electronic payments that we  
15:32:50 10 receive from the Federal Reserve. We go out and  
11 pick up files that are generated by other  
12 financial institutions. And we post those files  
13 to our member accounts.

14 Q Can you explain to me how an ACH  
15:33:08 15 transaction is originated?

16 A It's originated -- the members originate  
17 the ACH transactions by -- they could do a tele  
18 where they would call the place of business and  
19 ask them to generate a transaction on their  
15:33:26 20 behalf. They could sign up for a direct deposit  
21 through a payroll group. And the company they  
22 work for generates a ACH deposit on their behalf.  
23 Basically, that's the way that would work.

24 Q You said a tele where a member provides.  
15:33:48 25 Would that be a phone check?

1 A Yeah. That would be a phone call. They  
2 would call the place of business or a place of  
3 business could call them. And ask them if they  
4 would like to make a payment by phone. And that  
15:34:02 5 payment -- that conversation is recorded. And  
6 they give them authorization, give the business  
7 authorization to make that transaction on behalf  
8 of the member.

9 Q When an ACH transaction occurs, is there  
15:34:18 10 any type of record of that transaction created?

11 THE COURT: Is there any type of  
12 what?

13 **BY MR. TOMPKINS:**

14 Q Any type of record created of that  
15:34:26 15 transaction?

16 A Yes. There is. We receive the file from  
17 the Federal Reserve. And that's the record we  
18 have to debit or credit the member's account.  
19 And also we give a record to the member by  
15:34:36 20 showing the transaction on their statement.

21 THE COURT: Now, what do you get  
22 from Federal Reserve?

23 THE WITNESS: It is a file that we  
24 get from them to --

15:34:46 25 THE COURT: Over computer?

1 THE WITNESS: Yes. Electronic  
2 file.

3 THE COURT: What's it say?

4 THE WITNESS: It has the -- has  
15:34:54 5 the financial institutions that we're debiting or  
6 we're getting the money from or we're giving  
7 money to. And it shows the member's name, their  
8 account number, the type of transaction whether  
9 it is a debit or credit, how much the transaction  
15:35:10 10 is. And it has a trace number on there. And  
11 that's how we post that transaction.

12 THE COURT: Would the same  
13 transaction be on the bank statement to the  
14 customer?

15:35:20 15 THE WITNESS: The trace number  
16 would not be on the bank statement to the  
17 customer, no.

18 THE COURT: But all the other  
19 information would be?

15:35:26 20 THE WITNESS: It would have the  
21 name of the company, the date, and the amount.  
22 And it would show it was debit or credit.

23 **BY MR. TOMPKINS:**

24 Q How long are the records of ACH  
15:35:38 25 transactions maintained?

1 A We keep those for seven years according to  
2 NACHA rules, which is the National Automated  
3 Clearinghouse Association. That's the governing  
4 body that governs the ACH transactions.

15:35:58 5 Q Does automated operations have a research  
6 function within Redstone?

7 A Yes, we do.

8 Q What type of research do you perform?

9 A When our members go to a branch and  
10 request information that the branch doesn't have,  
11 they can call us if it's about an ACH. And we  
12 will research that to verify the debit or credit  
13 and give that information to the employee. And  
14 the employee is free to give that to the member  
15 at that point.

15:36:30

16 Q Do you ever get direct requests from  
17 members?

18 A No.

19 Q Are all the employees of the automated  
15:36:40 20 operations group located in a single branch  
21 office?

22 A Yes, they are.

23 Q Which office is that?

24 A 220 Wynn Drive, Huntsville, Alabama 35893.

15:36:50 25 Q And does that group in Huntsville support

1 all branches credit union wide?

2 A Yes.

3 Q When a Redstone Federal Credit Union  
4 member comes to a branch to ask for a record of a  
15:37:12 5 payment to a merchant, what is that member  
6 provided with?

7 A We give them a copy of the transactional  
8 detail report -- or actually, we give it to the  
9 employee, and the employee gives it to the  
15:37:26 10 member. And the transactional detail report  
11 shows the account number, the trace number, the  
12 dollar amount, whether it is a debit or credit.  
13 It shows the originating routing number for that  
14 originating bank. And it shows the date. And I  
15:37:46 15 think that's about it.

16 THE COURT: Shows the trace  
17 number?

18 THE WITNESS: Yes, ma'am. On the  
19 transactional detail report.

15:37:58 20 THE COURT: Okay.

21 **BY MR. TOMPKINS:**

22 Q I want to ask you, Mr. Cox: Do you have a  
23 black binder in front of you?

24 A No, sir.

15:38:18 25 Q These are exhibits that have already been

1 admitted in this trial. And I want to ask you to  
2 look at Tab 2.

3 A Okay.

4 Q Looking at the second page of Tab 2?

15:38:48 5 A Yes, sir.

6 Q Is that a transactional detail report?

7 A Actually maybe I'm not looking at the  
8 second page. That is a bank statement in here.

9 Q Does anyone refer to this document as a  
10 transactional detail report at Redstone?

11 A No.

12 MS. CAULEY: Object, Your Honor.  
13 That is awfully overbroad. He can't testify for  
14 all employees of Redstone.

15:39:12 15 THE COURT: Sustained. And that  
16 answer is to be stricken and is stricken from the  
17 record. And that means that if you cannot erase  
18 it from your mind, you may not take that  
19 statement in consideration at the time you  
15:39:24 20 deliberate.

21 How many employees does it have total?

22 THE WITNESS: We have about 800  
23 employees.

24 THE COURT: Okay.

15:39:34 25 **BY MR. TOMPKINS:**

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1 Q Mr. Cox, if you look at the fourth entry  
2 from the bottom, do you see that?

3 A Yes, sir.

4 Q Dell Financial with some letters and  
15:39:46 5 numbers that are after?

6 A Yeah. Payment. And that's the date --  
7 that's the settlement date of the payment.

8 Q The 041106?

9 A Yeah. November the 6th, 2004.

15:40:00 10 THE COURT: 2004?

11 THE WITNESS: Yes.

12 THE COURT: Oh, yeah.

13 **BY MR. TOMPKINS:**

14 Q What does the P-A-Y-M-E-N-T mean?

15:40:06 15 A Payment. Payment.

16 Q Does that indicate in any way what type of  
17 transaction this is?

18 A It indicates that it is a payment to Dell  
19 Financial for 954.12.

15:40:20 20 Q Does this provide any tracking or tracing  
21 information for that payment?

22 A No.

23 Q Now, I want to ask you to look at Exhibit  
24 3 in that same binder. Page 2 of that exhibit.

15:40:50 25 Do you know what that document is?

1 A Yes. That's a transactional detail  
2 report.

3 Q What information is contained on this  
4 transactional detail report that's not reflected  
15:41:00 5 on the bank statement that we just looked at?

6 A It has the trace number and --

7 THE COURT: Where is that?

8 THE WITNESS: It's right below  
9 Mr. Brim's name.

15:41:16 10 THE COURT: Start with --

11 THE WITNESS: Let me back up.  
12 That's -- can I go get my glasses? I left them  
13 over there. Thank you.

14 On here, it has transaction code, which is  
15:41:56 15 27, which would be for the -- debiting the  
16 member's account. And it has --

17 THE COURT: Where do you see that?

18 THE WITNESS: It has the header at  
19 the top. Explains pretty much what all this is.

15:42:08 20 THE COURT: Oh, I see it.

21 THE WITNESS: And the TC is  
22 transaction code. The debit is the amount. Then  
23 it shows a payment. And it shows the date. And  
24 it has a credit trace number right there, that  
15:42:22 25 122. And it has Dell Financial. And it has the

1 settlement date.

2 THE COURT: The settlement date,  
3 the day it was paid? Is that what you call the  
4 settlement date?

15:42:36 5 THE WITNESS: Yes, ma'am.

6 **BY MR. TOMPKINS:**

7 Q What is the purpose of the trace number?

8 A It's a way for us to verify that the --  
9 what the financial institution gives us to post  
10 the transaction. And if we need -- if we need  
11 the -- if we give it to the member, then they can  
12 give it to the company that they paid. And that  
13 company can use that trace number to find it if  
14 they misplaced it or posted it to a wrong  
15 transaction.

15:43:08 15  
16 Q Mr. Cox, does Redstone have any policies  
17 concerning its provision of account information  
18 to persons other than the accountholder?

19 A Yes, we do.

15:43:20 20 Q What are those policies?

21 A We do not give out any information to  
22 anybody other than the account owner.

23 Q Have those policies been in place for the  
24 past ten years?

15:43:32 25 A Yeah.

1 Q Can a third party request a transactional  
2 detail report?

3 A No.

4 THE COURT: Can a customer give  
15:43:44 5 permission to the bank in writing that you can  
6 furnish somebody else a transactional detail  
7 report?

8 THE WITNESS: We wouldn't. We  
9 would give it to the customer. And the customer  
15:43:52 10 would give it to the third party.

11 THE COURT: All right.

12 **BY MR. TOMPKINS:**

13 Q Does that include other parties to the  
14 transactions, for example, a merchant?

15:44:04 15 A Yes.

16 Q If a merchant were to call?

17 A Yeah. The merchant, we would advise them  
18 to go through their financial institution to get  
19 that information.

15:44:12 20 THE COURT: What? I'm not  
21 following you.

22 THE WITNESS: So if --

23 THE COURT: If Dell had called --

24 THE WITNESS: If Dell had called  
15:44:20 25 me, we would tell them to go to their financial

1 institution, the one that generated the  
2 transaction.

3 THE COURT: Okay. And they could  
4 have gotten the same information from them?

15:44:28 5 THE WITNESS: Yes. Yes.

6 THE COURT: Okay. So that would  
7 show what account it was deposited to.

8 THE WITNESS: And the trace number  
9 and the amount. Uh-huh (indicating yes).

15:44:36 10 THE COURT: Okay.

11 MR. TOMPKINS: That's all I have,  
12 Your Honor. Thank you, Mr. Cox.

13 THE WITNESS: You're welcome.

14 MS. CAULEY: Your Honor, we have  
15:44:44 15 no questions.

16 THE COURT: Okay. Thank you so  
17 much.

18 Did the jury have any questions? Okay.

19 (Bench discussion in chambers out  
15:46:46 20 of the hearing and presence of the jury.)

21 (End of bench discussion.)

22 (In open court. Jury present.)

23 THE COURT: The first question the  
24 jury has is: Can a client -- and that would be a  
15:48:26 25 client of yours -- request a detailed report via

1 telephone or other forms of communication, or is  
2 it always in person with verification such as ID  
3 or account number provided prior to release of a  
4 detailed report?

15:48:40 5 THE WITNESS: It's always in  
6 person with verification of ID.

7 THE COURT: Okay. Would it be  
8 reasonable to assume that a branch employee  
9 dealing with public inquiries would know what a  
10 transactional detail report is and how to request  
11 one?

12 THE WITNESS: Some employees may  
13 know, and some would not know. They would  
14 eventually figure out what information they would  
15 need to give to the member. And they would  
16 request that through us. So I guess the  
17 answer --

18 THE COURT: Well, I think the  
19 assumption is on the part of the client, is it  
15:49:18 20 reasonable to assume -- that's the way I read  
21 it -- that a branch employee dealing with public  
22 inquiries would know what a transactional detail  
23 report is and to request one?

24 THE WITNESS: It would probably be  
15:49:34 25 reasonable for somebody to assume that an

1 employee would know what that is. But all  
2 employees wouldn't know.

3 THE COURT: All right. Thank you.  
4 You may be excused.

15:49:44 5 THE WITNESS: All right. Thank  
6 you.

7 (Witness excused.)

8 THE COURT: And your next witness  
9 is --

15:49:54 10 MR. LANGLEY: Your Honor, we call  
11 Dell Financial Services by video deposition.

12 THE COURT: Okay. Can you get the  
13 video to work?

14 MR. LANGLEY: I believe we worked  
15:50:02 15 that out earlier today. But --

16 MR. BENNETT: And Your Honor,  
17 there were three of the speculation objections on  
18 the record.

19 THE COURT: Hang on just a second.  
15:50:28 20 Let me see them.

21 MR. BENNETT: We don't mind the  
22 jury hearing.

23 THE COURT: No. I just want to  
24 see them.

15:50:36 25 MR. LANGLEY: Do you want us to

1 approach?

2 THE COURT: If you'll give me the  
3 written copy of the deposition and give me page  
4 and line, I can read it and rule without going in  
15:50:42 5 chambers.

6 MR. BENNETT: Your Honor, I have  
7 bracketed and put tabs on the three.

8 THE COURT: Okay.

9 MR. LANGLEY: Your Honor, we have  
15:50:58 10 no objection -- we don't contest the objection  
11 with respect to Page 31.

12 THE COURT: So you're going to  
13 take that out?

14 MR. LANGLEY: Yes, Your Honor.

15:51:06 15 THE COURT: Okay. That is Page  
16 31, Lines 8 through 14?

17 MR. LANGLEY: Yes. And Your  
18 Honor, we will stipulate to remove Page 36, Line  
19 24 through Page 37, Line 25. And the last one,  
15:51:40 20 we oppose their objection.

21 MR. BENNETT: On Page 42, Lines 20  
22 through 24.

23 THE COURT: Okay.

24 MR. BENNETT: And we can argue if  
15:51:56 25 the Court --



1 THE COURT: Hang on just a second.  
2 Let me just read it.

3 MR. BENNETT: Your Honor --

4 THE COURT: Wait. Would you  
15:52:18 5 please just let me read it in context?

6 MR. BENNETT: I'm sorry.

7 THE COURT: I'm going to sustain  
8 the objection to that part.

9 MR. BENNETT: Thank you, Judge.

10 Now, logistically, the defendant -- we  
11 have a sophisticated jury. We would be -- the  
12 plaintiff would accept Your Honor instructing the  
13 jury of those objections because of the technical  
14 difficulty the defendant would have at redacting  
15:52:54 15 them. So they will hear the objected  
16 testimony --

17 THE COURT: I'll instruct --

18 MR. LANGLEY: Your Honor, may we  
19 be heard very briefly on the record on this  
15:53:06 20 issue?

21 THE COURT: No. That's it. I'm  
22 sorry. I've ruled.

23 Okay. This is a deposition taken of a  
24 Dell representative while the witness was under  
15:53:14 25 oath. And you should consider her testimony as

1 if she were here in person, testifying in open  
2 court in front of you. And I think the only  
3 objection that plaintiff has is the objection  
4 I've just sustained.

15:53:26 5 MR. BENNETT: Well, they all are  
6 still objections --

7 THE COURT: But you are  
8 withdrawing them?

9 MR. BENNETT: No. We still  
15:53:34 10 insist, but it's difficult for the defendant to  
11 remove it or redact it. We would ask if, at each  
12 of those three points, the Court could instruct  
13 the jury that you have sustained --

14 THE COURT: You're  
15:53:42 15 misunderstanding me.

16 MR. BENNETT: Sorry.

17 THE COURT: Those three  
18 objections, two of which the defendant has  
19 stipulated are appropriate, and the third one are  
15:53:50 20 the only objections you have?

21 MR. BENNETT: Yes, Your Honor.  
22 The only ones.

23 THE COURT: Okay.

24 (Videotape played.)

16:28:36 25 MR. BENNETT: Your Honor --

1 THE COURT: Okay. I sustained the  
2 objection to the question as to based on the  
3 records that you have reviewed, why would  
4 Mr. Brim have asked about auto pay if he was  
16:28:54 5 contending the payment had already been made in  
6 full. There was an objection to that question.  
7 I sustained it. But she also said, I don't know.  
8 Disregard both the question and the answer.

9 (Videotape played.)

16:44:12 10 THE COURT: The next --

11 MR. BENNETT: We don't mind if the  
12 jury hears it if the judge instructs.

13 THE COURT: We're just talking  
14 about a couple of lines, right? From Line 20 to  
16:44:28 15 Line 24?

16 MR. BENNETT: Yes, Your Honor.  
17 That's the question. But then the answer would  
18 go on to Page 43, Line 9.

19 THE COURT: Okay. There is a  
16:44:34 20 question that is about to be -- rather than  
21 stopping and running and deleting, there's a  
22 question that is being asked by -- questions  
23 being asked by the defendant, dealing with what  
24 Midland -- I mean, what Dell Financial Services'  
16:44:52 25 response would have been if Midland had contacted

1 them in '08 and '09 and '10. And I have -- and  
2 there's an answer. And they have objected to  
3 that. And I have sustained that objection. That  
4 means that that series of questions -- and it  
16:45:10 5 goes all the way up to Ms. Cauley's  
6 cross-examination.

7 You are to eliminate from your brain when  
8 you go into the jury room to deliberate in this  
9 case. It is stricken. And that means even if  
16:45:26 10 you cannot erase it, you cannot take it in  
11 consideration at the time you go to deliberate.

12 (Videotape played.)

13 MR. BENNETT: Your Honor, the rest  
14 of the next couple of pages are, I don't think,  
17:02:46 15 particularly informative one way or the other.  
16 They could advance it.

17 THE COURT: Hang on just a second.

18 MR. BENNETT: I believe, Counsel,  
19 for substantive stuff again is after Mr. Langley  
17:02:58 20 asks questions on Page 60.

21 THE COURT: Okay.

22 MR. BENNETT: Maybe 60, Line 9.  
23 If you want to skip those couple of pages. That  
24 will save us five, ten minutes, at least.

17:03:08 25 THE COURT: Okay.

1 MR. BENNETT: Or start with  
2 Mr. Langley's questioning on Page 59, Line 21.  
3 The first thing he gets an answer to is Page 60,  
4 Line 9.

17:04:34 5 JUROR 24: We really need to use  
6 the restroom.

7 THE COURT: Okay. Just take a  
8 restroom break.

9 (Short recess.)

17:10:56 10 (In open court. Jury present.)

11 THE COURT: Let the record show  
12 the jurors are back in the courtroom, and  
13 everybody is here who is supposed to be here.

14 Did you find the place, Mr. Tompkins?

17:11:08 15 MR. TOMPKINS: Yes, Your Honor.

16 THE COURT: Thank you so much for  
17 your effort.

18 (Videotape played.)

19 THE COURT: Ladies and gentlemen  
17:14:02 20 of the jury, we're going to recess for the night.  
21 I hope you'll have a good night. It's supposed  
22 to be stormy tonight. So just be careful. It's  
23 not supposed to start until late, I think. But  
24 anyway, be careful and observe the instructions  
17:14:16 25 I've given you about not discussing the case.

1           And please be back at 9:00 o'clock in the  
2 morning. I think we only have one witness left.  
3 So the case will go to you probably around noon  
4 tomorrow. Okay?

17:14:28 5           I need the lawyers to stay.

6                           (Jury excused.)

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

9           THE COURT: Okay. I need to put  
17:15:38 10 something else on the record about this Exhibit  
11 A, which were the questions I attributed to Juror  
12 Bess, and then the juror that actually owned up  
13 to the questions was Juror Hines. And --

14           MR. LANGLEY: Do you need me to  
17:15:56 15 speak up?

16           THE COURT: No. It was mentioned  
17 by the defendant when they moved to strike him  
18 and excuse him about they didn't know about his  
19 math background. But that even -- and I  
17:16:10 20 overruled that objection.

21           Mr. Hines' background that he noted -- let  
22 us all know about when he was answering the  
23 question is that he is a retired electronic  
24 engineer. He has a BS degree, he has a master's  
17:16:26 25 degree, and he is working on his Ph.D.

1 MR. LANGLEY: Your Honor, we  
2 didn't object on the grounds that we didn't know  
3 he had a math background. But he was the one  
4 that raised his hand and asked about factoring in  
17:16:34 5 the mathematic context. That wasn't the basis of  
6 our objection.

7 THE COURT: Okay. Well, he didn't  
8 write it. So it's moot. It's Mr. Hines that  
9 wrote it. Anyway, since that has been cleared  
17:16:46 10 up, I just want to put that on the record.

11 And let's go talk about the -- have the  
12 jury charge conference now. Because I need Tammi  
13 to make the copies in the morning before we  
14 start. Just come in the office.

17:17:10 15 (The Proceedings were recessed at  
16 approximately 5:17 p.m. on February 24, 2011.)  
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C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 16th day of March of 2011.

*Cheryl K Powell*

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Cheryl Renae King Powell, CCR, RPR, FCRR  
Federal Certified Realtime Reporter

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