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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS
R. Murray Hughes, Special Referee

Case No. 2010-CP-39-0352
Appellate Case No. 2012-211187

RECEIVED

JUN 17 2013

SC Court of Appeals

Us Bank National Association, *et al*, ... Respondents,
v.

Barbara E. Bebout, and
Robert A. Swaynham, *et al*,
of Whom,
Barbara E. Bebout, and
Robert A. Swaynham are Appellants.

RECORD ON APPEAL

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INDEX

Findings of Fact in Regards to the Affirmative Claims, etc.	1
Special Referee's Sale	14
Special Referee's Report and Judgment	18
Summons and Notices	29
Complaint	33
Second Amended Answer and Counterclaim, Third Party Complaint	39
Answer of the Third Party Defendant to Second Amended Answer and Counterclaim	64
Plaintiff's Reply to Second Amended Answer and Counterclaim, Third Party Complaint	73
Testimony	
Barbara Bebout	
Direct	82
Cross	114
Cross	165
Redirect	170
Kevin Sandifer	
Direct	189
Cross	211
Dr. Phillip G. Swicegood	
Direct	225
Cross	230
Cross	230
Redirect	233
Robert Alec Swaynham	
Direct	235
Cross	251
Cross	254
Redirect	283
Recross	292
Paul Giangrande	
Direct	294
Cross	339
Direct	350
Cross	390
Deposition Exerpts Walter C. Castro	406
Exhibits	
Plaintiff's Exhibits:	
P 1	419
P 2	423
Defendant's Exhibits:	
D 1	438
D 2	439
D 3	440
D 4	441

D 5	442
D 6	443
D 7	444
D 8	445
D 9	448
D 10	452
Americash Exhibits:	
A 1	453
A 3	455
A 4	460
A 5	461
A 6	462
A 7	463
A 8	464
A 9	465
A 10	466
A 13	467
A 14	468
A 15	469
A 16	470
A 17	472

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) FOR THE THIRTEENTH JUDICIAL CIRCUIT

US Bank National Association as Successor) Case No. 2010-CP-39-0352
Trustee to Bank of America National Assoc.,)
Successor by merger to LaSalle Bank)
National Association, as Trustee for Morgan)
Stanley Mortgage Loan Trust 2007-3XS,)
Plaintiff,)

v.)

Barbara E. Bebout; Robert A. Swaynham)
a/k/a Robert Alec Swaynham; Mortgage)
Electronic Registration Systems, Inc. (MIN#)
1001419-0060908012-1); The Peoples)
National Bank,)

Defendants & Third Party Plaintiffs,)

v.)

Americash Mortgage Corporation,)

Third Party Defendant.)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2012 MAR -2 P 1:01

**FINDINGS OF FACT IN REGARD TO THE AFFIRMATIVE CLAIMS
ASSERTED BY THE DEFENDANTS AND THIRD PARTY PLAINTIFFS,
BARBARA E. BEBOUT AND ROBERT A. SWAYNGHAM,
a/k/a ROBERT ALEC SWAYNGHAM**

Based on the testimony and documents admitted at trial, I find as a matter of fact as follows in regard to the affirmative claims asserted by the Defendants and Third Party Plaintiffs, Barbara E. Bebout and Robert A Swaynham, a/k/a Robert Alec Swaynham

(Bebout/Swaynghams):

According to the testimony of the Bebout/Swaynghams, in the year 2006, they began the process of searching for a lender to refinance an existing mortgage on the subject property, that mortgage being held by Peoples National Bank. Although Bebout and Swaynham described the loan from Peoples National Bank as a "bridge loan" the mortgage which secures its payment is dated August 22, 2002.

According to the records of Americash Mortgage Corporation (Americash), Bebout and Swaynham first contacted Americash on or around August 31, 2006, seeking a \$500,000.00, loan to be secured by a mortgage. Americash opened a file on the Bebout/Swaynghams on August 31, 2006, and began the loan origination and underwriting process. Americash requested a credit report on September 1, 2006, and on September 8, 2006, Americash opened a second loan origination file, linked to the loan origination file opened on August 31, 2006.

Ultimately, Americash approved the Bebout/Swaynghams for two loans, a loan in the amount of \$400,000.00, the repayment of which was to be secured by a first mortgage on the property, and a second loan in the amount of \$100,000.00, the repayment of which was to be secured by a second mortgage. The term of the first loan/mortgage was 30 years, with an interest rate of 7.65% per annum. The term of the second loan/mortgage was 15 years with an interest rate of 11.759% per annum. Bebout was to be the borrower and the loan application reflects her income, assets and debts. Both Bebout and Swaynham were to be mortgagors as the subject property was titled in both names.

Late in the loan origination/underwriting process, on or around October 27, 2006, the ~~Bebout/Swaynghams informed Americash of their desire to have Ken Acker, of the Pickens~~
County Bar, close the above referenced mortgage loan transactions. Prior to receiving this

request, Americash contacted the Willoughby Law Firm, one of South Carolina law firms Americash utilized to close South Carolina loans, and requested that firm conduct the title examination on the property and begin preparations to close the Bebout/Swaynghan's loans. Upon receiving the Bebout/Swaynghan's request, Americash contacted Mr. Acker and was informed that his firm did not conduct "witness only" closing and would have to begin its own title examination and loan closing preparations.

The two loans closed on November 20, 2006, in Greenville, South Carolina. Present at the closing were two attorneys - Kevin B. Sandifer and Walter Christopher Castro. The loan closing was supervised by Mr. Sandifer with Mr. Castro acting as witness.

At the closing, among the many documents signed, was a document entitled "Attorney/Insurance Preference Check List" which provided in pertinent part that "[h]aving been informed of this right [the right to select legal counsel] and having no preference, I (we) asked for assistance from the lender and was (were) referred to a list of acceptable attorneys. From the list I select...." Handwritten on a line on this form is the name "Wyatt Willoughby."

The HUD-1 signed at closing shows various disbursements being made, including the pay-off of the prior mortgage holder, Peoples National Bank, and excess loan proceeds of \$66,407.00, disbursed to the Bebout/Swaynghams. These disbursements were done by the Willoughby Law Firm. Both mortgages were properly and timely recorded and the prior mortgage was marked paid and satisfied of record.

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**CONCLUSIONS OF LAW IN REGARD TO THE AFFIRMATIVE CLAIMS
ASSERTED BY THE DEFENDANTS AND THIRD PARTY PLAINTIFFS,
BARBARA E. BEBOUT AND ROBERT A. SWAYNGHAM,
a/k/a ROBERT ALEC SWAYNGHAM**

The affirmative claims asserted by Bebout/Swaynham depend nearly entirely on their own testimony. The exhibits admitted at trial consisted mainly of loan documents and correspondence, none of which affirmatively supports the various claims of the Bebout/Swaynghams. Other than their testimony, there is no direct evidence of these claims.

Although I find the Bebout/Swaynham testimony to be credible, I find the testimony presented by the Americash witnesses, i.e., the two attorneys who were present at the closing and the testimony of the President of Americash, to be credible as well. The burden of persuasion in regard to their affirmative claims lies with the Bebout/Swaynghams. Because the evidence adduced at trial in support of these claims is made up almost exclusively of their testimony, given my view of the credibility of the witnesses who testified, the allocation of the burden of persuasion is, in large measure, outcome determinative and compels a ruling in favor of Americash and the Plaintiff.

The following is my analysis and my rulings on the Bebout/Swaynham third-party-plaintiff claims against Americash. For purposes of this Order, I refer to the Bebout/Swaynham third-party-plaintiff claims by their sequential defense number noted on their Second Amended Answer, Counterclaim and Third-Party Complaint.

To the extent the Bebout/Swaynghams assert affirmative defenses or counter-claims against the Plaintiff which are identical to their third-party-plaintiff claims against Americash, rather than set forth my rulings on these claims separately, I incorporate my rulings on the

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Bebout/Swaynghan third-party-plaintiff claims against Americash in regard to any identical Bebout/Swaynghan affirmative defenses or cross-claims against the Plaintiff.

I. THE \$500,000.00 LOAN (SEVENTH DEFENSE)

The Bebout/Swaynghams assert Americash "promised" them a loan in the original principal amount of \$500,000.00, with an interest rate of 5.5%.¹

There is no documentary evidence to support this allegation. The documentary evidence, along with the testimony of the Americash witness, Paul Giangrande (Giangrande), shows the Bebout/Swaynghams were seeking a cash-out refinance in the amount of \$500,000.00. They ultimately qualified for a \$400,000.00 loan secured by a first mortgage and a \$100,000.00 loan secured by a second mortgage. The evidence shows this is what the Bebout/Swaynghams received which resulted, among other things, in the pay-off of their existing first mortgage and their receipt of excess loan proceeds amounting of over \$66,000.00.

The Bebout/Swaynghams signed all the documents necessary to close the two Americash loans, including the notes and mortgages and right to cancel or rescind both transactions. Prior to the institution of this foreclosure action, the Bebout/Swaynghams never complained about any terms or provisions of the loans or asserted they did not receive from Americash that for which they bargained.

Every contracting party owes a duty to the other party to the contract and the public to learn the contents of a document before he or she signs. *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986), citing *J.B. Colt Co. v. Britt*, 129 S.C. 226, 123 S.E. 845 (1924). Here,

¹ This allegation appears at times throughout the Bebout/Swaynghams' pleadings, sometimes taking the form of allegations that Americash "misrepresented" the terms of the mortgage loan

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the Bebout/Swaynghams had every opportunity to review and read all the loan documents they signed. They cannot now complain that any aspect or term of the loan, all of which were detailed in the signed loan documents, was in any way misrepresented.

Finally, the Bebout/Swaynghams claim they were under some sort of pressure to close the subject transaction(s) because their prior mortgage was due or shortly to become due. This assertion is contradicted by the evidence adduced at trial. As Mr. Giangrande testified the Bebout/Swaynghams' credit report showed their prior mortgage was not due to be paid in full until September 2007, a full 9 months after the closing of the transaction in question.

II. SECTION 37-10-102 (SEVENTH DEFENSE).

The Bebout/Swaynghams assert Americash failed to abide by the Bebout/Swaynghams' attorney preference.

The testimony and evidence show that the Bebout/Swaynghams told Americash on or about October 31, 2006, of their desire to use the Acker Law Firm to close the loans (*see* Bebout/Swaynham Exhibit 10 - marked as Respondent's Exhibit 10).² By that time Americash already had an "open order" with the Willoughby Law Firm and changing law firms would cause a delay in the closing. Further, the Bebout/Swaynghams were "wanting to sign soon...." A handwritten note on Respondent's Exhibit 10 says, "ready to go ... Title issue is resolved." The inference to be drawn from this notation is the Bebout/Swaynghams agreed to use the Willoughby Law Firm to close these loans. This inference is further supported by the telephone

transaction in question. For the sake of brevity, I will not repeat my ruling in regard to this assertion every time this allegation appears in a Bebout/Swaynham cause of action.

² The inference to be drawn from this fact, of course, is that Americash properly and timely made the Bebout/Swaynghams aware of their option to pick an attorney to close these loans.

call Bebout testified she received from a "closing attorney," who was not Mr. Acker, prior to the closing and the attorney preference form the Bebout/Swaynghan's signed at closing, both of which clearly demonstrate the willingness of Bebout/Swaynghan to use Willoughby or his designee as their closing attorney. *See* Respondent's Exhibit 3.

III. SECTION 37-5-108 (EIGHTH DEFENSE)

This section of the Consumer Protection Code does not apply to mortgage loan transactions. Accordingly, the Bebout/Swaynghams have no claim against Americash under this cause of action.

In addition, there was nothing "unconscionable" about the loan in question, the \$100,000.00 loan, or Americash's conduct in its or their origination, processing or closing.

The income information provided by the Bebout/Swaynghams shows a debt ratio of 43.643% upon the closing of the loans in question - a debt ratio, according to the testimony of Americash, well within the credit guidelines Americash was operating under at the time of the mortgage loan transaction in question as well as its present guidelines.

The loan application signed by Bebout (*see* Americash Exhibit 2), shows a monthly income of \$14,000.00 with a mortgage payment of \$3,060.00 for the mortgage the Bebout/Swaynghams wished to refinance. The new mortgage payment, for both the \$400,000.00 and the \$100,000.00 loan combined was \$3,840.58. This equaled a monthly payment increase of only \$780.58 for a larger (combined) loan amount which also provided the Bebout/Swaynghams with \$66,407.00 in cash.



IV. SECTION 40-58-10 (NINTH DEFENSE).³

Section 40-58-10, provides that a person may not "broker a mortgage loan as defined by this chapter" unless that person is otherwise exempt under this section or has complied with the provisions of this statute, i.e., obtained a mortgage broker's license.

Section 40-58-20 defines the terms "mortgage broker" and "mortgage lender." The undisputed evidence is that Americash is a mortgage lender, it is not a mortgage broker.

V. FIDUCIARY DUTY AND NEGLIGENCE (TENTH DEFENSE).

There is no evidence that there was any fiduciary relationship between the Bebout/Swaynghams and Americash. "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987); *Ellis v. Davidson*, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004). The relationship must be "more than casual to equal a fiduciary relationship." *Ellis*, at 519, 595 S.E.2d, 822 (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003); *Moore v. Moore*, 260 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004)). "As a general rule, a fiduciary relationship cannot be created by the unilateral action of one party." *Ellis, supra.*, 358 S.C. at 519, 595 S.E.2d, 822 (citing *Regions Bank, supra.*, 326 S.C. at 670, 582 S.E.2d, 444). To establish the existence of a fiduciary relationship, "the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so

³ The allegation that Americash was a mortgage broker also appears in the Bebout/Swaynghams' Twelfth Defense. I incorporate my rulings in regard to the Ninth Defense in regard to the Twelfth Defense.

entrusted will act not in his own behalf but in the interest of the party so reposing.” *Id.* “The evidence must show the entrusted party actually accepted or induced the confidence placed in him.” *Id.*

The South Carolina Supreme Court has recognized certain relationships as fiduciary in nature. *Hendricks II v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003). “Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.” *Id.* at 459, 578 S.E.2d, 716 (a student/advisor relationship is not fiduciary).

No party has cited a South Carolina case, and I can find none, which has held that a lender stands in a fiduciary relationship with its borrower.

To the extent this defense/counterclaim attempts to assert a negligence claim against Americash, again, there was no evidence adduced at trial to support such a claim. The Bebout/Swaynghams failed to establish a duty, a breach of that duty or damages proximately related to that breach.

VI. SECTION 37-20-70(c) (ELEVENTH DEFENSE).

Section 37-20-70(c) or (g) does not exist in the South Carolina Code. This defense/cause of action also cites 12 U.S.C. § 3755(a)(1) which, along with its sister sections, provides a somewhat uniform procedure for the foreclosure of mortgages assigned to the Secretary of the Department of Housing and Urban Development. This section, obviously, has no application to the instant foreclosure.

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I am informed that counsel for the Bebout/Swaynghams notified counsel for Americash by e-mail September 27, 2011, saying "[i]n our Answer and Counterclaim we mis-cited a code section. It appears in the Eleventh defense of the Counterclaim. It should read 37-23-70."

No motion to amend was made at the trial or thereafter to amend the pleadings in regard to this section. In addition, and regardless of how it is pleaded, section 37-23-70 prohibits certain actions and requires certain disclosures in regard to what it defines as "high-cost" and consumer home loans. No evidence was adduced at trial to establish the loans in question met the definition of a "high-cost" loan or that there was a violation of this section by Americash.

VII. Regulation Z and the Home Ownership and Equity Protection Act (HOEPA)
(THIRTEENTH DEFENSE).

The Home Ownership and Equity Protection Act of 1994 (HOEPA), amended the Truth in Lending Act (TILA) and established requirements for certain loans with high interest rates or high fees. The rules defining the loans covered by HOEPA and the requirements for such loans are set out in section 32, of Regulation Z, which implements the TILA.

The loan in question here, and the loan secured by the second mortgage, are not loans covered by this section. Accordingly, the Bebout/Swaynghams have no claim against Americash.

To the extent this defense/counterclaim attempts to assert any other type of violation of the TILA, no evidence was admitted at trial to support such a claim. The undisputed evidence shows that Americash made the required initial disclosures (*see* Americash Exhibits 19, 20, 21 and 22 and the testimony of Mr. Giangrande). No evidence was adduced to the effect that these

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initial disclosures were not made or that either the initial disclosures or the final disclosures were in any way incorrect or did not comply with the requirements of the TILA.

VIII. SECTION 6, RESPA (FOURTEENTH DEFENSE).

Section 6 of RESPA concerns generally mortgage servicing. Americash was not and is not the servicer of the mortgage the plaintiff seeks to foreclose. Accordingly, the Bebout/Swaynghams have no claim against Americash in regard to this cause of action. Further, no evidence was adduced at trial to show any RESPA violation in regard to the servicer of the \$400,000.00, loan which, in any event, was not a party to this action.

IX. SECTION 37-23-40(1) (FIFTEENTH DEFENSE).

Section 37-23-40(1) prohibits lenders from taking certain actions concerning high-cost home loans, the phrase high-cost home loans being defined in section 37-23-20 (9). Here, the mortgages in question do not meet the test set out in section 37-23-20(9) for a high-cost home loan and there is no evidence to the contrary.

X. UNFAIR TRADE PRACTICES (SIXTEENTH DEFENSE).

The Bebout/Swaynghams assert a violation of South Carolina's Unfair Trade Practices Act (UTPA), S.C. Code Ann. § 39-5-10 *et seq.*, in regard to the mortgage loan transaction.

The UTPA prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce...."

A private cause of action under the UTPA is limited to those unfair or deceptive acts or practices that affect the public interest. *Drs. Stever and Latham, P.A. v. Nat. Med. Enterprises, Inc.*, 672 F.Supp. 1489, 1521 (D.S.C. 1987). The UTPA is not available to address a private wrong where the public interest is unaffected. *Id.*

Here, as is set forth above, Americash complied with all applicable federal and state statutes in regard to the mortgage transaction in question, as well as second mortgage transaction. Further, to the extent Americash's relationship with the Bebout/Swaynghams gave rise to any common-law duty of Americash towards its borrowers, Americash did not breach that duty or duties in any respect. Finally, there is no evidence of any public interest affected by the loans or the mortgages used to secure repayment, the closings of those loan, the servicing of the loans, and this foreclosure action. Accordingly, the Bebout/Swaynghams have no claim against Americash under their UTPA cause of action.

Further, the UTPA has a three year limitations period which expired long before this action was filed in 2010.

XI. DAMAGES.

As set forth above, the Bebout/Swaynghams failed to prove their claims against Americash. However and in addition, I conclude the Bebout/Swaynghams' damage analysis is flawed. The Bebout/Swaynghan damages witness simply computed the difference in cost in terms of interest paid, over the life of each loan, between the two loans which were closed and the loan the Bebout/Swaynghams allege they were "promised."

As pointed out in cross-examination by counsel for the plaintiff, the Bebout/Swaynghan damages witness did not take into account in his damages calculations that the Bebout/Swaynghams had not made any mortgage payments since at least August 2009, now over two years ago, nor have they been paying their real property taxes since at least 2009.

XIII. CONCLUSION.

MT#12

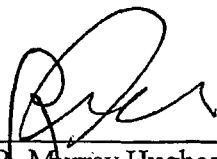
In light of the foregoing, I find and conclude that the Bebout/Swaynham third-party-plaintiff claims against Americash set forth in their Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Defenses are without merit and should be dismissed with prejudice. To the extent these Defenses assert counter-claims against the Plaintiff they are equally without merit and should be dismissed with prejudice as well.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that that the Bebout/Swaynham third-party-plaintiff claims against Americash set forth in their Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Defenses should be and hereby are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED, ADJUDGED AND DECREDD that o the extent these Defenses assert counter-claims against the Plaintiff they should be and hereby are DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.



R. Murray Hughes, Special Referee for
Pickens County

Pickens, South Carolina
February 13, 2012
0:30:025548 00114caulkingalproposed Order.vpd

SPECIAL REFEREE'S SALE

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

BY VIRTUE of a decree heretofore granted in the case of U.S. Bank National Association v. Barbara E. Bebout, et al., Civil Action Number 2010-CP-39-0352, the Special Referee for Pickens County has ordered that following property, which is the subject of the above action, be sold on May 7, 2012, at 11:00 a.m. at the Pickens County Courthouse to the highest bidder:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13 containing 20.94 acres, more or less, as shown on that certain plat prepared by C.E. Shehan, Surveying dated January 18, 1988, recorded in the Office of the ROD for Pickens County in Plat Book 35 at page 18.

LESS

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13-A containing 5.15 acres, more or less, as shown on that certain plat prepared for Hayden S. Porter and Patricia M. Porter prepared by Robert E. Threatt, dated May 7, 1994, recorded May 20, 1994 in the Office of the ROD for Pickens County in Plat Book 63 at page 174B. Said tract containing 5.15 acres, more or less, conveyed to Hayden S. Porter and Patricia M. Porter by deed of Joel A. Swaynham and Robert Alex Swaynham dated May 18, 1994, recorded May 20, 1994 in said ROD Office in Book 241 at page 188.

Reference is hereby craved to said plats for a more complete and accurate description. Be all measurements a little more or less.

This being a portion of the identical property conveyed to Joel A. Swaynham and Robert Alec Swaynham by deed of Raymond R. Reinke dated September 3, 1993, recorded September 8, 1993 in the Office of the ROD for Pickens County in Book 213 at page 293. This is also a portion of the identical property conveyed to Robert Alec Swaynham by deed of Joel A. Swaynham dated March 26, 1998, recorded March 26, 1998 in said ROD Office in Book 418 at page 188. This is also the identical property conveyed to Barbara E. Bebout by deed of Robert Alec Swaynham dated July 31, 2001 recorded August 1, 2001 in said ROD Office in Book 625 at page 273.

Property Address: 142 Overlook Drive, Pickens, SC 29671
Mailing Address: [REDACTED]

TMS# 5102-00-69-0557

The property will be sold subject to any past due or accruing property taxes, assessments, existing easements and restrictions of record and any other senior encumbrances.

This property will be sold subject to the following mortgage(s)/ senior encumbrances:
N/A

The successful bidder must pay interim interest from the date of the Sale through date of compliance at the rate of 7.625%.

Each successful bidder other than plaintiff at time bid is accepted will be required to deposit with Master as evidence of good faith 5% of bid in cash or certified check at the time of bid. In event purchaser fails or refuses to comply with terms of sale within 20 days from close of bidding, deposit shall be forfeited and applied first to costs and then to Plaintiff's debt, and the Master shall forthwith re-advertise and resell said property upon the same terms on some subsequent sales day at the risk of former purchaser until obtaining full compliance with sale.

Bidding will not remain open after the sale.

Terms of sale - cash; purchaser to pay for deed and stamps.



R. Murray Hughes
Special Referee for Pickens County

McANGUS, GOUDELOCK & COURIE, LLP
Thomas E. Lydon
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-39-0352

US Bank National Association as Successor Trustee

Barbara E. Bebout; Robert A. Swaynham a/k/a

to Bank of America National Assoc., et al.

Robert Alec Swaynham; et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Louis H. Lang, Esq.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Special Referee

Judge Code

Date

February 23 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2012 MAR -2 P 1:06

U.S. Bank National Association, as)
Successor Trustee to Bank of)
America, National Association,)
Successor by merger to LaSalle Bank)
National Association, as Trustee)
for Morgan Stanley Mortgage Loan)
Trust 2007-3XS,)

Civil Action No. 2010-CP-39-0352

Plaintiff,

vs.

Barbara E. Bebout; Robert A.)
Swaynham a/k/a Robert Alec)
Swaynham; Mortgage Electronic)
Registration Systems, Inc. (MIN#)
1001419-0060908012-1); The)
Peoples National Bank)

Defendants,

Barbara E. Bebout and Robert A.)
Swaynham,)

Third-Party Plaintiffs,

vs.

Americash Mortgage Corporation,

Third-Party Defendant.

**SPECIAL REFEREE'S REPORT
AND JUDGMENT OF
FORECLOSURE AND SALE**

Pursuant to Rule 53 SCRCF, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case.

Pursuant to the Order of Reference, a hearing was held and was attended by all parties who have appeared in the action and their respective attorneys. At the hearing,

testimony was taken and evidence was presented by the parties. From the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACTS

1. The Summons, Complaint, and Lis Pendens were filed on February 24, 2010.
2. The pleadings were served on all defendants.
3. In response to the Complaint, Defendants Barbara E. Bebout and Robert A. Swaynham (hereinafter "Borrowers") filed an Answer, Counterclaim, and Third-Party Complaint. Plaintiff timely filed a Reply to the Answer, Counterclaim, and Third-Party Complaint. Third-Party Defendant Americash Mortgage Corporation ("Americash") timely filed an Answer to the third-party claims. Thereafter, Borrowers filed an Amended Answer, Counterclaim, and Third-Party Complaint and a Second Amended Answer, Counterclaim and Third-Party Complaint. Plaintiff and Americash both filed responses to the amended pleadings filed by Borrowers.
4. All defendants were notified by mail of the time, date, and place of the hearing in this matter.
5. On or about November 20, 2006, a promissory note was executed by Defendant Barbara E. Bebout to Americash in the original principal amount of \$400,000.00, with interest thereon, the terms of which are more fully explained by reference thereto (the "Note"). Shortly after the closing, Americash executed an allonge whereby the Note was endorsed in blank.

mt #2

6. The obligation due on the Note is secured by a mortgage from Borrowers on their house located at 140 Overlook Drive in Pickens, which was recorded in the Office of the Register of Deeds for Pickens County in Book 3468 at Page 95 (the "Mortgage"). The mortgagee named in the Mortgage is Mortgage Electronic Registration Services, as nominee for Americash.

7. Borrowers failed to make payments when due on the Note. The Note is, therefore, in default.

8. Subsequent to the filing of this action, the Mortgage was assigned to Plaintiff.

9. At the foreclosure hearing, Borrowers asserted that the foreclosure action should be dismissed for two reasons. First, they challenged whether Plaintiff established ownership of the Note. Second, they contended that the filing of the foreclosure action was premature because the assignment of the Mortgage had not been executed or recorded at the time this action was filed.

10. Plaintiff has placed the Note and Mortgage in the hands of its attorney for collection.

11. Plaintiff is entitled to recover a reasonable amount as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, in accordance with the terms of the Note and Mortgage.

12. The amount due and owing on the Note, with interest at the rate provided in the Note, is as follows:

(A)	Principal	\$	386,481.40
(B)	Interest through 9/29/2011	\$	66,110.67
(C)	Escrow advances	\$	7,798.97
(D)	Fees (property inspections)	\$	30.00

(E) Late charges \$ 283.12

Total debt secured by mortgage
including interest to date shown \$ 460,704.16

Attorney's fees, costs of collection and interest for the period from the date shown in (B) above through the date of this judgment at the rate of \$80.74 per day shall be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein, and interest after the date of judgment at the rate of 7.625% per annum on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

13. The Plaintiff is seeking the usual foreclosure of the Mortgage and has in the Complaint expressly waived the right to a deficiency judgment.

14. If surplus funds remain after the sale of the property described in the mortgage, a hearing will be held pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure to determine the validity and priority of the liens.

CONCLUSIONS OF LAW

Applying the case law and statutes of the State of South Carolina to the evidence presented at the foreclosure hearing, I conclude as follows:

1. Borrowers contend that Plaintiff did not have standing to file the foreclosure action because the Note and Mortgage had not been assigned to it at the time the case was filed. However, "assignments and transfers of notes and mortgages are valid whether recorded or not," *Long Realty Co. v. Breedin*, 175 S.C. 233, 233, 179 S.E. 47, 48 (1935). Whether such assignment has been made may be evidenced by a written

mt#4

endorsement or assignment on the paper, or it may be shown by other competent testimony. *Childs v. Alexander*, 22 S.C. 169 (1885).

2. It is well-settled that for an assignment to be valid against a subsequent bona fide purchaser, it must be recorded. *See, Long Realty Co.*, 175 S.C. at 233, 179 S.E. at 48. However, recordation is irrelevant in determining whether a party has standing or is a real party in interest in a suit in state court. *Id.* An assignee of a note and mortgage must only establish that it owns the loan documents and that the mortgagor is currently in default.

3. The legal standard for determining who is entitled to enforce a promissory note is set forth in Section 36-3-301 of the South Carolina Code. This section provides that:

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

4. In this case, the allonge to the Note has been endorsed in blank and the Mortgage has been assigned to Plaintiff. Moreover, Plaintiff has possession of the original Note and presented it to the Court at the foreclosure hearing. As such, Plaintiff is a "person entitled to enforce" the note, as defined by Section 36-3-301.

5. Borrowers also contend that Plaintiff did not have standing to initiate the foreclosure action because the Mortgage had not been assigned to it at the time the lawsuit was filed. However, the fact that the Mortgage was not assigned to Plaintiff until after the lawsuit was filed does not defeat the foreclosure action. *See, Campus Sweater and Sportswear Co. v. M.B. Kahn Construction Co.*, 515 F. Supp. 64 (D.S.C. 1979).

5 mt#5

6. Irrespective of when the assignment was executed or recorded, South Carolina recognizes the "familiar and uncontroverted proposition" that "the assignment of a note secured by a mortgage carries with it an assignment of the mortgage." *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930). Therefore, as the owner of the Note, Plaintiff had the right to foreclosure the Mortgage.

7. Based on the foregoing, Plaintiff is entitled to judgment for the sum of \$460,704.16, plus attorney's fees, costs of collection, and interest for the period from September 29, 2011, through the date of this judgment at the rate of \$80.74 per day, which sum shall be paid from the proceeds received from the sale of property described in the Mortgage.

8. Plaintiff is entitled judgment of foreclosure of the Mortgage, and the mortgaged property should be ordered sold at public auction after due advertisement, as more particularly set forth below.

9. The counterclaims and third-party claims asserted by Borrowers are addressed in a separate Order.

Accordingly, it is ORDERED:

1. That there is due and owing to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$460,704.16, plus attorney's fees, costs of collection, and interest for the period from September 29, 2011 through the date of this judgment at the rate of \$80.74 per day.

6 *mt#6*

2. The amount due in the preceding paragraph shall constitute the total judgment due to the Plaintiff and shall bear interest hereafter at the rate of 7.625% per annum.

3. That Borrowers shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises hereinafter described, be sold by the undersigned Special Referee at public auction, in Pickens County, State of South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The undersigned Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.625% per annum.

C. The sale shall be subject to taxes and assessments, existing easements, and easements and restrictions of record.

D. Purchaser to pay for deed stamps and the cost of recording the deed.

5. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

7 mt#7

6. Deficiency judgment having been waived, the bidding will not remain open after the sales date.

7. That the undersigned Special Referee will by advertisement according to law, give notice of the time and place of sale, and the terms thereof, and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned Special Referee may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the undersigned Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court:

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus will be held pending further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Pickens County is ordered and directed to eject and remove from the premises the

occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, and equity or redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IF FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the name of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. The undersigned Special Referee will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

13. A description of the premises herein ordered to be sold is as follows:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13 containing 20.94 acres, more or less, as shown on that certain plat prepared by C.E. Shehan, Surveying dated January 18, 1988, recorded in the Office of the ROD for Pickens County in Plat Book 35 at page 18.

9 m #9

LESS

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13-A containing 5.15 acres, more or less, as shown on that certain plat prepared for Hayden S. Porter and Patricia M. Porter prepared by Robert E. Threatt, dated May 7, 1994, recorded May 20, 1994 in the Office of the ROD for Pickens County in Plat Book 63 at page 174B. Said tract containing 5.15 acres, more or less, conveyed to Hayden S. Porter and Patricia M. Porter by deed of Joel A. Swaynham and Robert Alex Swaynham dated May 18, 1994, recorded May 20, 1994 in said ROD Office in Book 241 at page 188.

Reference is hereby craved to said plats for a more complete and accurate description. Be all measurements a little more or less.

This being a portion of the identical property conveyed to Joel A. Swaynham and Robert Alec Swaynham by deed of Raymond R. Reinke dated September 3, 1993, recorded September 8, 1993 in the Office of the ROD for Pickens County in Book 213 at page 293. This is also a portion of the identical property conveyed to Robert Alec Swaynham by deed of Joel A. Swaynham dated March 26, 1998, recorded March 26, 1998 in said ROD Office in Book 418 at page 188. This is also the identical property conveyed to Barbara E. Bebout by deed of Robert Alec Swaynham dated July 31, 2001 recorded August 1, 2001 in said ROD Office in Book 625 at page 273.

Property Address: 142 Overlook Drive, Pickens, SC 29671
Mailing Address: [REDACTED]

TMS# 5102-00-69-0557

AND IT IS SO ORDERED.



R. Murray Hughes
Special Referee for Pickens County

Pickens, South Carolina

February 23, 2012

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

US Bank National Association, as Successor
Trustee to Bank of America National Association
successor by merger to LaSalle Bank National
Association, as Trustee for Morgan Stanley
Mortgage Loan Trust 2007-3XS,

Plaintiff,

v.

Barbara E. Bebout; Robert A. Swaynham a/k/a
Robert Alec Swaynham; Mortgage Electronic
Registration Systems, Inc. (MIN# 1001419-
0060908012-1); The Peoples National Bank;

Defendant(s).

IN THE COURT OF COMMON PLEAS

2010 FEB 24 P 3:00
DOCKET NO.

2010-CP-39- 352

SUMMONS AND NOTICES
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waived

(011516-00395)

TO THE DEFENDANT(S) ABOVE NAMED:

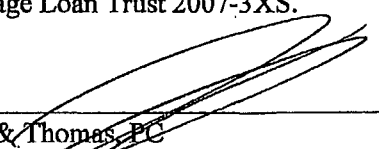
YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you

fail to do so, application for such appointment will be made by US Bank National Association, as Successor Trustee to Bank of America National Association successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-3XS.


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Kevin T. Hardy (SC Bar #76015) • Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
February 23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

US Bank National Association, as Successor
Trustee to Bank of America National Association
successor by merger to LaSalle Bank National
Association, as Trustee for Morgan Stanley
Mortgage Loan Trust 2007-3XS,

Plaintiff,

v.

Barbara E. Bebout; Robert A. Swaynham a/k/a
Robert Alec Swaynham; Mortgage Electronic
Registration Systems, Inc. (MIN# 1001419-
0060908012-1); The Peoples National Bank;

Defendant(s).

(011516-00395)

CLERK OF COURT
PICKENS COUNTY OF COMMON PLEAS
SOUTH CAROLINA

DOCKET NO.

2010 FEB 24 P 3:00

2010-CP-39-

352

2010-LP-39-

121

LIS PENDENS
Deficiency Judgment Waived

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Barbara E. Bebout and Robert Alec Swaynham to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Americash (MIN# 1001419-0060908011-3) dated November 20, 2006, and recorded in the Office of the RMC/ROD for Pickens County on December 29, 2006, in Mortgage Book 3468 at Page 95.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13 containing 20.94 acres, more or less, as shown on that certain plat prepared by C.E. Shehan, Surveying dated January 18, 1988, recorded in the Office of the ROD for Pickens County in Plat Book 35 at Page 18.

LESS

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13-A containing 5.15 acres, more or less, as shown on that certain plat prepared for Hayden S. Porter and Patricia M. Porter prepared by Robert E. Threatt, dated May 7, 1994, recorded May 20, 1994 in the Office of the ROD for Pickens County in Plat Book 63 at Page 174B. Said tract containing 5.15 acres, more or less, conveyed to Hayden S. Porter and Patricia M. Porter by deed of Joel A. Swaynham and

Robert Alex Swaynham dated May 18, 1994, recorded May 20, 1994 in said ROD Office in Book 241 at Page 188.

This being the identical property conveyed to Joel A. Swaynham and Robert Alec Swaynham by deed of Raymond R. Reinke dated September 3, 1993 and recorded September 8, 1993 Deed Book 213 at Page 293. Subsequently, Joel A. Swaynham conveyed his interest in the subject property to Robert Alec Swaynham by deed dated March 26, 1998 and recorded March 26, 1998 Deed Book 418 at Page 188. Subsequently, Robert Alec Swaynham conveyed a 1/2 interest in the subject property to Barbara E. Bebout by deed dated July 31, 2001 and recorded August 1, 2001 in Deed Book 625 at Page 273.

Property Address: 140 Overlook Drive
Pickens, SC 29671

TMS# 5102-00-69-0557



Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Kevin T. Hardy (SC Bar #76015) • Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
February 23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

US Bank National Association, as Successor
Trustee to Bank of America National Association
successor by merger to LaSalle Bank National
Association, as Trustee for Morgan Stanley
Mortgage Loan Trust 2007-3XS,

Plaintiff,

v.

Barbara E. Bebout; Robert A. Swaynham a/k/a
Robert Alec Swaynham; Mortgage Electronic
Registration Systems, Inc. (MIN# 1001419-
0060908012-1); The Peoples National Bank;

Defendant(s).

(011516-00395)

CLERK OF COURT
PICKENS COUNTY
IN THE COURT OF COMMON PLEAS
SOUTH CAROLINA

DOCKET NO.
2010 FEB 24 P 3:00

2010-CP-39-352

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Waived

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Pickens County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said

judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about November 20, 2006, Barbara E. Bebout made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$400,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Barbara E. Bebout and Robert Alec Swaynham made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Americash (MIN# 1001419-0060908011-3) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13 containing 20.94 acres, more or less, as shown on that certain plat prepared by C.E. Shehan, Surveying dated January 18, 1988, recorded in the Office of the ROD for Pickens County in Plat Book 35 at Page 18.

LESS

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13-A containing 5.15 acres, more or less, as shown on that certain plat prepared for Hayden S. Porter and Patricia M. Porter prepared by Robert E. Threatt, dated May 7, 1994, recorded May 20, 1994 in the Office of the ROD for Pickens County in Plat Book 63 at Page 174B. Said tract containing 5.15 acres, more or less, conveyed to Hayden S. Porter and Patricia M. Porter by deed of Joel A. Swaynham and Robert Alex Swaynham dated May 18, 1994, recorded May 20, 1994 in said ROD Office in Book 241 at Page 188.

This being the identical property conveyed to Joel A. Swaynham and Robert Alec Swaynham by deed of Raymond R. Reinke dated September 3, 1993 and recorded September 8, 1993 Deed Book 213 at Page 293. Subsequently, Joel A. Swaynham conveyed his interest in the subject property to Robert Alec Swaynham by deed dated March 26, 1998 and recorded March 26, 1998 Deed Book 418 at Page 188. Subsequently, Robert Alec Swaynham conveyed a 1/2 interest in the subject property to Barbara E. Bebout by deed dated July 31, 2001 and recorded August 1, 2001 in Deed Book 625 at Page 273.

Property Address: 140 Overlook Drive
Pickens, SC 29671

TMS# 5102-00-69-0557

9. The Mortgage was signed, witnessed and probated November 20, 2006; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Pickens County on December 29, 2006, in Mortgage Book 3468 at Page 95.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for August 1, 2009, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of August 1, 2009, the principal sum of \$386,481.40, with interest from July 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. The Peoples National Bank, by virtue of a mortgage given by Barbara E. Bebout and Robert Alec Swaynham in the amount of \$438,623.14, dated August 22, 2002, and recorded August 23, 2002 in Book 2022 at Page 157. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate.

B. Mortgage Electronic Registration Systems, Inc. (MIN# 1001419-0060908012-1), by virtue of a mortgage given by Barbara E. Bebout and Robert Alec Swaynham in the amount of \$100,000.00, dated November 20, 2006, and recorded December 29, 2006 in Book 3468 at Page 110

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Determine that the mortgage held by The Peoples National Bank, recorded August 23, 2002 in Book 2022 at Page 157 has been paid in full, and direct the Clerk of Court/Register of Deeds for Pickens County to release the lien of the mortgage from the subject property.

(3) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(4) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(5) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

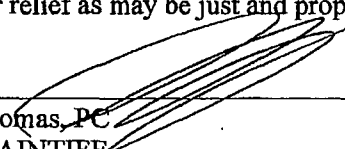
First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(7) Issue an order directing the Sheriff of Pickens County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(8) Order such other and further relief as may be just and proper.


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
February 23, 2010

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT**

15 U.S.C. Section 1692g, As Amended

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2010 FEB 24 P 3:00

1. The amount of the debt as of August 1, 2009, is the principal sum of \$386,481.40, with interest from July 1, 2009, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
2. US Bank National Association, as Successor Trustee to Bank of America National Association successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-3XS is the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt, and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor named in this notice is not the original Creditor, and if you make a request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Rogers Townsend and Thomas, PC, Post Office Box 100200, Columbia, South Carolina 29202-3200.
7. This notice should not be construed as a thirty (30) grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE
USED FOR THAT PURPOSE.**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

2010-CP-39-0352

US Bank National Association as Successor)
Trustee to Bank of America National Assoc.,)
Successor by merger to LaSalle Bank)
National Association, as Trustee for Morgan)
Stanley Mortgage Loan Trust 2007-3XS,)
PLAINTIFFS)

SECOND AMENDED ANSWER,
COUNTERCLAIM, and
THIRD-PARTY COMPLAINT
(NON-JURY TRIAL)

Vs.)

Barbara E. Bebout; Robert A Swaynham)
a/k/a Robert Alec Swaynham; Mortgage)
Electronic Registration Systems, Inc. (MIN#)
1001419-0060908012-1); The Peoples)
National Bank;)

DEFENDANTS and)

THIRD-PARTY PLAINTIFFS,)

Vs.)

U.S. Bank, Americash Mortgage)
Corporation and Greentree Mortgage)

THIRD-PARTY DEFENDANTS.)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 MAY 12 P 1:05

Defendants, husband and wife, Barbara E. Bebout and Robert Alec Swaynham
(hereinafter "Swaynghams"), amending their answer to the Plaintiff's Complaint, and
asserting Counterclaims and their Third-Party Complaint, would respectfully show as
follows:

The named Plaintiff, U. S. Bank is the successor in interest to Americash Mortgage
Corporation which was the original mortgagee on two loans (first mortgage for \$400,000.00
and second mortgage for \$100,000.00) executed by the Swaynghams on November 20, 2006.

Upon information and belief, Americash is a business incorporated and organized in the State
of California and doing business in the State of South Carolina. The first mortgage was
assigned to U.S. Bank on March 12, 2010 in Mortgage Book 4149 at Page 169 Pickens

County Register of Deeds (See Exhibit "A" incorporated herein by this reference). The second mortgage was allegedly assigned to Greentree Mortgage, but no assignment to Greentree Mortgage appears in the Pickens County Register of Deeds. For the purposes of this Second Amended Answer, Counterclaim and Third-Party Complaint, Third-Party Defendant Americash Mortgage Corporation shall be referred to as "Americash".

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically, admitted, modified or explained is denied and strict proof demanded thereof.
2. Paragraphs 1 and 5 of the Complaint are admitted upon information and belief.
3. As to the allegations of Paragraphs 2, 4, and 11 the Swaynghams are without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph.
4. Specifically as to the allegations contained in Paragraphs 3, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16 and 17 of the Complaint, the Swaynghams answer that the documents speak for themselves and it is for the Court to determine to what extent they are enforceable, were properly executed and recorded, and to establish any priority of one over the other. All allegations of those paragraphs to the extent inconsistent therewith are denied.
5. Further answering, until determination by the Court of the rights, duties and obligations of all of the parties herein, the Swaynghams should not be required to make payments on a Note and Mortgage as to which it remains to be determined whether they are enforceable and to what extent.

6. The Swaynghams incorporate herein the allegations contained in the statement of facts set forth hereinafter.

FOR A SECOND DEFENSE
(Unclean Hands)

7. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent with this defense.
8. Plaintiff's Complaint is barred by the doctrine of unclean hands.

FOR A THIRD DEFENSE
(Duress and Fraud)

9. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent with this defense.
10. Plaintiff's Complaint is barred on the grounds that the alleged note and mortgage at issue are void ab initio because they were obtained by duress or fraud.

FOR A FOURTH DEFENSE
(Fraud and Misrepresentation)

11. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent with this defense.
12. Plaintiff's Complaint is barred on the grounds that the alleged note and mortgage at issue are void ab initio on grounds of fraud and misrepresentation.

FOR A FIFTH DEFENSE
(Illegality)

13. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent with this defense.
-
14. The agreements upon which Plaintiff bases some or all of its causes of action are illegal and/or unenforceable under South Carolina law and public policy.

FOR A SIXTH DEFENSE
(In Pari Delicto)

15. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent with this defense.
16. Plaintiff's claims are barred, in whole or in part, by the doctrine of *in pari delicto*, which provides that a Plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.

**FOR A SEVENTH DEFENSE BY WAY OF COUNTERCLAIM &
THIRD -PARTY COMPLAINT FIRST CAUSE OF ACTION**
(Violation of the South Carolina Consumer Protection Code,
S.C. Code Ann. §37-10-102)

17. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under its defenses set forth above.
18. While negotiating a loan to pay off their bridge construction loans, the Swaynghams were promised a rate of five and ½ % (5.5%) on \$500,000.00 by Americash. The Swaynghams told Americash they wanted to use attorney Ken Acker who is located in Pickens, S. C. for their closing. After six months of waiting, the Swaynghams received a surprise phone call by Americash on the morning of November 20, 2006, and were told their closing attorney would be the Willoughby Law Firm in Columbia, S.C. (which is more than 100 miles from the Swayngham's residence).
19. The lenders made no efforts whatsoever to abide by the Swaynghams' wishes as to their attorney preference in the transaction referred to in the Complaint. Instead, Americash set up a closing and ignored the Swaynghams' choice of

attorney. At the closing, the Swaynghams were presented with an attorney they did not know and then told 'they had to take it or leave it' if they wanted to refinance their bridge loans. Exhibit "B", incorporated herein by this reference, clearly shows Americash, and their agents, were aware of the Swaynghams' wishes. When Mrs. Swaynham signed the attorney preference form, it was blank. Later, the name "Wyatt Willoughby was added. See Exhibit "C", incorporated herein by this reference.

20. The failure to ascertain the Swaynghams' preference as to legal counsel prior to closing is a violation of South Carolina Code §37-10-102.
21. The Swaynghams have been damaged by the failure to ascertain their preference as to legal counsel prior to closing in an amount of actual damages to be determined, plus the total amount of the loan finance charge, double the amount of the excess loan finance charge or other charges or fees paid by the Swaynghams, statutory damages, and attorney's fees and costs.
22. Upon information and belief, this violation of the South Carolina Consumer Protection Code entitles Homeowner to not less than one thousand five hundred (\$1,500.00) dollars and not more than seven thousand five hundred (\$7,500.00) dollars per debtor, for each violation, as well as attorney fees and costs.

**FOR AN EIGHTH DEFENSE BY WAY OF COUNTERCLAIM
& THIRD-PARTY COMPLAINT SECOND CAUSE OF ACTION**
(Violation of the South Carolina Consumer Protection Code
S.C. Code Ann. §37-5-108)

-
23. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve

all rights under its defenses set forth above.

24. Beginning in the spring of 2006, and until November 20, 2006, the Swaynghams applied for a residential loan with the mortgage lender "Americash". The Swaynghams requested and were quoted an APR of five and one-half (5.5 %) percent for one loan in the amount of Five Hundred Thousand (\$500,000.00) Dollars by a representative of Americash. After months of telephone negotiations, the representative of Americash told the Swaynghams literally at the closing 'table', the terms of the mortgage had changed.
25. The morning began when the Americash representative called the Swaynghams at work and told them to meet the Americash closing attorney at Stax's restaurant in Greenville, S.C. The closing took place on a restaurant table.
26. When the loan process began, the Swaynghams' credit rating was virtually perfect. The Swaynghams sought the Americash loan to pay off a number of interim construction loans. Because of the extreme delay (approximately six months) in the loan process, the Swaynghams had begun to default on their interim construction loans. Their credit rating began to drop accordingly. By the time the closing occurred, the Swaynghams believed they had no choice but to go with Americash's altered loan terms.
27. The new Americash terms were a Four Hundred Thousand (\$400,000.00) Dollar loan at 7.625 % and a One Hundred Thousand (\$100,000.00) Dollar loan at eleven and three fourths (11.75%) per cent. Dr. Philip Swicegood, economist from Wofford College, calculated the difference between what the Swaynghams were promised and what they were given. His figures are shown on Exhibit "D",

incorporated herein by this reference.

28. The value of the mortgage(s) at issue is greater than the actual value of the mortgage promised. The mortgage lender was aware of this disparity at the time the agreement was entered into by the parties in violation of S.C. Code § 37-5-108(4) (a) (ii).
 29. Prior to closing, the Swaynghams provided the mortgage lender with complete and accurate information regarding their current and expected income, current obligations, and employment status.
 30. The mortgage lender, including those now seeking foreclosure, knew or should have known—based on the Swaynghams' disclosed current and expected income, current obligations, and employment status—at the time the mortgage agreement was entered into, that the Swaynghams would be unable to make the scheduled mortgage payments in violation of S.C. Code § 37-5-108(4)(b).
 31. The mortgage lender complaint is barred on the grounds that the mortgage at issue is unconscionable pursuant to South Carolina's Consumer Protection Code, S.C. Code Ann. § 37-5-108.
 32. The Swaynghams have been damaged in an amount of actual damages to be determined, plus statutory damages, and attorneys' fees and costs, and if the Court determines unconscionable conduct, the amount of the loan, award of all finance charges, twice the interest paid on the mortgage, and forgiveness of all interest due on the mortgage pursuant to S.C. Code § 37-10-105.
-

**FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
& THIRD-PARTY COMPLAINT THIRD CAUSE OF ACTION**

(Violation of the South Carolina Licensing Requirements Act of Certain
Brokers of Mortgages on Residential Real Property, S.C. Code Ann.
§40-58-10 et. al)

33. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under its defenses set forth above.

34. Americash acted as a mortgage lender for the Swaynghams pursuant to S.C. Code Ann. §40-58-20(1). The mortgage lender committed multiple violations of South Carolina law in the transaction set forth above, including, but not limited to, the following:

- a. Misrepresenting material facts and making false promises to influence, persuade, or induce the Swaynghams to take a mortgage loan. This includes presenting the broker in the guise of a lender and pursuing a course of misrepresentation through agents or otherwise;
- b. Intentionally misrepresenting and concealing material factors, terms, and conditions of the transaction to which lenders were a party, pertinent to an applicant for a mortgage loan or a mortgagor;
- c. Engaging in transactions, practices or courses of business which are unconscionable in light of the regular practices of a mortgage lender and/or mortgage loan broker, or which operated a fraud upon the Swaynghams, in connection with the making of or purchase or sale of the mortgage loan;
- d. engaging in mortgage loan brokering without a license;
- e. Such other violations as may be shown at trial.

35. Lenders intentionally engaged in transactions with the Swaynghams that were unconscionable in light of the regular practice of a mortgage broker in violation of S.C. Code Ann. §40-58-70(3).
36. The Swaynghams have been damaged in an amount of actual damages to be determined, plus statutory damages, fees paid to others by the Swaynghams or by the mortgage lenders on the Swaynghams' behalf.

FOR A TENTH DEFENSE AND BY WAY OF CROSSCLAIM
(Breach of Fiduciary Duty, Negligence)

42. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Defendant reserves all rights under its defenses set forth above.
43. Third-Party Defendants acted as agents for the Swaynghams.
44. As the Swaynghams' agents, they owed the Swaynghams a duty of fidelity along with other fiduciary duties of good faith and fair dealing.
45. Third-Party Defendant breached such duties to the Swaynghams and acted in a negligent, grossly negligent, reckless, willful, and wanton manner and in a manner characterized by disloyalty, bad faith, and unfair dealing in one or more of the following particulars:
- (a) Third-Party Defendants entered into an unconscionable transaction in violation of applicable mortgage broker standards, which said parties knew or should have known should not be made; and
- (b) Third-Party Defendants acted as the Swaynghams' agent in obtaining mortgages for a home that said parties knew or should have known had a falsified price.

46. As a direct and proximate result of the actions and breaches of duties of Third-Party Defendants, the Swaynghams suffered actual damages in an amount to be determined.
47. The conduct of the Third-Party Defendants was sufficiently malicious, willful, wanton, reckless, grossly negligent, and/or outrageous to entitle the Swaynghams to punitive damages in an amount to be determined by the finder of fact.

**FOR A ELEVENTH DEFENSE BY WAY OF COUNTERCLAIM &
THIRD-PARTY COMPLAINT FIFTH CAUSE OF ACTION
VIOLATION OF
(Violation of S.C. CODE § 37-20-70 (C))**

48. Each and every allegation contained in the foregoing paragraphs is repeated as if fully re-alleged herein to the extent consistent herewith. The Swaynghams reserve all rights under its defenses set forth above.
49. Subsequent to their depositions on Oct. 8, 2010, Alec Swayngham and his wife, Barbara Bebout conducted a personal audit of their checking accounts.
50. The Swaynghams discovered that prior to the foreclosure they received checks from ASC, the servicing company of Americash, representing returned mortgage payments in the amount of \$3,300.00 and \$1,000.00 with the words "misapplication reversal". These checks are attached hereto as cumulative Exhibit "E", incorporated herein by this reference.
51. The Swaynghams had been working with the loan servicer on a loan modification for most of 2009, during which time Mrs. Swayngham had two heart attacks. The Swaynghams were not told by the servicer that a foreclosure was being prepared during this time.

52. Upon information and belief, the discovery material indicates that Americash (through its servicing company ASC) was not sure how to proceed after the Swaynghams' loans were referred for foreclosure (See Exhibit "F" which are the ASC notes on page 17 dated December 7, 2009) because the Swaynghams were working to modify their loans and the Swaynghams were still making their loan payments.
-
53. The Third-Party Plaintiffs are informed and believe Americash had targeted their property for a short sale, or foreclosure, because of its high equity value.
54. Third-Party Plaintiffs are informed and believe, pursuant to 12 U.S.C. Section 3755 (a) (1), the subject foreclosure is invalid because there was no "breach of a covenant or condition in the mortgage agreement"; in other words, this foreclosure was a creation of Americash, or some entity, acting on its behalf.
55. The Third-Party Plaintiffs are informed and believe they are entitled to damages from the violation of 12 U.S.C. Section 3755 (a) (1) in an amount equal to the subject first and second mortgages totaling \$500,000.00.
56. The Swaynghams are informed and believe Americash also violated S.C. Code § 37-20-70 (c) in that, by returning the Swaynghams' checks, Americash encouraged default on an existing loan.
57. The Swaynghams are informed and believe pursuant to S.C. Code § 37-20-70(G) (1) the Court has the authority to terminate this foreclosure and pay a reasonable amount of the Swaynghams' attorney fees.
-

**FOR A TWELTH DEFENSE AND BY WAY OF COUNTERCLAIM
& THIRD-PARTY COMPLAINT SIXTH CAUSE OF ACTION**

(Breach of Fiduciary Duty In Violation of the South Carolina Licensing
Requirements Act of Certain Brokers of Mortgages on Residential Real
Property, S.C. Code Ann. §40-58-78)

58. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under its defenses set forth above.
59. The Third-Party Defendants acting as Mortgage Brokers were agents of the Swaynghams.
60. As the Swaynghams' agents, they owed the Swaynghams a duty of utmost care, honesty, and loyalty in the transaction, including a duty of full disclosure of all material facts pursuant to S.C. Code Ann. §40-58-78 (A)(2).
61. The Defendants breached their duty of utmost care, honesty, and loyalty to the Swaynghams in violation of S.C. Code Ann. §40-58-78 (A) (2).
62. The Swaynghams have been damaged in an amount of actual damages to be determined, plus statutory damages, fees paid by the Swaynghams or by the Defendants on the Swaynghams' behalf, and attorneys' fees and costs.

FOR AN THIRTEENTH DEFENSE AND BY WAY OF
COUNTERCLAIM AND THIRD-PARTY COMPLAINT AND SEVENTH
CAUSE OF ACTION
(Violation of S.C. Consumer Protection Code)

63. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under its defenses set forth above.
64. This action is instituted against Lenders and Third-Party Defendants for multiple

violations of the Truth in Lending Act, Federal Reserve Board Regulation Z, and the Home Ownership & Equity Protection Act (HOEPA) promulgated pursuant thereto, all of which is codified in S.C. Code, Section 37-5-203, *et.seq.* and the South Carolina Consumer Protection Code generally.

65. The loan referred to above is a closed-end consumer transaction, and is a consumer loan.
66. The loan was for the refinancing of the borrower's principal dwelling, and was secured by the borrower's principle dwelling.
67. Lenders and Third-Party Defendants failed to give disclosures required under HOEPA three days prior to the consummation of the transaction.
68. Lenders and Third-Party Defendants arranged for and/or extended credit to the Swaynghams without regard to the Swaynghams' need for the services.
69. Lenders and Third-Party Defendants arranged for and/or extended to credit for which the Swaynghams could not receive, and did not receive, any potential benefit.
70. Lenders and Third-Party Defendants while regularly engaged in the business of making loans, or arranging consumer loans, falsely disclosed the annual percentage of the rate of the loan in violation of the Regulation Z, and/or attempted to make or made additional charges prohibited by the S.C. Consumer Protection Code.
71. Each of the foregoing acts constitutes a separate and distinct violation, entitling the Swaynghams to statutory damages in the amount of \$1,000.00 per violation, as well as actual damages, attorney's fees, and the costs of this action.

72. Additionally, the Swaynghams are entitled to "enhanced damages" for Lenders' and Third-Party Defendants' material violations of HOEPA and TILA (as incorporated into the SCCPC) including the refund of all finance charges and fees.
73. Lenders and Third-Party Defendants made to the Swaynghams loans from which they knew they would receive no benefit, and of which said parties knew or should have known the Swaynghams had no understanding of.
74. The Swaynghams are also informed and believe they are entitled to rescind the loan transaction as a result of the foregoing.

FOR A FOURTEENTH DEFENSE AND BY WAY OF
COUNTERCLAIM AND THIRD-PARTY COMPLAINT AND AN
EIGHTH CAUSE OF ACTION
(Violation of Real Estate Settlement Procedures Act Servicing Requirements)

75. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under their defenses set forth above.
76. The actions (or inaction) of Plaintiff and Third-Party Defendants Americash constitute violations of Section 6 of RESPA. The Swaynghams are entitled to actual damages, costs, and to require the correction of the account at issue herein.
77. Due to this failure to comply, or to assist the Swayngham's in any meaningful way, this action is instituted for actual damages, costs, and attorney's fees.
78. Further, upon information and belief, the acts of Plaintiff and/or Third-Party Defendants Americash herein are representative of a pattern of noncompliance with RESPA, thus entitling Homeowner to additional and/or enhanced damages.

**FOR A FIFTEENTH DEFENSE AND BY WAY OF
COUNTERCLAIM AND THIRD-PARTY COMPLAINT AND FOR A
NINTH CAUSE OF ACTION**
(Violation of the High Cost and Consumer Home Loans Act)

79. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under their defenses set forth above.
80. Third-Party Defendants did not verify that the Swaynghams had received counseling from a certified counselor prior to executing the loan in violation of §37-23-40(1).
81. Third-Party Defendants failed to determine whether the Swaynghams could actually pay the loan. The Swaynghams' monthly loan payments, along with their other debts, exceeded 50% of their monthly income in violation of 37-23-20.

**FOR A SIXTEENTH DEFENSE AND BY WAY OF
COUNTERCLAIM & THIRD-PARTY COMPLAINT AND A TENTH
CAUSE OF ACTION**
(Unfair Trade Practices)

82. Each and every allegation contained in the foregoing paragraphs is repeated as if fully realleged herein to the extent consistent herewith. The Swaynghams reserve all rights under their defenses set forth above.
83. The activities of the Lenders and Third-Party Defendants constitute "trade or commerce" as defined by South Carolina Code § 39-5-10, et.seq. (Second Amended).
-
84. The actions of the Lenders and Third-Party Defendants, above-described, constitute unfair and deceptive acts and practices in the conduct of trade and

commerce, as prohibited by the South Carolina Unfair Trade Practices Act, §39-5-10 et seq. and are knowing and willful violations thereof.

85. The Swaynghams would further show that the actions of Lenders and Third-Party Defendants herein that violate the Mortgage Loan Broker's Act, as set forth herein below, constitute per se violations of the South Carolina Unfair Trade Practices Act. These actions are not permitted under any United States or South Carolina laws or regulations.

86. The actions of the Lenders and Third-Party Defendants have a real and substantial potential for repetition and are a threat to the public interest.

87. The Swaynghams have suffered an ascertainable loss due to the unlawful actions, of the Lenders and Third-Party Defendants, and are entitled, under § 39-5-140, to recover actual damages in an amount to be proven at trial, treble said actual damages for the Defendants' knowing and willful behavior, and an award of costs.

WHEREFORE, having fully answered the Plaintiffs' Complaint, and having set forth defenses, counterclaims, cross claims and Third-Party complaint, the Swaynghams respectfully request:

- A. That Plaintiff's Complaint be dismissed with costs; and
- B. Such other and further relief as the Court deems just and proper.

In addition, without waiving the foregoing request for relief the Swaynghams pray for judgment under the Counterclaims and Third-Party complaint as follows:

- A. For actual damages according to proof;

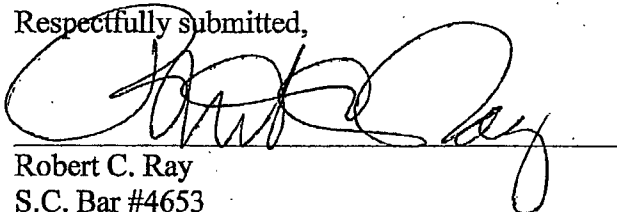
2010-CP-39-0352
May 10, 2011

SECOND AMENDED ANSWER,
COUNTERCLAIM AND
THIRD-PARTY COMPLAINT

- B. For compensatory damages as permitted by law;
- C. For consequential damages as permitted by law;
- D. For statutory damages as permitted by law;
- E. For punitive damages as permitted by law;
- F. For treble actual damages;
- G. For rescission;
- H. For equitable relief, including restitution;
- I. For interest as permitted by law;
- J. For Declaratory Relief;
- K. For reasonable attorney's fees and costs; and
- L. For such other relief as is just and proper.

Respectfully submitted,

By:



Robert C. Ray
S.C. Bar #4653
Attorney for Robert Alec Swaynham
and Barbara E. Bebout
306A Mills Avenue
Greenville SC 29605
Office: 864-233-4555
Fax: 864-232-9730
E-mail: bobraylaw@gmail.com

Greenville SC
May 9, 2011

EX. A

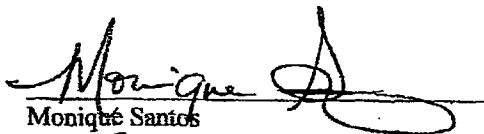
STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

ASSIGNMENT OF MORTGAGE
Mortgage Book 3468 at Page 95

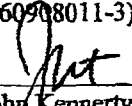
FOR VALUE RECEIVED, we hereby set over, transfer and assign unto US Bank National Association, as Successor Trustee to Bank of America National Association successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-3XS, c/o Americas Servicing Company, 7495 New Horizon Way, Frederick, MD21703, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, together with the Note executed by Barbara E. Bebout and Robert Alec Swaynham to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Americash (MIN# 1001419-0060908011-3) dated November 20, 2006, and duly recorded in the public records of Pickens County, State of South Carolina, on December 29, 2006, in Mortgage Book 3468 at Page 95.

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Americash (MIN# 1001419-0060908011-3) has caused this instrument to be executed in its corporate name and behalf by John Kennerty, as its Assistant Secretary, duly authorized, on this 12th day of March, 2010.

Mortgage Electronic Registration Systems, Inc.
acting solely as nominee for Americash (MIN#
1001419-0060908011-3)


Monique Santos

Camille Garcia

By: 
John Kennerty
Its: Assistant Secretary

STATE OF South Carolina
COUNTY OF York

ACKNOWLEDGMENT
S.C. Code § 30-5-30
(Effective January 1, 1995)

I, the undersigned, Notary Public for the State of South Carolina, do hereby certify that Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Americash (MIN# 1001419-0060908011-3) by John Kennerty, its Assistant Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 12th day of March, 2010.


NOTARY PUBLIC FOR _____
My Commission Expires: _____

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(011516-00395)

CAROLYN M. EVANS
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 08/18/2019

Ex. B

File Name - 0060908011

Borrower - Barbara E. Sebout

Property - 140 Overlook Drive
Pickens, SC 29571

10/31/2006 12:23PM - - - I WAS INFORMED THAT THE BORROWER WANTS TO HAVE THE DOCUMENTS SIGNED BY THE ATTORNEY BELLOW. I CONTACTED THE ACKER LAW FIRM AND WAS INFORMED THAT THEY DO NOT DO SIGNINGS ONLY, THEY MUST TO THE TITLE WORK AND DISBURSE THE LOAN AS WELL. I HAVE INFORMED THE LO TO FIND OUT IF THE BORROWER WANTS ME TO OPEN TITLE WITH THIS ATTORNEY, CM

10/27/2006 1:09PM - - - Borrower requested signing done by The Acker Law Firm and Ken Acker Please contact legal secretary is Miriam 864/878-1184 Pickens, SC

10/05/2006 1:18PM - - - NEEDING APPRAISAL AND DOC ORDER, CM

EX. C

ATTORNEY/INSURANCE PREFERENCE CHECK LIST

Date: NOVEMBER 20, 2006

Lender: AMERICASH

Borrower(s): BARBARA E. BEBOUT

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

- I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of the loan.

(a) I select: _____
Attorney's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

- Having been informed of this right, and having no preference, I (we) asked for assistance from the lender and was (were) referred to a list of acceptable attorneys. From the list I select:

WYATT JENKINS HBY

Attorney's Name

Barbara E. Bebout
Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

- I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required ☒ hazard ☐ flood ☐ other: _____ insurance in connection with this mortgage transaction.

(a) I select: ALLSTATE - PAT CAMPBELL
Agent's Name

Barbara E. Bebout
Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Philip Swicegood, Ph.D.
Wofford College
429 N. Church Street
Spartanburg, SC 29303
Office (864) 597-4378
Fax (846) 597-4549
SwicegoodPG@Wofford.edu

EX. D

September 7, 2010

Robert Ray
Attorney at Law
306-A Mills Avenue
Greenville, SC 29605

Re: Swaynham

Dear Mr. Ray:

At your request I have completed a preliminary determination of the economic impact sustained based on the switched mortgage terms. As I understand the terms, your client requested a \$500,000.00 mortgage for 30 years at a fixed rate of 5.5%. Instead they were offered a pair of mortgages with drastically different terms: (i) \$400,000.00 for 30 years at 7.625% and (ii) \$100,000.00 for 15 years at 11.75%. The total difference in payments over the life of the loans equals **\$178,474.96**. In lump-sum present value terms discounted at the current market rate of 5.5%, the difference in payments over the life of the loans equals **\$122,168.83**.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Philip Swicegood, Ph.D.
Michael James Family Professor of Finance
Wofford College

E.N.E

Check Image Print

User ID: USDH3
Report ID: Check Image PrintDate: 10/22/2010
Time: 15:34:42

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100125	93156933	1000993704	3300.00	20100125	9328871679

FOR MULTITONE COPY OF THE DOCUMENT CHECKED FOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM

MORTGAGE SERVICES
P.O. BOX 10388
Des Moines, IA 50308-0388

MORTGAGE SERVICES
WELLS FARGO BANK N.A.
PAYEE ATTACHED LEARN
500 11th Ave S
Des Moines, IA 50319-3744
1-877-322-7878

CHECK NO. 1000993704
DATE 01/12/2010

AMOUNT
\$3,300.00

FOR INFORMATION REVERSE

THREE THOUSAND THREE HUNDRED AND 00/100 DOLLARS

PAY TO THE ORDER OF BARBARA S BESCOT
145 OVERLOOK DR
PO BOX 50 25471-4000

Barbara S Bescot
AUTHORIZED SIGNATURE

10000330000

1266415

Check image Print

User ID: USDH3
Report ID: Check Image Print

Date: 10/22/2010
Time: 15:39:24

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100216	88107220	1001040035	1000.00	20100216	9328871679

THIS MULTICOLOR AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

MORTGAGE SERVICES
P.O. Box 10388
Des Moines, IA 50308-0388

FORMER APPLICATION REVERSAL
One Thousand and 00/100 Dollars

PAY TO THE ORDER OF
BARBARA EBERSON
146 CLEVELAND DR
PICKERS, NC 28111-0000

CHECK NO.
1001040035

DATE
02/04/2010

AMOUNT
\$1,000.00

[Signature]

1194706

EX. F

Page: 17 Document Name: untitled

FOR2 1127131748 FOR PROCESS NOTES ELF P24/001 04/27/10 11:52:53
BE BEBOUT L:R F:A B: R: 08/01/09 TYPE CONV. RES. M:F F:2
140 OVERLOOK DR PICKENS SC 29671 GUAR
12/24/09 -----* PROCESS NOTES *-----
12/24/09 15:13:01 K53 FROM: WELLS FARGO HOME MORTGAGE ***RELEASED FROM L
OSS MIT/ BANKRUPTCY.***
12/21/09 11:55:29 678 LOSS MIT HAS DENIED THE WORKOUT DUE TO
REASON CODE 37 - BORROWER NOT SENT REQUESTED
INFORMATION.
12/08/09 11:45:06 K4Z FROM: WELLS FARGO HOME MORTGAGE MESSAGES AND TASK
UPDATES WILL NOT TRANSFER TO FIDELITY WHILE THE LO
AN IS INACTIVE IN THE FORECLOSURE WORKSTATION. CHE
CK WITH PRIMARY PROCESSOR FOR CASE STATUS.
12/07/09 17:53:27 K56 FROM: WELLS FARGO HOME MORTGAGE DO NOT RESPOND DIR
ECTLY TO THIS MESSAGE BE ADVISED A PAYMENT OR PA
YMENTS HAS BEEN APPLIED ON THIS LOAN SINCE IT WAS
REFERRED TO FORECLOSURE PLEASE SEND A MESSAGE TO
THE ASSIGNED PROCESSOR NOTIFYING THEM WHETHER YOU
ARE ABLE TO PROCEED WITH FORECLOSURE OR IF ANOTHER
ACTION IS REQUIRED THANK YOU.
12/07/09 09:31:54 RPA LMT1 TEMPLATE = ASCMOD
LOAN IS BEING SUSPENDED FOR:
FUNDS REC'D PRE-APPROVED LOAN MOD

Date: 4/28/2010 Time: 10:55:11 AM

ROBERT C. RAY
ATTORNEY AT LAW

306A MILLS AVENUE
GREENVILLE, SC 29605

864-233-4555
FAX: 864-232-9730

May 10, 2011

Pickens County Clerk of Court
Harold P. Welborn, Jr.
P.O. Box 215
Pickens SC 29671

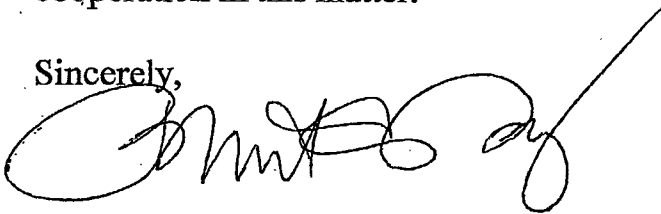
Re: 2010-CP-39-0352

Dear Mr. Welborn,

Enclosed please find our Second Amended Answer, Counterclaim, and Third Party Complaint in the above referenced matter. Please clock this in and return to us in the enclosed envelope.

If you have any questions, please call us at 864-233-4555. Thank you for your cooperation in this matter.

Sincerely,



Robert C. Ray
Attorney at Law

RCR/map
Enclosures

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 MAY 12 P 1:05

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) FOR THE THIRTEENTH JUDICIAL CIRCUIT

US Bank National Association as Successor) Case No. 2010-CP-39-0352
Trustee to Bank of America National Assoc.,)
Successor by merger to LaSalle Bank)
National Association, as Trustee for Morgan)
Stanley Mortgage Loan Trust 2007-3XS,)
Plaintiff,)

v.

Barbara E. Bebout; Robert A. Swaynham)
a/k/a Robert Alec Swaynham; Mortgage)
Electronic Registration Systems, Inc. (MIN#)
1001419-0060908012-1); The Peoples)
National Bank,)

Defendants & Third Party Plaintiffs,)

v.

Americash Mortgage Corporation,)
Third Party Defendant.)

ANSWER OF THE THIRD-PARTY
DEFENDANT, AMERICASH
MORTGAGE CORPORATION
TO SECOND AMENDED ANSWER,
COUNTERCLAIM AND THIRD-
PARTY COMPLAINT OF THE
DEFENDANTS, BARBARA E. BEBOUT
AND ROBERT A. SWAYNGHAM

The third-party defendant, Americash Mortgage Corporation (Americash), by and through its undersigned counsel, answering the third-party complaint herein, would respectfully show:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the third-party complaint not hereinafter specifically admitted is denied.

FOR A SECOND DEFENSE

2. The unnumbered opening paragraph and paragraphs 1 through 16 of the second amended

answer and third party complaint of the defendants, Barbara E. Bebout and Robert Alec Swaynham (collectively hereinafter "mortgagors"), do not appear to require a response from Americash. To the extent that any of these paragraphs could be construed as to require a response, the same are denied as Americash lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.

3. Paragraph 17 is denied unless hereinafter specifically admitted.
4. Paragraph 18 is admitted to the extent it alleges the borrowers informed Americash of their desire to utilize Ken Acker to close the subject mortgage loan transaction. Further answering this paragraph Americash would show that the mortgagors thereafter agreed to utilize the Willoughby Law Firm to close the mortgage loan transaction in question and the borrower, Barbara E. Bebout (Bebout) signed a document entitled "Attorney/Insurance Preference Check List" to that effect. Paragraph 18 is denied to the extent it alleges the mortgagors were "promised a rate of five and ½ % (5.5%) on \$500,000.00 by Americash." To the extent any allegation in this paragraph remains unanswered, the same is denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
5. Paragraphs 19, 20, 21 and 22 are denied.
6. Paragraph 23 is denied unless hereinbefore or hereinafter specifically admitted.
7. Paragraph 24 is admitted to the extent it alleges Bebout applied for a loan from Americash and that ultimately Americash provided Bebout with two loans, one in the original principal amount of \$400,000.00, which would bear interest at the rate of 7.625% per annum and the payment of which would be secured by way of a first mortgage on the mortgagors' property and another loan in the original principal amount of \$100,000.00, which would bear interest

at the rate of 11.75% per annum, and the payment of which would be secured by a second mortgage on the mortgagors' property. To the extent any allegation contained in this paragraph remains unanswered, the same is denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

8. Paragraphs 25 and 26 are denied as Americash lacks sufficient information or belief as to form an opinion as to their truth or falsity. Further responding to paragraph 26, Americash would specifically deny the allegation that "[w]hen the loan process began, the Swaynghams' credit rating was virtually perfect."
9. Paragraph 27 is admitted to the extent it alleges that Americash provided Bebout with a loan in the original principal amount of \$400,000.00, the same to bear interest at the rate of 7.625% per annum and the payment of which to be secured by a first mortgage on the mortgagors' property and another loan in the original principal amount of \$100,000.00, which would bear interest at the rate of 11.75% per annum, and the payment of which would be secured by a second mortgage on the mortgagors' property. To the extent this paragraph alleges any misfeasance or malfeasance on the part of Americash in the origination or closing of the mortgage loan transaction(s), the same is denied. To the extent any allegation contained in this paragraph remains unanswered, the same is denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
10. Paragraph 28 is denied.
11. Paragraph 29 is denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
12. Paragraphs 30, 31 and 32 are denied.

13. Paragraph 33 is denied unless hereinbefore or hereinafter specifically admitted.
14. Paragraphs 34 is admitted to the extent it alleges that Americash is a mortgage lender. The balance of the paragraph is denied.
15. Paragraphs 35 and 36 are denied.
16. Paragraph 42 (there are no paragraphs 37, 38, 39, 40 and 41) is denied unless hereinbefore or hereinafter specifically admitted.
17. Paragraphs 43, 44, 45, 46 and 47 are denied.
18. Paragraph 48 is denied unless hereinbefore or hereinafter specifically admitted.
19. Paragraph 49 is denied as Americash lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
20. Paragraphs 50 is denied to the extent that it alleges that any loan servicing company involved with the servicing of the loan in question was doing so at the behest of or on behalf of Americash. The balance of the paragraph is denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
21. Paragraphs 51 and 52 are denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
22. Paragraphs 53, 54, 55, 56 and 57 are denied.
23. Paragraph 58 is denied unless hereinbefore or hereinafter specifically admitted.
24. Paragraphs 59, 60, 61 and 62 are denied.
25. Paragraph 63 is denied unless hereinbefore or hereinafter specifically admitted.
26. Paragraph 64 is denied.
27. Paragraph 65 is admitted to the extent it alleges the mortgagors are consumers. The balance

of the paragraph is denied as Americash lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

28. Paragraph 66 is admitted.
29. Paragraphs 67, 68, 69, 70, 71, 72, 73 and 74 are denied.
30. Paragraph 75 is denied unless hereinbefore or hereinafter specifically admitted.
31. Paragraphs 76, 77 and 78 are denied.
32. Paragraph 79 is denied unless hereinbefore or hereinafter specifically admitted.
33. Paragraphs 80 and 81 are denied generally and are specifically denied to the extent the alleged S.C. Code Ann. §§ 37-23-40(1) and 37-23-20 apply to the loan or loans in question.
34. Paragraph 82 is denied unless hereinbefore or hereinafter specifically admitted.
35. Paragraphs 83, 84, 85, 86 and 87 are denied.

FOR A THIRD DEFENSE

36. Each and every allegation contained in this answer is incorporated herein as if set forth verbatim.
37. The seventh defense/counterclaim/third party complaint/first cause of action, the eighth defense/counterclaim/third party complaint/second cause of action, the tenth defense and by way of cross claim, the eleventh defense/counterclaim/third party complaint/fifth cause of action, the twelfth defense/counterclaim/third party complaint/sixth cause of action and the thirteenth defense/counterclaim/third party complaint/seventh cause of action, the fourteenth defense/counterclaim/third party complaint/ eighth cause of action, the fifteenth defense/counterclaim/ third party complaint/ninth cause of action and the ~~sixteenth~~ defense/counterclaim/third party complaint/tenth cause of action are all barred by the

applicable statute of limitations.

FOR A FOURTH DEFENSE

38. Each and every allegation contained in this answer is incorporated herein as if set forth verbatim.
39. The ninth defense/counterclaim/third cause of action fails to state facts sufficient to constitute a cause of action because the statute pursuant to which it is allegedly brought does not provide any private remedy. Further, this cause of action fails to state facts sufficient to constitute a cause of action against Americash in that it fails to allege Americash is or was a mortgage broker as defined by South Carolina law. Had it so alleged, that allegation would be denied.

FOR A FIFTH DEFENSE

40. Each and every allegation contained in this answer is incorporated herein as if set forth verbatim.
41. To the extent what is denominated as the tenth defense and by way of crossclaim alleges a cause of action sounding in negligence against Americash, such negligence being expressly denied, Americash would show that any injuries or damages sustained by the mortgagors were due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the mortgagors combining, concurring and contributing with any negligence of Americash, without which such negligence on the part of the mortgagors, the mortgagors would not have incurred any of the alleged injuries and/or damages they assert they have suffered.
-
42. Should the negligence of the mortgagors be determined to be equal to or less than that of

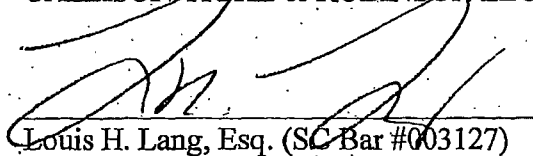
Americash, such negligence on the part of Americash being again expressly denied, any recovery to be had by the mortgagors should be reduced by the percentage of fault attributed to the mortgagors. If, on the other hand, the negligence of the mortgagors be determined to be greater than that of Americash, such negligence on the part of Americash being again expressly denied, the mortgagors should be barred from any recovery against Americash in regard to the mortgagors' negligence claims.

FOR A SIXTH DEFENSE

43. Each and every allegation contained in this answer is incorporated herein as if set forth verbatim.
44. To the extent the mortgagors seek any equitable relief from Americash, their claims are barred by the doctrines of laches, estoppel, stale claim, ratification and unclean hands.

Wherefore, having fully answered the second amended answer, counterclaim and third-party complaint herein, Americash would respectfully request that it be dismissed, with costs, and that the Court grant it such other and further relief as the Court may deem just and proper.

CALLISON TIGHE & ROBINSON LLC



Louis H. Lang, Esq. (SC Bar #003127)

1812 Lincoln St., Ste. 200

PO Box 1390

Columbia SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

E-Mail: louislang@callisontighe.com

*Counsel for Third-Party Defendant,
Americash Mortgage Corporation*

May _____, 2010
Columbia, South Carolina

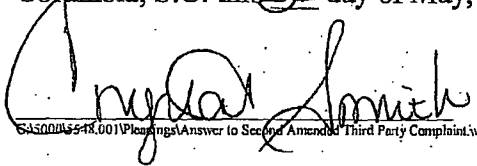
CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the above and foregoing to all counsel of record in said proceedings to his office address with sufficient postage attached.

Robert C. Ray, Esq.
306A Mills Avenue
Greenville, SC 29605
Counsel for the Third Party Plaintiffs

Thomas E. Lydon, Esq.
McAngus, Goudelock & Currie, LLP
700 Gervais Street
Post Office Box 12519
Columbia, S.C. 29211

Columbia, S.C. this 31st day of May, 2010.


6350003548.001\Pleadings\Answer to Second Amended Third Party Complaint.vpd

CLERK OF COURT
FOURTH COUNTY
SOUTH CAROLINA
2011 JUN -1 P 3:15

LOUIS H. LANG, ESQ.
LouisLang@callisontighe.com

CLERK OF COURT
CALLISON TIGHE
SOUTH CAROLINA

2011 JUN -1 P 3:15

May 31, 2011

Hon. Pat Welborn
Clerk of Court for Pickens County
214 E. Main St.
PO Box 215
Pickens SC 29671

Re: US Bank National Association v. Barbara E. Bebout; Robert A. Swaynham, et al. v.
AmeriCash Mortgage Corporation
Case No: 2010-CP-39-0352

Dear Ms. Welborn:

Enclosed please find the original and one (1) copy of the following document concerning the above-referenced matter:

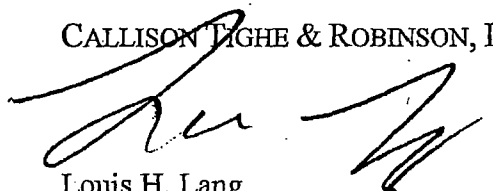
1. Answer of Americash Mortgage Corporation to Second Amended Answer, Counterclaim and Third-Party Complaint of Defendants, Barbara Bebout and Robert Swaynham.

Please file the original and return a clocked copy to me in the envelope I have enclosed for your convenience.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC


Louis H. Lang

LHL/cs
Enclosure

cc: David J. Alt, Esq. (w/ encl.)
Hon. R. Murray Hayes (w/ encl.)
Thomas E. Lydon, Esq. (w/ encl.)
Robert C. Ray, Esq. (w/ encl.)

G:\5000\5548.001\Correspondence\Clerk.005.wpd

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2011 MAY 27 P 3:47

US Bank National Association as)
Successor Trustee to America)
National Assoc, Successor by merger)
To LaSalle Bank National)
Association, as Trustee for Morgan)
Stanley Mortgage Loan Trust)
2007-3XS,)

Civil Action No. 2010-CP-39-0352

PLAINTIFF'S REPLY TO SECOND
AMENDED ANSWER, COUNTERCLAIM
AND THIRD-PARTY COMPLAINT

Plaintiff,)

vs.)

Barbara E. Bebout; Robert A.)
Swaynham a/k/a Robert Alec)
Swaynham; Mortgage Electronic)
Registration Systems, Inc. (MIN#)
1001419-0060908012-1); The)
Peoples National Bank)

Defendants,)

Barbara E. Bebout and Robert A.)
Swaynham,)

Third-Party Plaintiffs,)

vs.)

Americash Mortgage Corporation,)

Third-Party Defendant.)

Plaintiff US Bank National Association hereby responds to the Second Amended Answer,

Counterclaim, and Third Party Complaint ("Second Amended Answer") of Defendants Barbara

E. Bebout and Robert A. Swaynham as follows:

FOR A FIRST DEFENSE

1. Plaintiff denies the statement in the introductory paragraph of the Second Amended Answer that "Plaintiff is a successor in interest to Americash Mortgage Corporation..."

2. Plaintiff does not believe that a response is required to Paragraphs 1 through 17 of the Second Amended Answer. To the extent that a response is deemed necessary, Plaintiff denies all allegations inconsistent with its Complaint and this Reply.

3. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 18, 19, 20, 21, and 22 Second Amended Answer and, therefore, denies the same and demands proof thereof.

4. Responding to Paragraph 23 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 3 above are realleged and incorporated herein by reference.

5. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 24, 25, 26, 27, 28, 29, 30, 31, and 32 of the Second Amended Answer and, therefore, denies the same and demands proof thereof.

6. Responding to Paragraph 33 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 5 above are realleged and incorporated herein by reference.

7. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Second Amended Answer and, therefore, denies the same and demands proof thereof.

8. ~~Plaintiff denies the allegations contained in Paragraphs 35 and 36 of the Second~~
Amended Answer.

9. Responding to Paragraph 42 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 8 above are realleged and incorporated herein by reference.

10. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 43, 44, 45, 46, and 47 of the Second Amended Answer and, therefore, denies the same.

11. Responding to Paragraph 48 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 12 above are realleged and incorporated herein by reference.

12. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 49, 50, 51, 52, and 53 of the Second Amended Answer and, therefore, denies the same.

13. Plaintiff denies the allegations contained in Paragraphs 54, 55, 56, and 57 of the Second Amended Answer.

14. Responding to Paragraph 58 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 13 above are realleged and incorporated herein by reference.

15. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 59, 60, 61, and 62 of the Second Amended Answer and, therefore, denies the same.

16. Responding to Paragraph 63 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 15 above are realleged and incorporated herein by reference.

17. Plaintiff denies the allegations contained in Paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of the Second Amended Answer.

18. Responding to Paragraph 75 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 17 above are realleged and incorporated herein by reference.

19. Plaintiff denies the allegations contained in Paragraphs 76, 77, and 78 of the Second Amended Answer.

20. Responding to Paragraph 79 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 19 above are realleged and incorporated herein by reference.

21. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 80 and 81 of the Second Amended Answer and, therefore, denies the same.

22. Responding to Paragraph 82 of the Second Amended Answer, the responses set forth in Paragraphs 1 through 21 above are realleged and incorporated herein by reference.

23. Plaintiff denies the allegations contained in Paragraphs 83, 84, 85, 86, and 87 of the Second Amended Answer.

SECOND DEFENSE

24. The Second Amended Answer fails to state a claim against Plaintiff upon which relief can be granted.

THIRD DEFENSE

25. Any allegation of the Second Amended Answer not admitted, qualified or explained is denied.

FOURTH DEFENSE

26. Defendants' damages, if any, are caused by their own acts or omissions, or the acts or omissions of third parties other than Plaintiff.

FIFTH DEFENSE

27. Plaintiff alleges that any damages allegedly suffered by Defendants, without admitting same to be true, were due to and caused entirely by the negligence of Defendants,

which is more than the negligence of Plaintiff, and that such is a complete bar to Defendants' recovery herein. Further, Plaintiff alleges that if Defendants' negligence was less than its negligence, that such negligence should be compared to that negligence of Plaintiff so as to apportion the relative fault as to each party.

SIXTH DEFENSE

28. Plaintiff alleges that any damages alleged in the Second Amended Answer were due to, occasioned by, or caused by the acts or omissions on the part of someone other than Plaintiff and but for such acts or omissions, Defendants would not have sustained any damages set forth in the Second Amended Answer, all of which Plaintiff pleads is a complete bar to the action.

SEVENTH DEFENSE

29. Any duty owed by Plaintiff to Defendants, the existence of which Plaintiff strictly denies, would have arisen under the mortgage contract only, and the damages allegedly incurred by Defendants were purely economic in nature. Because Defendants' counterclaims lie in contract, Defendants are prohibited from recovering in tort.

EIGHTH DEFENSE

30. Defendants' state law counterclaims are preempted by the National Bank Act (12 U.S.C. § 21 *et seq.*), by Regulations promulgated by the Office of the Comptroller of the Currency, and otherwise by federal law.

NINTH DEFENSE

31. Plaintiff does not constitute a "creditor" as defined by the Truth in Lending Act and Regulation Z because the debt in this case was initially payable to an entity

other than Plaintiff on the face of the evidence of indebtedness or by agreement. Because Plaintiff is not a "creditor" as defined by the Act and because the alleged violation was not apparent on the face of the Federal Truth in Lending Disclosure Statement, Plaintiff cannot be held liable for any alleged violations of the Truth in Lending Act.

TENTH DEFENSE

32. Plaintiff or its agent has possession of the Note, which is endorsed to Plaintiff. Plaintiff is therefore the holder of the Note. Plaintiff or its agents purchased and took possession of the Note for value, in good faith, before Defendants defaulted under the Note and Mortgage, and without notice that the Note would be subject to Defendants' claims or defenses. Therefore, as a holder in due course, Plaintiff took the Note free of Defendants' claims and defenses.

ELEVENTH DEFENSE

33. Defendants' attempt to rescind the loan is ineffective and incomplete due to Defendants' failure to follow the proper rescission procedure under the law and failure to do so within the time period permitted under the law.

TWELFTH DEFENSE

34. Defendants voluntarily and willingly entered into this loan transaction, received the benefits of the loan, and then defaulted on the loan, thereby breaching the terms of the Note and Mortgage. Defendants signed and delivered the loan documents, including a HUD

settlement statement, a Note and Mortgage, and various other loan origination documents. Because Defendants come into this Court with unclean hands as to the particular loan transaction of which they now complain, they should be barred from any recovery.

THIRTEENTH DEFENSE

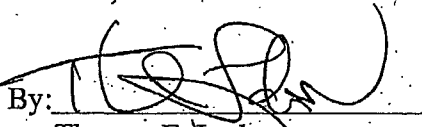
35. Defendants' claims against Plaintiff are barred by the applicable statutes of limitations.

FOURTEENTH DEFENSE

36. Plaintiff adopts and incorporates herein by reference all affirmative defenses asserted by the Third-Party Defendant in response to the Second Amended Answer.

WHEREFORE, Plaintiff prays for the relief demanded in its Complaint, that the claims against it be dismissed with prejudice, that the third-party claims be dismissed, for the fees and costs incurred in responding to the Second Amended Answer, and for such other and further relief as the Court may deem just and proper.

McANGUS, GOUDELOCK & COURIE, LLP

By: 

Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
(803) 779-2300

May 26, 2011

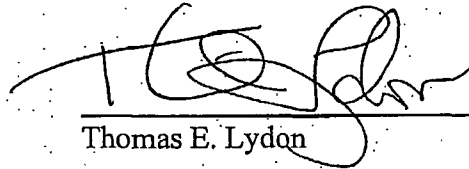
Attorneys for US Bank National Association

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of May, 2011, served a copy of Plaintiff's Reply to the Second Amended Answer, Counterclaim and Third-Party Complaint by mailing a copy of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Robert C. Ray, Esquire
306 A Mills Avenue
Greenville, SC 29605

Louis Lang, Esquire
Post Office Box 1390
Columbia, SC 29202



Thomas E. Lydon

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 MAY 27 P 3:47

1 STATE OF SOUTH CAROLINA)
 2) COURT OF COMMON PLEAS
 3 COUNTY OF PICKENS)
 4 US BANK NATIONAL ASSOCIATION AS)
 5 SUCCESSOR TRUSTEE TO BANK OF)
 6 AMERICA NATIONAL ASSOC.,) **COPY**
 7 SUCCESSOR BY MERGER TO LASALLE)
 8 BANK NATIONAL ASSOCIATION, AS)
 9 TRUSTEE FOR MORGAN STANLEY)
 10 MORTGAGE LOAN TRUST 2007-3XS,)
 11 Plaintiffs,) 2010-CP-39-0352
 12 vs.)
 13 BARBARA E. BEBOUT; ROBERT A.)
 14 SWAYNGHAM A/K/A/ ROBERT ALEC)
 15 SWAYNGHAM; MORTGAGE ELECTRONIC)
 16 REGISTRATION SYSTEMS, INC. (MIN#)
 17 1001419-0060908012-1); THE)
 18 PEOPLES NATIONAL BANK;)
 19 Defendants and)
 20 Third-Party Plaintiffs,)
 21 Vs.)
 22 U.S. BANK, AMERICASH MORTGAGE)
 23 CORPORATION AND GREENTREE)
 24 MORTGAGE)
 25 Third-Party Defendants.)

1 MR. RAY: Could we take a little
2 break?

3 THE COURT: Sure.

4 (A short break was taken)

5 MR. RAY: Your Honor, we call
6 Barbara Bebout.

7 BARBARA E. BEBOUT,
8 having been previously
9 sworn/affirmed, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RAY:

13 Q. Ms. Bebout, you're still under oath.
14 Okay?

15 A. Yes.

16 Q. All right. Behind me back here is a
17 gentleman; do you see him?

18 A. Yes, I do.

19 Q. Okay. You've been looking at him while
20 you were here?

21 A. Yes.

22 Q. I'll represent to you that that is Mr.
23 Sandifer, Kevin Sandifer.

24 A. Yes.

25 Q. You went to his deposition?

1 A. Yes, I did.

2 Q. Back, I think it was in February of
3 last -- of this year. Do you remember
4 your closing?

5 A. Yes.

6 Q. Was he at your closing?

7 A. No.

8 Q. Had you ever seen him before his
9 deposition?

10 A. No, I had not.

11 Q. Okay.

12 MR. RAY: Your Honor, I would ask
13 Mr. Sandifer be released. He's got
14 some business in Columbia. I don't
15 know if they want to call him or
16 not.

17 MR. LANG: Since he's here, Your
18 Honor, I will call him as a
19 witness.

20 THE COURT: Okay. Mr. Sandifer,
21 can you stay with us?

22 MR. SANDIFER: Yeah, I can do
23 that.

24 THE COURT: All right. Thank
25 you, sir.

1 MR. RAY: Okay.

2 Q. Ms. Bebout, where do you live?

3 A. 140 Overlook Drive, Pickens.

4 Q. And how long have you lived there?

5 A. Well, on the property we've lived there

6 probably since 2000.

7 Q. Okay.

8 A. Thereabouts.

9 Q. And are you married?

10 A. Yes.

11 Q. Who is your husband?

12 A. Alec Swaynham.

13 Q. Is he seated over here?

14 A. Yes, he is.

15 Q. Okay. Do you have children?

16 A. Yes, I do.

17 Q. And do you have children by Mr.

18 Swaynham?

19 A. No, I don't.

20 Q. Okay. How many children do you-all

21 have?

22 A. We have three.

23 Q. All right. And you care for them as

24 your children; is that correct?

25 A. Yes, I have.

- 1 Q. Okay. Around 2000 did you and your
2 husband do some construction work on
3 your property in Pickens?
- 4 A. Yes, we did.
- 5 Q. Okay. And did you take out some
6 construction loans at Peoples Bank?
- 7 A. Yes.
- 8 Q. Okay. And in doing those construction
9 loans did you take out bridge loans?
- 10 A. Yes.
- 11 Q. Okay. Do you know roughly how much
12 those loans were?
- 13 A. I would say roughly at the time --
14 well, at the beginning, the first
15 construction loan I'm not sure what it
16 was because that's when we built the
17 apartment over the garage. But the
18 second one had to be close to four,
19 maybe four twenty something, 400 maybe.
20 Right around there.
- 21 Q. Okay.
- 22 A. Four twenty.
- 23 Q. And in the summer of 2006 did you want
24 to consolidate your loans and try to
25 get a permanent 30 year loan?

1 A. We did.

2 Q. Okay. And did you approach different
3 lending institutions?

4 A. Yes, we did.

5 Q. And do you remember was AmeriCash one
6 of those lenders that you approached?

7 A. They approached us.

8 Q. What do you mean by that?

9 A. We had filled out an online information
10 form through Lending Tree, and several
11 companies contacted us, and we did the
12 comparison ourself as far as interest
13 rates, what the best one was for -- for
14 us.

15 Q. Do you remember the name of the person
16 with AmeriCash that you spoke with?

17 A. Tamara Pacak.

18 Q. Okay.

19 A. Tamara Pacak.

20 Q. Tamara Pacak. And because her last
21 name is so hard to pronounce let's just
22 call her "Tamara." Is that okay?

23 A. That's fine.

24 Q. Okay. And did you ever speak to
25 anybody else at AmeriCash beside

1 Tamara?

2 A. No.

3 Q. Okay. And do you remember filling out
4 a loan application with AmeriCash in
5 August of 2006?

6 A. Yes. There was a loan application
7 handwritten that we had handwritten --
8 I think that it was a credit release
9 form maybe, and that -- and that was
10 either mailed or faxed. I don't
11 remember which one. Alec would have
12 done that.

13 Q. Okay. Michelle is going to let you
14 look at a document.

15 MR. RAY: Your Honor, if I could
16 get that marked. It's for
17 Defendant's Exhibit-One.

18 (Thereupon the Court Reporter
19 marked the pertinent document as
20 DEFENDANTS' -EXHIBIT-NUMBER-ONE.)

21 Q. Do you recognize that document?

22 A. It's a Borrower's Signature
23 Authorization document.

24 Q. All right. And is your signature on
25 that document?

1 A. Yes, it is.

2 Q. What is the date on that document?

3 A. 8/31/06.

4 Q. August 31st of '06?

5 A. Yes.

6 Q. Do you remember was that the date you

7 filled out the loan application?

8 A. Yes.

9 Q. All right. And did that document go

10 with that loan application?

11 A. I don't remember.

12 Q. Do you remember if you filled the

13 application out by hand, or did you do

14 it on line?

15 A. It was by hand.

16 Q. By hand. Okay. And so did you send

17 that in to AmeriCash?

18 A. Yes.

19 Q. All right. Did AmeriCash ever send you

20 an attorney preference form?

21 A. No.

22 Q. Okay. Did you ever tell AmeriCash that

23 you wanted a certain attorney to close

24 this loan?

25 A. Yes, we did.

1 Q. And who was that?

2 A. That was Tamara.

3 Q. Ken Acker?

4 A. Oh, the attorney was Ken Acker.

5 Q. Yes.

6 A. Yeah. Sorry.

7 Q. Okay. You told Tamara you wanted the

8 attorney, Ken Acker, here in Pickens to

9 close your loan; is that correct?

10 A. Yes, we did.

11 Q. Okay. Do you remember when you told

12 them that?

13 A. From the very beginning. Any time that

14 the conversation came up about the

15 closing we had always said that we

16 wanted Ken Acker. My husband used him

17 previously for several things, and we,

18 as a couple, we used him to make our

19 Will. So we always made that known.

20 Q. Okay. After you filled out that loan

21 application did you get anything else

22 from AmeriCash?

23 A. No.

24 Q. I mean, any documents at all?

25 A. I don't remember any documents at all.

1 Q. Okay. And do you remember how much you
2 were trying to borrow?
3 A. Four hundred and -- well, we wanted to
4 borrow 500,000.
5 Q. All right. You wanted 500? Is that
6 what you're saying, 500,000?
7 A. Yes.
8 Q. Okay. Did you discuss this with
9 Tamara?
10 A. Yes. It was discussed.
11 Q. Okay. And did she tell you that they
12 were going to make you a loan?
13 A. Yes, she did.
14 Q. And do you remember the terms of the
15 loan?
16 A. Yes, I do. The terms were one mortgage
17 at 5.5 percent, and it was supposed to
18 be in my husband and I's name, the
19 loan.
20 Q. It was supposed to be in both names?
21 A. Both names.
22 Q. So what happened when you got to the
23 closing concerning that?
24 A. Well, I found out that not only was it
25 not the percent that we had been told

1 the whole time, that it was two
2 separate loans, and that it would have
3 to be only in my name because my credit
4 was good.

5 Q. Okay. And did you ever get those terms
6 in writing from Tamara at any time?

7 A. She didn't -- we had a lot of trouble
8 getting anything from her. We didn't
9 get phone calls returned a lot of times
10 but when we did talk to her, there was
11 no changes.

12 Q. So she never told you anything
13 different than one loan at a half a
14 million dollars at five and a half
15 percent?

16 A. Well, definitely not.

17 Q. Okay. So your testimony is the first
18 time you learned that was --

19 MR. LANG: Objection. Leading,
20 Your Honor. He's leading all the
21 time, but I object to a leading
22 question.

23 THE COURT: Don't testify for
24 her.

25 MR. RAY: Okay.

1 THE COURT: Just ask questions.

2 MR. RAY: Okay.

3 Q. When did you first learn that those
4 terms, that they were different terms?

5 A. At the closing.

6 Q. And what was it that they offered you
7 when you got to the closing?

8 A. Well, it was two mortgages. One --
9 well, first of all they told me I would
10 be the sole borrower. Two mortgages,
11 one at almost 12 percent, and the other
12 at almost eight, seven and something.
13 And that's what I was told at the time
14 of the closing.

15 Q. What were the amounts of the two
16 mortgages?

17 A. One for -- it was 500,000. I think one
18 was for 100,000, and then the other was
19 for 400, 420, thereabouts.

20 Q. Okay.

21 A. I -- I have to get the --

22 Q. All right. Did you ever get a call
23 from an attorney named Wyatt
24 Willoughby?

25 A. Yes, I did.

1 Q. And when did you get that phone call?

2 A. I -- I received that call right before
3 the closing at my place of employment.

4 Q. You say you received it right before
5 the closing. Looking back on it did
6 you know when the closing was going to
7 be?

8 A. No, I didn't.

9 Q. All right. And what happened in that
10 phone call?

11 A. He had said that he would be the
12 attorney representing the closure of
13 this loan. He would be doing the
14 actual closing of it, and I expressed
15 -- again, I expressed that I, both my
16 husband and I, wanted Ken Acker.

17 Q. And how did you leave the phone call?
18 What did you think was the outcome?

19 A. He did not say any changes were made to
20 anything. Everything seemed to be
21 smooth. I -- I just had expressed my
22 concerns. I did want to get what was
23 represented, and I didn't think there
24 was any problem with that happening at
25 the time. He did not relay that that

1 would be any problem at all.

2 Q. Did you tell him you had requested Ken

3 Acker?

4 A. Yes, I did.

5 Q. All right. Do you know if Mr.

6 Willoughby is still a member of the

7 Bar?

8 A. I don't know.

9 Q. Now when did you first learn about the

10 closing?

11 A. It was early the day of the closing on

12 November 20th.

13 Q. I'm sorry?

14 A. Early the day of the closing.

15 Q. And what day was that?

16 A. November 20th.

17 Q. Of what year?

18 A. 2006.

19 Q. All right. And when you say "early"

20 what time was that?

21 A. I just arrived at work, and usually I

22 get there 8:00ish, sometimes a little

23 after, but my husband called me soon

24 after that. I'm -- I'm not sure of the

25 exact time. You know, I have my little

1 routine of getting my coffee and
2 getting to my desk, but it was soon
3 after I had arrived.

4 Q. All right. And what did you learn in
5 that phone call?

6 A. He had told me that --

7 Q. Who is "he"?

8 A. My -- my husband told me that we were
9 having the closing today, and that he
10 had spoke with Tamara, and that it was
11 arranged at Stax Restaurant during my
12 lunch hour -- our lunch hour. Sorry.

13 Q. All right. So it was going to be at
14 Stax Restaurant at your lunch hour.
15 How long did you get for lunch?

16 A. An hour.

17 Q. All right. And when did the closing
18 begin?

19 A. Approximately 11:00, 11:30, something
20 like that.

21 Q. Okay. We're putting up a time line of
22 these events from what you've been
23 testifying to for The Court and to help
24 anybody else, if you-all want to take a
25 look at it. Okay. So what time did

1 you arrive at the restaurant?

2 A. Approximately between 11:00 and 11:30.

3 Q. And what was the restaurant like?

4 A. Everybody was coming in for lunch.

5 Q. All right. And what did you see when
6 you got there?

7 A. My husband and I walked in, and we saw
8 a man with a stack of papers. He had
9 said you must be Ms. Bebout and Mr.
10 Swaynham, and we said we did -- we
11 were, excuse me, and proceeded to the
12 table.

13 Q. Where was the table?

14 A. It was as we entered to the right. It
15 was a four seater. I could show it.

16 Q. We have a seating chart. I'm going to
17 let you put an "X" on the seating
18 chart.

19 MR. RAY: Your Honor, I'll let
20 her look at and then I'll introduce
21 it. Well, we'll going ahead and
22 introduce it as Defendant's Two.

23 (Thereupon the Court Reporter
24 marked the pertinent diagram as
25 DEFENDANT'S-EXHIBIT-NUMBER-TWO.)

1 Q. Have you got a pen or something up
2 there, Ms. Bebout?

3 A. No.

4 Q. Can you put an "X" approximately where
5 this person was sitting with the
6 papers?

7 A. (Witness complies with request.)

8 Q. Okay.

9 A. Well, it's approximately -- it could be
10 table 407 or 410, so I could mark one
11 table. Do you want me to mark exactly
12 where he was sitting or where --

13 Q. Yes. Mark, yes, where he was sitting.

14 A. Okay.

15 Q. Okay. Is that where the closing took
16 place?

17 A. Yes.

18 Q. And did this person identify himself?

19 A. No, he did not.

20 Q. Never?

21 A. Never did. Never showed any
22 identification.

23 Q. All right. Was there anybody else
24 there?

25 A. No.

1 Q. All right. Did you attend the
2 deposition of Mr. Castro?
3 A. Yes, I did.
4 Q. Okay. And I believe Mr. Castro was in
5 Myrtle Beach when we deposed him; is
6 that correct?
7 A. Yes, he was.
8 Q. And you were looking at him over Skype
9 --
10 A. Yes.
11 Q. -- computer, and was that the person
12 that was at the closing?
13 A. Yes, it was.
14 Q. Okay. All right. And did you see Mr.
15 Acker anywhere?
16 A. No. I did not.
17 Q. All right. When you came into contact
18 with this person what happened?
19 A. What happened?
20 Q. Did he let you look at the papers or --
21 A. Oh, yes. We sat -- we sat down at a
22 table and proceeded to start the
23 closing. It was the restaurant was
24 very -- getting very noisy. Several
25 interruptions from the waitress. He

1 had a big stack of papers that he
2 pretty much placed in the middle of the
3 table, and I remarked on this huge
4 stack that he had because I've had
5 closings before on my previous home,
6 and it was never like that.

7 Q. Did you look at the papers? Did you
8 notice anything unusual about the loan?

9 A. Immediately he explained that I was the
10 sole borrower.

11 Q. Right.

12 A. And that the percentages were incorrect
13 or -- or were not -- they were
14 incorrect from what I thought I was
15 going to get. He explained that, and
16 my husband --

17 Q. What happened then? Did you make a
18 phone call?

19 A. We did. We made a call to Tamara.

20 Q. And where was she?

21 A. She must have been in Columbia. My
22 husband called her. Or she's with
23 AmeriCash. I don't know where --

24 Q. You don't know where she was.

25 A. -- where she is exactly, but I know my

1 husband has her telephone number.

2 Q. Okay. All right.

3 A. The lawyer said Columbia.

4 Q. Okay. What did you tell Tamara?

5 A. That the interest rate was not what we

6 had been told all along. It was

7 supposed to be 5.5 percent. Wanted to

8 know why I was the sole borrower, and

9 that's not what we intended. Of

10 course, we didn't want two separate

11 mortgages. Now we were pretty upset

12 when we talked to her, and -- and I was

13 right there trying to help Alec ask the

14 questions, too, you know. Please ask

15 her. But, you know, we -- we had

16 pretty much a short conversation, and

17 she --

18 Q. What did she tell you?

19 A. She pretty much said that's all she

20 could do for us, and it was kind of a

21 take it or leave it.

22 Q. Okay. And at this time what was the

23 state of your bridge loans?

24 A. It was in the state of being -- I guess

25 it was a balloon loan, and we were

1 getting ready to have to pay the whole
2 amount, and the date was I think within
3 days of being due. This -- this all
4 happened -- it just took us a long time
5 to get to this point. My husband began
6 talking to them in May, and this was,
7 you know, November. It had taken
8 several months to get to this point,
9 and it's very frustrating.

10 Q. And did this person that was sitting at
11 the table who you think was Mr. Castro,
12 did he say anything about this?

13 A. About what?

14 Q. About the loan, the difference in the
15 loans between what you expected and
16 what was there?

17 A. After the phone call, when we hung up,
18 and I had -- he had told -- or Alec had
19 told us that she could not do it, and
20 he pretty much assured me that -- or
21 gave his opinion that he would go ahead
22 through with it because we could always
23 refinance later. And, you know, just
24 to get our balloon loan paid off
25 because I obviously was very upset.

1 The noise by then in the restaurant was
2 just tremendous. Several
3 interruptions. I was just -- because
4 this had taken so long, and having all
5 these not returned calls, I was so
6 frustrated I just wanted, you know, a
7 conclusion to this. It just was
8 nothing that we were -- thought we were
9 going to have.

10 Q. All right. So did you go ahead and
11 sign the papers?

12 A. Yes, I did.

13 Q. Now how did Mr. Castro handle these
14 papers?

15 A. Well, at the beginning he went over the
16 numbers, you know, and the percentage
17 that he had told us, and I did see the
18 full documents at the beginning. After
19 that, after a few signatures when there
20 was a lot of just initials, and I don't
21 know how to -- you know, I have a -- I
22 don't know how -- I don't really have a
23 stack of papers, but it was kind of the
24 stack. He would pull a stack over and
25 lift it as such. I never saw the

1 titles. None of it was explained to
2 me. He said the papers were repetitive
3 of the previous, and just to sign the
4 signature there.

5 Q. Okay. They were repetitive. Is that
6 what you said?

7 A. Repetitive pages. That it was pretty
8 much the same thing that --

9 Q. Did you ever see him sign anything?

10 A. Oh, no. Not at all. It -- it was all
11 mostly me.

12 Q. All right. And you said that you told
13 him it was your lunch hour; is that
14 right?

15 A. Oh, yes, I did. I was concerned with
16 the stack of papers that, you know,
17 we've got to get through with it in an
18 hour.

19 Q. Okay. Now do you remember getting to
20 there was a paper that was in your
21 deposition Mr. Lang had an attorney's
22 name on it, and the insurance company's
23 name. Do you remember that?

24 A. Yes. Uh-huh.

25 Q. And do you remember seeing that at the

1 closing?

2 A. Yes. I do remember seeing that, and
3 that must have been at the -- that was
4 right at the end of the closing.

5 Q. And what was on that -- I'm going to
6 hand you a copy of this.

7 MR. RAY: Your Honor, that will
8 be Defendant's Exhibit-Three.

9 (Thereupon the Court Reporter
10 marked the pertinent document as
11 DEFENDANTS'-EXHIBIT-NUMBER-THREE.)

12 Q. Is that the paper you're talking about?

13 A. Yes it is.

14 Q. All right. How did that paper appear
15 on the day of the closing?

16 A. It had the -- the typewritten
17 information on it as far as at the top,
18 or my name under the signature. That
19 was typed in, but it was nothing else
20 there.

21 Q. Okay. I'm going to hand you what we're
22 going to mark Exhibit-Four, which I'll
23 tell you is basically the same piece of
24 paper.

25 (Thereupon the Court Reporter

1 marked the pertinent document as
2 DEFENDANTS' -EXHIBIT-NUMBER-FOUR.)

3 Q. All right. Do you see Four?

4 A. Yes, sir, I do.

5 Q. Is that close to how it looked at the
6 day of the closing?

7 A. Yes.

8 Q. Is it the same as it looked the day of
9 the closing?

10 A. Yes, it is.

11 Q. And how does that appear?

12 A. There was no handwriting on this paper
13 when I signed it.

14 Q. And when Mr. Lang showed you that piece
15 of paper at your deposition how did it
16 appear?

17 A. My signature -- Wyatt Willoughby was
18 filled in attorney preference above my
19 name, and Allstate-Pat Campbell was
20 filled in, which that's the insurance
21 company.

22 Q. Okay. And did you fill those in at the
23 closing?

24 A. No.

25 Q. Did you see this individual fill them

1 in at the closing?

2 A. No, he didn't. He did not do that in
3 front of me.

4 Q. Now as a matter of fact, you said a
5 minute ago this man never identified
6 himself. Who did you think this man
7 was?

8 A. We -- we thought it was Wyatt
9 Willoughby.

10 Q. Okay. All right. Did you feel like
11 the atmosphere you were in was
12 conducive to clear thinking?

13 A. No. Not at all. After dealing with
14 this company for -- and Tamara for
15 several months, trying to get return
16 calls, trying to get some kind of, you
17 know, document, which we did not
18 receive anything, just to have, it was
19 never done, and it was very frustrating
20 coming in. We were so close to the
21 date that we needed to do something. I
22 -- I was stressed when I walked in the
23 door, and when you find out everything
24 is different and not what you've been
25 promised all along, and no problems has

1 been presented to us that -- that
2 anything different was going to happen.
3 Waitresses continuing to interrupt us,
4 fill our glasses up. The noise in the
5 restaurant was tremendous. I couldn't
6 -- it's hard to think in that type of
7 atmosphere, much less having everything
8 changing before your eyes.

9 Q. How many seats were at that table?

10 A. Four.

11 Q. Does that restaurant have booths?

12 A. It does.

13 Q. So it has tables that are larger than
14 this table?

15 A. Oh, yes.

16 Q. And I think what you described before
17 about the stack of papers did the
18 papers pretty much always stay in the
19 stack?

20 A. He had the -- he would put the stack
21 back after we signed, he would take
22 some off, and I would sign, and he
23 would put it back.

24 Q. All right. How many chairs were at the
25 table?

- 1 A. There were four initially. Now I know
2 sometime during this closing that I
3 know a neighbor at another table or
4 booth, or it may have been the
5 waitress, had grabbed a chair.
- 6 Q. Okay. And do you remember seeing a
7 form -- you were asked about this in
8 your deposition by Mr. Lang about a
9 three day right of rescission. Do you
10 remember that?
- 11 A. Can you repeat that? I'm sorry.
- 12 Q. Do you remember seeing a form that's
13 entitled three day right of rescission
14 at your deposition?
- 15 A. Rescission?
- 16 Q. Right of Rescission.
- 17 A. No.
- 18 Q. You don't remember that form?
- 19 A. No.
- 20 Q. Okay. And you don't remember going
21 over that form?
- 22 A. No. No.
- 23 Q. All right.
- 24 A. Nothing was explained to us.
- 25 Q. It never was explained to you?

1 A. Never. Was explained or aware of --
2 made aware of anything.

3 Q. All right. Now you said a minute ago
4 that this individual, later believed to
5 be Mr. Castro, had said what about --
6 if you didn't like the loan what? Just
7 repeat what you had said earlier;
8 please.

9 A. Oh. His opinion was that if it was him
10 that he would just go ahead because my
11 credit was so good just go ahead and
12 complete this closing and just turn
13 around and refinance, and which we had
14 tried to do. My -- my husband called
15 Tamara several times after this and did
16 not, I mean for several month, and she
17 did not return the phone calls.

18 Q. All right.

19 A. We had even a harder time after than
20 before.

21 Q. How many months was that?

22 A. Afterwards?

23 Q. Yes.

24 A. It was several. I -- I -- I know it
25 was more than three or four I did.

1 Q. Okay. And you had, I believe, at the
2 closing there was two construction
3 loans you were paying off; is that
4 correct? With Peoples Bank?

5 A. Yeah. They were consolidated. It was
6 supposed to be consolidated.

7 Q. Were there some credit card debts also?

8 A. Yes, it was.

9 Q. And who paid off those credit card
10 debts?

11 A. Alec did.

12 Q. And how was that?

13 A. He received the checks from AmeriCash.

14 Q. So he paid off the credit card debts?

15 A. Yes.

16 Q. Were they listed on the HUD as debts to
17 be paid off?

18 A. To pay, yes, he did.

19 Q. And the attorney didn't do it?

20 A. The attorney didn't?

21 Q. Didn't make the payments.

22 A. No. No. Huh-uh. My -- my husband
23 did.

24 Q. All right. Okay. So that was November
25 20th of 2006. Who did you make your

1 payments to after the first payment?
2 Who do they go to?
3 A. Oh, AmeriCash?
4 Q. AmeriCash. And how long did you make
5 payments to AmeriCash?
6 A. January '08. So it was like 14 months.
7 Q. Fourteen months into January of '08?
8 A. Yeah.
9 Q. Okay. And then what happened, do you
10 know?
11 A. A period of about four months, I think,
12 that it went to JMAC and then from JMAC
13 to ASC.
14 Q. All right. Hang on just a minute. I
15 believe you testified that you filled
16 out that loan application in August of
17 '06; is that correct?
18 A. Yes.
19 Q. And you also testified -- and correct
20 me if I'm wrong -- that you didn't
21 receive anything else until you got to
22 the closing; is that correct?
23 A. That's correct.
24 Q. And did you receive documents when you
25 left the closing?

1 A. Yes, we did.

2 Q. All right. And were those documents
3 signed when you received them?

4 A. No.

5 Q. Okay. And many of the documents, were
6 they blank when you left there?

7 A. Yes.

8 Q. Okay. Did you ever receive something
9 called a good faith estimate of what
10 your loan would be?

11 A. No, I didn't. Would that be before the
12 closing?

13 Q. Right.

14 A. I did not.

15 Q. Yes, I should clarify. Before the
16 closing?

17 A. No.

18 Q. Okay. Did you actually receive a good
19 faith estimate at the closing? Let me
20 let you look at --

21 (Thereupon the Court Reporter
22 marked the pertinent document as
23 DEFENDANTS'-EXHIBIT-NUMBER-FIVE.)

24 Q. I'm going to hand you a document. So
25 that good faith estimate, is that your

1 signature at the bottom of that?

2 A. Yes, it is.

3 Q. Okay. When did you learn that you were

4 entitled -- or did you ever learn that

5 you were entitled to receive a good

6 faith estimate?

7 A. No, I did not. I mean, I -- I -- I

8 never did see -- nothing was ever gone

9 over as far as good faith estimate at

10 the meeting that day.

11 Q. Okay. Did you learn that at a much

12 later date?

13 A. Learn what? The -- the estimate?

14 Q. About the good faith estimate.

15 A. At the day of closing?

16 Q. No, no. I'm saying did you learn that

17 you were -- when did you learn you were

18 entitled to receive it?

19 A. Oh, I learned that --

20 Q. Not when you got this form right here.

21 When did you learn you were entitled to

22 receive this good faith estimate, that

23 you had the right to receive it?

24 A. Not until the proceedings had started

25 through you. I've learned a lot.

1 Q. So I told you that?

2 A. Yes, you did.

3 Q. All right.

4 MR. RAY: That's all we have for
5 her, Your Honor.

6 THE COURT: Mr. Ray, I don't
7 think you ever formally moved these
8 things, these exhibits into
9 evidence.

10 MR. RAY: I move to admit all
11 One-through-Five, Your Honor.

12 THE COURT: Any objection?

13 MR. LANG: No objection, Your
14 Honor.

15 MR. LYDON: No objection.

16 THE COURT: Okay. They're in
17 evidence. Thank you. All right,
18 sir. Whenever you're ready.

19 MR. LANG: Please The Court, Your
20 Honor. I'm going to stand over
21 here if that's suits everybody
22 better.

23 THE COURT: That's great.

24 CROSS-EXAMINATION

25 BY MR. LANG:

- 1 Q. Ms. Bebout, good morning. My name is
2 Louis Lang. We met, I guess, back in
3 Mr. Ray's office, I believe it was in
4 October or so of last year. Let me ask
5 you just a couple of preliminary
6 questions. How far did you go in
7 school?
- 8 A. I went through two years of college and
9 then another year. I have a two-year
10 Associate's degree, and I have a one
11 year degree.
- 12 Q. So you have a two year Associate degree
13 in I think it was computer technology;
14 is that correct?
- 15 A. Yes.
- 16 Q. And when did you get that degree?
- 17 A. I went to work in '90-'91, so it would
18 have been right before that.
- 19 Q. Right before then. And you have a one
20 year degree in another subject?
- 21 A. Yes, I do.
- 22 Q. And what is that subject?
- 23 A. Surgical technology.
- 24 Q. And before your illness you worked in
25 computer technology; is that correct?

1 A. Yes, I did.

2 Q. For about how many years?

3 A. Probably almost ten, 13.

4 Q. And during that period of time were you

5 ever in a supervisory sort of position?

6 A. That I supervised?

7 Q. Yes, ma'am.

8 A. No.

9 Q. And in terms of computer technology

10 tell us what you did. What were you

11 doing working in that field?

12 A. I did programming in Cobalt language on

13 the mainframe.

14 Q. So it's actually programming computers?

15 A. Yes.

16 Q. And the language you used was Cobalt?

17 A. Yes, it was.

18 Q. And I take it -- and I don't know, I've

19 heard that name, but I take it that's a

20 fairly -- it would be for me, in any

21 event -- complex sort of thing to do?

22 A. No, it's not. It's English. In

23 English. You can read it.

24 Q. Okay. But someone like me couldn't do

25 it; is that right?

1 A. Yes, you could. It's -- it's then in
2 English it says if this number equals
3 this, then do this. That's how it
4 states it.

5 Q. But you had to go to school two years
6 to do this.

7 A. Well, they -- when we were outsourcing
8 they trained people off the street.

9 Q. But you had a two year education?

10 A. Yes, I did.

11 Q. And let me ask you this: Before this
12 closing in November of 2006 you had
13 closed at least two other loans; isn't
14 that right? For this particular
15 property?

16 A. I believe probably.

17 Q. Okay.

18 A. I think so.

19 Q. And you mentioned that you were under
20 pressure in November of 2006 to
21 refinancing the loan, an existing loan
22 on the property; is that correct?

23 A. Yes, we were.

24 Q. What documentation do you have when you
25 were going through that particular

1 loan? Do you have any?

2 A. My lawyer has my documentation.

3 Q. Your lawyer has the documentation?

4 A. On the loan.

5 Q. For the loan that you were refinancing

6 in 2006?

7 A. Most all of the documentation that I

8 saw in writing was in E-mail. Now

9 everything else was verbal. Is that

10 what you're asking?

11 Q. No. I'm talking about the loan you

12 were refinancing in 2006, the existing

13 loan on the property. Are you with me?

14 A. Right now?

15 Q. No, ma'am. You had a loan on the

16 property before you contacted

17 AmeriCash; is that correct?

18 A. Yes.

19 Q. All right.

20 A. The -- the balloon loan with Peoples.

21 Q. The Peoples National balloon loan?

22 A. Yes.

23 Q. That's the one I'm talking about.

24 A. Okay.

25 Q. Where is the documentation on that?

1 A. My husband would have that.

2 Q. Has your husband given it to your
3 lawyer?

4 A. I would -- you would have to ask him.

5 Q. None of that has been produced to me,
6 but let me ask you this: Tell me terms
7 and conditions of that Peoples National
8 loan.

9 A. Well, it -- it -- at the end when we
10 were refinancing it was a higher
11 interest rate, and the -- it was a
12 consolidation of the two construction
13 loans, from what I understand, and it
14 ballooned out where you had this amount
15 of time, and you had to just pay the
16 balance right afterwards.

17 Q. And you say you had to pay the balance
18 in 2006; is that correct?

19 A. It was soon after the closing, yes.

20 Q. How soon after the closing?

21 A. I don't know. It was just -- I just
22 know we felt pressure to get it paid,
23 and that we had to do it soon.

24 Q. Was it months, years? Tell me --

25 A. I could not tell you that. It was

1 close.

2 Q. Well, close as in the next day, or the

3 next week, or the next month?

4 A. You just asked me that. I answered.

5 Q. Well, do you know that?

6 A. I said I did not.

7 Q. Okay. You just know it was close?

8 A. I know it was very close, and we were

9 under stress at the time, both my

10 husband and I, to get that paid. It

11 was a concern.

12 Q. Was it very close or close?

13 A. It was close.

14 Q. Have you got any correspondence from

15 Peoples National saying they were going

16 to foreclose that mortgage, if you did

17 not refinance it?

18 A. No.

19 Q. So it wasn't past due at the point you

20 refinanced it; is that correct?

21 A. No. But it was soon to be due.

22 Q. Well, we don't know how soon. Wouldn't

23 you agree we don't know how soon

24 sitting here today?

25 A. No, I don't. Not that far back. I

1 can't tell you. I just know it was
2 very soon.

3 Q. Now let me invite your attention, Ms.
4 Bebout -- is it Bebout (pronouncing be
5 bout) or Bebout (pronouncing be bow)?
6 The "T" on the end, do you pronounce
7 that "T"?

8 A. Yes.

9 Q. Okay. Bebout (pronouncing be bout).
10 Let me invite your attention, Ms.
11 Bebout, to the \$400,000 note, and if
12 you could take a look at that, please,
13 ma'am. I take it your initials are on
14 the bottom of each page of that note --

15 A. Yes.

16 Q. -- is that correct?

17 A. Yes. That's correct.

18 Q. So someone told you to do that, I
19 assume; is that correct?

20 A. Yes.

21 Q. And the lawyer closing the loan told
22 you to do that, I assume; is that
23 correct?

24 A. Yes.

25 Q. All right. And your signature appears

1 on that last page; is that right?

2 A. Yes, it does.

3 Q. And you understood what a note was; is

4 that correct?

5 A. Not at the time, no.

6 Q. You did not understand what a note was?

7 A. Nothing was explained, anything, during

8 that time as far as "This is a note,

9 this is," you know -- a lot of these

10 pages I didn't see. He said, "Just

11 initial this." A lot of the time he

12 said it was just repetitive.

13 Q. So you signed a note for \$400,000 not

14 knowing what --

15 A. I did not see the full page.

16 Q. Please let me finish my question. It

17 would be very helpful to the court

18 reporter.

19 A. Okay.

20 Q. You signed a note for \$400,000 not

21 knowing what a note was and not knowing

22 what you were signing?

23 A. He did not show me the full page.

24 There was a stack this big

25 (indicating).

1 Q. Did you ask them to show you the full
2 page?

3 A. He did the first couple, and like I
4 said, he said a lot of this was just
5 repetitive. I'm not a lawyer so I
6 don't know a lot of these things I was
7 required to have as far as the law. I
8 did not know that. I was very
9 stressed. I had other things going on
10 in my life. I had children that I was
11 trying to get through college. I had
12 the death of my mother I was grieving
13 with. I was suffering from depression
14 at the time with the death of my
15 mother. The responsibility of having
16 all my -- I had other things on my
17 plate. My cup was full at this time.
18 I did not know as the legal aspect of
19 this of what I needed to do as far as
20 I'm supposed to have this note. I'm
21 supposed to have this attorney
22 preference letter before the closing.
23 I was supposed -- it was all verbal. I
24 trusted the bank and the lawyer to
25 represent me at that time. I've never

1 been brought up to not trust. I didn't
2 know there was scams, and frauds, and
3 deceptions like this. This was all new
4 to me.

5 Q. Yes. What is the scam and fraud here?

6 A. I didn't -- in anything that I was told
7 I was going to get. I had no reason
8 not to believe Tamara.

9 Q. Let me ask you this, Ms. Bebout: Did
10 you get the money from the loans that
11 you took out on November 20th, 2006?

12 A. I didn't read -- on what? The closing?
13 We did get the money.

14 MR. LANG: Begging The Court's
15 indulgence for a minute.

16 THE COURT: Yes.

17 Q. Do you remember signing something
18 called a Settlement Statement or a HUD
19 form? Do you remember that, Ms.
20 Bebout?

21 A. You'll have to show it to me. That's
22 the only way I can recognize something
23 other than -- the title wouldn't mean
24 anything to me. I'm sure it's --

25 Q. Let me show you a document -- let me

1 finish my question, and then you can
2 answer me.

3 A. I wasn't trying to interrupt you.

4 Q. I understand, but it's confusing.

5 A. Yes.

6 Q. Let me hand you a document and ask you
7 if your name is on that document? Your
8 signature rather.

9 A. Yes.

10 Q. Okay. And do you recognize your
11 husband's signature as well?

12 A. Yes, I do.

13 Q. Do you recognize this document at all?

14 A. It may have been the first few that he
15 had shown. He had -- I remember the
16 numbers and him going over like --
17 well, I don't see the interest on this,
18 but I remember him giving me some
19 totals.

20 Q. If I could retrieve that back from you.

21 MR. LANG: And I would ask that
22 this be marked into evidence
23 AmeriCash Exhibit-Number-One.

24 THE COURT: Objection?

25 MR. RAY: No objection.

1 THE COURT: No objection.
2 Exhibit-One for AmeriCash.
3 (Thereupon the Court Reporter
4 marked the pertinent document as
5 AMERICASH-EXHIBIT-NUMBER-ONE.)

6 Q. Ms. Bebout, let me hand you what has
7 already been marked and entered as
8 AmeriCash-Exhibit-Number-One. And
9 you'll see there, and I invite your
10 particular attention, Ms. Bebout, to
11 line number 303, which is at the bottom
12 of the page, left-hand column. It
13 shows cash to borrower \$66,407. You
14 received those funds, did you not?

15 A. I'm not aware of the total amount. I
16 do know we had received extra funds to
17 pay off some construction loan debt
18 that we had on credit cards.

19 Q. So I take it that you did receive some
20 funds, although you don't remember the
21 exact amount?

22 A. My husband did, yes.

23 Q. You don't remember the exact number;
24 correct?

25 A. Exact number -- the total?

- 1 Q. Of the funds you received.
- 2 A. Not right offhand I don't, but --
- 3 Q. But you know you used those funds to
- 4 pay off other debt that you owed other
- 5 people; is that correct?
- 6 A. That's correct.
- 7 Q. And you also are aware, let me invite
- 8 your attention to line 104, which is on
- 9 the left-hand side. It says, "Payoff
- 10 first mortgage to ... Peoples National
- 11 Bank," doesn't it?
- 12 A. Yes. I see it.
- 13 Q. And that mortgage was paid off, was it
- 14 not?
- 15 A. Yes, it was.
- 16 Q. So of the \$500,000 you received of the
- 17 loans that you got from AmeriCash on
- 18 November 20, 2006, \$422,173.67 went to
- 19 pay off that Peoples National loan; is
- 20 that correct?
- 21 A. That's what it says here.
- 22 Q. Do you have any reason to think that
- 23 that amount did not go to Peoples
- 24 National loan to be paid off?
- 25 A. I -- I don't have any reason.

1 Q. And do you have any reason to doubt
2 that you or your husband received
3 \$66,407 as excess loan proceeds from
4 this loan from AmeriCash?

5 A. I know we received some cash, so I --
6 the exact amount I was -- I'm not sure.
7 So I have no reason as far as that --

8 Q. You don't have any reason to doubt it?

9 A. No, I don't.

10 Q. Okay. And I take it your husband
11 handles most of the finances, or at
12 least he did in regard to the property?

13 A. At that time he did. I was -- I had a
14 lot of medical problems. My husband
15 did, too, and I leaned on him for the
16 mortgage, you know, to take care of a
17 lot of the details. I was aware of --
18 of all the details, you know, as far as
19 the -- the proceedings and what we were
20 going through, but yeah, he wrote the
21 actual checks. I wrote checks to take
22 care of my children, and --

23 Q. So he wrote the mortgage checks to pay
24 the mortgages; is that correct?

25 A. Yes.

- 1 Q. All right. And by paying the mortgages
2 he paid both the Peoples National
3 mortgage as well as the refinanced
4 mortgage that you took out with
5 AmeriCash; is that correct?
- 6 A. Yes. He did.
- 7 Q. And I don't think you ever spoke
8 directly with anyone at AmeriCash; is
9 that correct?
- 10 A. Not directly. I was present with my
11 husband while he was talking.
- 12 Q. Well, you never spoke to anyone --
- 13 A. I never spoke to them.
- 14 Q. -- from AmeriCash; is that correct?
- 15 A. That's correct.
- 16 Q. Let me ask you a few other questions,
17 Ms. Bebout. I think your direct
18 testimony was that you filled out a
19 loan application with AmeriCash in
20 August, August 31st, approximately, of
21 2006; is that correct?
- 22 A. Yes.
- 23 Q. And that you received -- or have you
24 received some blank documents from the
25 closing; is that correct?

1 A. Yes.

2 Q. Where are these documents now?

3 A. We have a copy with my lawyer.

4 Q. Do you have any documents there with

5 you?

6 A. I didn't bring anything.

7 Q. And you also signed a loan application,

8 did you not, at the closing of the

9 mortgage transaction; is that correct?

10 A. Yes, we did.

11 MR. RAY: I'm sorry, Your Honor,

12 I didn't hear what he said.

13 Q. You also signed a loan application at

14 the closing of the mortgage

15 transaction; is that correct?

16 MR. LANG: Did you hear that?

17 A. Yes.

18 Q. Let me hand you a document and ask if

19 you recognize that document?

20 A. My signature is on it.

21 Q. All right.

22 A. I mean, it's hard to remember

23 everything I signed.

24 Q. Well, let me ask you this: Do your

25 initials appear on the first --

1 A. Yes, it does.

2 Q. Wait until I finish. Do your initials
3 appear on the first three pages of the
4 document?

5 A. Yes, it does.

6 Q. All right. And does your signature
7 appear on the last page of the
8 document?

9 A. Yes, it does.

10 Q. If I could retrieve that from you, Ms.
11 Bebout.

12 MR. LANG: Your Honor, I ask that
13 this be marked and entered as
14 AmeriCash Exhibit-Number-Two.

15 THE COURT: Any objection?

16 MR. RAY: Just a second, Your
17 Honor. Your Honor, I'm going to
18 object to this. It was given as a
19 loan application for the -- we're
20 not here on the Greentree loan, the
21 \$100,000 loan. We're here on the
22 \$400,000 loan, and the first page
23 has got loan amount -- let's see,
24 \$100,000, interest rate 7 3/4. And
25 there's another amount down below

1 --

2 THE COURT: Which application
3 loan is that for?

4 MR. LANG: Your Honor, this is
5 the loan application in our file
6 from the closing attorney's file.

7 THE COURT: Oh, okay.

8 MR. LANG: That is where I picked
9 it out.

10 THE COURT: Signed at closing?

11 MR. LANG: Yes, sir.

12 THE COURT: I'll admit it for
13 that purpose.

14 MR. RAY: Your Honor, just a
15 second. No objection.

16 THE COURT: All right. Thank
17 you.

18 (Thereupon the Court Reporter
19 marked the pertinent document as
20 AMERICASH-EXHIBIT-NUMBER-TWO.)

21 Q. All right. Ms. Bebout, let me hand you
22 what has already been marked and entered as
23 AmeriCash-Exhibit-Number-Two, and if I
24 could invite your attention, Ms. Bebout, to
25 the second page of that document.

- 1 A. Yes.
- 2 Q. It reflects a -- a gross income of
3 \$14,000 per month; is that correct?
4 I'm looking at the columns of the
5 borrower?
- 6 A. I -- I see the 14,000. I don't think
7 that includes my income.
- 8 Q. You don't think \$14,000 is your income?
- 9 A. It's my husband's income at the time.
10 I was making probably -- I'm not sure
11 the monthly, I would have to figure
12 that out, but I was making close to 93
13 a year.
- 14 Q. So you're suggesting that the \$14,000
15 under borrower in this loan application
16 is not accurate?
- 17 A. Right offhand it looks like -- it
18 appears to be my husband's income, and
19 maybe they didn't include mine.
- 20 Q. I'm just talking about your income.
21 You're the borrower, and you made a big
22 point of that. Tell me were you making
23 approximately \$14,000 a month in
24 November of 2006?
- 25 A. I don't know that was my income. I do

1 not know.

2 Q. What was your gross --

3 A. I just told you 93,000.

4 Q. What does that work out to?

5 A. I -- I can't do math right now on the
6 stand.

7 Q. I just happen to have a calculator.

8 A. Okay.

9 Q. Tell me --

10 A. I don't want to do that if you don't
11 mind. I'm a little nervous, so if you
12 want to do it. I just told you my
13 yearly, if you don't mind.

14 Q. You can watch me do it. Okay? Make
15 sure I do it right.

16 MR. RAY: Your Honor, is that a
17 question that he's --

18 MR. LANG: Yes, it is a question.

19 MR. RAY: Well, we're having
20 trouble when you get up there. I
21 can't really hear you.

22 MR. LANG: I'll speak louder.

23 Q. All right. So I take it your testimony
24 is in November of 2006 you were earning
25 approximately \$93,000 a year; is that

1 correct?

2 A. I know that's what I was earning when I
3 left. So that may not be exactly
4 correct when I'm thinking about it now.
5 I'm thinking that's what I made when I
6 left the company, and I left in 2009.
7 So that's what I made then. I'm not
8 sure exactly what I made then. It must
9 have been a little less. I mean, the
10 upper 80s, or something like that.

11 Q. Eighty-eight, 89?

12 A. Yeah. It may have been. All right.
13 Let's put in 88 just to be on the
14 conservative side. That's what they --
15 before taxes.

16 Q. Yes, ma'am. Divide that by 12. That's
17 \$7,333 a month gross.

18 A. Correct. It would be thereabouts.

19 Q. Was that what you were making
20 approximately in November of 2006? But
21 you weren't making 14,000; is that
22 correct?

23 A. No.

24 Q. Do you have any question, Ms. Bebout,
25 that your signature and your initials

1 appear on what's known as this
2 AmeriCash Exhibit-Number-Two?

3 MR. RAY: Number what?

4 MR. LANG: Number-Two.

5 MR. RAY: Okay. Which one is
6 that?

7 MR. LANG: That's the HUD note,
8 loan application we just provided.

9 MR. RAY: The one you've just
10 been talking about?

11 MR. LANG: Yes.

12 MR. RAY: Your Honor, I know
13 before I said I didn't have an
14 objection, but I do have an
15 objection now that I'm reviewing a
16 different loan application which we
17 have up here with the correct
18 amount. That doesn't have anything
19 to do with this closing. That's
20 got the wrong amount on it.

21 MR. LANG: I'll put that in,
22 Judge.

23 THE COURT: Put them both in.
24 I'm the finder of fact.

25 MR. RAY: Okay.

1 THE COURT: If they're signed
2 documents with the proper
3 foundation, I'll consider them
4 both.

5 MR. LANG: Let me go back and
6 make sure I closed the loop on that
7 other.

8 THE COURT: That's fine. Go
9 ahead.

10 Q. Ms. Bebout, we're talking about now
11 AmeriCash Exhibit-Number-Two.

12 A. Okay.

13 Q. And we talked about the fact that it
14 says on AmeriCash Exhibit-Number-Two,
15 which has already been admitted into
16 evidence, that it shows the borrower
17 income at \$14,000 a month; correct?

18 A. Yes.

19 Q. I mean we figured out that you think
20 you were making approximately \$88,000 a
21 year in November of 2006.

22 A. Could have been.

23 Q. So we divided 88,000 by 12 and came up
24 with 7,333; correct? So if you were
25 making \$88,000 a year in 2006, your

1 monthly gross income would have been
2 around \$7,300; correct?

3 A. Thereabout.

4 Q. Okay. Ms. Bebout, let me hand you a
5 document and ask if you recognize this
6 document?

7 A. (Witness examines document.)

8 MR. RAY: Your Honor, we gave you
9 something up there.

10 A. I recognize my signature on some of
11 these. Just looking at it, it looks
12 like some of the numbers are a little
13 different. I do recognize this 7.6
14 percentage that was discussed through
15 Willoughby that was like a credit like
16 some of my bills maybe.

17 Q. Let me --

18 A. I don't know. I don't -- I -- I reckon
19 that's changed, of course.

20 Q. Let me ask you if you recognize your
21 initials on the first three pages of
22 the document?

23 A. Yes.

24 Q. And do you recognize your signature on
25 the fourth page?

1 A. Yes.

2 Q. If I could retrieve that from you just
3 momentarily.

4 MR. LANG: And ask that that be
5 admitted as
6 AmeriCash-Exhibit-Number-Four.

7 THE COURT: No objection, I
8 assume? That's the one you
9 produced there.

10 MR. RAY: Your Honor, I am going
11 to object based on the fact that
12 the date on this document, I
13 believe, is the date of closing,
14 and -- and it's just like the
15 previous Exhibit-Number-Three.

16 THE COURT: I thought the loan
17 app. that was admitted was
18 Number-Two.

19 MR. LANG: Two; right.

20 MR. RAY: Two, Two.

21 THE COURT: And so this would be
22 potentially Number-Three.

23 MR. RAY: Three. Okay. I'm
24 sorry. Two and Three Mr. Lang has
25 asked questions of Ms. Bebout did

1 not fill this form out, and so I
2 know they've got what appears to be
3 her initial down there, but she's
4 already testified about how that
5 came about. And he's trying to ask
6 her about this information.

7 THE COURT: Yes. But doesn't all
8 that go to the weight. If she said
9 she signed it, and it's part of a
10 closing package produced by you,
11 doesn't that go to the weight and
12 not the admissibility?

13 MR. RAY: I'm not going to object
14 to it being admitted, but only for
15 the purposes that this was one of
16 many, many documents in that large
17 stack, and this certainly should,
18 you know --

19 THE COURT: Sure. I mean, you
20 know, I've got to determine what
21 the factual import of that is, but
22 I think it's in evidence.

23 MR. RAY: Okay.

24 THE COURT: Go ahead, Mr. Lang.

25 MR. LANG: Thank you, Your Honor.

1 (Thereupon the Court Reporter
2 marked the pertinent document as
3 AMERICASH-EXHIBIT-NUMBER-THREE.)

4 Q. Ms. Bebout, let me hand you what's
5 already been marked and entered as
6 AmeriCash-Exhibit-Number-Three, which
7 is the document I just asked you to
8 look at.

9 A. Okay.

10 Q. And again, I would invite your
11 attention to the second page of that
12 document, and correct me if I'm wrong,
13 but it has the same gross income of the
14 borrower on a monthly basis as
15 AmeriCash Exhibit-Number-Two, and that
16 is \$14,000; correct?

17 A. From the previous document? It's the
18 same as the previous? Yes.

19 Q. It's the same as the previous document;
20 is that right?

21 A. Yes, it is.

22 Q. Okay. And let me invite your attention
23 to the very top of that second page,
24 and it says, "Name and address of
25 employer, United Healthcare Services."

1 Were you working at United Healthcare
2 Services in November of 2006?

3 A. Yes.

4 Q. So that's correct?

5 A. Uh-huh.

6 Q. All right.

7 A. Yes.

8 Q. And it also says that "If employed,"
9 the next line, "If employed in current
10 position ... less than two years or if
11 currently employed in more than one
12 position, complete the following: Name
13 and address of employer. Ahold,"
14 A-h-o-l-d, "Information Services." And
15 it says that you worked there from
16 November of 1997 to November of 2005;
17 is that correct?

18 A. Yes, it is.

19 Q. But you're saying that the \$14,000 per
20 month gross income is incorrect; is
21 that right?

22 A. It -- it seems high. I mean, I --

23 Q. If I can retrieve that. Let me ask you
24 a couple of other things about some
25 other documents.

1 A. Uh-huh.

2 Q. Let me hand you another document and
3 ask if you recognize that? Do you
4 recognize the signature on that
5 document?

6 A. Yes. I recognize it. If I could get
7 that from you.

8 MR. LANG: Your Honor, I would
9 ask that this be marked and entered
10 as AmeriCash Exhibit-Number-Four.

11 MR. RAY: This is Four; right?

12 MR. LANG: Yes.

13 MR. RAY: Your Honor, we're going
14 to object to this document because
15 it's for the wrong loan.

16 MR. LANG: Judge, these are all
17 disclosures that were made to the
18 borrowers at the time. She's
19 identified the document by way of
20 her signature. It goes to the
21 weight and not the admissibility.

22 THE COURT: I agree.

23 MR. RAY: All right.

24 THE COURT: Exhibit-Four for
25 AmeriCash.

1 (Thereupon the Court Reporter
2 marked the pertinent document as
3 AMERICASH-EXHIBIT-NUMBER-FOUR.)

4 Q. All right. Ms. Bebout, let me hand you
5 another document and ask you if you can
6 identify your signature on that
7 document?

8 A. (Witness examines document.) This is
9 the same one you just showed me.

10 Q. It's a little different. Is that
11 your signature?

12 A. Yes, it is.

13 Q. Okay.

14 MR. LANG: I would ask that this
15 document be marked and entered as
16 AmeriCash Exhibit-Number-Five.

17 MR. RAY: Your Honor, could we
18 have just a second? I'm sorry. No
19 objection, Your Honor.

20 THE COURT: All right.
21 Number-Five.

22 (Thereupon the Court Reporter
23 marked the pertinent document as
24 AMERICASH-EXHIBIT-NUMBER-FIVE.)

25 Q. Ms. Bebout, let me hand you another

1 document and ask if you recognize your
2 signature on this document?

3 A. (Witness examines document.) Yes.

4 Q. And there's another signature also here
5 on this document.

6 A. My husband.

7 Q. And you recognize your husband's
8 signature?

9 A. Yes, I do.

10 Q. If I could retrieve that from you.

11 MR. LANG: Your Honor, I ask that
12 this be marked as Defendant's
13 Exhibit-Number-Six. AmeriCash
14 Exhibit.

15 MR. RAY: No objection, Your
16 Honor.

17 THE COURT: Okay. Number-Six.
18 (Thereupon the Court Reporter
19 marked the pertinent document as
20 AMERICASH-EXHIBIT-NUMBER-SIX.)

21 Q. Let me hand you a last Truth-in-Lending
22 and ask you if you recognize any
23 signatures on that document?

24 A. My signature and my husband's
25 signature.

1 Q. Let me retrieve that from you.

2 MR. LANG: And I ask that this be
3 marked as AmeriCash
4 Exhibit-Number-Seven.

5 MR. RAY: Your Honor, could I ask
6 what this Number-Seven, the purpose
7 of this is?

8 MR. LANG: Your Honor, they're
9 making assertions that either no
10 disclosures were made, or somehow
11 the disclosures are incorrect.
12 These are four Truth-in-Lending
13 Statements, Truth-in-Lending
14 whatever they're called, that were
15 our loan file, and I'm putting them
16 into evidence they were all signed
17 by the borrower.

18 THE COURT: Okay.

19 MR. RAY: No objection, Your
20 Honor.

21 THE COURT: All right.
22 Number-Seven.

23 (Thereupon the Court Reporter
24 marked the pertinent document as
25 AMERICASH-EXHIBIT-NUMBER-SEVEN.)

1 THE COURT: So Four through Seven
2 are all TILs?

3 MR. LANG: That's correct, Your
4 Honor.

5 THE COURT: Truth-in-Lending
6 Disclosures?

7 MR. LANG: Yes, sir.

8 THE COURT: Okay.

9 MR. LANG: I'm sorry I didn't
10 make that clear, but I just wanted
11 to include them.

12 Q. Now Ms. Bebout, just so the record is clear
13 that the exercise I just went through I had
14 you identify your signature on
15 AmeriCash-Exhibits-Four-through-Seven. And
16 all those have the title Federal
17 Truth-in-Lending Disclosure Statements; is
18 that correct?

19 A. That's what it says.

20 Q. You have to speak up just a little.

21 A. Yes. That -- that appears on the
22 title.

23 Q. All right. Now, Ms. Bebout, this was a
24 -- this loan from AmeriCash to you
25 secured by mortgage was to refinance a

1 prior loan on the property; correct?

2 A. Yes.

3 Q. And so you understand that you had a
4 right to cancel the transaction within
5 three business days of the closing;
6 isn't that right?

7 A. No. I was not aware of that.

8 Q. Well, let me hand you a document and
9 ask if you can identify your signature
10 on that document?

11 A. (Witness examines document.) It -- it
12 is my signature.

13 Q. Okay. I will retrieve that from you.

14 MR. LANG: And ask that this be
15 marked as AmeriCash
16 Exhibit-Number-Eight.

17 MR. RAY: No, objection, Your
18 Honor.

19 THE COURT: Number-Eight without
20 objection.

21 (Thereupon the Court Reporter
22 marked the pertinent document as
23 AMERICASH-EXHIBIT-NUMBER-EIGHT.)

24 Q. Ms. Bebout, let me hand you what I've
25 marked and entered as AmeriCash

1 Exhibit-Number-Eight, and that document
2 is entitled Notice of right to Cancel;
3 is that correct?

4 A. This is the one you just entered?

5 Q. Yes, ma'am.

6 A. Yes.

7 Q. And it bears your signature on the
8 bottom of it; is that correct?

9 A. Yes. That is correct.

10 Q. And it says just above there, "Each of
11 the undersigned hereby acknowledges the
12 receipt of two (2) completed copies of
13 this Notice of Right to Cancel";
14 correct?

15 A. That's what it says.

16 Q. Okay. There's no question that your
17 signature appears on the AmeriCash
18 Exhibit-Number-Eight; is that right?

19 A. Yes.

20 Q. And I take it that you are familiar
21 with your husband's signature; is that
22 right?

23 A. Yes, I am.

24 Q. All right. Let me hand you a document
25 and ask if your husband -- if you

1 recognize your husband's signature on
2 that document?

3 A. Yes, I do.

4 MR. LANG: Your Honor, I ask that
5 this be marked in evidence as
6 AmeriCash Exhibit-Number-Nine.

7 MR. RAY: Your Honor, give me
8 just a second, please. No
9 objection, Your Honor.

10 THE COURT: No objection.
11 Number-Nine

12 (Thereupon the Court Reporter
13 marked the pertinent document as
14 AMERICASH-EXHIBIT-NUMBER-NINE.)

15 Q. Now Ms. Bebout, let me hand you what
16 has been marked as AmeriCash
17 Exhibit-Number-Nine, and you would
18 agree with me that is identical, except
19 for the signature and the typed name,
20 to AmeriCash Exhibit-Number-Eight; is
21 that right?

22 MR. RAY: Your Honor -- I will
23 withdraw that.

24 THE COURT: Okay.

25 A. It appears to be.

1 Q. Did you ever notify AmeriCash that you
2 wished to cancel and rescind the loan
3 that you closed on November 20, 2006?

4 A. No, we did not.

5 Q. I'm sorry?

6 A. No.

7 Q. You said you had a stack of documents
8 when you left that closing; is that
9 correct?

10 A. Yes.

11 Q. That stack of documents included copies
12 of Defendant's Exhibits, AmeriCash
13 Exhibits-Numbers-Eight-and-Nine, did it
14 not?

15 A. I did -- I do not think so. I was not
16 aware of these documents.

17 Q. Where is that stack of documents now?

18 A. My lawyer has the documents.

19 MR. LANG: Well, at this point in
20 time, Your Honor, I would ask that
21 Mr. Ray produce those documents.
22 They never were produced to me in
23 spite of the standard discovery
24 requests.

25 A. I -- I was never made aware of what

1 this was -- or is.

2 MR. LANG: Your Honor, at this
3 point in time, this is my only shot
4 at this, I --

5 THE COURT: Do you have a stack
6 of closing files that they were
7 given from the closing?

8 MR. RAY: Not with me, Your
9 Honor. I don't -- no, not that I
10 know of. I -- I received the
11 closing documents, I believe, from
12 Mr. Lang in discovery.

13 MR. LANG: If he doesn't have
14 them, then he can't produce them.

15 THE COURT: That's true.

16 MR. LANG: Thank you, Your Honor.

17 THE COURT: What's the difference
18 between Eight and Nine? Was one by
19 Barbara and one by Robert? Is that
20 --

21 MR. LANG: That's correct.

22 THE COURT: Okay. Thank you. I
23 thought that's what it was.

24 Q. Ms. Bebout, let me --

25 MR. RAY: Your Honor, let me

1 clarify that last. I think we do
2 have the documents at the office,
3 the blank documents, but I didn't
4 realize -- we don't have them with
5 us.

6 THE COURT: Okay.

7 MR. LANG: Well, Your Honor, I
8 would insist that they be produced.

9 THE COURT: All right.

10 MR. LANG: I mean, I've got this
11 witness on the stand at this point
12 in time, and she has testified that
13 these documents weren't among them.

14 A. I don't know for certain on that.

15 MR. LANG: If that is going to be
16 a point of contention, these
17 documents have never been produced
18 to me. So I would insist that they
19 be produced now.

20 THE COURT: Okay.

21 MR. RAY: Your Honor, those
22 documents, she did not testify that
23 those documents were among them
24 because she did not receive signed
25 copies. These are signed copies

1 he's talking about. They received
2 blank copies.

3 THE COURT: Well, I think that's
4 what he's asking for is the blank
5 copies.

6 MR. LANG: That's correct.

7 THE COURT: And he says he didn't
8 get them.

9 MR. LANG: That's right.

10 THE COURT: Okay. So I agree.
11 You've got a right to get those.

12 MR. LANG: Yes, sir.

13 THE COURT: But procedurally what
14 do you-all want to do about that?
15 I mean --

16 MR. LANG: Here is what I would
17 suggest, Judge.^o

18 THE COURT: -- the clock is
19 ticking.

20 MR. LANG: Yes, sir. Here is
21 what I would suggest, Judge. I
22 assume we are going to take a break
23 for lunch at some point in time.
24 If counsel could retrieve those
25 documents during the break, and if

1 I need to recall Ms. Bebout, I
2 will.

3 THE COURT: What about that?

4 MR. RAY: Well, Your Honor, it
5 will take it about 45 minutes one
6 way, and so, I mean, we're talking
7 two hours probably to go get them
8 and come back.

9 THE COURT: Well, I mean, but I
10 think he's got some rights that I'm
11 bound, duty bound, to honor here
12 if he wants it, and he's asked for
13 it. Now what we could --
14 admittedly it might require us to
15 not finish today.

16 MR. LANG: Well, that's fine,
17 Judge.

18 THE COURT: If that's the way it
19 falls, that's the way it falls.

20 MR. RAY: I agree, Judge.

21 THE COURT: But, you know, unless
22 somebody can tell me some reason
23 he's not entitled to those things
24 now that he made standard discovery
25 requests, and they exist, even

1 though they're in Greenville, and
2 he wants them, I think I have to
3 let him have them.

4 MR. LANG: That's fine, Judge.
5 If he can't retrieve them today,
6 maybe we'll just leave the record
7 open, and if I need to make a point
8 of this, we will reconvene at some
9 point?

10 THE COURT: Why don't we do that.
11 Why don't we don't retrieve them
12 today; Mr. Ray produce whatever is
13 in that file for Mr. Lang within
14 some reasonable time frame, say, a
15 week or ten days; Mr. Lang gets a
16 chance to look at them. I'm going
17 to be gone for the next two weeks
18 anyway, and when I get back I'm
19 going into a week of trial, so I'm
20 not going to be able to start --
21 even if we finish today, I couldn't
22 start reviewing this for a ruling.

23 MR. RAY: Yes, sir. That will be
24 fine with us, Your Honor.

25 MR. LANG: That's fine, Judge.

1 MR. RAY: Yes, sir. That will be
2 fine with us, Your Honor.

3 MR. LANG: That's fine, Judge.

4 THE COURT: Okay.

5 MR. LANG: That will work.

6 THE COURT: Let's do that.

7 Q. Just a few more questions, Ms. Bebout.
8 Let me invite your attention to
9 Defendant's Exhibit-Number-Three, which
10 is actually your exhibit. And I think
11 it is -- no, that's the AmeriCash
12 exhibit. I don't mean to reach over
13 you, but I'm looking for the Attorney
14 preference form. I think you just
15 missed it. Let me invite your
16 attention, Ms. Bebout, to Defendant's
17 Exhibit-Number-Four. That's the
18 attorney preference form. And your
19 testimony was, I believe on direct that
20 your name and Wyatt Willoughby was not
21 filled in when you signed this
22 document?

23 A. Not at the time.

24 Q. So you just signed a lot of blank
25 documents; is that correct?

- 1 A. Yes.
- 2 Q. And you also testified that the
- 3 insurance name was not filled in as
- 4 well?
- 5 A. There was no handwriting on those
- 6 papers.
- 7 Q. The insurance carrier's name is
- 8 Allstate-Pat Campbell; is that correct?
- 9 A. That's correct.
- 10 Q. That was your insurance company; is
- 11 that correct?
- 12 A. Yes, it is.
- 13 Q. And Pat Campbell was your insurance
- 14 agent; correct?
- 15 A. Yes. She was ours.
- 16 Q. All right. How would whoever was
- 17 closing this loan know that unless you
- 18 informed them?
- 19 A. I did verbally tell them, yes.
- 20 Q. You verbally told them, told whoever
- 21 was closing the loan --
- 22 A. Previously to the -- to the closing,
- 23 yes, I did.
- 24 Q. Previously to the closing?
- 25 A. Yes.

1 Q. And who did you tell?
2 A. I know my husband told either Tamara or
3 it was -- it was brought up.
4 Q. Okay. You didn't tell anybody? Your
5 husband told them?
6 A. Yes.
7 Q. Okay. Let me hand you another document
8 and ask if you recognize your signature
9 on that?
10 A. (Witness examines document.) Yes.
11 Q. And whose signature is on that
12 document?
13 A. My signature.
14 Q. All right. And what's the date on that
15 signature?
16 A. The date of the closing 11/20/06.
17 Q. I take it you don't remember signing
18 this document?
19 A. I don't recognize the document.
20 Q. Okay. But there's no question that
21 you're --
22 A. I did sign it.
23 Q. But there's no question that your
24 signature appears on that document?
25 A. Yes.

1 Q. If I could retrieve just that document.

2 MR. LANG: Your Honor, I would
3 ask that this be marked as
4 AmeriCash Exhibit-Number-Ten.

5 MR. RAY: Your Honor, just a
6 second. No objection, Your Honor.
7 This is Exhibit-Number-Ten, the
8 Application Notice giving the
9 address of the Department of
10 Consumer Affairs.

11 THE COURT: All right, sir.

12 (Thereupon the Court Reporter
13 marked the pertinent document as
14 AMERICASH-EXHIBIT-NUMBER-TEN.)

15 Q. Let me return to you what has now been
16 marked and entered as Defendant's
17 AmeriCash Exhibit-Number-Ten, and this
18 is a document that's titled South
19 Carolina Application Notice; is that
20 correct?

21 A. Yes.

22 Q. And it says -- and correct me if I'm
23 wrong -- that "The agency designated to
24 receive complaints or inquiries about
25 the origination and making of this loan

1 is," and then it lists the South
2 Carolina Department of consumer
3 Affairs, its address, post office box,
4 and two telephone numbers, one of which
5 is a 800 number; correct?

6 A. Yes.

7 Q. Now presumably, because we don't have
8 the documents with us today, but a copy
9 of this document, unsigned, is in that
10 stack of documents which you turned
11 over to your attorney; is that correct?

12 A. It may be.

13 Q. I take it you never filed a complaint
14 or made any complaints to the
15 Department of Consumer Affairs in
16 regard to the origination or the
17 making, as the phrase is in this
18 document, of the loan that we're
19 discussing here today; is that correct?

20 A. I did not.

21 Q. And to this day you've never done that;
22 is that correct?

23 A. That's correct.

24 Q. Talking more disclosures, if I could,
25 Ms. Bebout, let me hand you another

1 document and ask you if you recognize
2 that one?

3 MR. RAY: What is that? I'm
4 sorry. What did you say?

5 MR. LANG: I'm asking her if she
6 recognizes the signature on this
7 document. I'm sorry.

8 MR. RAY: That's going to be
9 Eleven, proposed Eleven?

10 MR. LANG: It will be, yes, I
11 hope.

12 A. That's my signature.

13 Q. Okay: And the date of your signature
14 is November 20, 2006; correct?

15 A. Yes.

16 Q. And do you recognize your husband's
17 signature?

18 A. Yes, I do.

19 Q. And it's the same date; is that
20 correct?

21 A. Yes, it is.

22 Q. If I could retrieve that from you.

23 MR. LANG: Your Honor, I would
24 ask that this be marked and entered
25 as Defendant's AmeriCash

1 Exhibit-Number-Eleven.

2 MR. RAY: No objection, Your
3 Honor.

4 THE COURT: Okay.

5 (Thereupon the Court Reporter
6 marked the pertinent document as
7 AMERICASH-EXHIBIT-NUMBER-ELEVEN.)

8 Q. Ms. Bebout, let me now return to you
9 what has been marked into evidence
10 AmeriCash Exhibit-Number-Eleven, and
11 that is a document entitled
12 "Itemization of Amount Financed"; is
13 that correct?

14 A. Yes.

15 Q. And it concerns the \$100,000 loan; is
16 that correct?

17 A. Yes.

18 Q. All right. Let me give you one more
19 document and ask if you recognize
20 anyone's signature on that?

21 A. Yes. That's my signature and my
22 husband's signature.

23 Q. Okay. Same day, November 20, 2006?

24 A. Yes. The date of the closing.

25 MR. LANG: Which would be

1 Defendant's AmeriCash
2 Exhibit-Number-Twelve. I would ask
3 it be entered.

4 MR. RAY: No objection, Your
5 Honor.

6 THE COURT: All right.

7 (Thereupon the Court Reporter
8 marked the pertinent document as
9 AMERICASH-EXHIBIT-NUMBER-TWELVE.)

10 Q. All right. Ms. Bebout, let me return
11 to you what has now been marked and
12 entered as AmeriCash
13 Exhibit-Number-Twelve, and this is
14 another document entitled "Itemization
15 of Amount Financed"; correct?

16 A. Yes, it is.

17 Q. And it concerns the \$400,000 loan; is
18 that right?

19 A. Yes, it does.

20 Q. There's no question that you signed
21 that, and your husband signed that; is
22 that correct?

23 A. That's our signature.

24 MR. LANG: Begging The Court's
25 indulgence for a moment, Your

1 Honor. If I can just run through
2 some of these.

3 THE COURT: All right, sir.

4 MR. LANG: Those are all the
5 questions I have of Ms. Bebout.
6 Thank you very much.

7 THE COURT: Okay.

8 MR. RAY: Your Honor, I've got a
9 few questions.

10 THE COURT: Do you have any
11 questions, Mr. Lydon?

12 MR. LYDON: Just a couple, Your
13 Honor.

14 THE COURT: All right.

15 MR. RAY: I'm sorry.

16 CROSS-EXAMINATION

17 BY MR. LYDON:

18 Q. Ms. Bebout, your lawyer asked you about
19 this sequence of events earlier, and I
20 want to make sure I've got it straight.
21 On November 20th, 2006, you-all
22 received a call -- or your husband
23 received a call, to be at Stax for the
24 closing?

25 A. Yes.

1 Q. All right. And what time did you show
2 up at the closing?
3 A. Between 11:00 and 11:30.
4 Q. Okay. And then around 11:30 you called
5 Tamara at AmeriCash?
6 A. (Witness nods head.)
7 Q. You need to say "yes" or "no."
8 A. Yes.
9 Q. Why did you call Tamara?
10 A. Because the loan was not what we
11 expected to get, the terms of the loan.
12 Q. Okay. What did you complain to her
13 about?
14 A. About the percentage. About me being
15 the sole borrower. Also, because it
16 was broke out in two loans.
17 Q. Okay. So you complained it was broken
18 out into two loans?
19 A. Yes.
20 Q. You complained that the interest rate
21 wasn't what you thought it was going to
22 be?
23 A. Right.
24 Q. And you complained that you were the
25 only one on the note?

1 A. That's correct.

2 Q. Okay. And then after you talked to her
3 you-all signed the paperwork; is that
4 right?

5 A. Yes.

6 Q. Okay. So when Mr. Lang asked you about
7 Exhibit-One, Plaintiff's Exhibit-One --
8 which I don't see it. It would have a
9 red sticker on it. Here it is. When
10 Mr. Lang asked you about the Promissory
11 Note, Exhibit-One, and you testified
12 that you didn't know what the terms
13 were, and you didn't know what you were
14 signing, that really wasn't accurate
15 because you had -- before you signed
16 that document you had called Tamara at
17 AmeriCash to complain about what the
18 terms were; isn't that true?

19 A. I -- I knew what the terms were as of
20 that day, the new terms.

21 Q. Okay. And you knew what the terms were
22 before you put your name on that note,
23 didn't you?

24 A. The terms before were different.

25 Q. Okay. I understand that. You knew

1 what you thought the terms were going
2 to be when you showed up at the
3 closing; is that correct?

4 A. I knew what the terms should have been.

5 Q. Okay. And you got to the closing, and
6 you found out they were something
7 different?

8 A. In "terms" you mean percent?

9 Q. Percent.

10 A. Yeah.

11 Q. Right.

12 A. That's what I've said.

13 Q. You got to the closing, and you found
14 out it was something different?

15 A. Yes, I did.

16 Q. And so then you called Tamara.

17 A. Yes. We did.

18 Q. You did. You and your husband did?

19 A. Yes.

20 Q. And you said, "Why are there two
21 loans?"

22 A. He asked that.

23 Q. Okay. And he asked her why you were
24 the only one on the notes?

25 A. Yes.

1 Q. And you asked why the interest rate was
2 higher?

3 A. Yes.

4 Q. And then after that happened, after
5 that phone call, you went back into the
6 restaurant, and you signed that note,
7 didn't you?

8 A. After speaking with Willoughby.

9 Q. Okay. So when Mr. Lang asked you
10 whether you signed the note, and your
11 testimony was you didn't know what you
12 were signing, the fact of the matter is
13 you had called AmeriCash and complained
14 about the terms of the loan before you
15 signed that document; right?

16 A. No, the terms, but the documents
17 specifically I don't remember this
18 document, the same note.

19 Q. Okay. You don't remember that
20 document. But you knew you were
21 signing a \$400,000 note at 7.625
22 percent interest.

23 A. Yes. I knew it was over seven, close
24 to eight.

25 Q. Okay. Thank you.

1 MR. LYDON: That's all the
2 questions I've got.

3 THE COURT: Okay. Mr. Ray?

4 MR. RAY: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. RAY:

7 Q. Can you hear me okay, Barbara?

8 A. Yes.

9 Q. Okay. In regard to what Mr. Lydon just
10 talked about, if you had had time to
11 think about this, in other words, if
12 you had known that Ken Acker wasn't
13 going to be there, that this was going
14 to be two loans, and that the interest
15 rates on both these loans was different
16 than what you had been told, then what
17 would you have done?

18 MR. LYDON: Objection. Calls for
19 speculation.

20 THE COURT: Overrule. I'll
21 permit her to answer.

22 A. I -- I would have not gone through with
23 this.

24 Q. And you talked about the fact the
25 atmosphere that you were sitting in was

1 a restaurant. It was lunchtime,
2 waitresses, and I believe the
3 individual we believe to be Mr. Castro
4 said that you could always go back and
5 call, and I don't know exactly what
6 term you used, but get it refinanced
7 or something? He told you that?

8 A. Yes, he did.

9 Q. And you did call afterwards back to
10 Tamara; is that correct?

11 A. Yes. We did several times.

12 Q. And you never got it?

13 A. No.

14 Q. All right. Let's go back, if we can,
15 to all these exhibits that Mr. Lang
16 entered.

17 MR. RAY: Where are they? Are
18 they up there now?

19 MR. LANG: She's got them.

20 MR. RAY: Oh, you've got them.

21 Okay.

22 (OFF RECORD)

23 Q. Now let me see. The
24 Exhibits-Two-and-Three. Okay? I
25 believe I'm correct. Exhibit-Two had

1 the \$100,000 loan on it, and
2 Exhibit-Three had the \$400,000 loan?

3 A. Would it be the red tab? Green?
4 Number-Two or Three?

5 Q. It would be Exhibits Two and Three,
6 what we're talking about.

7 A. Yes. I have them.

8 Q. Okay. I believe your testimony was
9 something to the effect that that
10 income seemed high?

11 A. It appears to be high.

12 Q. Is it possible that Tamara asked for
13 the household income?

14 A. That's possible.

15 MR. LANG: Object to the form of
16 the question. That calls for --
17 that is pure speculation.

18 THE COURT: Sustained.

19 Q. Did you fill out the form?

20 A. Fill out this form?

21 Q. Yes.

22 A. No, I did not. I mean, as far as
23 putting in the numbers? No.

24 Q. Did you -- who was the interviewee on
25 the -- look at the second or third page

1 of those documents, if you would. Who
2 was the interviewee?

3 A. Which document?

4 Q. Or interviewer, I guess.

5 A. Which document?

6 THE COURT: Exhibits

7 Two-and-three.

8 A. Oh, both of them on page two and three?

9 Q. I think so.

10 A. Okay. Where am I looking? At the
11 income?

12 Q. It's either the second or third page.
13 It's got the interviewer on there.

14 A. Interviewer.

15 Q. At the bottom.

16 THE COURT: So page four of five.

17 MR. RAY: Okay. Four of five.

18 Q. Do you see that at the bottom that
19 says, "Interviewer"?

20 A. Interviewer's signature?

21 Q. Yes.

22 A. Yes. I see that.

23 Q. And what does that say?

24 A. Tamara Pacak.

25 Q. What is the date that Tamara signed

1 that?

2 A. It was the date of the closing,
3 11/20/06.

4 Q. Was Tamara Pacak at the closing?

5 A. No, she was not.

6 Q. Was she around the closing anywhere?

7 A. No.

8 Q. Did Mr. -- the individual, the
9 representative, I believe it was Mr.
10 Castro, did he say he had brought those
11 documents from anywhere? Where she
12 was?

13 A. No.

14 Q. All right. And the conversations with
15 Tamara were all over the phone; is that
16 correct?

17 A. Yes, it was.

18 Q. Okay. Now is there a date at the top
19 of the application?

20 A. Same page?

21 Q. On the first page. Do you see the date
22 on the first page?

23 A. Not handwritten. I'm looking for a
24 date that's typed.

25 Q. Okay. Strike that.

1 A. I see my birthday.
2 Q. Strike that question. The date on I
3 think it's page five of five where it
4 appears to be your signature?
5 A. That's the credit?
6 Q. When did you sign it?
7 A. 11/20/06.
8 Q. Okay. Now go back to page four, what
9 appears to be your signature?
10 A. Yes.
11 Q. Okay. Is that your handwriting where
12 the date is?
13 A. No, that's not mine.
14 Q. Not your handwriting?
15 A. No. That's not.
16 Q. It is yours?
17 A. No, it isn't.
18 Q. Is not?
19 A. I didn't write that date.
20 Q. Do you know who wrote that date?
21 A. No, I don't. That's not my
22 handwriting.
23 Q. It is your handwriting or not?
24 A. No, that isn't. You can see my date on
25 the next page. Right. Right.

1 Q. But is the signature yours?
2 A. On this one. On this one. Yes, it is.
3 Q. Okay. Okay. But you're saying that
4 you didn't fill in that date?
5 A. No, I didn't.
6 Q. Okay. Now let me see. If we're
7 looking at these exhibits, we've got
8 Four-Five-Six-and-Seven. Those are
9 four Truth-In-Lending exhibits. Okay?
10 Now if you will you look up at the top
11 of the Truth-In-Lendings, if I can find
12 one, I can tell you right where it is,
13 and do you see a loan number up there
14 in very small letters?
15 A. Yes, I do.
16 Q. Okay. For Number Exhibit-Four what is
17 that loan number up there? Just read
18 the last two numbers, if you would.
19 Not all of them. Just the last two.
20 A. One, two, the last two? Is that what
21 you said?
22 Q. I'm sorry. Where the loan number is,
23 the last --
24 A. Oh, that's application. Sorry.
25 Q. The last two digits.

1 A. On Exhibit-Four?

2 Q. Yes.

3 A. I don't see the loan number on this

4 one. It's the application number.

5 Q. Do you see at the top, do you see where

6 it says loan number?

7 A. On Exhibit-Six-and-Seven I see loan

8 number at the top. On Exhibit-Four I

9 see the application number which

10 appears to be the loan number.

11 Q. What are the last two digits of

12 Number-Four?

13 A. One, two.

14 Q. Two?

15 A. Yeah. There are two --

16 Q. One, two, 12, 12.

17 A. Yes.

18 Q. Okay. On Number-Four -- I'm sorry. On

19 Exhibit-Five, what are the last two

20 digits of that loan number?

21 A. Eleven.

22 Q. On Number-Six what are the last two

23 digits on that one?

24 A. Eleven.

25 Q. And Number-Seven?

1 A. Twelve.

2 Q. Okay. So we've got, as far as the loan
3 numbers go, basically two different
4 loan numbers; right?

5 A. Yes.

6 Q. You've got four Truth-in-Lendings.

7 A. Yes.

8 Q. And are they all different amounts or
9 not? I'm talking about the interest,
10 amount financed, so forth.

11 A. Yes, they are.

12 Q. Okay. If you knew on that day that you
13 were signing up for about \$1.2 million
14 worth of loans, would you have signed
15 all those documents?

16 A. No, I would not.

17 Q. Did anybody ever explain to you why
18 they had you sign four different
19 Truth-in-Lendings?

20 A. No. He did not.

21 Q. Did he ever explain what a
22 Truth-in-Lending was?

23 A. No, he did not.

24 Q. Could you see -- when you were signing
25 those documents do you remember him

1 holding the page so you could see it or
2 not?
3 A. No. He did not.
4 Q. Okay.
5 A. This was done in an hour.
6 Q. All right.
7 A. He did not explain very much other than
8 he was representing us at the time,
9 too.
10 Q. All right. Now can you look on those
11 four documents, and then I want to go
12 to Exhibit-Eight-and-Nine. Those are
13 the two Rights of Rescissions. Let's
14 go first to Exhibit-Four. What's the
15 date that was prepared?
16 A. Prepared my -- by my signature?
17 Q. No.
18 A. The date this loan was prepared.
19 Q. Prepared by whoever.
20 A. 8/31 of '06.
21 Q. Okay. And then on Exhibit-Five, when
22 was that one prepared?
23 A. On 8/31 of '06.
24 Q. Number-Six?
25 A. It says November 20th of '06.

- 1 Q. November 20th of '06?
- 2 A. Right. It just has a date at the top.
- 3 It doesn't say date prepared.
- 4 Q. It doesn't have a date of prepare?
- 5 A. It says November 20th of '06.
- 6 Q. Okay. So is there a date prepared on
- 7 Number-Six?
- 8 A. It's not in the same spot. I don't -- I
- 9 don't see one.
- 10 Q. Okay. What about Number-Seven?
- 11 A. It looks just like that other one as
- 12 far as date. It says, "Date: November
- 13 20th, 2006," at the top.
- 14 Q. You don't see a date prepared on that
- 15 one?
- 16 A. No, I don't.
- 17 Q. All right. Do you see any names on
- 18 that document besides yours and your
- 19 husband's?
- 20 A. AmeriCash at the top.
- 21 Q. Any --
- 22 A. No.
- 23 Q. -- names of other people?
- 24 A. No other names.
- 25 Q. Okay. All right. Now let's go to

1 Exhibit-Eight-and-Nine. That's the two
2 Rights of Rescission.

3 A. Yes. I see that.

4 Q. Okay. And you see on
5 Exhibit-Number-Eight, that's, I
6 believe, your Right of Rescission, do
7 you see the date prepared?

8 A. November 20th of 2006.

9 Q. What about Exhibit-Nine?

10 A. November 20th in 2006.

11 Q. Date prepared. Okay. And also let's
12 look at on both of those, you know,
13 where we talk about the loan numbers on
14 those other documents; do you see a
15 loan number somewhere on those Rights
16 of Rescission?

17 A. Yes. At the top.

18 Q. And on yours what is the last two
19 digits on the loan number?

20 A. On Exhibit-Nine it would be 11, and on
21 Eight is 11.

22 Q. So on Eight it's 11; is that right?

23 A. Yes. Yes.

24 Q. Okay. And on Nine it's 11?

25 A. Yes.

- 1 Q. Okay. Do you have any other Rights of
2 Rescission up there?
- 3 A. Are you saying do I see it?
- 4 Q. That's the only exhibit you have with
5 Rights of Rescission on it?
- 6 A. Yes, it is.
- 7 Q. All right. Let's go to Exhibit-Ten.
8 That's the one to the Consumer Affairs
9 Office. What is the loan number on
10 that one?
- 11 A. Up at the top it says the last two is
12 11.
- 13 Q. Eleven. Okay. Does that have a date
14 prepared on that one?
- 15 A. I -- I don't see one.
- 16 Q. Okay. Was that form ever explained to
17 you at the closing?
- 18 A. No, it was not.
- 19 Q. Exhibit-Number-Eleven, that is the
20 Itemization of Amount Financed, and
21 also Exhibit-Twelve.
- 22 A. Yes.
- 23 Q. Okay. On Exhibit-Eleven, what's the
24 last two digits of that loan number?
- 25 A. That one is 11.

1 Q. And what about Exhibit-Twelve? It's
2 number 12. So Exhibit-Twelve is loan
3 12?

4 A. Oh, sorry. I have it backwards.

5 Q. Okay.

6 A. Twelve is 11.

7 Q. Okay.

8 A. And Eleven is 12.

9 Q. Right. Okay. So you've got
10 Itemization of Amount financed two
11 different loans there.. Okay. Once
12 again, I ask you if you filled out the
13 loan application approximately the last
14 day of August of 2006; is that right?

15 A. Yes. Yes.

16 Q. The next time you received a written
17 document from AmeriCash was when?

18 A. At the closing on November 20th, '06.

19 Q. And did you sign anything in the
20 interim?

21 A. No, I did not.

22 Q. And you didn't receive anything?

23 A. No.

24 MR. RAY: That's all.

25 THE COURT: Is that all for this

1 witness?

2 MR. RAY: Yes.

3 MR. LANG: I have some on
4 redirect, Your Honor.

5 THE COURT: All right.

6 MR. LANG: I apologize.

7 MR. RAY: Your Honor, we're not
8 resting. We have some more
9 witnesses.

10 THE COURT: All right.

11 THE COURT: He's recross.

12 **RECROSS-EXAMINATION**

13 **BY MR. LANG:**

14 Q. Let me hand you two more documents, Ms.
15 Bebout. I'm going to show you the
16 title of a group of documents, but let
17 me ask you the first document does that
18 have your signature?

19 A. Yes, it does.

20 Q. Okay. And what's the loan number on
21 the top of that document?

22 A. Twelve.

23 Q. Let me retrieve that from you. And
24 does this document bear your husband's
25 name?

1 A. Yes, it does.

2 Q. And what's the loan number on the top
3 of that one?

4 A. Twelve.

5 MR. RAY: Your Honor, I can't
6 hear them back here. I'm sorry.

7 MR. LANG: Your Honor, I would
8 like to enter these, offer these,
9 and mark these as AmeriCash
10 Exhibits-Thirteen-and-Fourteen.

11 MR. RAY: No objection, Your
12 Honor.

13 THE COURT: All no objection.

14 MR. RAY: Those were exhibits?
15 I'm sorry.

16 THE COURT:
17 Thirteen-and-Fourteen.

18 MR. LANG: Thirteen-and-Fourteen.

19 (Thereupon the court reporter marked the
20 pertinent documents as AMERICASH
21 EXHIBITS-NUMBERS-THIRTEEN-AND-FOURTEEN.)

22 Q. All right. Ms. Bebout, let me hand you
23 what is now marked as AmeriCash
24 Exhibits-Thirteen-and-Fourteen, and
25 those are the Notices of Right to

1 Cancel with regard to the loan number
2 12; is that correct?

3 A. Yes, it is.

4 Q. Both signed by you and your husband;
5 correct?

6 A. Yes.

7 Q. And presumably blanks of those may be
8 in these stack of documents that Mr.
9 Ray has that you gave him; correct?

10 A. Could be. This looks like a larger
11 version.

12 Q. Right.

13 A. Like they've blown up.

14 Q. But the substance of them could be in
15 these copies in Mr. Ray's possession;
16 correct?

17 A. Yes, it could.

18 MR. LANG: No further questions.

19 THE COURT: All right. Okay.

20 Can she step down.

21 MR. RAY: Well, we haven't rested
22 with her.

23 THE COURT: Well, I didn't say
24 you had rested. I said are you
25 through with her?

1 MR. RAY: Well, no, I'm not
2 finished with her. I was wondering
3 if we could maybe break for lunch?
4 How is that?

5 THE COURT: Why can't we finish
6 with Ms. Bebout.

7 MR. RAY: Well, we could. It's
8 going to --

9 THE COURT: What else have you
10 got with her?

11 MR. RAY: I was going to go over
12 --

13 MR. LANG: I would suggest, Your
14 Honor, that if there is redirect,
15 it would have to be confined to
16 what I just went over with her in
17 regard to --

18 THE COURT: Yes. I mean, you
19 know, you're not bringing up
20 anything new at this point. You've
21 already had your direct.

22 RE-REDIRECT EXAMINATION

23 BY MR. RAY:

24 Q. Barbara, Mr. Lang introduced two
25 exhibits, one that is Number-Twelve,

1 Right to Cancel. If you knew you had
2 the right to cancel, would you have
3 cancelled this?

4 A. Yes, I would. If I was aware of what I
5 know, I -- I would have done that. I
6 would have cancelled it.

7 MR. RAY: All right. That's all,
8 Your Honor.

9 THE COURT: All right. Thank
10 you. Step down, please, ma'am.
11 Okay. This is probably a good time
12 to break for lunch, but Mr.
13 Sandifer has been sitting here all
14 day.

15 MR. RAY: We asked if he could be
16 released.

17 THE COURT: I know, but --

18 MR. LANG: Well, Your Honor, they
19 have made such an issue of this,
20 and I think it goes directly to Ms.
21 Bebout's credibility, I need him as
22 a witness.

23 THE COURT: Yes. I understand
24 that. Mr. Sandifer, what's your --
25 do you have any requests? Do you

1 want to hang around? Would you
2 like to testify now, or we -- I
3 think we could take you out of
4 order.

5 MR. SANDIFER: If I had a
6 preference, I would rather go now.

7 MR. LANG: That's fine. We can
8 take him out of order, Judge.

9 THE COURT: Yes. Just take him
10 out of order, I would say, and I
11 hate for him just to sit here and
12 then have to go to lunch and come
13 back.

14 MR. RAY: That's fine.

15 THE COURT: Okay. Come on
16 around, Mr. Sandifer. The court
17 reporter will swear you. And then
18 I think we definitely will go to
19 lunch after.

20 KEVIN B. SANDIFER,
21 being first duly sworn/affirmed, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LANG:

25 THE COURT: All right, Mr. Lang.

1 MR. LANG: Thank you, Your Honor.

2 Q. Could I have your full name, please,

3 sir.

4 A. Sure. Kevin Bruner Sandifer.

5 Q. Mr. Sandifer, are you an attorney?

6 A. Yes, sir.

7 Q. Are you licensed in the State of South

8 Carolina to practice law?

9 A. Yes, sir.

10 Q. How long have you been so licensed?

11 A. I was admitted to the Bar in November

12 of 2000.

13 Q. And where is your office?

14 A. Northeast Columbia, Two Notch Road.

15 Q. And what does your practice primarily

16 consist of?

17 A. Real estate.

18 Q. And by "real estate" tell me what you

19 mean by that.

20 A. Closing residential mortgages.

21 Q. Has that always been your practice

22 since 2000?

23 A. No, sir. I did a year of personal

24 injury work. I did some legislative

25 work.

1 Q. Do you know a gentleman by the name of
2 Wyatt Willoughby?

3 A. Yes, sir.

4 Q. And how do you know him?

5 A. He and I worked together briefly for a
6 period of time around the time we did
7 these closings.

8 Q. All right. Let me invite your
9 attention then to November of 2006. At
10 that time were you working with Mr.
11 Willoughby?

12 A. I would help him close loans if he was
13 unable to close them himself.

14 Q. By "help him close loans" --

15 A. Conduct the closing. I'm sorry. I
16 didn't mean to interrupt.

17 Q. That's okay. By "conducting the
18 closing," what do you mean by that?

19 A. Attended the closing, explain the
20 documents, making sure the
21 homeowner/borrower understood the terms
22 of the loan.

23 Q. And how would you be notified of a
24 closing from Mr. Willoughby's office?

25 A. He or one of his employees would

1 contact me and ask me for assistance.

2 Q. And what kind of information would you
3 need to give before you could actually
4 contact the closing?

5 A. I would need to know -- look over the
6 title search. Look over documents.
7 Where to meet the homeowner and what
8 time and location.

9 Q. Did you receive documents from Mr.
10 Willoughby's office in regard to
11 closings that you were going to
12 conduct?

13 A. In almost every instance, yes. I
14 believe so. There was maybe a home
15 loan modification, or something like
16 that, where the lender would mail it
17 directly to the borrower, but that
18 wasn't the case here.

19 Q. Would you review those documents before
20 you actually went to conduct a closing?

21 A. Unless they had just came off the
22 printer. If they had just came off the
23 printer, and time was an issue, I would
24 do my best to, and I would definitely,
25 if I hadn't had a chance to go over

1 them prior to, I would explain all the
2 terms to the homeowner to make sure
3 they matched up the homeowner's
4 expectations.

5 Q. Do you recall this particular closing?

6 A. When you conduct a number of closings
7 over a period of time, a lot of them
8 fall into a gray area where you don't
9 remember every facet of it, but I do --
10 I remember after I had seen Ms. Bebout
11 and Mr. Swaynham at my deposition, I
12 do recall seeing them. I don't recall
13 everything about the closing. I do
14 recall looking at this document here,
15 which is --

16 Q. Before we get to that I --

17 A. I'm sorry. Go ahead.

18 Q. Do you recall seeing before your
19 deposition Mr. Swaynham and Mr.
20 Bebout? I'm sorry. Ms. Bebout and Mr.
21 Swaynham.

22 A. After seeing them again at the
23 deposition I do recall seeing them
24 prior.

25 Q. Do you recall where you saw them?

1 A. There was an issue at the deposition
2 about where the location of the closing
3 took place. I do not recall the
4 location of the closing.

5 Q. Would you have seen them any place
6 other than at a closing?

7 A. Not likely.

8 Q. All right. Do you know them
9 personally?

10 A. No, sir.

11 Q. Now in regard to this particular
12 closing, do you recall who else was
13 present other than yourself?

14 A. The only reason I recall is because I
15 do know Mr. Castro, and I did see his
16 signature, and can recognize his
17 signature as a witness on the
18 mortgages.

19 Q. And who is Mr. Castro?

20 A. Mr. Castro is a gentleman by the name
21 of Chris Castro. He had recently
22 passed the Bar at that point in time.

23 Q. And by "recently passed the Bar" you're
24 talking about November '06?

25 A. Yes, I believe so.

1 Q. All right. And did you know Mr. Castro
2 prior to November of '06?

3 A. If it was, it wasn't much prior, but I
4 did know him a little bit prior to that
5 time.

6 Q. Well, was Mr. Castro present at the
7 closing of this particular transaction?

8 A. Yes, sir.

9 Q. And how do you know that?

10 A. Because I had seen his signature as a
11 witness on the closing. I don't recall
12 him, you know, sitting there asking
13 questions, or anything of that nature,
14 but I do recall that he witnessed the
15 documents.

16 Q. Would you have signed and notarized
17 anything indicating that Mr. Castro was
18 present at a closing when he was not?

19 A. No, sir.

20 Q. Would you have signed and witnessed any
21 signature on a document when the actual
22 document signer was not present?

23 A. No, sir.

24 Q. Why not?

25 A. Because I'm signing to say that I saw

1 the individual that did sign the
2 document say they signed the document.
3 That's my role. That's the role as a
4 notary, an attorney, and as a witness.

5 Q. In your role as the closing attorney
6 for a residential real estate
7 transaction who do you understand you
8 represent?

9 A. To a certain degree I represent the
10 lender. There's been some
11 clarification issues from the Bar
12 stating what -- how much you represent
13 the lender, but you're also
14 representing the homeowner and making
15 sure that the terms do comply with his
16 expectations, and the homeowner
17 understands the terms of the loan.

18 Q. Would you agree with me that your
19 principal client at a residential real
20 estate closing is the borrower?

21 A. Yes, sir.

22 Q. And would you agree with me that you
23 actually have an attorney/client
24 relationship with the borrower if
25 you're closing their mortgage loan.

1 transaction?

2 A. Yes, sir.

3 Q. And would you agree with me that you
4 have the same duties as any
5 attorney/client relationship in any
6 other kind of context as you have with
7 a borrower at a residential real estate
8 closing?

9 A. Yes, sir.

10 Q. Now in terms of -- and you've heard the
11 testimony. You were here and very
12 patient, and you heard the testimony of
13 Ms. Bebout. You heard her say that
14 none of these documents were explained
15 to her. Do you ever recall a closing
16 that you conducted where you did not
17 explain anything?

18 A. In fact, I could recall a closing where
19 the loan officer, it wasn't this one,
20 of course, but it was a different
21 closing where the loan officer said he
22 doesn't -- this homeowner has done 20
23 closings before just with me. And I
24 said I'm -- well, I still wanted to
25 make sure that he understands what the

1 terms of this loan are. So no, I do
2 not -- I do not let the homeowner sign
3 documents without at least a basic
4 understanding of the note terms, the
5 mortgage, and the right of rescission.

6 Q. In terms of the note terms, what would
7 you explain to the borrower?

8 A. I would explain to them -- I can almost
9 spit it out verbatim what the loan
10 amount is;, who the lender is; when the
11 first payment is due; whether or not
12 there's a prepayment penalty; whether
13 or not -- in -- in all of conventional
14 loans there is no -- there is personal
15 liability. But I do a lot of reverse
16 mortgages, and there's no personal
17 liability. Go over that fact.

18 Q. Would you explain the personal
19 liability in a conventional loan?

20 A. It's not a big issues because it's
21 clear it is a personal liability.
22 You're signing as a borrower. The only
23 exception to the rule is in some
24 reverse mortgage the lender is the
25 personal liability, and the lender is

1 only looking to the value of the
2 property.

3 Q. In regard to signing the mortgage, what
4 terms and conditions would you explain
5 to the borrow in regard to the mortgage
6 or the mortgagor?

7 A. You're given a mortgage on the house.
8 It's guaranteeing repayment of the
9 loan, that your house is collateral for
10 the loan, then you're promising to keep
11 it insured, pay your taxes, and not
12 allow the property to be misused or
13 violate any other laws. That the
14 lender has a right to inspect the
15 property.

16 Q. Would you explain that fast, or would
17 you go a little slow?

18 A. I mean, I -- it's generally eight to 12
19 pages. I take it paragraph by
20 paragraph. I don't state a three
21 minute spiel on each paragraph, but I
22 go over each paragraph. Many
23 attorneys, many attorneys will say, "If
24 you want this loan, you've got to sign
25 here, you've got to sign here, you've

1 got to sign here." In my opinion, you
2 haven't done anything for the
3 homeowner. You haven't done anything
4 for the lender. All you've done is
5 executed the documents.

6 Q. And that's not your way of closing a
7 residential real estate?

8 A. Not at all.

9 Q. In terms of the right of rescission,
10 what would you explain to the borrower?

11 A. Again, my spiel is, you know, be
12 supportive and nice to your spouse in
13 the next few days because either one of
14 you can cancel or both of you-all can
15 cancel. Each of you have the right of
16 rescission for the next three days that
17 includes the date after the closing,
18 and I explain to them when the last day
19 is. I tell them that it's up until
20 midnight of the last day of the -- of
21 the third day, but I advise them not to
22 wait until midnight. I tell them how
23 to -- where to sign it, if they want to
24 sign it. I always make sure I give
25 them two copies each, and I also tell

1 them that be in mind. I would advise
2 them to mail it UPS and ask for a typed
3 returned receipt, and not just stick it
4 in the mail.

5 Q. Do recall ever advising -- well, let me
6 ask you this: If a homeowner ever
7 questioned whether or not they were
8 getting the agreed upon interest rate,
9 loan term, loan amount, anything like
10 that, would you go ahead and close that
11 transaction?

12 A. I would give the homeowners a choice.
13 If it differs, and they're okay with
14 the difference, I would give them time
15 to think about it. I would give them
16 time to mull it over, to consider it,
17 and everything else, and if they still
18 are acceptable of the terms, then it's
19 their choice whether or not to accept
20 the terms.

21 Q. And would you advise them to go ahead
22 and accept them? Have you ever advised
23 a homeowner to go ahead and accept the
24 terms that they found to be different
25 because they could go ahead and

1 refinance it later on down the road?

2 A. I would -- I would hesitate to give
3 that advice one way or another. I
4 would let the homeowner make their own
5 decision.

6 Q. Do you recall ever having given such
7 advice?

8 A. Not that I can recall.

9 Q. You mentioned that you made sure that
10 the borrowers have copies of the
11 documents that they have signed?

12 A. They always have an unsigned copy.
13 Could I make them a signed copy? I
14 can. Rarely does anyone request.
15 Rarely does anyone ask for it.

16 Q. So you have a duplicate copy of all the
17 closing documents unsigned for the
18 borrower?

19 A. I have to give them a copy of the note,
20 the mortgage, the right of rescission
21 right there at the closing, as well as
22 the settlement statement, otherwise,
23 the right of rescission doesn't begin
24 to take effect until they receive those
25 documents.

- 1 Q. And in regard to the settlement
2 statement, the HUD one closing
3 statement, whatever you want to call it
4 --
5 A. Correct.
6 Q. -- do you go over that with the
7 borrower?
8 A. Yes, sir.
9 Q. And what do you tell the borrowers just
10 generally about the numbers?
11 A. I show them what the closing costs are;
12 what major mortgage you're paying off;
13 what the loan amount is; and show them
14 if there's cash to or from the
15 homeowner, or if there's any cash to or
16 from the homeowner at all.
17 Q. Do you recall ever letting a borrower
18 sign a blank document? In other words,
19 the document is not filled in at all.
20 You say, "Go ahead and sign this
21 document"?
22 A. I don't, no.
23 Q. Let me hand you what has been marked
24 Respondents' Exhibit-Number-Three,
25 which is the attorney preference

1 document. Do you recognize any
2 handwriting on that document?

3 A. I recognize my handwriting spelling out
4 Wyatt Willoughby and Allstate-Pat
5 Campbell. That's mine.

6 Q. All right. Would you have allowed the
7 borrower, or any borrower, to sign that
8 document without having filled in those
9 two names?

10 A. To be honest with you, the only time I
11 might do it is I'll make a mental note
12 of it, and I'll say -- because in this
13 instance and other instances where
14 there is a need to rush to the closing,
15 I might ask who it is because I
16 wouldn't know who -- what insurance
17 company or the agent's name. I might
18 wait until later to fill it in, but
19 I'll ask that permission at the
20 closing.

21 Q. You wouldn't fill it in without the
22 permission of your client?

23 A. Correct.

24 Q. Do you remember in this particular
25 circumstance if it was filled in at the

1 closing table?

2 A. I don't know if I filled it in at the
3 closing table, or if I filled it in
4 prior to Ms. Bebout's signature, but
5 that is my handwriting. I wouldn't
6 have had any access to that information
7 any other way.

8 Q. In regard to your actually conducting
9 transactions or closing loans for Mr.
10 Willoughby, did you explain to the
11 borrower why you were doing it and not
12 Mr. Willoughby?

13 A. I believe I did.

14 Q. Let me hand you a document, Mr.
15 Sandifer, and ask if you recognize the
16 signature on that document?

17 A. I recognize mine, and I recognize some
18 handwriting in the block right-hand
19 corner as my handwriting as well. The
20 date, I dated that.

21 Q. All right. If I could retrieve that
22 from you.

23 MR. LANG: And ask this be marked
24 as AmeriCash Exhibit-Number?

25 COURT REPORTER: Sixteen.

1 THE COURT: Number-Sixteen?

2 MR. LANG: Yes, sir.

3 THE COURT: Okay.

4 MR. RAY: No objection, Your
5 Honor.

6 THE COURT: Okay.

7 MR. RAY: That was Sixteen?

8 (Thereupon the Court Reporter
9 marked the pertinent document as
10 AMERICASH-EXHIBIT-NUMBER-SIXTEEN.
11 Later remarked at EXHIBIT NUMBER-
12 FIFTEEN.)

13 Q. Mr. Sandifer, let me hand you what has
14 now been marked and entered as
15 AmeriCash Number-Sixteen and just ask
16 you a couple of questions about that
17 document. Is this the standard
18 document that you utilized at the
19 closings you were doing for Mr.
20 Willoughby?

21 A. Yes, sir. In fact, I use the majority
22 of the form of this in my own practice.

23 Q. And this is what is known as an
24 Engagement Letter of Waiver of Conflict
25 of Interest letter; is that correct?

- 1 A. Correct.
- 2 Q. And you say there's some handwriting
3 down at the bottom?
- 4 A. The bottom right-hand corner is mine.
5 Whether or not there's funds due.
6 Whether or not there's two loans. What
7 I got paid for the closing.
- 8 Q. All right. And "funds due," what does
9 that mean? Funds due at closing or
10 funds due later?
- 11 A. No, it would be is the homeowner
12 required -- is it a cash up refinance.
13 Is it a cash neutral refinance, or is
14 it where the homeowner is supposed to
15 bring money to the table.
- 16 Q. And by the note there I take it that
17 means the homeowner doesn't have to
18 bring money to the table in this
19 particular instance?
- 20 A. Correct.
- 21 Q. Let me hand you what's been marked
22 Plaintiffs' Exhibit-Number-One, and
23 this is a copy of the note with the
24 Allonge attached. I notice that there
25 are initials from the borrower on each

1 of the pages. Is that something that
2 you do in your practice?

3 A. I do do that, not to even indicate to
4 the borrowers here at the closing
5 because, I'm going to have to scratch
6 your paper, but when there's a
7 question, for instance, on the
8 attorney/insurance preference letter,
9 there's several places to sign.

10 Q. That's Respondents'
11 Exhibit-Number-Three; right?

12 A. Yes, sir.

13 Q. Okay.

14 A. And there's several places to sign, and
15 it's unclear where -- for the borrower
16 where to sign. I place a little "X"
17 mark where I -- for instance, on the
18 attorney/insurance preference letter
19 she has the added right to choose
20 attorney, right to choose insurance
21 agent. I ask them what the situation
22 is and indicate appropriately because
23 there are, in this case, on this
24 Respondent's Exhibit-Three, there's
25 three locations to sign. I -- I put

1 that "X" mark at the bottom of page
2 one of the note, page two of the note,
3 and there wasn't any question about
4 where to sign the note, so
5 self-explanatory.

6 Q. Let me hand you what's been marked as
7 Plaintiff's Exhibit-Number-Two, and I
8 take it that this is a copy of the
9 mortgage, and similar initials now for
10 both mortgagors are at the bottom of
11 each page; correct?

12 A. Correct.

13 Q. And let me invite your attention to the
14 last -- well, you might say the last
15 page, the signature page of the
16 mortgage of Respondent's
17 Exhibit-Number-Two.

18 A. Yes, sir.

19 Q. Does that bear your signature?

20 A. Yes, sir.

21 Q. And does it bear Mr. Castro's
22 signature?

23 A. Yes, sir.

24 Q. And again, would you have signed that
25 document without Mr. Castro being

- 1 present at the closing?
- 2 A. No, sir.
- 3 Q. And, of course, Mr. Castro's full name
- 4 is Walter Christopher Castro?
- 5 A. It appears that way. I know him as
- 6 "Chris."
- 7 Q. I'm sorry?
- 8 A. I knew him as "Chris."
- 9 Q. Turn over to the next page of the
- 10 exhibit. And that's the so-called
- 11 probate or acknowledgement portion of
- 12 the mortgage?
- 13 A. Yes, sir.
- 14 Q. And does that bear your signature as a
- 15 notary?
- 16 A. Yes, sir.
- 17 Q. And Mr. Castro's signature as witness?
- 18 A. Yes, sir.
- 19 Q. And would you have notarized that
- 20 document, that probate, if Mr. Castro
- 21 had not been present at the closing to
- 22 witness the signatures of the
- 23 mortgagor?
- 24 A. No, sir, I would not.
- 25 Q. Is Mr. Castro about your same age?

1 A. I haven't seen him in a number of
2 years, but he's approximately the same
3 age.

4 Q. About the same height?

5 A. Close to, yes, sir.

6 Q. Same build?

7 A. Yes, sir.

8 Q. Hair follicly challenged as yourself?

9 A. I don't recall so much, but yeah, I
10 believe so. I don't -- I don't recall
11 in that great of detail.

12 MR. LANG: Begging The Court's
13 indulgence for a minute.

14 THE COURT: Yes, sir.

15 MR. LANG: Thank you very much,
16 Mr. Sandifer. I appreciate your
17 patience with us. And this was my
18 fault. I made you stay here.

19 THE WITNESS: Okay.

20 CROSS-EXAMINATION

21 BY MR. RAY:

22 Q. Mr. Sandifer.

23 A. Yes, sir.

24 Q. Do you remember me doing your
25 deposition November 15th of last year?

1 A. I don't recall the date. I do remember
2 you doing the deposition, yes, sir.

3 Q. Okay. Do you remember what you said at
4 the deposition?

5 A. I remember a large part of it. I don't
6 know if that's what you're asking.

7 Q. I said, "Who set up this closing?"
8 What did you say?

9 A. I believe I said that it was Diane at
10 the office or another employee at the
11 office.

12 Q. At where?

13 A. At the office. At Wyatt's office.

14 Q. Wyatt. Where is Wyatt today?

15 A. I haven't talked to him.

16 Q. Has he been disbarred?

17 A. I don't know. I believe he has --

18 MR. LANG: Objection to the form
19 of the question, Your Honor.

20 There's no good faith basis for
21 asking that question. Mr. Wyatt
22 Willoughby resigned his Bar
23 membership, just so the record is
24 clear. He was not disbarred.

25 MR. RAY: All right. He resigned

1 from the bar?

2 Q. He resigned from the bar?

3 A. I -- I don't have any independent
4 knowledge.

5 Q. All right. Do you remember testifying
6 at your deposition that you don't know
7 really where the closing took place?

8 A. Yes, sir.

9 Q. I later took Mr. Castro's deposition,
10 and he testified he was there only as a
11 witness. Does that surprise you?

12 A. First off, I don't know what Mr. Castro
13 testified to in his deposition, but no,
14 that -- that does not surprise me.

15 Q. Okay. If I heard your testimony a
16 minute ago with Mr. Lang correctly,
17 you're saying that you know you were at
18 this closing because of the signatures.

19 A. I know the fact that I was at the
20 closing for several reasons. One, I
21 have some recollection of the closing.
22 Not -- I can't recall it from the time
23 I sat down at the closing table until
24 the time we all exited the closing
25 table, but I do -- there are several

1 tell-tale signs. One, I remember
2 meeting your clients. Two, the dates
3 on the documents. Three, my
4 handwriting.

5 Q. You remember the date on the documents?

6 MR. LANG: Your Honor, I object.
7 Counsel has to let the witness
8 finish the answer.

9 MR. RAY: All right.

10 Q. Could you explain the items as you go
11 through them?

12 A. Certainly. Where the documents are
13 dated. For instance, on the Engagement
14 letter and Waiver of Conflict of
15 Interest, I dated that. I signed it.
16 On the attorney/client --
17 attorney/insurance preference letter,
18 which is Plaintiff's Exhibit-Three has
19 my tell-tale "X" mark where Ms. Bebout
20 was supposed to sign the document.

21 Q. I'm not saying that you didn't sign the
22 documents. What my question really is,
23 is where you sign the documents?

24 A. Where?

25 Q. Yes.

1 A. I told you I can't recall that answer.
2 Q. You don't know where you signed them?
3 A. I don't remember whether we were
4 sitting at table 407 or 419, or what I
5 thought it was beside.
6 Q. No, I'm talking about were you in Wyatt
7 Willoughby's office when you signed it?
8 A. No, sir.
9 Q. Did you sign them at the closing?
10 A. Yes, sir.
11 Q. Okay. Do you remember telling me at
12 the deposition that you don't recall if
13 you've ever been to Stax Restaurant?
14 A. I do recall that.
15 Q. Why did you say that?
16 A. Because I don't.
17 Q. Do you know where Stax Restaurant is?
18 A. I know there are several. I don't know
19 where each one is. I'm not from
20 Greenville. I don't know where all the
21 locations of Stax are.
22 Q. Well, at the time of the deposition it
23 was four years before, you wouldn't
24 remember being in a restaurant?
25 A. Let me ask this question. August 14th,

1 2005, do you remember where you were?

2 Q. No, I don't. But if I did a closing in
3 a restaurant, I would remember it. I
4 could remember doing unusual things all
5 the way back to when I started
6 practicing law. I remember right where
7 I was. I don't remember the exact
8 date, but I would remember going to a
9 place to, you know, take an Affidavit
10 or mean, anything. I remember
11 everything. I meant, it's not that
12 hard. But four years later you're
13 telling me you don't even know if
14 you've ever been to Stax.

15 A. I don't remember the location of the
16 closing. I do remember meeting your
17 clients.

18 Q. And then I said, "You don't think you
19 would ever remember going to a
20 restaurant?" And you said, "I have
21 closed a loan in a restaurant before.
22 I don't remember if this loan was
23 closed in a restaurant. If so, what
24 restaurant it was." And I said, "What
25 other restaurants have you been to?"

1 And you said, "I don't know." And
2 then something about you had a client
3 out in Hilton Head that owned a
4 restaurant, and you went there and did
5 a closing.

6 A. I could think of one reasonably there.

7 Q. But think a minute. I would think if I
8 went to a place like Stax that's very
9 busy at lunchtime, I would remember
10 this closing very well.

11 MR. LANG: Object to the
12 question, Your Honor. It's
13 argumentative.

14 THE COURT: That's argumentative.

15 MR. RAY: I know I'm testifying.
16 I'm arguing with him.

17 Q. Do you remember talking to Mr.
18 Swaynham and Ms. Bebout about a
19 respite. Do you remember that?

20 A. No, sir.

21 Q. Do you know why they signed four
22 different Truth-in-Lending statements?

23 A. I would have to take a look at one, and
24 I would -- I've seen instances before
25 where for the client's issues the

1 lender needs the final Truth-in-Lending
2 signed at the closing as well as the
3 initial Truth-in-Lending signed for
4 their records.

5 Q. Theoretically Ms. Bebout signed up for
6 about a million two in loans that day,
7 if you look at the Truth-in-Lending.
8 Does that seem unusual?

9 A. If they're signing -- if they're
10 resigning an initial Truth-in-Lending
11 for the clients issues and they're
12 signing the final Truth-in-Lending for
13 the final terms of the loan, it's not
14 that unusual. If they are resigning --

15 Q. I understand. I've got that part.

16 A. Okay.

17 Q. If all the Truth-in-Lendings were dated
18 the same day. Is that unusual?

19 A. I don't know. They clearly didn't sign
20 two notes and two mortgages for the
21 same dollar figure, therefore, they
22 weren't out a million and two in loans.

23 Q. Well, that is confusing, isn't it?

24 A. What's that?

25 Q. All these Truth-in-Lendings.

- 1 A. It depends on the explanation given.
2 If I explained to them that they are
3 signing a Truth-in-Lending for the
4 final terms, and if I explained to
5 them that they were signing
6 Truth-in-Lending reflecting the initial
7 terms which needed to be signed for the
8 lenders and clients.
- 9 Q. That is, you did explain it to them?
- 10 A. I -- I believe I did. I also believe I
11 told them how much money they were
12 getting back, and the interest rate,
13 what the terms of each loan were.
- 14 Q. Do you remember signing some of the
15 documents in the wrong place?
- 16 A. I don't recall exactly. I -- I think I
17 know what you're talking about, but
18 I'll let you ask the question.
- 19 Q. Well, in other words, Mr. Castro, I
20 think, signed where you were supposed
21 to sign, and you signed where he was
22 supposed to sign on some of them?
- 23 A. I saw that just a few minutes ago when
24 Mr. Lang was asking questions on this
25 mortgage. I do see that here on

- 1 Plaintiff's Exhibit-Two.
- 2 Q. Are you sure those Xes weren't there
- 3 for Mr. Castro?
- 4 A. You asked that question during the
- 5 deposition. The Xes beside Ms.
- 6 Bebout's name and Mr. Castro's name.
- 7 Q. There's somewhere Mr. Castro signed.
- 8 A. I'm sorry?
- 9 Q. There were some Xes where Mr. Castro
- 10 signed.
- 11 A. That's what I just said.
- 12 Q. What?
- 13 A. That's what I just said.
- 14 Q. Okay. So who put those Xes there?
- 15 A. I would have put those Xes there.
- 16 Those are my Xes.
- 17 Q. At the time where was Mr. Castro
- 18 living?
- 19 A. Where was he living?
- 20 Q. Yes.
- 21 A. I don't recall. I believe it's in
- 22 Columbia. I believe -- I believe he
- 23 was just finishing the Bar, but I'm not
- 24 positive.
- 25 Q. Have you talked to him in the last

1 year?

2 A. Yes, sir.

3 Q. How many times?

4 A. I talked to him once right around the
5 time that you had Noticed me of the
6 deposition, and I talked to him --
7 tried to call his office the other day,
8 and he's away on duty, military duty.

9 Q. Military duty.

10 A. Yes, sir.

11 MR. RAY: I think that's all I
12 have, Your Honor.

13 THE COURT: Thank you. Any
14 redirect?

15 MR. LANG: Nothing on redirect.
16 Thank you.

17 THE COURT: All right. Thank
18 you. Appreciate you hanging around
19 for us. I guess he can be excused
20 now?

21 MR. LANG: Yes, sir.

22 MR. RAY: Yes, sir.

23 THE COURT: Thank you, Mr.
24 Sandifer.

25 THE WITNESS: Thank you.

1 THE COURT: Can we go to lunch
2 for about 30 minutes maybe? Does
3 that suit everybody?

4 MR. RAY: It might be a little
5 bit -- I've got that witness coming
6 in. I've got to talk to him a
7 minute.

8 THE COURT: Well, I mean --

9 MR. RAY: 2:30?

10 THE COURT: Yes, why don't we say
11 2:30? Does that suit you?

12 MR. LANG: Yes, sir.

13 THE COURT: Because if he's -- I
14 don't know. There's somebody out
15 in the hall. I don't know if that
16 is your witness or not.

17 MR. RAY: Could be.

18 **(A lunch break was taken)**

19 (While off record the Court
20 Reporter remarked the pertinent
21 document AMERICASH
22 EXHIBIT-NUMBER-SIXTEEN as
23 AMERICASH-EXHIBIT-NUMBER-FIFTEEN.)

24 THE COURT: Mr. Lang has the
25 floor, and I believe there's a

1 little housekeeping matter. Go
2 ahead, Mr. Lang.

3 MR. LANG: May it please The
4 Court, Your Honor, two housekeeping
5 matters. Housekeeping matter
6 number one, I mistakenly referred
7 to our last document, the AmeriCash
8 last exhibit, as AmeriCash
9 Exhibit-Number-Sixteen. It is
10 properly AmeriCash
11 Exhibit-Number-Fifteen.

12 THE COURT: Very well.

13 MR. LANG: And I've asked the
14 court reporter to make that change
15 on the exhibit stamp.

16 THE COURT: Okay. Great.

17 MR. LANG: The second thing,
18 Judge, I realized over the break
19 that I had been merrily putting
20 into the record documents which
21 contain Social Security numbers,
22 dates of birth, and personal
23 identifying information such as
24 that. And I suggested to Mr. Ray
25 that before we close the record on

1 this case that he, and I, and Mr.
2 Lydon go through and redact --

3 THE COURT: Yes, let's redact
4 those things.

5 MR. LANG: -- those personal
6 items.

7 MR. RAY: That's an excellent
8 idea.

9 THE COURT: Everybody can agree
10 on that.

11 MR. LANG: And I don't think we
12 need to do it right now because the
13 court reporter is going to keep
14 them in her possession until we
15 close the record, but before we do
16 that, Mr. Ray and I will get
17 together and take care of it.

18 THE COURT: Okay. If you-all
19 will take care of that. Very well.

20 MR. RAY: That's a good thing.

21 THE COURT: Okay. Bob, I believe
22 you have a witness.

23 MR. RAY: Yes, sir. I call Dr.
24 Phillip Swicegood from Wofford.

25 THE COURT: Okay. Dr. Swicegood,

1 come around, and the court reporter
2 will swear you.

3 **Dr. PHILLIP G. SWICEGOOD,**
4 being first duly sworn/affirmed, was
5 examined and testified as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. RAY:**

8 Q. Dr. Swicegood, please state your full
9 name for the record.

10 A. Phillip Graham Swicegood.

11 Q. Okay. And where are you presently
12 employed, Dr. Swicegood?

13 A. I work at Wofford College.

14 Q. In what capacity?

15 A. I'm a finance professor there.

16 Q. And how long have you been there?

17 A. I've been there seven years.

18 Q. And where did you go to college?

19 A. Did undergrad work at Liberty
20 University in Virginia; did a MBA at
21 the University of Texas; and did a
22 Ph.D. in finance at Florida State
23 University.

24 Q. Okay. Is your specialty finance or
25 economics?

1 A. Finance, yes. All my degrees were
2 finance special.

3 Q. And you presently teach at Wofford; is
4 that correct?

5 A. That's correct.

6 Q. And that's what you teach?

7 A. Yes.

8 Q. Are you head of the department?

9 A. I'm program coordinator for the finance
10 division. It's a dual head of the
11 accounting finance department.

12 Q. All right. And have you testified in
13 other cases?

14 A. Yes, I have.

15 Q. And you made computations in other
16 cases relative to economic issues?

17 A. Yes, I have.

18 Q. All right.

19 MR. RAY: Your Honor, I would
20 submit he is qualified as an
21 expert.

22 THE COURT: Anyone care to
23 cross-examine on his expertise?

24 MR. LYDON: No cross-examination
25 and no objection.

1 THE COURT: All right. No
2 objection. He is an expert in the
3 area of finance. Go ahead, Mr.
4 Ray.

5 MR. RAY: Okay.

6 Q. Dr. Swicegood, did I call you around
7 September of 2010?

8 A. Yes.

9 Q. Okay. In relationship to the
10 Swaynham/Bebout loans?

11 A. Yes.

12 Q. Okay. And did I ask you to make
13 certain computations at that time?

14 A. You did.

15 Q. And can you tell me did you do that?

16 A. I did.

17 Q. Okay. And did you come up with an
18 analysis of that?

19 A. I did.

20 Q. Okay. Let me see.

21 MR. RAY: I've got a copy of a
22 letter. If it's all right, we'll
23 submit and make that the next
24 exhibit. And, unfortunately, Your
25 Honor, I don't think I've got a

1 copy for everybody else, but
2 they've received a copy before.

3 (Thereupon the Court Reporter
4 marked the pertinent document as
5 DEFENDANT'S-EXHIBIT-NUMBER-SIX.)

6 Q. Is this a copy of a letter that you
7 sent me on or around September 7th,
8 2010?

9 A. Yes, it is.

10 Q. Okay. And tell me what this is about.
11 What were you doing?

12 A. I was asked to calculate the -- the
13 difference in -- in the payments
14 between what was the original mortgage
15 terms by 30 years, five and a half
16 percent, and what those payments would
17 have looked like versus the second
18 alternative, which was the total
19 500,000 split into the two pieces, one
20 a \$400,000 amount over 30 years at
21 7.625, and the second component of
22 100,000 over 15 years at 11.75. So I
23 aggregated the two payments and took
24 the differential, and then I also did a
25 present value summation of that.

1 Q. Okay. And what did your analysis show?

2 A. For the total payments spread out over
3 the course of 30 years the difference
4 is about \$178,000. And in a present
5 value single lump sum that's an
6 equivalent to about \$122,000.

7 Q.. What's the difference between a lump
8 sum and the figure spread out over 30
9 years?

10 A. Lump sum is the value up front, this
11 was when I was doing analysis in
12 September of 2010, as opposed to the
13 individual payment differences but
14 spread out over time, and that
15 difference accounts for inflation, and
16 risk, and all those other variables
17 that are built into that five and a
18 half percent discount rate that I used.

19 Q. Okay. And just to be specific, I
20 believe you were saying on the payments
21 made over the 30 years that was
22 \$178,474.96; is that correct?

23 A. Correct.

24 Q. Okay. And on the lump sum present
25 value, payoff value, that's

1 \$122,168.83?

2 A. Correct.

3 MR. RAY: That's all I have, Your
4 Honor.

5 THE COURT: Okay.
6 Cross-examination?

7 MR. LANG: Just --

8 CROSS-EXAMINATION

9 BY MR. LANG:

10 Q. Dr. Swicegood, the only question I have
11 for you is your assumption in this
12 calculation is that the 30 year loan
13 would actually pay out of the 30 years;
14 is that correct?

15 A. Yes. That's what I assumed.

16 Q. That was your instruction from Mr. Ray?

17 A. Yes.

18 MR. LANG: I have no further
19 questions.

20 MR. LYDON: Just a couple of
21 questions.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. LYDON:

25 Q. Dr. Swicegood, just so I make sure I

- 1 understand, that's based on monthly
2 payments?
- 3 A. Yes. I'm assuming monthly payments.
- 4 Q. Assuming monthly payments. Okay. And
5 you're assuming that the borrower would
6 actually pay the monthly payments?
- 7 A. Correct. Yes.
- 8 Q. If the borrower on the higher interest
9 rate loan didn't pay the interest,
10 didn't make the payments, would that
11 change the calculation?
- 12 A. Sure. Depending on if there was lack
13 of payment one way or another, sure.
- 14 Q. Okay. So if, say, during the first
15 three years of the loan to be 36
16 payments, the borrower only made 31
17 payments, would that change the amount
18 of the interest rate? Not the amount
19 of the interest rate. The amount of
20 the total interest that was paid by the
21 borrower?
- 22 A. State that one more time.
- 23 Q. Sure.
- 24 A. If they only paid 31?
- 25 Q. If they only paid 31 out of the first

1 36 payments that were due, would that
2 change the difference between the
3 amount of interest that they paid under
4 one loan versus the other loan?

5 A. Since they had different interest rates
6 and different amortization schedules,
7 sure. It will -- it will make a
8 difference, yeah.

9 Q. Okay. Were you asked to calculate --
10 first let me ask you this: Were you
11 provided information by Mr. Ray showing
12 the actual amount of interest that was
13 paid by Mr. Swaynham and Ms. Bebout on
14 the loan that we're here about?

15 A. No.

16 Q. So you don't know how much interest
17 they paid?

18 A. No.

19 Q. Okay. So you don't know whether the
20 interest they actually paid was more
21 than they would have paid on a five and
22 half percent loan or less than they
23 would have paid on a five and a half
24 percent loan?

25 A. No. I was just given these rates.

1 Q. Just a hypothetical?

2 A. These were the facts as I understood
3 them as they were presented to me.

4 Q. Okay. So you just compared two
5 hypothetical loans?

6 A. Yes. Yes.

7 Q. Okay. And you weren't provided or
8 didn't do any sort of review of the
9 payments that Mr. Swaynham and Ms.
10 Bebout actually paid to the lender?

11 A. No, I didn't look at that.

12 MR. LANG: That's all the
13 questions I've got. Thank you very
14 much.

15 THE COURT: Any redirect?

16 MR. RAY: Your Honor, just one
17 follow-up question.

18 CROSS-EXAMINATION

19 BY MR. RAY:

20 Q. Dr. Swicegood, you don't know Alec
21 Swaynham or Barbara Bebout, do you?

22 A. No.

23 Q. Okay. And did you have a bill for
24 coming over here today and testifying?

25 A. I probably do.

1 Q. Did you prepare a bill, or can you
2 prepare a bill for your testimony
3 today?

4 A. Yes.

5 Q. Okay. And you did charge for your
6 services previously; is that correct?

7 A. Correct.

8 Q. Okay. Do you have the bill with you --
9 do you have a bill, or will you prepare
10 a bill for today?

11 A. I will.

12 Q. Okay.

13 A. I have not yet.

14 Q. All right.

15 MR. RAY: That's all I have.

16 THE COURT: Thank you, Dr.

17 Swicegood. I assume he can be
18 excused?

19 MR. RAY: Yes, sir.

20 MR. LANG: No objection.

21 THE COURT: No objection? Thank
22 you. Thank you for coming, sir.
23 Okay. I think we're still on the
24 Defendant/Third-Party Plaintiffs
25 case.

1 MR. RAY: Yes, sir. And we will
2 call Alec Swaynham to the stand,
3 please.

4 THE COURT: Okay. Mr. Swaynham,
5 please come up. The court reporter
6 will swear you.

7 ROBERT ALEC SWAYNGHAM,
8 being first duly sworn/affirmed, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. RAY:

12 Q. Alec, please state your name.

13 A. It's Robert Alex Swaynham.

14 Q. All right. And how old are you?

15 A. I'm 45.

16 Q. All right. And are you married to
17 Barbara?

18 A. I am.

19 Q. Okay. And she's been testifying today;
20 is that correct?

21 A. Yes.

22 Q. Okay. And where do you work?

23 A. I work for TRS.

24 Q. What is that?

25 A. It's a subsidiary of Fluor Corporation.

1 Q. Okay. And how long have you worked
2 there?

3 A. Since November 2004.

4 Q. Okay. And what do you do there?

5 A. I work in operations and maintenance in
6 the project controls group.

7 Q. All right. And what is your
8 educational background like?

9 A. I have an Associate's Degree in
10 computer technology.

11 Q. Okay. And where else did you work
12 before TRS?

13 A. I worked for Metropolitan Life
14 Insurance and Ahold Information
15 Systems, American Equipment, Bi-Lo,
16 Incorporated.

17 Q. Okay.

18 A. South Carolina Department of Health and
19 Environmental Quality Control.

20 Q. Okay. All right. You've heard all the
21 testimony that's gone on before. In
22 2006 were you trying to consolidate
23 some loans?

24 A. Yes.

25 Q. And to do that what did you do?

1 A. I filled out a form on Lendingtree.com
2 where the -- which site will have
3 lenders that are interested in lending
4 you money contact you.

5 Q. And did somebody from AmeriCash contact
6 you?

7 A. Yes.

8 Q. And who was that?

9 A. Tamara Pacak.

10 Q. Okay. Have you ever met Tamara Pacak?

11 A. No, I have not.

12 Q. Okay. And how did you communicate with
13 her?

14 A. By telephone.

15 Q. E-mail?

16 A. Possibly E-mail.

17 Q. Okay. Did she send you a loan
18 application in August of 2006?

19 A. I don't remember the exact document,
20 but she sent us something I'm sure we
21 signed and sent back on August 31st,
22 which was probably the loan
23 application.

24 Q. Was it something you filled out in
25 hand?

- 1 A. Yes.
- 2 Q. Okay. Not on the internet?
- 3 A. No. Not on the internet.
- 4 Q. All right. In that document -- and
- 5 we'll just call her "Tamara," did she
- 6 ask for an income figure?
- 7 A. I do not recall.
- 8 Q. Did she ask how much money you and Barb
- 9 made?
- 10 A. I guess so. I -- I don't remember
- 11 anything on that document, but I'm sure
- 12 I told her over the telephone.
- 13 Q. Okay. And when you gave her that
- 14 figure, whose income were you talking
- 15 about?
- 16 A. Our total household income.
- 17 Q. So the total household income. All
- 18 right. Okay. And also, let me see,
- 19 you-all have three children together;
- 20 is that correct?
- 21 A. Yes.
- 22 Q. And they're in college? Some of them?
- 23 A. One is left in college now. At the
- 24 time we had two or three in college.
- 25 Q. Okay. And you were helping them with

1 college?

2 A. Yes.

3 Q. Okay. And so you had conversations
4 with Tamara. In those conversations
5 what did you learn from Tamara?

6 A. The initial conversation with Tamara
7 was where she asked what terms I was
8 interested in on the mortgage. I told
9 her I was interested in a \$500,00 loan
10 at five and a half percent interest for
11 30 years, fixed payment, and that I
12 wasn't interested in dealing with
13 multiple banks over the period of the
14 loan. I wanted whoever I did business
15 with to keep the mortgage.

16 Q. All right. So you say you didn't want
17 the mortgage sold?

18 A. I didn't want it sold.

19 Q. Okay. And did she agree to that?

20 A. Yes.

21 Q. And what about the amount you wanted to
22 borrow and the rate?

23 A. I wanted to borrow 500,000 at five and
24 a half percent.

25 Q. All right. And did you have trouble

1 ever getting in touch with her?

2 A. Over the course of several months we
3 made contact, but I had a lot of
4 difficulty getting answers in a
5 reasonable amount of time from her when
6 she initially said the whole process
7 would take three or four weeks.

8 Q. All right. And after the end of August
9 of 2006 did you receive any other
10 documents from her until the time of
11 the closing?

12 A. I -- I don't recall any documents.

13 Q. Okay. Are you pretty good about
14 keeping records or not?

15 A. I am.

16 Q. Okay. And have you been through your
17 records?

18 A. I have.

19 Q. And did you find any other documents
20 you might have received?

21 A. I -- I did not.

22 Q. All right. Now as a result of your
23 conversations with her what were you
24 expecting in terms of an attorney for
25 this closing?

- 1 A. I was expecting Ken Acker to represent
2 us at the closing.
- 3 Q. Now why was that?
- 4 A. He's been the only attorney I've ever
5 used, whether it be for Wills, or real
6 estate closings, or whatever. I've
7 used him three times for real estate
8 loans and once for a Will.
- 9 Q. Did you tell Tamara that?
- 10 A. Yes.
- 11 Q. Okay. And what did she tell you about
12 the loan? I know you just said what
13 you wanted. Did she say --
- 14 A. She agreed -- she contacted us, and
15 that was the agreement that it was a
16 500K loan at five and a half percent
17 for 30 years.
- 18 Q. All right.
- 19 A. And we continued to pursue it with her
20 because that was our understanding of
21 what she was going to provide.
- 22 Q. And on the morning of November 20,
23 2006, did you get a phone call?
- 24 A. Yes.
- 25 Q. Okay. And who was that from?

- 1 A. Tamara.
- 2 Q. And what did she say?
- 3 A. That the loan closing was going to be
4 today at lunchtime, and that we needed
5 to plan to meet with the closing
6 attorneys.
- 7 Q. And where were you to go to?
- 8 A. Stax Restaurant.
- 9 Q. Okay. And where was Tamara located, do
10 you know?
- 11 A. I -- I'm guessing she was in California
12 because the phone number I had was an
13 area code for California.
- 14 Q. All right. And so did you go to Stax
15 Restaurant?
- 16 A. Yes.
- 17 Q. And what did you see when you got
18 there?
- 19 A. There was a gentleman there that looked
20 like an attorney, and he had documents,
21 and he approached us, I guess, because
22 we looked like we were looking for
23 somebody, and said he was there
24 representing AmeriCash.
- 25 Q. And did he identify himself, his name?

1 A. I don't remember him telling us his
2 name.

3 Q. All right. And had you ever talked to
4 Wyatt Willoughby before this closing?

5 A. I never spoke with Wyatt Willoughby.

6 Q. Was that Barb that spoke to him?

7 A. Yes.

8 Q. Okay. And who did you think this guy
9 was?

10 A. I thought it was Wyatt Willoughby.

11 Q. Okay.

12 A. Because I didn't know the other two
13 persons' names before we contacted you
14 to handle our case.

15 Q. All right. And you saw Mr. Sandifer in
16 here a little while ago. Was that the
17 gentleman that was at the restaurant?

18 A. I did not recognize him as being the
19 gentleman at the restaurant.

20 Q. When was the first time you ever saw
21 Mr. Sandifer?

22 A. In Columbia when we went to his
23 deposition with you.

24 Q. All right. Did you see Mr. Castro when
25 we did his deposition over the Skype

1 computer?

2 A. I did.

3 Q. All right. Was that the gentleman that
4 was in the restaurant?

5 A. Yes.

6 Q. And let's see. You went to the
7 closing. I ask you now if you knew
8 then what you know now, would you have
9 gone to that closing?

10 A. No.

11 Q. That's like a song. Isn't there a
12 song.

13 MR. LANG: Objection, Your Honor.
14 Move to strike.

15 THE COURT: Stricken.

16 MR. RAY: Okay.

17 Q. Why do you say that? Why would you not
18 have gone to this closing?

19 A. I didn't get anything that I asked for
20 in the initial contact with the
21 mortgage company.

22 Q. All right. And what are you talking
23 about? In terms of what?

24 A. The terms of the loan.

25 Q. Okay. What about the attorney?

1 A. I did not get the attorney I requested
2 either.

3 Q. Okay. I ask you to look at a document
4 that -- I don't know what number we're
5 on. I ask you to look at that
6 document. Do you recognize the
7 signature on that document?

8 A. I do.

9 Q. And whose signature is that?

10 A. Barbara's.

11 Q. Okay. And what's the date next to that
12 signature?

13 A. November 20th, 2006.

14 Q. Okay. And what does it say at the top
15 of that document?

16 A. Notice of Assignment, Sell, or Transfer
17 of Servicing Rights.

18 Q. Okay. It says, "Transferred from
19 AmeriCash to"?

20 A. AmeriCash.

21 Q. And what's the effective date?

22 A. January 1st, 2007.

23 Q. Do you have any idea what this document
24 means?

25 A. No, because I -- my mortgage was with

1 AmeriCash, and it says it's
2 transferring it to AmeriCash.

3 Q. Okay. And you just testified you did
4 not want the loan to leave AmeriCash;
5 is that correct?

6 A. That's correct.

7 Q. Do you see the loan number at the top?
8 It ends in -- what's the last two
9 digits?

10 A. Eleven.

11 Q. Okay. And do you remember seeing this
12 document at the closing?

13 A. I don't remember it, but I -- I didn't
14 initial it or sign even.

15 Q. All right. Now did you -- after the
16 closing was over did you attempt to
17 call Tamara about the loan?

18 A. I did.

19 Q. And why did you attempt to do that?

20 A. I was attempting to discuss with her
21 the terms of the loan and to have an
22 opportunity to refinance it, what I had
23 really asked for originally.

24 Q. And who gave you that idea about
25 refinancing what you just did?

1 A. The closing attorney.

2 Q. Okay. And that would be Mr. Castro?

3 A. Yes.

4 Q. Okay. Did he ever discuss the cost of

5 refinancing the loan with you?

6 A. Like if we refinanced the second time

7 to get what we wanted or the --

8 Q. Yes. How much that would cost to

9 refinance. Did he ever say that?

10 A. He did -- did not.

11 Q. Okay. And had Tamara ever told you

12 that AmeriCash was going to transfer

13 the loan to anybody else?

14 A. No, she did not.

15 Q. Okay. What did she indicate?

16 A. She indicated that they would keep the

17 loan in-house. That they were not a

18 brokerage. That they were the mortgage

19 company I would be dealing with,

20 sending my payments to.

21 Q. And were you able to get Tamara,

22 communicate with her, after the

23 closing?

24 A. Maybe once. I -- I know I attempted

25 several times in December and January,

- 1 and finally I gave up.
- 2 Q. And so did you ever learn did she leave
- 3 that office or something?
- 4 A. I'm assuming so. She's not ever been
- 5 there since to talk to. She doesn't
- 6 appear to work there anymore.
- 7 Q. Okay. And did they give you anybody
- 8 else to talk to there?
- 9 A. No, they did not.
- 10 Q. Okay. Now did you make payments on
- 11 this loan after the closing?
- 12 A. I did.
- 13 Q. And who did you make them to?
- 14 A. AmeriCash.
- 15 Q. And for how long?
- 16 A. Thirteen months.
- 17 Q. So what months would that get you up
- 18 to?
- 19 A. January 2008.
- 20 Q. Okay. And after that time did you make
- 21 payments to another company?
- 22 A. I did. To GMAC.
- 23 Q. All right. How long did you do that?
- 24 A. Four months.
- 25 Q. And after that did you make payments to

1 somebody else?

2 A. Yes. To ASC for the remaining period
3 of time.

4 Q. Okay. Now in answering this
5 foreclosure and filed your Counterclaim
6 have you incurred expenses?

7 A. I have.

8 Q. Well, you heard Dr. Swicegood just
9 testify; is that correct?

10 A. Yes. That's correct.

11 Q. And what did you hear him say?

12 MR. LANG: Objection, Your Honor.
13 He can't repeat what a witness
14 said.

15 THE COURT: I mean, the witness'
16 testimony is in the record.

17 MR. RAY: Right.

18 THE COURT: Rephrase your
19 question, Mr. Ray.

20 Q. Is that one of your damages?

21 A. Yes.

22 Q. Okay. And did you incur attorneys'
23 fees in answering this?

24 A. Yes. I have attorneys' fees for two
25 attorneys.

1 Q. All right.

2 A. I've also incurred court fees with the

3 court filings and court reporters.

4 Q. What about statutory damages?

5 A. I'm not sure what you're asking there.

6 Q. Okay. Are you asking The Court to

7 award you attorneys' fees and all these

8 other costs?

9 A. Yes. I am.

10 Q. All right. Now, a final thing. Did you

11 total up the payments that you made to

12 AmeriCash, GMAC, and ASC?

13 A. Yes. To those three companies for the

14 \$400,000 loan totaled to \$107,438, and

15 to the other loan, the \$100,000 loan

16 that passed through four companies,

17 added up to 40,000 and something

18 dollars for a total of one hundred and

19 -- rounding to the nearest 1,000,

20 \$148,000.

21 Q. 148,000 you've paid in on those two

22 loans?

23 A. Yes.

24 Q. Okay. All right.

25 MR. RAY: That's all I have for

1 right now.

2 THE COURT: Thank you, sir.

3 Cross-examination?

4 MR. RAY: Your Honor, I would ask
5 to move to have that document moved
6 into evidence.

7 THE COURT: Oh, sure. Which
8 number will this be, Ms. Court
9 Reporter?

10 COURT REPORTER: Number-Seven is
11 the Notice of Assignment.

12 THE COURT: Number-Seven?

13 COURT REPORTER: Yes.

14 THE COURT: Okay.

15 MR. RAY: All right.

16 MR. LANG: No objection.

17 (Thereupon the Court Reporter
18 marked the pertinent document as
19 DEFENDANTS'-EXHIBIT-NUMBER-SEVEN.)

20 CROSS-EXAMINATION

21 BY MR. LYDON:

22 Q. Mr. Swaynham, you mentioned several
23 representations or agreements that you
24 reached with Tamara regarding what this
25 loan was going to be?

1 A. Yes.

2 Q. And who was going to close it?

3 A. (Witness nods head.)

4 Q. You need to say "yes" or "no."

5 A. Yes, I did.

6 Q. Do you have anything in writing from

7 her?

8 A. No, I do not.

9 Q. Now you indicated that you communicated

10 with her some by E-mail. Do you have

11 any E-mails from her?

12 A. I do not. It's not something I thought

13 I needed to say at the time.

14 Q. All right. When you and your wife left

15 the closing you got a package of

16 documents at the closing; is that

17 correct?

18 A. That's correct.

19 Q. How many documents was it?

20 A. Maybe a ream or two of paper. I -- I

21 don't know. It was a stack about like

22 this (indicating).

23 Q. Okay. So a ream is 500 pages; is that

24 right?

25 A. Yes. It's -- yeah.

1 Q. Okay. So --

2 A. A good number of documents.

3 Q. Seven hundred pages?

4 A. I -- that's correct.

5 Q. Okay. And did you give all of those to
6 your attorney?

7 A. I gave everything we had to Mr. Ray.

8 Q. Okay. So he's got several hundred
9 pages of documents that were given to
10 you at this loan closing?

11 A. I couldn't tell you the number, but, I
12 mean, it's a big stack, you know, two
13 or three inches. However that is.

14 Q. Okay. Two or three inches.

15 A. Yes.

16 Q. Did you keep a copy, or did you give
17 him your only copy?

18 A. I gave him my only copy.

19 Q. Okay.

20 MR. LYDON: That's all the
21 questions I've got. Thank you very
22 much.

23 THE COURT: Mr. Lang?

24 MR. LANG: May it please The
25 Court, Your Honor.

CROSS-EXAMINATION

BY MR. LANG:

Q. Mr. Swaynham, good afternoon. My name is Louis Lang. We met it was about a year ago or so.

A. Yes, sir.

Q. You said in your direct examination that you told Ms. Pacak that the \$14,000 was a total of your income and your spouse's income; is that correct?

A. I gave her a number that was the total of our income, but 14,000 would -- would not have been it.

Q. Well, what would have been the number?

A. It should have been around 20,000 to 20,500 per month.

Q. Twenty thousand to 20,500 per month?

A. Gross income.

Q. Gross income from you and your spouse in August of 2006?

A. Yes.

Q. Okay. What was your spouse's income, and what was yours?

A. I don't remember the exact numbers, but Barb should have been around 88 to

1 \$89,000, and mine would have been in
2 the neighborhood of 100 to 155,000.
3 Q. Well, that's your gross annual.
4 A. Annual income.
5 Q. I'm talking about your monthly gross.
6 A. Monthly gross should have been
7 somewhere around 19, to 20,000.
8 Q. Okay. Again, I'm asking how much you
9 made a month in August of 2006 gross?
10 A. Whatever, say, 153,000 divided by 12
11 is.
12 Q. If you could divide that up for me real
13 quick.
14 A. It's 12,750.
15 Q. All right. So that was your gross
16 income; is that correct?
17 A. That's correct.
18 Q. That's not 14,000?
19 A. No, that's not 14,000.
20 Q. And then your spouse's income, Ms.
21 Bebout's income, was you said about 88
22 -- well, tell me what you think that
23 was.
24 A. I'm guessing that she was around
25 88,000. I don't have any documentation

1 to tell me. That would have been
2 \$7,333.
3 Q. So we're talking about 19,000 and
4 \$20,000 a month; is that correct?
5 A. Yes.
6 Q. Where did this \$14,000 number come
7 from?
8 A. I have no idea.
9 Q. Well, your wife signed the Uniform
10 Residential Loan Application, did she
11 not, at the closing that said the
12 borrower was making \$14,000 a month;
13 isn't that right?
14 A. That's correct.
15 Q. You've seen that document before; is
16 that correct?
17 A. I have.
18 Q. And you had the opportunity, as did Ms.
19 Bebout, to review that document at the
20 closing, did you not?
21 A. If you consider the number of documents
22 we probably had 20 seconds or so per
23 document to review them and sign them
24 --
25 Q. Well, was anybody --

1 A. -- over the period of the closing, so
2 as much --

3 Q. Was anybody rushing you out -- I'm
4 sorry.

5 A. As much as you can know what's on the
6 document in 15 or 20 seconds, we
7 reviewed them.

8 Q. Was anyone rushing you out the door
9 that it had to be done in a certain
10 amount of time?

11 A. We were both required to be back at
12 work that afternoon after lunch because
13 we did not have notice to ask for the
14 day off.

15 Q. Did the closing attorney say, "We've
16 got to get this done in an hour"?

17 A. We said that we had our lunch hours to
18 get the closing done.

19 Q. You had every opportunity though, did
20 you not, to review any document you
21 wanted as you signed it; isn't that
22 correct?

23 A. That's correct.

24 Q. Now you testified on the record that
25 you had contact with AmeriCash after

- 1 the closing.
- 2 A. Yes.
- 3 Q. Is that correct?
- 4 A. That's correct.
- 5 Q. You never wrote them a letter though;
- 6 right?
- 7 A. Did not write any letters.
- 8 Q. Not one single letter over a period of,
- 9 say, you paid AmeriCash how many
- 10 months?
- 11 A. We paid them 13 months.
- 12 Q. Thirteen months you made payments on
- 13 both of these loans?
- 14 A. AmeriCash was initially the person or
- 15 company receiving the payments on both
- 16 loans.
- 17 Q. All right. You paid AmeriCash for a
- 18 period of 13 months on both these
- 19 loans; is that right?
- 20 A. Only on the \$400,000 loan. They sold
- 21 the other loan to I believe it was
- 22 Homecomings Financial before they sold
- 23 that loan the year that we sent them to
- 24 GMAC.
- 25 Q. All right. Let me just focus on the

1 \$400,000.

2 A. Okay.

3 Q. That \$400,000 loan you made payments,
4 according to your testimony, to
5 AmeriCash for a period of 13 months;
6 right?

7 A. Yes.

8 Q. Do you have a payment book?

9 A. No. We never received a payment book.

10 Q. You wrote them checks?

11 A. I wrote them checks?

12 Q. And every month you wrote that check;
13 correct?

14 A. That's correct.

15 Q. And every month, according to your
16 testimony, you knew that that loan was
17 not what you had been told was going to
18 be on; correct?

19 A. That's correct.

20 Q. But you kept making those payments in
21 writing to AmeriCash for a period of 13
22 months; correct?

23 A. That's correct.

24 Q. And you never wrote them and told them
25 "This is not the deal I agreed to";

1 isn't that right?

2 A. I did not write. I attempted to call
3 them.

4 Q. Well, you didn't write them, did you?

5 A. I did not.

6 Q. Did you ever try to contact the
7 president of AmeriCash?

8 A. You can't do it.

9 Q. Did you ever try?

10 A. I did try talking to most anybody at
11 AmeriCash, primarily with Tamara Pacak.

12 Q. Well, you told me she had left at some
13 point in time; correct? Or she
14 wouldn't even return your calls.

15 A. Don't know -- yeah, don't know when she
16 left. She stopped returning phone
17 calls.

18 Q. You never tried to call the president
19 of AmeriCash; isn't that right?

20 A. That's correct.

21 Q. You didn't try to E-mail him, the
22 president's E-mail.

23 A. I don't have his E-mail address.

24 Q. I believe they have a website on the
25 internet, do they not?

1 A. They do. Try sending E-mail to it.
2 You won't get a response.
3 Q. Please answer my question. They have
4 an internet website, do they not?
5 A. They do.
6 Q. You never tried to Federal Express a
7 letter to AmeriCash; right?
8 A. I did not.
9 Q. And you never made any complaints about
10 all these things that you said were
11 wrong with this closing until this
12 litigation was filed; is that correct?
13 A. That's correct.
14 Q. I'm going to hand you a document and
15 ask you if you can identify it.
16 A. This is a document that we sent to ASC
17 where they were asking for information
18 to -- about our income to -- redo the
19 mortgage.
20 Q. I understand. Let me ask you a couple
21 of questions. Your signature appears
22 on the second page of that document?
23 A. It does.
24 Q. And this is documents that you
25 authored, that you wrote?

1 A. Yes.

2 Q. If I could retrieve that from you.

3 MR. LANG: Your Honor, I ask that
4 this be marked as AmeriCash
5 Number-Sixteen.

6 MR. RAY: Your Honor, could we
7 have just a minute.

8 THE COURT: Are you looking at a
9 copy?

10 MR. LANG: Yes, sir, he is.

11 THE COURT: Okay. Take your
12 time. By the way, while he's
13 looking at that, the 4:30 thing I
14 had went away, so if we need to run
15 past 4:30, that's fine with me.

16 MR. RAY: No objection, Your
17 Honor.

18 THE COURT: No objection.
19 Number-Sixteen for AmeriCash.

20 (Thereupon the Court Reporter
21 marked the pertinent document as
22 AMERICASH-EXHIBIT-NUMBER-SIXTEEN.)

23 Q. Mr. Swaynham, let me hand you what has
24 now been marked and entered as
25 AmeriCash Number-Sixteen. And this is

1 written by you; is that correct?

2 A. That's correct.

3 Q. And it doesn't say anything about this
4 \$100,000 loan being the wrong interest
5 rate, does it?

6 A. It does not.

7 Q. It doesn't say anything about this
8 \$400,000 loan being the wrong principal
9 amount, and that's 500,000; correct?

10 A. It does not.

11 Q. And I think it was supposed to have
12 been dated January 11, 2009; is that
13 correct?

14 A. 2010.

15 Q. I'm sorry. 2010.

16 A. Uh-huh.

17 Q. But it's actually typed January 11,
18 2009, which you just mixed up the date.

19 MR. RAY: Your Honor, I'm sorry.
20 When is it dated?

21 THE WITNESS: I accidentally put
22 the wrong date in the -- in the
23 header of the letter. I meant to
24 put 2010, but it was early 2011.

25 Q. I mean, it was 2009. You meant to put

1 2010.

2 A. Yeah, I mean -- yeah. That's correct.

3 Q. And you say in this letter, do you not,

4 "We are behind on our expenses due to

5 loss of Barbara's income after she had

6 a heart attack ... [earlier this]

7 year"; correct?

8 A. That's correct.

9 Q. And your wife had a heart attack, I

10 think, back in May of 2009; is that

11 right?

12 A. It was Easter weekend, whenever that

13 was.

14 Q. In 2009; correct?

15 A. That's correct. That's correct.

16 Q. You don't say anything in this letter

17 about, again, "This is the wrong loan.

18 I didn't agree with this one"; correct?

19 A. That's correct.

20 Q. Now there were two people, were there

21 not, at the closing of this loan

22 transaction. Is that not correct?

23 A. There was Barb, myself, and an

24 AmeriCash representative.

25 Q. All right. There was another person

1 there, was there not, other than you,
2 yourself, and this Mr. Castro; isn't
3 that correct?

4 A. We don't remember anyone else being
5 there.

6 Q. You don't remember anyone else being
7 there?

8 A. I do not.

9 Q. Do you remember being deposed in Mr.
10 Ray's office?

11 A. I do.

12 Q. On October 8th, 2010. Do you remember
13 that?

14 A. I do.

15 MR. LANG: Your Honor, if I may?

16 THE COURT: Yes, sir.

17 Q. Mr. Swaynham, I'm going to hand you a
18 copy of actually the original of your
19 deposition, and if you will bear with
20 me one moment, I'm going to invite your
21 attention to page 60 of that
22 deposition.

23 MR. RAY: Did you say "60"?

24 MR. LANG: Yes.

25 MR. RAY: All right.

1 Q. The page numbers are at the top right
2 hand.

3 A. I -- I found it.

4 Q. Are we on page 60? All right. Do you
5 remember me asking you the question,
6 "And who was there?" And you're
7 answering, "I don't remember the
8 person's," and the "S" after the person
9 is with the apostrophe after the "S."
10 I'm sorry. Person's is spelled
11 p-e-r-s-o-n-'-s, "names, but it was I
12 -- I assume Mr. Willoughby, the
13 attorney, and I think one other person
14 was there, maybe two."

15 A. Yes.

16 Q. "I don't remember." Is that your
17 testimony?

18 A. That is my testimony.

19 Q. And now your testimony here today is
20 that there was only person; is that
21 correct?

22 A. That is correct.

23 Q. So you remember things better now than
24 you did back in December or October of
25 2010; is that correct?

1 A. I do. The reason being is because when
2 you did this deposition I had not met
3 Mr. Castro or Mr. Willoughby. Oh, I
4 had met Mr. Castro, but I had not met
5 Mr. Willoughby or Mr. Sandifer. I know
6 the restaurant was really crowded.
7 There was waitresses coming and going.
8 There were a lot of people around. The
9 only person I remembered was Castro.
10 After going to their depositions I was
11 sure he was the only one that was
12 there.

13 Q. Well, you weren't sure in 2010; is that
14 correct?

15 A. That's correct. I didn't know what
16 they looked like.

17 Q. And, in fact, you said you think
18 probably there was one other person
19 there other than Mr. Willoughby who you
20 assumed was Mr. Castro and Mr.
21 Sandifer; correct?

22 A. I did say that then.

23 Q. And when you went to the Stax
24 Restaurant Mr. Acker wasn't there;
25 right?

1 A. He was not there.

2 Q. Did anyone tell you not to call Mr.

3 Acker?

4 A. No, they did not.

5 Q. Could you have called him?

6 A. I could have called him.

7 Q. Did you ever talk to Mr. Acker about

8 this particular transaction?

9 A. No, I did not. Tamara Pacak was

10 supposed to arrange everything with the

11 closing attorneys.

12 Q. But you never took the initiative to

13 call Mr. Acker; correct?

14 A. No, I, did not.

15 Q. Even when you got to that closing, and

16 Mr. Acker wasn't there?

17 A. And I did not do it with the three

18 prior closings I did with him either.

19 Q. Well, you --

20 A. The loan officer took care of it.

21 Q. Well, those two other closings were

22 with Mr. Acker; correct?

23 A. I had three with him.

24 Q. Well, you had three with Mr. Acker;

25 right?

1 A. And every one of them was arranged by
2 the -- the loan officer.

3 Q. And Mr. Acker was there; isn't that
4 right?

5 A. He was.

6 Q. And you're trying to get money from
7 AmeriCash because Mr. Acker was not at
8 this deposition -- or at that closing;
9 correct?

10 A. That is correct.

11 Q. But you went there, and you saw that he
12 wasn't there; correct?

13 A. That's correct.

14 Q. And you did not ask to call him or to
15 stop the closing and call Mr. Acker at
16 that time; correct?

17 A. I did not.

18 Q. You didn't do anything like that;
19 correct?

20 A. I called Tamara Pacak.

21 Q. You knew that Mr. Acker wasn't there;
22 isn't that right?

23 A. That's true. Correct.

24 Q. And you called Ms. Pacak before you
25 signed all these documents; correct?

- 1 A. That's correct.
- 2 Q. And she told you that this was the best
3 that she could do; isn't that right?
- 4 A. That's correct.
- 5 Q. And you went ahead and did it anyway;
6 isn't that correct?
- 7 A. That's correct.
- 8 Q. No one forced you to sign any of these
9 documents; correct?
- 10 A. They did not.
- 11 Q. The loan, or rather, the mortgage that
12 you were paying off by way of this
13 mortgage transaction, you had that with
14 Peoples National; correct?
- 15 A. That's correct.
- 16 Q. You don't remember what the terms of
17 that loan are, do you?
- 18 A. I don't remember.
- 19 Q. You don't remember at all.
- 20 A. It was too long ago.
- 21 Q. Too long ago. But you remember in 2006
22 that somebody from AmeriCash promised
23 you a \$500,000 loan at 5.5 percent; is
24 that right?
- 25 A. I do.

- 1 Q. But you don't remember the loan that
2 was paid off by this transaction. What
3 its terms and conditions were?
- 4 A. I know it was seven and a quarter
5 percent, or thereabouts, interest rate.
6 I do not know the -- the end of the
7 mortgage, or the balloon payment, or
8 the initial date for signing the
9 construction loan. I -- I don't
10 remember the details of --
- 11 Q. Don't remember those things; is that
12 right?
- 13 A. I -- I wasn't upset about those things.
14 I got what I asked for then.
- 15 Q. In terms of getting what you asked for
16 you don't have any document, anything
17 in writing, nothing from AmeriCash that
18 says, "We're going to give you a
19 \$500,000 five percent loan" --
- 20 A. I do not.
- 21 Q. Let me finish my question. \$500,000
22 5.5 percent loan; correct?
- 23 A. Correct.
- 24 Q. Nothing at all?
- 25 A. Nothing.

1 Q. And is that the documents that you gave
2 Mr. Ray you said that was -- I think
3 you made a motion, I couldn't quite see
4 it -- it was like five inches thick?
5 A. I said two or three inches thick.
6 Q. Two or three inches?
7 A. Yeah.
8 Q. Hundreds of pages; right? Is that
9 right?
10 A. However many is in two or three inches
11 of documents.
12 Q. Well, I think you testified when Mr.
13 Lydon was cross-examining you that
14 there were hundreds of pages. Is that
15 right or wrong?
16 A. I corrected myself and said that it was
17 however many pages was in two or three
18 inches of a stack of papers.
19 Q. A stack of papers about two or three
20 inches thick; correct?
21 A. Uh-huh.
22 Q. I'm sorry. You have to say "yes."
23 A. Yes.
24 Q. Mr. Swaynham, let me hand you a
25 document that's a multipage document,

1 and ask if you recognize that document,
2 and in particular, recognize any
3 initials or the signature on the
4 bottom?

5 MR. RAY: Your Honor, I couldn't
6 hear what he said.

7 Q. Mr. Swaynham, I'm handing you a
8 document, and I would ask you if you
9 recognize any signatures on that
10 document, and in particular any
11 initials on the document?

12 A. Yes. This is the -- the mortgage
13 document, and it's got my wife's
14 initials and my initials at the bottom,
15 but it's not really -- Barb's initials
16 aren't like she usually does it for
17 some reason.

18 Q. Let me invite your attention to the
19 sixth page, sixth page of seven, and
20 ask you if you recognize any signatures
21 on that page?

22 A. The sixth page?

23 Q. Right. Six pages.

24 A. I do. I see what you're talking about
25 this page.

1 Q. Is your signature on that?

2 A. Yes, it is.

3 Q. And do you recognize your wife's
4 signature on that page as well?

5 A. I do.

6 Q. All right. Can I retrieve that from
7 you?

8 MR. LANG: Your Honor, I would
9 ask that this be marked as
10 AmeriCash Exhibit-Number-Seventeen.

11 MR. RAY: I don't see the
12 relevancy here. This is the
13 \$100,000 mortgage.

14 THE COURT: I thought it was the
15 same --

16 MR. LANG: He's asking for
17 damages based upon both of these
18 loans.

19 MR. RAY: That's true. No
20 objection.

21 THE COURT: Number-Seventeen for
22 AmeriCash.

23 MR. LANG: Yes, sir.

24 (Thereupon the Court Reporter
25 marked the pertinent document as

1 AMERICASH-EXHIBIT-NUMBER-SEVENTEEN.)

2 Q. Mr. Swaynham, let me return to you
3 what has now been marked and entered as
4 Exhibit-Number-Seventeen for AmeriCash,
5 and this is the \$100,000 mortgage which
6 is securing the loan of the \$100,000
7 mortgage; right?

8 A. Yes. I see that.

9 Q. Of course, you knew before you signed
10 that document what a mortgage was;
11 correct?

12 A. That's correct.

13 Q. A mortgage is a lien on property;
14 correct?

15 A. Yes.

16 Q. And that mortgage is a lien on the
17 property that's the subject of this
18 foreclosure action; correct?

19 A. That's correct.

20 MR. RAY: Your Honor, he's asking
21 him to -- I mean, he's getting over
22 into legal opinions, I think. The
23 document speaks for itself.

24 THE COURT: Overruled. Go ahead.

25 Q. And you know that that mortgage secures

- 1 payment of the \$100,000 note; correct?
- 2 A. Yes.
- 3 Q. And you knew, according to your
- 4 testimony, that when the closing
- 5 occurred that that \$100,000 loan was
- 6 not what you wanted; correct?
- 7 A. That's correct.
- 8 Q. And you went ahead and signed the
- 9 mortgage, which is AmeriCash
- 10 Exhibit-Number-Seventeen anyway;
- 11 correct?
- 12 A. That's correct.
- 13 Q. Then you made payments on that loan for
- 14 many months after that; correct?
- 15 A. That's correct.
- 16 Q. And you never wrote either AmeriCash or
- 17 the other servicers for that loan,
- 18 whoever bought it from AmeriCash, that
- 19 this was not the loan you wanted;
- 20 correct?
- 21 A. That's correct.
- 22 Q. And, in fact, you have not raised any
- 23 of those issues until this litigation
- 24 began; correct?
- 25 A. That's correct.

- 1 Q. Now in terms of that particular
2 mortgage and the note, no one is trying
3 to collect on either of those items; is
4 that correct?
- 5 A. You mean as far as the foreclosure?
- 6 Q. Yes.
- 7 A. No.
- 8 Q. So, in other words, whoever has got
9 that note now is not asking you to
10 repay it; is that correct?
- 11 A. They're asking for a monthly payment,
12 but they are not foreclosing.
- 13 Q. Right. You're not paying that monthly
14 payment, are you?
- 15 A. No, I'm not.
- 16 Q. Okay. When is the last time you made a
17 payment on the \$100,000 note?
- 18 A. Whenever Mr. Ray told me not to make it
19 anymore sometime after I hired him. I
20 don't remember.
- 21 Q. Okay. And they've not moved to sue you
22 on that debt; is that correct?
- 23 A. That's correct.
- 24 Q. So the calculations of damages or
25 difference in interest rates that your

1 expert witness testified to would be
2 wrong because it does not take into
3 account the fact that you're not making
4 a payment on this \$100,000 note; is
5 that correct?

6 A. I'm sure the calculations would be
7 different, but I -- I'm not a financial
8 person.

9 Q. You know what a Right of Rescission is,
10 do you not?

11 A. It gives me the right to change my
12 mind.

13 Q. Okay. Let me hand you what's been
14 marked AmeriCash Exhibit-Number-Nine
15 and ask if you recognize that document?

16 A. It says, "Notice of Right to Cancel."

17 Q. Correct. Does that mean the same thing
18 as rescission? It's just a fancy word
19 for "cancel"; isn't it? It worked just
20 as well.

21 A. It sounds like it does.

22 Q. All right. You understand that that
23 document provided you as a borrower and
24 the mortgagor the opportunity to cancel
25 this entire transaction?

- 1 A. Yes.
- 2 Q. You didn't do that, did you?
- 3 A. No, I did not.
- 4 Q. But you knew you had that right to do
- 5 that because you got that document;
- 6 isn't that correct?
- 7 A. That's correct.
- 8 Q. And you got a copy of that document
- 9 when you left the closing table on
- 10 November 20, 2006; correct?
- 11 A. I did.
- 12 Q. I know you've got a two year
- 13 Associate's Degree. You work with
- 14 computers. The directions on that
- 15 document for cancelling this
- 16 transaction are not particularly
- 17 complex, are they?
- 18 A. I was looking for them. It says I must
- 19 send by mail or telegram a notice no
- 20 later than midnight November 24th,
- 21 2006.
- 22 Q. Fairly straightforward; correct?
- 23 A. Yes.
- 24 Q. In fact, it says in large capital
- 25 letters "How to cancel"; correct?

- 1 A. Yes.
- 2 Q. It says, "If you decide to cancel this
3 transaction, you may do so by notifying
4 us in writing at AmeriCash, 450,
5 Apollo, Suite E, Brea, California
6 92821"; correct?
- 7 A. That's correct.
- 8 Q. And it tells you the date by which you
9 can do that; correct?
- 10 A. It does.
- 11 Q. Very clear, very understandable. Do
12 you agree with me on that?
- 13 A. I do.
- 14 Q. And you didn't cancel this transaction,
15 did you?
- 16 A. No. I attempted to contact Tamara
17 Pacak, which I could not.
- 18 Q. Is there anything in this document, the
19 one that we just went over, that says
20 you could cancel the transaction by
21 attempting to contact a person at
22 AmeriCash by phone after the
23 transaction?
- 24 A. No, it does not.
- 25 Q. And I want to make sure the record is

1 clear. The Notice of Right to Cancel
2 that we just went over, AmeriCash
3 Number-Nine, what's the loan number on
4 that? It's in the top left-hand
5 corner?
6 A. It's 0060908011.
7 Q. Do you know if that's for the \$400,000
8 loan or the \$100,000?
9 A. The \$400,000 loan.
10 Q. Okay. You got an identical Right to
11 Cancel, did you not, for the \$100,000
12 loan; correct?
13 A. I guess so. I probably --
14 Q. All right. Let me hand you what's been
15 marked as AmeriCash
16 Exhibit-Number-Thirteen.
17 A. It's identical with a different loan
18 number.
19 Q. All right. What's the loan number on
20 AmeriCash Exhibit-Number-Thirteen?
21 A. 0060908012.
22 Q. And that's for the \$100,000 loan;
23 correct?
24 A. That's correct.
25 Q. And the directions are identical on

1 AmeriCash Exhibit-Number-Thirteen as on
2 AmeriCash Exhibit-Number-Nine; correct?

3 A. They are.

4 Q. Straightforward and very clear;
5 correct?

6 A. That's correct.

7 Q. And you never did that; is that right?

8 A. I did not.

9 MR. LANG: Begging The Court's
10 indulgence.

11 THE COURT: Yes, sir. Take your
12 time.

13 Q. This loan transaction that you closed
14 in November of 2006, I think you said
15 that's not your first loan closing;
16 correct?

17 A. It is not.

18 Q. You closed at least three other
19 closings; is that correct?

20 A. (Witness nods head.)

21 Q. Is that "yes"?

22 A. That's a "yes."

23 Q. All right. And you had actually built
24 or been a part of the construction of
25 two homes on this 15 acres tract that's

1 the subject of this mortgage?

2 A. That's correct.

3 Q. And you did that all yourself?

4 A. A lot of it was done myself, and my
5 wife.

6 MR. LANG: I don't have any
7 further questions, Your Honor.

8 THE COURT: Very well. Let's
9 see. Who is next? Mr. Lydon, or
10 have you --

11 MR. LYDON: I think it goes back
12 to Mr. Ray.

13 THE COURT: Okay.

14 MR. RAY: Just a couple of
15 questions, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. RAY:

18 Q. Now you testified you believe it was
19 Mr. Castro that was the representative
20 for Wyatt Willoughby at the restaurant;
21 correct?

22 A. That's correct.

23 Q. Did Mr. Castro have any comment that
24 you can remember about these Rights of
25 Rescission that Mr. Lang has been

1 talking about?

2 A. I -- I do not remember any.

3 Q. And did you tell Mr. Castro that you
4 made it clear that you had to be back
5 to the office; you had an hour for
6 lunch; right?

7 A. I -- I did.

8 Q. And did your wife say the same thing?

9 A. That's correct.

10 Q. And you knew that?

11 A. That's correct.

12 Q. Did anybody bother to call you ahead of
13 time and ask when it would be
14 convenient for you to do this closing?

15 A. I did not remember anybody calling and
16 asking when it would be convenient. We
17 had been waiting for weeks or months to
18 do the closing, and Tamara called and
19 said it was today. So we showed up.

20 Q. Do you think it was a little unusual
21 that they asked to do the closing in a
22 crowded restaurant right at lunchtime?

23 A. It was to me.

24 Q. All right. Do you remember receiving
25 besides just this Right of Rescission

1 any counsel from Mr. Castro in the
2 restaurant?

3 A. I remember overhearing him talking with
4 Barb, and I guess he was talking with
5 me also, that we could always refinance
6 the mortgage later.

7 Q. And that was some kind of solution for
8 you not liking what you were being
9 given; is that correct?

10 A. Yes. We were encouraged to go ahead
11 and go through with the closing just so
12 that we could get our funds to pay off
13 the other loans that were coming due.

14 Q. Do you remember precisely what Tamara
15 told you on the phone about this loan?

16 A. It was a very short conversation. She
17 basically said that's all that she
18 could offer us. We could take it or
19 leave it, and the "take it or leave it"
20 was her words. It was a very short
21 conversation. I'm guessing she knew we
22 were upset.

23 Q. Now also Mr. Lang asked you about did
24 you receive anything in writing about
25 this offer of a half million dollars at

1 five and a half percent. Did you ever
2 remember seeing an E-mail from Tamara?

3 A. I thought I remembered having an E-mail
4 from her, but I -- I didn't save one
5 from that long ago. It -- it wasn't a
6 document that I thought I needed to
7 save. I -- I save everything related
8 to taxes and, you know, a mortgage, but
9 I -- I didn't know I needed to save
10 stuff leading up to a mortgage.

11 Q. And you conducted a pretty exhaustive
12 search; right?

13 A. I have.

14 Q. Okay. So couldn't find it. And Mr.
15 Lang kept asking you did you ever write
16 a letter to AmeriCash, and you said,
17 "No." But what you're saying was you
18 kept calling. That's what you were
19 told to do?

20 MR. LANG: Objection to the form
21 as leading her.

22 Q. Were you told to call?

23 A. I wasn't told to call Tamara. I was
24 calling her to see what we could -- I
25 wasn't trying to cancel the mortgage

1 that we had signed, but I was trying to
2 find out what we could do next to get
3 what we had asked for.

4 Q. So you wanted to get back to where you
5 thought you were supposed to be?

6 A. Yes.

7 Q. Now as time went on your wife had a
8 heart attack; is that correct?

9 A. She -- she did have a heart attack.

10 Q. And you got lupus?

11 A. I've had it and some other problems for
12 ten or 11 years.

13 Q. Okay. And were both of you-all in the
14 hospital?

15 A. At one time we were.

16 Q. At the same time?

17 A. At the same time.

18 Q. So you had a pretty astounding medical
19 bills; is that correct?

20 A. Normally my out-of-pocket after what
21 insurance covers every year, lately
22 it's been in the 30 to \$40,000 range a
23 year.

24 Q. When you tried to modify the loan when
25 you were talking to, I guess it was

1 2009 you were trying to get the loan
2 modified with ASC, did you make it
3 clear to them about what you-all had
4 been going through?

5 A. I did.

6 Q. And what was their response?

7 A. They told me to write a hardship
8 letter, and some other things. They
9 kept changing what they were asking
10 for, but I -- I did everything that
11 they asked multiple times.

12 Q. And was that about the same time they
13 were foreclosing on you?

14 A. I didn't know anything about the
15 foreclosure till February.

16 Q. All right. Did you read the notes we
17 got in discovery?

18 A. I did.

19 Q. And what was going on while you were
20 trying to get this loan modified?

21 A. They were making decisions to foreclose
22 on our home in the last quarter of
23 2009.

24 Q. All right. Another thing. Mr. Lang
25 kept saying no one forced you to sign;

1 is that correct?

2 A. That's correct.

3 Q. Do you understand the term "duress"?

4 A. Somewhat.

5 Q. Do you feel like the circumstances of
6 this closing would have placed you in a
7 stressful situation? Were you in
8 duress?

9 MR. LANG: Your Honor, if counsel
10 is trying to assert an affirmative
11 defense of duress, it's not in the
12 pleading, so I object to -- if
13 that's what he's trying to do, I
14 certainly object to this line of
15 questioning.

16 THE COURT: What does it go to,
17 Mr. Ray?

18 MR. RAY: I'm trying to ask him
19 if he was in a stressful situation
20 during this closing.

21 THE COURT: I understand that,
22 but which of your basic issues is
23 your question relevant to?

24 MR. RAY: Unconscionability, Your
25 Honor.

1 THE COURT: Okay. Go ahead. On
2 that basis I overrule your
3 objection.

4 MR. LANG: Okay.

5 Q. Go ahead, Al.

6 A. We had been, I don't know the exact
7 definition of "duress," but I'll say we
8 were under a lot of stress from medical
9 bills --

10 Q. I'm talking about at the closing now.

11 A. Well, the closing we were under duress
12 there from waiting several months
13 trying to obtain a loan to pay off the
14 other balances, and it was -- took an
15 extended period of time, more than what
16 we were expecting. We had external
17 stresses, too, from Barb's mom passing
18 away the year before, and just other
19 things.

20 Q. I'm talking about specifically about
21 the restaurant as --

22 MR. LYDON: And I'm going to
23 object to leading. He's asked him
24 what was causing him to have
25 stress. He's answered it, and I

1 don't think that Mr. Ray can
2 suggest other things that Mr. Ray
3 might think were causing him
4 stress.

5 THE COURT: I agree. It was
6 leading. Ask him about the
7 restaurant one more time, and
8 that's going to be it.

9 MR. RAY: Okay. All right.

10 Q. In relationship to the restaurant, were
11 you under stress?

12 A. Yes, we were. We did not get the loan
13 we were expecting. It -- it was not a
14 quiet place where we could review all
15 the documents. It did not give us a
16 chance to review all the documents at
17 the closing. Of course, we reviewed
18 them over the weeks after that. It --
19 there was a lot of commotion in the
20 restaurant, just a noisy place, but we
21 went through with it.

22 Q. All right. Okay.

23 MR. RAY: That's all, Your Honor.

24 THE COURT: Thank you.

25 MR. LYDON: I don't have

1 anything.

2 MR. LANG: Just briefly, Your
3 Honor.

4 THE COURT: Recross?

5 MR. LANG: Recross, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. LANG:

8 Q. Mr. Swaynham, you said that the
9 restaurant was a noisy place. You were
10 under stress, but you got a package of
11 documents that were signed at the
12 closing before you left that
13 restaurant.

14 A. That's correct.

15 Q. What did you do with them, that
16 package, after you left that
17 restaurant?

18 A. Took them home.

19 Q. Did you look at them when you took them
20 home?

21 A. I did take them and read them over the
22 next couple of weeks.

23 Q. Okay. I'm talking about the next
24 couple of days.

25 A. Don't know how much I read without --

1 the closing, I believe, was on a
2 Monday. I typically work 13 or 14
3 hours a day, so I don't know how much I
4 would have read them before the
5 weekend.

6 Q. You could have read them, could you
7 not?

8 A. I could have.

9 Q. Could have read them in the comfort of
10 your own home; correct?

11 A. That's correct.

12 Q. Wouldn't be in a restaurant; correct?

13 A. That's correct.

14 Q. Wouldn't be a lot of commotion going
15 on, or anything like that; correct?

16 A. That's correct.

17 Q. And a place in your house like a study
18 or your bedroom, that would be quiet;
19 correct?

20 A. That's correct.

21 Q. You had every opportunity to do that
22 the day of the closing when you went
23 home from work that evening; correct?

24 A. I -- I did.

25 Q. And the next couple of days you could

1 have done that, too, as well?

2 A. That's correct.

3 MR. LANG: No further questions.

4 THE COURT: Is that all for this
5 witness?

6 MR. RAY: That's all, Your Honor.

7 THE COURT: Okay. Step down,
8 please, sir. Your case?

9 MR. RAY: Yes, sir. I would call
10 a gentleman here from AmeriCash.
11 I'm not sure I know --

12 THE COURT: Okay. You're going
13 to call him? That's fine.

14 MR. RAY: Yes, sir.

15 **PAUL GIANGRANDE,**

16 being first duly sworn/affirmed, was
17 examined and testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. RAY:**

20 THE COURT: Let's get your name
21 on the record first, sir.

22 THE WITNESS: My name is Paul
23 Giangrande.

24 MR. STEWART: Excuse me. Ms.
25 Bebout needs to go to the rest

1 room, and we don't mind going
2 forward, but I want to let you know
3 she's --

4 THE COURT: Right. If we can go
5 forward, but she's excused to go to
6 the rest room. Sorry for the
7 interruption.

8 Q. I'm sorry. Could you spell your name?

9 A. Yes. Giangrande, G-i-a-n-g-r-a-n,
10 Nancy, d, David, e, Edgar, Giangrande.

11 Q. Okay. Mr. Giangrande, please state
12 your age.

13 A. Forty-six.

14 Q. Okay. And where do you live?

15 A. Los Angeles, California.

16 Q. All right. Did you fly here to --

17 A. That's correct.

18 Q. Okay. And who do you work for?

19 A. I work for AmeriCash.

20 Q. And how long have you worked for
21 AmeriCash?

22 A. Thirteen years.

23 Q. And what is your educational
24 experience?

25 A. I have a Bachelor's in business.

1 Q. From where?
2 A. California State, Dominguez Hills.
3 Q. I'm sorry?
4 A. California State University, Dominguez
5 Hills.
6 Q. Okay. Any other degrees?
7 A. No.
8 Q. All right. After you got out of
9 college where did you work?
10 A. Greentree Financial.
11 Q. And how long did you work there?
12 A. Maybe three years.
13 Q. What were your duties there?
14 A. I was an account executive.
15 Q. All right. Did you have a major in
16 college?
17 A. Business.
18 Q. Okay. And then after you worked for
19 Greentree where did you work?
20 A. I worked for a local thrift and loan in
21 Los Angeles. I subsequently went to
22 work for a high loan-to-value lender
23 out of Dallas.
24 Q. How long did you work -- what's the
25 name of that company?

1 A. The Pace Funding.
2 Q. Pace Funding?
3 A. Correct.
4 Q. How long did you work for Pace?
5 A. Approximately '94 to '98.
6 Q. Okay. Is Pace still in existence?
7 A. No. Pace Funding is no longer in
8 business.
9 Q. Did it go out of business around 2000?
10 A. You know, I don't know.
11 Q. They were in a class action suit,
12 weren't they?
13 A. I don't know.
14 Q. So after you left Pace then you went to
15 AmeriCash?
16 A. I -- I started at AmeriCash; correct.
17 Q. Okay. Now what are your
18 responsibilities of AmeriCash?
19 A. My primary responsibilities are
20 interacting with investors that
21 purchase our loan, promoting the
22 business, looking for different avenues
23 for bringing in new originations.
24 Q. Are you in marketing?
25 A. Partly.

1 Q. And dealing with customers?
2 A. No.
3 Q. What was the other thing?
4 A. Bringing in new origination channels.
5 Q. New origination channels. Did you
6 know, or do you know Tamara Pacak?
7 A. I -- I know of her.
8 Q. Do you know where she's located?
9 A. Currently?
10 Q. Yes.
11 A. No.
12 Q. When did she leave AmeriCash?
13 A. I don't know.
14 Q. Okay. Do you see the time chart up
15 there?
16 A. I do.
17 Q. Okay. You don't have trouble seeing it
18 anymore?
19 A. No, I'm good.
20 Q. Okay. You're good with that. Let me
21 get my copy. Just a second. Have you
22 reviewed this file?
23 A. I have.
24 Q. Okay. So you're familiar with it?
25 A. I'm reasonably familiar with it.

1 Q. All right. Can you tell me what
2 happened relative to the AmeriCash and
3 the Swaynham/Bebout loan in August of
4 2006?

5 A. I don't really understand that
6 question. What happened with the loan?

7 Q. Yes. What was going on in August of
8 2006?

9 A. Based on what I can surmise from
10 reviewing the file --

11 Q. Yes.

12 A. -- the borrowers applied at
13 Lendingtree.com. We were probably one
14 of four or five lenders that had the
15 opportunity to contact the borrowers.
16 I believe Tamara did her job and
17 contacted the borrower. At the same
18 time other lenders are probably calling
19 the borrowers.

20 Q. Have you seen the original loan
21 application?

22 A. I've seen the -- the loan application
23 that was in the file.

24 Q. Was that typed or handwritten?

25 A. It's typed. We don't do handwritten.

1 Q. No? Well, if Alec and Barb did not
2 type this application, how would it
3 have gotten in there typed?

4 A. Well, we take the applications over the
5 phone.

6 Q. Oh. So Tamara would have typed it in
7 over the phone?

8 A. Based on the question she just more or
9 less reads, follows the -- the sequence
10 of the credit application and asks the
11 questions.

12 Q. So by doing it that way the borrower
13 never sees what goes into the
14 application; is that correct?

15 A. I don't know.

16 Q. Well, I mean, how could they?

17 A. I don't know.

18 Q. No? Okay. Now so on August 31st, 2006
19 we have a document -- I'm trying to
20 remember -- I think that's Exhibit-One
21 that we've got. Hang on just a second.

22 A. Sure.

23 Q. I hand you what's been marked Exhibit
24 -- what number is it? One. What does
25 that appear to be?

- 1 A. It's a Borrower Signature
2 Authorization.
- 3 Q. Okay. And what does that mean?
- 4 A. It allows us to receive third-party
5 information pertaining to the
6 processing of a loan.
- 7 Q. Okay. So at that point in time why is
8 the information, the loan application,
9 had it been typed in by Tamara?
- 10 A. Probably not. I -- I don't know, but I
11 would suspect not.
- 12 Q. Not. Okay. So when would that have
13 occurred?
- 14 A. Early in the transaction. It would
15 have occurred probably within once --
16 once the borrower is committed to
17 AmeriCash they would start doing that
18 over the telephone.
- 19 Q. Okay. Can you give me a date in this
20 instance?
- 21 A. 8/31, it looks like. I believe we ran
22 credit on that date as well probably
23 right around this time, right around
24 the first of September.
- 25 Q. Okay. Are you familiar with RESPA? Do

1 you know what that is?

2 A. A little bit.

3 Q. And does RESPA require disclosures?

4 A. It does.

5 Q. Okay. And would those disclosures and
6 RESPA apply to this loan?

7 A. Of course.

8 Q. Okay. And what type of disclosures
9 would be given at that point in time?

10 A. We send out preliminary disclosures
11 either through U.S. mail or an E-mail
12 attachment, preference based on what
13 the borrower tells us.

14 Q. So come from the lender to the
15 borrower; correct?

16 A. Correct.

17 Q. Okay. And do you know if any such
18 disclosures were given in this case?

19 A. I do not know.

20 Q. Okay. Now you've heard testimony that
21 what Alec and Barb were expecting from
22 the loan. Have you seen any other
23 documents that were issued in between
24 August 31st and the date of the
25 closing, November 20th, 2006?

1 A. Have I seen any documents?

2 Q. Yes. Any other documents that we don't

3 have in evidence?

4 A. Oh, no.

5 Q. Nothing else. Okay. When in this

6 process would the lender order title

7 commitments on this loan?

8 A. We do it early on. We're pretty

9 proactive in trying to get things done

10 quickly, swiftly.

11 Q. Okay. And if the discussions had been

12 as Alec and Barb said, they were asked

13 if they could get a half million

14 dollars at five and a half percent, or

15 if there had been a change in that,

16 when would those disclosures have been

17 made?

18 A. In 2006 there would only be the initial

19 disclosures and final disclosures.

20 Q. So when would the initial disclosures

21 be made?

22 A. The initial disclosures go out within

23 three days.

24 Q. Three days; right?

25 A. Correct.

- 1 Q. According to RESPA. Okay. So you've
2 got the signatures on August 31st,
3 2006. So those disclosures should be
4 in the hands of the borrowers at least
5 by the 10th; right?
- 6 A. I would think so.
- 7 Q. And if they changed the terms of the
8 loan, then those disclosures would have
9 to go out to the borrowers; is that
10 correct?
- 11 A. No. That's not correct.
- 12 Q. They don't if they change the terms?
- 13 A. A change of circumstances wasn't
14 required to be sent out in 2006.
- 15 Q. I'm sorry?
- 16 A. There were no changes of circumstances
17 required to go out in 2006.
- 18 Q. They were expecting five and a half
19 percent a half a million, and so if the
20 loan changed, would the disclosures not
21 go out saying, "This is what you're
22 going to get"?
- 23 A. A new set of disclosures would not be
24 required to go out?
- 25 Q. They would not be required to go out?

1 A. Would not be required to go out.
2 Q. Why is that?
3 A. Because that was the law.
4 Q. That was the what?
5 A. That was the law in 2006. There's only
6 an initial set of disclosures and a
7 final set of disclosures.
8 Q. When were the initial disclosures given
9 here?
10 A. I answered that question. What they
11 generally -- our practice is to send
12 them out within three days --
13 Q. Three days. Okay.
14 A. -- either through an E-mail or through
15 U.S. mail, whichever way the borrower
16 prefers it.
17 Q. Okay. I've got another exhibit,
18 MR. RAY: I think this will be
19 marked as our next exhibit.
20 Q. Let me ask you to take a look at that.
21 MR. RAY: What exhibit number is
22 that? Eight?
23 Q. And can you tell me what that appears
24 to be?
25 A. It appears to be a Request for -- or it

1 is a Request for Title Commitment.

2 Q. And what's the date on that?

3 A. Coversheet here, it says 9/12.

4 Q. 9/12/06 in big letters?

5 A. Correct.

6 Q. And it says, "Bebout first and second."

7 What does that mean?

8 A. Bebout first and second, it means that

9 there's two loans here, a first

10 mortgage and a second mortgage.

11 Q. So what is -- and this is going to Dawn

12 Winning; is that correct?

13 A. I -- yes, it says "Dawn Winning."

14 Q. And it's on AmeriCash stationery?

15 A. Correct.

16 Q. And it's from Trina Reedus?

17 A. Correct.

18 Q. And so what is Trina asking Dawn

19 Winning to do?

20 MR. LANG: Your Honor, just for
21 the sake of the record, I don't
22 have any objection to this exhibit
23 coming in as evidence.

24 THE COURT: Okay. This will be
25 Exhibit-Eight.

1 MR. RAY: All right.

2 (Thereupon the Court Reporter
3 marked the pertinent document as
4 DEFENDANTS'-EXHIBIT-NUMBER-EIGHT.)

5 MR. RAY: But if it's all right,
6 I'll ask him a couple more
7 questions here.

8 Q. What is the purpose of this document?

9 A. It's says "Request for Title
10 Commitment," so they're opening up an
11 order.

12 Q. Okay. So what are the amounts of the
13 loans?

14 A. I said I'm not familiar with the
15 document. Okay. Here it is. 470 and
16 30.

17 Q. 470 and 30?

18 A. Correct.

19 Q. Okay. Would that be a difference
20 between one loan of 500,000?

21 A. Yes.

22 Q. Okay. And it's got primary residence
23 cash out refi, loan purpose?

24 A. Okay.

25 Q. Okay. And so by the time this goes out

1 the disclosure should have gone out; is
2 that correct?

3 A. Yes.

4 Q. All right. And would there be two
5 disclosures since there are two loans?

6 A. Yes.

7 Q. All right. AmeriCash has never
8 produced any such disclosures. Do you
9 know where they are?

10 A. They were sent out to the borrower.

11 Q. To the borrower. How were they sent?

12 A. I go back to pass that either, you
13 know, E-mail or U.S. mail.

14 Q. Do you have any way of proving that
15 those disclosures were sent?

16 A. We have policies and procedures in
17 place. That's all I can provide you at
18 this time. I don't -- we have signed
19 disclosures in the file.

20 Q. Okay. So do you have some kind of
21 proof in the file that these
22 disclosures went out, however they went
23 out?

24 A. Not that I saw.

25 Q. Okay. Also, when would it be normal

1 for the attorney preference form to go
2 out?

3 A. I don't know.

4 Q. Did you see any such form in this case?

5 A. I did.

6 Q. All right, sir. Now we look at that
7 sequence of events up there. You've
8 got 8/31/06, Application for a Loan,
9 and you've got September 12th, and
10 AmeriCash sends to Wyatt Willoughby the
11 Title Request. That's
12 Exhibit-Number-Eight. And we go down
13 to October 27th of '06, AmeriCash note
14 that borrower has requested the Acker
15 Law Firm.

16 A. Okay.

17 Q. And does that seem about the right time
18 frame?

19 A. I -- from what I've seen it looks to be
20 accurate.

21 Q. Hang on just a second. I'm sorry. Do
22 you see these internal notes that
23 AmeriCash would generate? I'm not sure
24 what you call them. When they're
25 talking about a certain loan they

1 generate these notes. A lot of times
2 it's they're in a kind of a code, you
3 know. Do you know what I'm talking
4 about?

5 A. You'll have to show it to me.

6 Q. Would you recognize those if --

7 A. Possibly.

8 Q. Okay. Now we're talking about two
9 different loans; is that correct?

10 A. I believe we are.

11 Q. Okay. I want to hand you what will be
12 Exhibit-Number-Nine, I guess, and if
13 you would take a look at that. That's
14 a cumulative exhibit with four pages in
15 it.

16 (Thereupon the Court Reporter
17 marked the pertinent document as
18 DEFENDANTS'-EXHIBIT-NUMBER-NINE.)

19 MR. RAY: Your Honor, I move to
20 have this moved into evidence.

21 THE COURT: Object?

22 MR. LANG: No objection.

23 THE COURT: Okay. Without
24 objection.

25 Q. And if you'll notice these are

1 actually, if I'm correct, these are two
2 communications about the two different
3 loans. Does that appear to be
4 something that AmeriCash would
5 generate?

6 A. Yes.

7 Q. Okay. And as of October 27, 2006,
8 AmeriCash is acknowledging Ken Acker as
9 the attorney that's nominated by Alec
10 and Barb to do their closing; is that
11 correct?

12 A. Correct.

13 Q. Okay. And so you go down that time
14 sequence a little bit further. You
15 look on the sequence of events we've
16 got October 31st, Halloween Day, '06,
17 it says -- I'm going to hand you
18 another document that will be our
19 Exhibit-Ten.

20 (Thereupon the Court Reporter
21 marked the pertinent document as
22 DEFENDANTS'-EXHIBIT-NUMBER-TEN.)

23 A. (Witness examines document.) Okay.

24 Q. Okay. And that seems to be a
25 communiqué from Christine Mendoza,

1 AmeriCash Senior Processor to Tamara
2 Pacak.

3 A. Okay.

4 Q. Is that correct? And somebody wrote in
5 handwriting in here "ready to go. One
6 title issue is resolved." What do you
7 think that means?

8 A. The way I interpret this is they spoke
9 to the borrower, explained to them
10 there may be a delay, and I'm assuming
11 that the borrower then said it's okay
12 to continue dealing with Counsel
13 Willoughby.

14 Q. Okay. Tell us about Attorney bellow. I
15 think that's sort of a typo. It came
16 off another one of these
17 communications. I think it's below,
18 Attorney below, I think is what it is.
19 I'm not sure. But it's clear that
20 somebody contacted the Acker Law Firm;
21 is that correct? And the Acker Law firm
22 said they do not do witness only
23 closings; is that right?

24 A. That's what I -- that's what I was
25 told.

1 Q. And then you read down in the smaller
2 print, "We would have [to] cancel the
3 open order with the Willoughby Law Firm
4 and open the title with the Acker Law
5 Firm. I know that this borrower is" --
6 I don't know what that is.

7 A. "Wanting to sign soon."

8 Q. "Wanting to sign soon. This would
9 cause a delay. Please speak with the
10 borrower to verify that they still want
11 to close with the Acker Law Firm.
12 Bryce will have the file." So it looks
13 like you've already employed Willoughby
14 to do this, and they're asking for
15 another attorney, so they're going to
16 -- it will cost them, you know, some
17 extra money to switch over to Acker.

18 A. I don't believe that's what that is
19 saying.

20 Q. What?

21 A. I just said I just think it -- it says
22 that the borrower is wanting to sign.
23 Oftentimes borrowers want their money
24 quickly, and if we switch, we would be
25 happy to switch, but it's going to

1 cause a delay, and speak to the
2 borrower. I don't know that it says
3 anything different than that.

4 Q. Well, do you see anything wrong with
5 the Acker Law Firm doing their own
6 title work?

7 A. I don't know anything about it.

8 Q. Do you see anything wrong with them
9 running the money through their escrow
10 account?

11 A. I -- no, I don't.

12 Q. Okay. Then we go down. All right. If
13 the Acker Law Firm was used, who would
14 be responsible for Wyatt Willoughby's
15 Law Firm's fees till this time?

16 A. There probably wouldn't be any.

17 Q. Wouldn't be any fees?

18 A. Probably not.

19 Q. Okay. Well, I thought you said it was
20 ready to go. Like the title work has
21 already been done.

22 A. I -- I don't know the answer to that
23 question, but based on how we conduct
24 business with other entities we
25 normally don't get billed for

1 cancellations. I don't know what
2 Willoughby's policy is.

3 Q. Well, Willoughby had already done the
4 title work. I mean, that's -- that's a
5 cost.

6 A. We open and cancel orders all the time.
7 I've never seen an invoice for it.

8 Q. Okay. We go down the time line a
9 little bit further and -- okay, then we
10 had the closing next on November 20th,
11 and you've heard all that testimony.
12 Okay. So the closing goes through, and
13 then we have this other chart.

14 MR. RAY: And did we not admit
15 that into evidence, the letter from
16 -- we need to put that up there.
17 Let me see if it's over there. Did
18 you see the letter earlier this
19 morning?

20 THE COURT: It's not in evidence.

21 MR. RAY: Oh, well, I need to put
22 that in there. We'll mark that,
23 too.

24 THE COURT: Do you have a copy
25 that is not so enormous?

1 MR. RAY: Well, Your Honor, I do,
2 but I don't know where it is. If
3 we can find it, we'll put the
4 smaller one in. Okay.

5 Q. Did you see this earlier this morning,
6 Mr. Giangrande?

7 A. Yes.

8 MR. RAY: Here. I've got a
9 smaller copy.

10 THE COURT: That's fine.

11 MR. RAY: Okay. So we'll move to
12 have the letter in the smaller size
13 placed into evidence, and that
14 would be, I think, Eleven; is that
15 correct?

16 THE COURT: Yes.

17 (Thereupon the Court Reporter
18 marked the pertinent document as
19 DEFENDANTS' - EXHIBIT - NUMBER - ELEVEN.)

20 Q. So what does that letter say?

21 A. Would you like me to read it?

22 Q. Well, on December the 7th was this the
23 loan sold by AmeriCash according to
24 this letter?

25 A. I don't know the actual date, but that

1 -- that seems to make sense.

2 Q. Okay. Is that the trust Morgan Stanley
3 Dean Witter Mortgage Capital, Inc.? Is
4 that the trust?

5 A. We just sold direct -- we were selling
6 directly to Morgan Stanley. I don't
7 know if the contract read Morgan
8 Stanley Dean Witter Mortgage Capital.
9 I don't -- I don't recall.

10 Q. But it doesn't say "trust" on there,
11 does it?

12 A. No. It doesn't say "trust."

13 Q. Okay. And then I want you to look back
14 also at another exhibit that we put in,
15 Number-Six, (sic) just a minute ago.
16 There was an assignment by AmeriCash to
17 itself on January the 1st of '07.

18 A. I'm familiar with the document. So if
19 you see it, I know -- I know what it
20 says.

21 Q. Okay. Do you know what that is?

22 A. Yeah.

23 Q. Okay. Now that says January 1st, 2007;
24 correct?

25 A. It does.

1 Q. And they're assigning the note to
2 themselves. Why would that be?

3 MR. LANG: Objection, Your Honor.
4 That's not what it says.

5 MR. RAY: What was the objection?

6 MR. LANG: It doesn't say they're
7 assigning the note to themselves.

8 Q. Well, what does that seem to say, Mr.
9 Giangrande?

10 A. It says -- do you want me to read it?

11 Q. Yes.

12 A. "You are hereby notified that the
13 servicing of your mortgage loan, that
14 is, the right ... [of] collect[ion]
15 payments from you, is being assigned,
16 sold or transferred from AmeriCash to
17 AmeriCash."

18 Q. Right.

19 A. Do you want me to keep going?

20 Q. Who is doing the assignment?

21 A. AmeriCash is assigning the loan, and
22 the best -- best that I can tell is
23 someone made a mistake.

24 Q. So this mistake where they -- they
25 didn't own the loan at this time, did

1 they?

2 A. Who is "they"?

3 Q. AmeriCash.

4 A. We're -- we're -- we're transferring
5 the loan with this document.

6 Q. Right. You're assigning it?

7 A. Correct.

8 Q. Okay. But according to that
9 Exhibit-Eleven it was the loan was
10 already sold to Morgan Stanley.

11 A. Yeah. That's -- that's -- I believe --
12 I don't know, there may be an
13 explanation there, but I believe that
14 possibly could be a mistake.

15 Q. Okay. Does AmeriCash have a servicing
16 company?

17 A. No.

18 Q. So making payments to AmeriCash you
19 make payments to AmeriCash; right?

20 A. No. We don't receive payments.

21 Q. Well, who does?

22 A. We assign the loans immediately. Our
23 credit facilities don't provide us to
24 ongoing credit. Our loans have to go
25 on the credit facility, and they have

1 to come off the credit facility.

2 Q. Well, so if I have a loan with
3 AmeriCash and going to make my first
4 payment, you've already assigned the
5 loan to who?

6 A. Yes. Normally?

7 Q. Yes.

8 A. Loans are assigned immediately, and the
9 first payment goes to the investor.
10 There may be a possibility that we'll
11 receive a payment. If we do, we will
12 forward it on to the investor that
13 purchased the loan.

14 Q. Okay. But the check is written to
15 AmeriCash; right?

16 A. Could be.

17 Q. All right.

18 A. It depends also on the investors of
19 that loan. We may have shipped the loan
20 to the investor for purchase, and they
21 could be very busy, and it could take
22 them some time to do due diligence on
23 the file. So that could also be
24 another possibility.

25 Q. Are you familiar with MERS?

1 A. A little bit. I -- I'm -- I'm not --
2 my expertise isn't in processing. I
3 -- I more or less run the business. We
4 have managers that oversee all of the
5 departments.
6 Q. Is AmeriCash a MERS member?
7 A. Yes.
8 Q. Okay. And do you-all put loans into
9 MERS?
10 A. Correct.
11 Q. Okay. Have you ever seen MERS accept
12 money?
13 A. No.
14 Q. They can't, can they?
15 A. I don't know.
16 Q. Can MERS sell a loan?
17 A. I -- I don't think so.
18 Q. What does MERS do?
19 A. It's just a registration mechanism for
20 a loan.
21 Q. It's like a catch bag?
22 A. It's a what?
23 Q. Catch bag.
24 A. Whatever you want to call it. I don't
25 know what that means.

1 Q. That's all it is. Okay. Do you
2 understand the term "nominee"? You
3 know, you see all these mortgages that
4 make so and so, and MERS as the
5 nominee. What does that mean to you?

6 A. I -- I -- I can't comment on it. I
7 don't know.

8 Q. All right. Now you reviewed this file,
9 and you're looking at that letter from
10 Attorney Lang stating that that loan
11 was sold on December the 7th. Have you
12 seen any document that would back up
13 that letter right there?

14 A. I didn't follow close enough to -- to
15 confirm that. If -- if that's what Mr.
16 Lang said, then I -- I would go along
17 with it.

18 Q. So you have no doubt it was sold?

19 A. I'm positive it was sold.

20 Q. Okay. And have you looked at the MERS
21 website lately?

22 A. No. Don't have a reason to.

23 Q. Would it surprise you to go on there
24 right and look at it if I told you who
25 owns the mortgage right now?

1 A. I -- I don't track it. I mean, I -- I
2 have no reason to go into MERS and do
3 that type of investigating. It's not
4 part of what I do on a day-to-day
5 basis.

6 Q. All right. Now in reviewing the file
7 did you see any kind of document that
8 would give MERS authority to assign any
9 note to US Bank or this note?

10 A. I didn't see any such document.

11 Q. Have you ever seen one?

12 A. No.

13 Q. All right. Are you in a position to
14 see that kind of thing?

15 A. I mean, I'm sitting down. I mean, if
16 you want to show it to me. I don't --
17 I don't know what you're implying.

18 Q. Okay. I just wondered. Okay. I'm not
19 talking about right now. I'm talking
20 about in the past have you ever seen
21 any kind of an instrument that would
22 allow MERS to actually make an
23 assignment of a note?

24 A. I -- I'm not an expert. I don't -- I
25 have no -- no understanding of how MERS

1 works.

2 Q. All right. Can MERS assign a mortgage?

3 A. Again, I don't know.

4 Q. You understand the difference between a
5 mortgage and a note. You understand
6 that; right?

7 A. Sure.

8 Q. Okay. You understand what a loan or a
9 mortgage and a note go into the MERS
10 stable of loans that the note and the
11 mortgage are separated?

12 A. Okay.

13 Q. Do you understand that?

14 A. Yeah.

15 Q. Okay. How do you understand that to
16 be? What happens?

17 A. When the loan -- my only dealing with
18 MERS is I know that loans get
19 registered with MERS. I don't get --
20 I'm not active with the day-to-day
21 origination of loan product. That's
22 not what I do.

23 Q. Right.

24 A. You know, unfortunately, the processor
25 or the processing manager are not with

1 our company any more, so you've got me,
2 and that's not what I do. I apologize.
3 I mean, if you go ask the guy who runs
4 Chase what's going on with the loan
5 product, I'm pretty sure he doesn't
6 know.

7 Q. Right. But in relationship to the fact
8 that the note and the mortgage was
9 separated when this loan is placed into
10 MERS, explain to me how you see that.

11 A. I don't. I mean, you keep asking me to
12 comment on MERS, and I apologize, but
13 I'm not a MERS expert.

14 Q. Do you understand what attorney
15 preference is?

16 A. I do.

17 Q. Yes?

18 A. I do.

19 Q. Okay. You understand that South
20 Carolina has very strict attorney
21 preference laws?

22 A. I have learned that.

23 Q. Okay. As a matter of fact, I think
24 Pace may have been involved in a
25 lawsuit around 2000.

1 MR. LANG: Your Honor, I object.

2 THE COURT: Strike that.

3 MR. RAY: All right. I'll strike
4 that.

5 THE COURT: It's got nothing to
6 do with this case.

7 MR. RAY: Okay.

8 Q. But you understand if you've read up on
9 the attorney preference laws in South
10 Carolina?

11 A. I haven't. I've spoke to counsel about
12 it.

13 Q. Okay. And when a borrower borrows the
14 money, and indicates they want a
15 certain attorney, you understand that
16 under attorney preference they're to be
17 given that attorney?

18 A. Okay.

19 Q. Okay? And they have to be asked if
20 they want, you know, a certain
21 attorney. They may not, but you
22 understand that?

23 A. Correct.

24 Q. Okay. So after reviewing this file, is
25 there any doubt in your mind that Aled

1 and Barb had requested the Acker Law
2 Firm to do this closing?

3 A. Is there any doubt? Yeah, I have some
4 doubt.

5 Q. Why?

6 A. Because I don't know what -- what --
7 what subsequent conversations
8 transpired.

9 Q. Okay. Well, I mean, we talked about
10 the October 27th communiqué, that
11 Exhibit-Number-Ten, I believe, that's
12 up there, where they were, I believe --
13 that Christine Mendoza was indicating
14 that they wanted Acker. Okay? Did you
15 see anything that would change this
16 election by the borrowers here
17 subsequent to that E-mail, or whatever
18 this is? I guess it's an E-mail.

19 A. Well, if I read this, and I'm
20 interpreting it correctly, it says,
21 "Please speak with the borrower to
22 verify they still want to close with
23 the Acker Law Firm. Bryce will have
24 the file." And then I see someone's
25 handwritten writing, and I don't know

1 whose handwriting that is. It says,
2 "Ready to go" -- "ready to go. ...
3 Title issue is resolved." So I'm
4 thinking that -- my -- my train of
5 thought is that it says please speak
6 with the borrower that that
7 conversation did take place. And
8 subsequent to that conversation they
9 said they were okay with going with the
10 new attorney, or the -- the original
11 attorney, Willoughby.

12 Q. They were okay with going with
13 Willoughby?

14 A. I wasn't part of the conversation. I'm
15 looking at some chicken scratch, and
16 I'm trying to make heads or tails out
17 of it, and that's the best I can come
18 up with.

19 Q. Okay. Do you know whether or not Alec
20 and Barb were given an attorney
21 preference form within three days of
22 the application?

23 A. I do not know positively.

24 Q. So you've never seen the form?

25 A. Wouldn't have a reason to look at it.

- 1 Q. Should they have given this --
- 2 A. Yes.
- 3 Q. -- AmeriCash have provided such a form?
- 4 Okay. What do you mean you had no
- 5 reason to look at it. You looked at
- 6 the file.
- 7 A. Yeah. I looked at the file, and it's
- 8 in the file, but, you know if you're
- 9 asking me --
- 10 Q. It's in the file?
- 11 A. -- you're asking me within three days.
- 12 Q. Within three days of the loan
- 13 application is there an attorney
- 14 preference form that is sent to them?
- 15 A. We have procedures in place to comply
- 16 with the state law, yes.
- 17 Q. Okay.. Is there such a form in your
- 18 file?
- 19 A. Yes, we do have one in the file.
- 20 Q. Okay. I've never seen it. Do you have
- 21 any kind of a proof that that was sent
- 22 to them?
- 23 A. Again, I -- I don't. Disclosures,
- 24 department disclosure package.
- 25 Q. How would that have been sent?

1 A. Let's see. Either U.S. mail --
2 Q. All right.
3 A. -- and/or an E-mail.
4 Q. They send attorney preference forms by
5 E-mail?
6 A. It's a document. It can be scanned and
7 sent over to the borrower.
8 Q. And you've seen this form in that file?
9 A. I saw the attorney preference form.
10 That was part of the loan package,
11 unless I'm misunderstanding something.
12 Q. Did you see the one that got signed on
13 November 20th, 2006?
14 A. Yeah.
15 Q. Is that the one you're talking about?
16 A. I'm talking about the one where it says
17 "Willoughby Law Firm" was handwritten
18 in.
19 Q. Right. Okay. Have you seen another
20 one that was sent within three days of
21 the loan application?
22 A. No. I have not seen it. If the
23 borrower doesn't return it, we can't do
24 anything about it. We'll send
25 documents out, and oftentimes we won't

1 get them back.

2 Q. So you cannot prove it was sent?

3 A. No, I cannot. At least from what I can
4 tell I can't prove it.

5 Q. All right. And can you prove that any
6 kind of disclosures about the loan was
7 sent?

8 A. Again, the -- I can tell you that
9 there's policies and procedures in
10 place.

11 Q. But you can't prove it?

12 A. Okay. I guess I can't.

13 Q. Well, I'm asking you. Can you?

14 A. I can tell you that we have a -- a
15 great history without any problems with
16 any of our audits, so that has -- that
17 has a lot to say about our company and
18 how we do business.

19 Q. Have you talked to Tamara about this?

20 A. Never.

21 Q. Never. Have you talked to anybody that
22 worked with Tamara about this?

23 A. No.

24 Q. Earlier today -- and I've actually got
25 a blowup of it -- there was an

1 assignment. I think we entered into an
2 Assignment of the Mortgage on March the
3 12th of 2010. And I don't know --

4 MR. LYDON: Would be Three,
5 Plaintiffs'-Three.

6 Q. Plaintiff's Exhibit-Three. Let you
7 take a look at that.

8 A. (Witness examines document.)

9 Q. Did you see that earlier today?

10 A. Yeah, I think I did.

11 Q. Okay. And what does that appear to be?

12 A. It says, "Assignment of Mortgage."

13 Q. By?

14 A. Assignment of Mortgage. Is there
15 something you want me to focus on?

16 Q. I'm sorry?

17 A. Is there something you want me to focus
18 on?

19 Q. Well, I mean, who is doing the
20 assignment?

21 A. It says here, "We hereby set over,
22 transfer and assign unto US Bank
23 National Association, as Successor
24 Trustee to Bank of America National
25 Association successor by merger to

1 LaSalle [National Bank] ... as Trustee
2 for Morgan Stanley Mortgage Loan Trust
3 2007-3XS."

4 Q. Okay. Now is MERS doing the
5 assignment?

6 A. No. It doesn't say so. It doesn't
7 read that way.

8 Q. If you read right down below it says --

9 A. "Mortgage Electronic Registration
10 Systems, Inc." Okay.

11 Q. By John Kennerty?

12 A. Okay.

13 Q. Do you see that?

14 A. Yeah.

15 Q. Okay. Does it appear as though they
16 are acting solely as nominee for
17 AmeriCash? Do you see that right on
18 the second --

19 A. Yeah. I don't understand the document.

20 Q. Yes. That what it seems to be?

21 A. That's what it says.

22 Q. Okay. At that time AmeriCash owned the
23 mortgage.

24 A. The date on this thing is 3/29/2010.

25 Well, that's a little -- okay. On

1 March -- witnessed in his hand this
2 12th day of March of 2010?

3 Q. Yes.

4 A. No, we didn't own the loan then?

5 Q. You didn't own it then?

6 A. No.

7 Q. All right. Okay. Did you own the
8 note?

9 A. No.

10 Q. Do you know who owned the note?

11 A. No.

12 Q. Do you know who owned the mortgage?

13 A. No.

14 Q. So is this assignment valid?

15 A. I don't know the answer to that.

16 Q. But you know AmeriCash didn't own it?

17 A. That's correct.

18 Q. And this purports to let MERS as
19 nominee for AmeriCash do some
20 assignment to US Bank.

21 A. Well, I'm -- I'm looking back up in the
22 body of the document. It says, "The
23 State of South Carolina on December
24 29th, 2006." I think that's the date
25 they're referencing is the transfer

1 date of the loan.

2 Q. That's the previous mortgage. Okay?

3 That's the one that's being assigned.

4 A. Uh-huh.

5 Q. Okay?

6 A. Okay.

7 Q. Talking about this mortgage.

8 A. Well, that's the mortgage in question.

9 It lines up with the dates with the
10 sale of the loan.

11 Q. What I'm talking about is as of this
12 date on this assignment, which would be
13 March 12th, 2010, your testimony is
14 that AmeriCash did not own the note and
15 did not own the mortgage; is that
16 correct?

17 A. That is correct.

18 Q. All right.

19 MR. RAY: Your Honor, this is in
20 evidence; right? This is
21 Plaintiff's-Three?

22 THE COURT: Yes.

23 MR. RAY: Okay.

24 Q. Oh, okay. Are you familiar with how
25 AmeriCash does closings throughout the

1 United States?

2 A. Generally speaking, yes.

3 Q. Is it normal practice for AmeriCash to
4 call a borrower two hours before a
5 closing?

6 A. No. We don't -- now, for what purpose?
7 Keep going.

8 Q. You know, to do a closing purpose.

9 A. Do a closing?

10 Q. Yes, to do a closing.

11 A. We don't -- we don't schedule the
12 appointments.

13 Q. So --

14 A. We've never had a practice of
15 scheduling the appointments.

16 Q. Why would Tamara have called the
17 borrowers and told them to be at this
18 restaurant in two hours?

19 A. I don't believe she did. We don't set
20 appointments for third parties. We
21 don't know what would be convenient.
22 We would get stuck in the middle --

23 Q. Right.

24 A. -- between the attorney and the
25 borrower, so we let the two parties

1 decide --

2 Q. So that's not normal, is it?

3 A. No, it's not normal.

4 Q. Okay.

5 A. It's not our normal course of business.

6 Q. What about at a restaurant?

7 A. I've heard of some closings happening

8 at restaurants, yes.

9 Q. At a restaurant that's crowded in the

10 middle of the restaurant?

11 A. I don't know about that, but I -- I've

12 known -- I've heard about closings at

13 different locations where folks are

14 traveling.

15 Q. Right. Right.

16 A. You know, just different -- different

17 things pop up, and -- and that's what

18 would be a convenient meeting spot.

19 Q. Do you normally give a choice to the

20 borrower?

21 A. For what?

22 Q. Place of the closing.

23 A. We don't discuss it with the borrower.

24 It's between the assigning agent and

25 the -- and the borrower. AmeriCash --

1 Q. Between the signing agent and the
2 borrower?

3 A. Well, in this case the attorney, but in
4 most cases --

5 Q. The borrower would be --

6 MR. LANG: Your Honor, if counsel
7 would stop interrupting the
8 witness. Let him finish the answer
9 and then counsel can ask him the
10 question.

11 THE COURT: Okay. Go ahead, Mr.
12 Ray.

13 MR. RAY: All right.

14 Q. Is a crowded restaurant at noon a good
15 place to do a closing?

16 A. I wouldn't do it.

17 Q. Especially if it were for a half
18 million dollars for your home; right?

19 A. If for a half a million dollars for
20 your home, half a million dollars for
21 anything is -- is a lot of money.

22 Q. All right. If AmeriCash is who set
23 this up, that wouldn't have been right,
24 would it?

25 A. AmeriCash didn't set it up.

1 Q. So you think Mr. Willoughby set this
2 up?

3 A. I believe they mutually set it up.

4 Q. "They" being the --

5 A. The borrower and the attorney. You
6 have to agree on a meeting place and a
7 meeting time. You can't just be there
8 sitting there assuming that someone is
9 going to walk in the door.

10 Q. Right. Do you have some kind of
11 evidence, some kind of proof of that?

12 A. No, I don't. I know our -- I know our
13 business practice in that area very
14 well.

15 Q. Okay.

16 MR. RAY: That's all for now,
17 Your Honor.

18 MR. LYDON: Just a couple of
19 questions, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. LYDON:

23 Q. Can I call you "Paul"?

24 A. Of course.

25 Q. Paul, where was Tamara's office?

- 1 A. She was located in our office in Brea.
- 2 Q. Brea, California?
- 3 A. Correct.
- 4 Q. Okay. And I'm guessing that's a three
- 5 hour time difference from South
- 6 Carolina. So if she was to call Mr.
- 7 Swaynham at 9:00 a.m. in South
- 8 Carolina, that would have meant she
- 9 would have had to have called him at
- 10 6:00 a.m. in the morning?
- 11 A. Yeah. Highly likely.
- 12 Q. What are your office hours out there?
- 13 A. The origination staff generally works a
- 14 10:00 to 7:00 Pacific Standard Time.
- 15 Q. Okay. So you don't think she got up at
- 16 6:00 in the morning and set this
- 17 closing up?
- 18 A. I don't believe so.
- 19 Q. All right. On the Notice of
- 20 Assignment, Sale, or Transfer of
- 21 Servicing Rights document.
- 22 A. Okay.
- 23 Q. I can't remember which number it is.
- 24 If you would, what does the first
- 25 sentence of that document say?

- 1 A. "You are hereby notified that the
2 servicing of your mortgage loan, that
3 is, the right to collect payments from
4 you, is being assigned, sold, or
5 transferred from AmeriCash."
- 6 Q. Okay. But this isn't selling the note,
7 or the mortgage, or transferring the
8 note or the mortgage. This exclusively
9 is limited to the servicing rights?
- 10 A. That's right.
- 11 Q. And, in fact, there's a little asterisk
12 after the word "notified," isn't
13 there?
- 14 A. There is.
- 15 Q. And what does it say at the bottom?
- 16 A. "This notification is a requirement of
17 section six of the Real Estate
18 Settlement Procedures Act (RESPA) (12
19 U.S.C. §2605)."
- 20 Q. So this document is a RESPA required
21 document that is a disclosure of
22 servicing rights; correct?
- 23 A. That's what it is.
- 24 Q. It has nothing to do with assigning, or
25 ownership, or anything else of the

1 actual loan itself, the note and
2 mortgage?

3 A. Yes. It -- it says on the top
4 "Transfer of Servicing Rights."

5 Q. Okay. Now the assignment of mortgage
6 that you were asked some questions
7 about, Plaintiff's Exhibit-Three.

8 A. Okay.

9 Q. It's your testimony that AmeriCash did
10 not own the note and the mortgage as of
11 March of 2010; is that correct?

12 A. No.

13 Q. Okay. Because the note was sold --

14 MR. RAY: Your Honor, I would
15 object to leading him.

16 MR. LYDON: It's
17 cross-examination.

18 THE COURT: Right.

19 Q. When was the note sold?

20 A. I can't be positive, but based on this
21 document December 29, 2006.

22 Q. That's the date that the mortgage was
23 recorded.

24 A. Okay. The -- the problem I have with
25 it is the 2006 volumes were really

1 high.

2 Q. Okay.

3 A. We would ship files, and they would sit
4 with our -- our -- our banks, or
5 whoever, in this case Morgan Stanley,
6 it could sit literally in the cube for
7 a month. I don't know if this was the
8 case here. It could have been
9 purchased off our warehouse line right
10 away. It could have taken two months.
11 I -- I can't be certain.

12 Q. Okay. But it wouldn't have taken three
13 years?

14 A. Oh, no. Absolutely not.

15 Q. Okay. All right.

16 A. And just for the record, our agreements
17 with our warehouse providers were our
18 creditors that we used to funnel loans.
19 Loans have to come on and off that
20 thing within 45 days generally
21 speaking. Maybe 60. If we've got an
22 extenuating circumstance, we can
23 explain the position, and we might be
24 able to buy a little time, but I mean,
25 definitely not more than 90 days.

- 1 Q. Okay.
- 2 A. If it's 90 days, that long, then it has
3 to be purchased off the credit facility
4 with our own funds, and we don't have
5 that type of capital laying around
6 where we can start purchasing hundreds
7 of thousands of dollars in transactions
8 off the credit line. So we've got to
9 get them sold.
- 10 Q. So within 90 days of closing this loan
11 --
- 12 A. That's the worse case scenario.
- 13 Q. -- was sold to somebody?
- 14 A. That would be the worse case, yes.
- 15 Q. And we think it was to Morgan Stanley?
- 16 A. Yes.
- 17 Q. All right. And but in the meantime the
18 mortgage was recorded in the name of
19 MERS as nominee for AmeriCash; correct?
- 20 A. That's what it says, yes.
- 21 Q. And it stays that way, recorded that
22 way, until it needs to be assigned to
23 somebody else before closure or other
24 reasons; isn't that right?
- 25 A. I guess so.

1 Q. Okay. And you didn't have any problem
2 with MERS executing this assignment on
3 behalf of AmeriCash to transfer the
4 legal interest, the recorded legal
5 interest, to US Bank as trustee for the
6 Morgan Stanley Trust?

7 A. No. I mean, why would we?

8 Q. And MERS was authorized to do that as
9 nominee for AmeriCash; correct?

10 A. I believe so.

11 MR. RAY: Your Honor, I object to
12 he's leading his own witness, so --

13 MR. LYDON: He's not my witness.

14 THE COURT: He's not his witness.

15 MR. RAY: He's not his witness,
16 but he's still --

17 THE COURT: He's your witness.

18 MR. RAY: Okay. All right.

19 THE COURT: Mr. Lang's witness
20 really, but you called him.

21 MR. LANG: I didn't ask him.

22 THE COURT: Okay. Go ahead.

23 MR. LYDON: That's all the
24 questions I've got. Can we go off
25 the record for one second?

1 THE COURT: Sure.

2 (OFF RECORD)

3 MR. LANG: Your Honor, given the
4 lateness of the time, what I would
5 propose to do is make Mr.
6 Giangrande my own witness. I mean,
7 the Third-Party Plaintiff hasn't
8 rested yet, but I will direct his
9 examination as though they had.

10 THE COURT: All right.

11 MR. LANG: Reserving my right for
12 the usual Involuntary Nonsuit.

13 THE COURT: Go ahead.

14 MR. LANG: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. LANG:

17 Q. Mr. Giangrande, let me talk to you
18 about a few things, and then we'll go
19 back to where we might have begun had
20 you not been called in the Third-Party
21 Plaintiffs case in chief. Plaintiffs'
22 Exhibit-Number-One, let me hand you
23 that, and invite your attention to the
24 Allonge. All right. You'll see --

25 MR. RAY: Your Honor, if it's all

1 right, I'm going to sit over here
2 in the jury box.

3 THE COURT: Wherever you can hear
4 best.

5 MR. RAY: That will be a lot
6 better than over here.

7 Q. Whose signature appears on that
8 Allonge?

9 A. Michael Martin.

10 Q. And who is Michael Martin?

11 A. He's an employee with AmeriCash.

12 Q. And what is his position with
13 AmeriCash?

14 A. He's vice president.

15 Q. Is he an officer with AmeriCash?

16 A. He's an officer; correct.

17 Q. Is he authorized to sign Allonges such
18 as the one attached to Plaintiff's
19 Exhibit-Number-One?

20 A. He is.

21 Q. And is that a mechanism, or the way, or
22 at least one of the ways that you sell
23 your loans on secondary mortgages?

24 A. That's correct.

25 Q. And do you recognize his signature?

- 1 A. That is definitely his signature.
- 2 Q. Let me invite your attention, Mr.
- 3 Giangrande, to Defendants'
- 4 Exhibit-Number-Nine, which is the
- 5 Borrower Summary. Good?
- 6 A. I've got it. Okay, sir. Yeah.
- 7 Q. In particular in your experience in the
- 8 13 years that AmeriCash has been around
- 9 and your prior experience in the
- 10 mortgage industry, do mortgage terms,
- 11 and conditions, and what the borrower
- 12 wants sometimes change between the
- 13 first contact and the closing of the
- 14 mortgage transaction?
- 15 A. Yes.
- 16 Q. Are there variables involved in terms
- 17 of what the borrower wants as well as
- 18 what the borrower can qualify for?
- 19 A. Of course.
- 20 Q. And can those variables include the
- 21 income of the borrower as well as the
- 22 value of the property?
- 23 A. Yeah.
- 24 Q. And in your initial contacts -- and by
- 25 "you" I mean AmeriCash -- are your

1 loan officers instructed to talk to the
2 borrower about anything in particular,
3 value of the property, income, those
4 sorts of things?

5 A. Yeah. They generally follow a
6 worksheet, make sure that we ask all
7 the proper questions.

8 Q. And can that information or those
9 variables change in the course of your
10 loan officer dealing with the borrower?

11 A. Yes.

12 Q. Let me invite your attention to the
13 comment section of Plaintiffs' Exhibit
14 -- Defendants' Exhibit-Number-Nine
15 rather, and tell me what it says under
16 "Comments" with the word starting
17 "appraisals"

18 MR. RAY: Have you got
19 Exhibit-Number-Nine, please?

20 MR. LAND: Yes.

21 MR. RAY: Okay.

22 Q. Go ahead.

23 A. Would you like me to read that?

24 Q. Yes, please.

25 A. "Appraisal" not spelled correctly,

1 "Appraisal came in 90K lower than.
2 discussed with appraiser cash out [is
3 the] primary goal."

4 Q. All right. Let me first ask you do you
5 get verbal, we call them VOPs in South
6 Carolina, do you get verbal estimates
7 from appraisers of a property that a
8 loan is being considered on?

9 A. We used.

10 Q. Did you do that back in '07?

11 A. We did.

12 Q. From your examination of the file in
13 this matter did we get a verbal on this
14 particular piece of property?

15 A. I believe we did, yes.

16 Q. And then after the verbal loan estimate
17 or property value estimate came in was
18 there a full appraisal done?

19 A. Yes.

20 Q. And does that comment refer to the full
21 appraisal coming in at \$90,000 less
22 than discussed with the appraiser?

23 A. Yes.

24 Q. Would that affect how you structure the
25 loan?

- 1 A. Absolutely.
- 2 Q. Now what is a --
- 3 A. Well, let me -- let me back up. In
- 4 this case the answer is "yes." Not
- 5 always. If you had a \$5 million home,
- 6 and it came in \$90,000, well, that's
- 7 not really going to make a difference.
- 8 Q. In this particular circumstance you had
- 9 --
- 10 A. Based on the loan amount and the equity
- 11 in the property, yeah, it would make a
- 12 difference.
- 13 Q. All right. What's a cash out primary
- 14 goal? What does that refer to?
- 15 A. That the consumer or the borrower is
- 16 looking to cash out of their home.
- 17 Q. Was that based on your examination of
- 18 the files in this matter the primary
- 19 goal of the borrowers?
- 20 A. Was that the primary goal? I -- I
- 21 don't know. I can't speak on behalf of
- 22 the borrower, but I believe based on
- 23 the notes it was.
- 24 Q. Based on our notes it was?
- 25 A. Right.

1 Q. Let me invite your attention again to
2 Defendants' Exhibit-Number-Ten.

3 A. Okay.

4 Q. Which is the E-mail.

5 A. Okay.

6 Q. Does it matter to AmeriCash what lawyer
7 in South Carolina closes an AmeriCash
8 loan?

9 A. No, not at all.

10 Q. If the borrowers had said they wanted
11 Mr. Acker to close this loan, and they
12 didn't care about any delay, or
13 anything of that nature, could Mr.
14 Acker close this loan?

15 A. Definitely.

16 Q. Assuming he's licensed to do all this?

17 A. Correct.

18 Q. Would AmeriCash have insisted upon
19 Willoughby, or somebody at his
20 direction, closing this loan as opposed
21 to Mr. Acker?

22 A. No, it doesn't make any difference to
23 us.

24 Q. Does it make any difference in terms of
25 the cost of the borrower who closes the

1 loan?

2 A. I don't believe it does. I -- I don't
3 know how -- what the fee structure
4 looks like, if there's any limitation
5 of what the attorneys can charge, if
6 one attorney charges more. But from
7 our perspective we don't have an issue
8 with it.

9 Q. Does it make any difference in terms of
10 cost for AmeriCash who closes the
11 transaction?

12 A. No. That's a third party.

13 Q. Let me go back a little bit and talk
14 about -- let me ask you this: As I
15 understand it what are the hours or
16 what were the hours of your loan
17 origination folks back in 2006?

18 A. 10:00 to 7:00.

19 Q. And that's Pacific time?

20 A. Pacific Standard.

21 MR. RAY: Judge, what was that,
22 your hours?

23 Q. Your loan origination folks back in
24 2006?

25 A. 10:00 to 7:00. We're primarily a west

1 coast originator.

2 MR. Ray: Were your people
3 available from 10:00 to 7:00?

4 MR. LANG: Well, I think it's my
5 turn.

6 MR. RAY: I'm sorry. I didn't
7 understand what he was saying.

8 THE COURT: That's 10:00 a.m. to
9 7:00 p.m.?

10 THE WITNESS: That's correct.

11 THE COURT: Yes.

12 Q. And I take it California is three hours
13 behind the east coast?

14 A. That's correct.

15 Q. So the 10:00 a.m. on the west coast is
16 1:00 in the afternoon on the east
17 coast?

18 A. Okay. Yeah.

19 Q. Is that right?

20 A. Uh-huh.

21 Q. All right. So 9:00 on the east coast
22 is 6:00 in California?

23 A. Okay. That's correct.

24 Q. And your folks would not ordinarily be
25 at work at 6:00 in the morning?

1 A. Well, there's -- there's some
2 individuals would have come in early
3 but not the origination staff, and
4 certainly not Tami.

5 Q. Okay. And she was in the origination
6 staff, was she not?

7 A. That's correct.

8 Q. All right. And 11:00 east coast time,
9 Eastern Standard time, would be 7:00 in
10 the morning out in California; correct?

11 A. Well, 11:00 here.

12 Q. I'm sorry. Yes, 8:00. 11:00 here --

13 A. Here is 8:00 a.m.; correct.

14 Q. -- is 8:00 a.m. in California. And
15 11:30 here would be 8:30 in California;
16 is that correct? Is that correct?

17 A. Yeah, three hours.

18 Q. And all those hours that I've gone
19 through are before 10:00 California
20 time?

21 A. Uh-huh.

22 Q. Is that right?

23 A. Uh-huh. Yes. Sorry.

24 Q. What kind of mortgage lender is
25 AmeriCash in terms of what kind of

1 loans do you-all originate?

2 A. We're primarily or almost exclusively a
3 underwrite to Fannie Mae and Freddie
4 Mac guidelines.

5 Q. Are these conventional loans that you
6 originate or --

7 A. They're conventional loans; correct.

8 Q. Do you do any FHA or VA?

9 A. Not really, no.

10 Q. Do you have people on your staff that
11 deal with compliance issues?

12 A. Yes, we do.

13 Q. And do you also have an outside counsel
14 that deals with those sorts of issues
15 as well?

16 A. Absolutely.

17 Q. And as well as outside counsel a
18 gentleman by the name of David Alt,
19 whose name is on my letter which is now
20 an exhibit.

21 A. David Alt is our primary attorney.

22 Q. Are those the people that you do use to
23 rely upon to make sure that you're in
24 compliance with whatever regulatory
25 statutory provisions apply?

1 A. Correct.

2 Q. And I think AmeriCash is licensed in a
3 number of states to originate mortgage
4 loans?

5 A. That's correct.

6 Q. Have any of those licenses ever been
7 questioned, or revoked, or suspended in
8 any respect?

9 A. No, never.

10 Q. What kind of rating do you have with
11 the Better Business Bureau?

12 A. "A" rating.

13 Q. You heard the testimony from Mr.
14 Swaynham that this is a -- well, let
15 me ask you this: What is the Mortgage
16 Asset Research Institute?

17 A. Mortgage Asset Research Institute is a
18 MRAI. They provide information to
19 third parties such as investors. I use
20 the word "investor." That's -- that
21 would be an entity in which we would
22 sell loans to warehouse providers.
23 Anyone seeking to get information
24 regarding -- it's like a score card on
25 AmeriCash.

1 Q. And what's the score on AmeriCash as
2 far as MRAI is concerned?

3 A. Superior.

4 Q. Superior? How do you market your
5 mortgage products?

6 A. We're primarily an internet based
7 lender.

8 Q. Okay. And what internet -- I don't
9 know the right term -- engine or
10 internet provider, do you subscribe to?

11 A. It varies, but over the years we've
12 been affiliated with Lending Tree,
13 Google, entities like those.

14 Q. Do those entities have their own
15 internal compliance for quality
16 assurance provisions or --

17 A. Yeah, we're constantly being monitored
18 by those -- those companies.

19 Q. Back in 2006, I take it was AmeriCash a
20 subscriber of Lending Tree?

21 A. We were.

22 Q. All right. Could you --

23 THE COURT: A subscriber of what?

24 MR. LANG: Lending Tree.

25 THE COURT: Oh, okay.

1 MR. LANG: Sorry.

2 Q. Could you explain to the judge how that
3 worked? In other words, how did a
4 prospective buyer interface with
5 Lending Tree, and then Lending Tree
6 somehow interfaced with its subscriber
7 lenders?

8 A. The borrower would go on the Lending
9 Tree site. They would fill out what
10 they call a QF, a qualification form.
11 They're asked to put in information as
12 accurately as possible. Once the
13 information is entered the consumer
14 hits send. We try not to use terms
15 that others won't understand, but
16 Lending Tree will transfer the
17 information over, and it -- and it sort
18 of gets scrubbed up against an
19 underwriting matrix, and it's done
20 seamlessly, and a price quote goes out
21 immediately. So it's all automated.
22 So based on whatever the consumer
23 enters in the system, a quote will go
24 out based on the information that was
25 received.

1 Q. And do Lending Tree's subscriber
2 lenders provide Lending Tree with
3 information so that all that can be
4 matched up, and then go out to the
5 perspective borrowers?

6 A. Yeah, it's -- it's contracted out.
7 It's not Lending Tree has a vendor that
8 we're required to use that massages
9 that information and then sends it out
10 to the consumer.

11 Q. And I take it at some point then, or
12 almost immediately after the consumer
13 has typed in whatever information it is
14 required, if AmeriCash is one of the
15 lenders that the quote went out for,
16 AmeriCash would get notified?

17 A. We would be quick to be notified in
18 real time.

19 Q. Okay. And as part of that information
20 that is sent out is there a credit
21 score or something of that nature that
22 is included?

23 A. Yes. Sorry for interrupting. Yes.
24 Lending Tree provides one credit score,
25 and it's called a "soft pull." So

1 they're not really looking at all the
2 items on your credit report. They're
3 just looking at one score.

4 MR. RAY: Soft pull?

5 MR. LANG: Pull, p-u-l-l.

6 A. Lending Tree will do what is known as a
7 "soft pull" and only look at one of the
8 credit bureaus, and typically they run
9 an Equifax, and an Equifax only, and
10 that score is given to us.

11 Q. Let me, if I could then, narrow it down
12 to focusing on these two loans, and I
13 take it you've had the opportunity to
14 review the duplicate files on these
15 loans that you, AmeriCash, provided?

16 A. Correct.

17 Q. And are these documents and records
18 kept in the ordinary course of
19 AmeriCash's business?

20 A. Yes.

21 Q. And is it the ordinary practice of
22 AmeriCash to keep these kinds of
23 records?

24 A. Yes.

25 Q. And the records indicate certain events

1 that happened in certain times and
2 certain days, and are those entries on
3 those records made at or near the time
4 and place of the event that they show
5 or depict?

6 A. Yes.

7 Q. Now if you need to refer to anything in
8 these documents, I'm not going to put
9 them all in because that would kill too
10 many trees, but if you need to refer to
11 a document, just let me know, and I'll
12 hand you the document.

13 Q. Okay. Can you tell me approximately
14 when the original prospect file for
15 AmeriCash was opened in regard to this
16 loan?

17 A. You know, I looked at it, and it was
18 just a few days before the borrower
19 file was opened. I want to say towards
20 the end of August.

21 Q. And what is a prospect file?

22 A. Someone that has shown some interest in
23 obtaining financing through AmeriCash.

24 Q. And was that prospect file given a
25 number?

1 A. Yeah.

2 Q. And did that number ultimately turn
3 into a loan number?

4 A. A borrower file; correct.

5 Q. And does a prospect file go from
6 prospect to borrower?

7 A. Yes.

8 Q. All right. And was there a second
9 prospect file opened?

10 A. I believe there was a second prospect
11 file opened at a later date.

12 Q. All right. Let me hand you both of
13 these files.

14 A. Okay.

15 Q. Which is the business records of
16 AmeriCash in regard to --

17 MR. RAY: Your Honor, I'm not
18 sure I understand. Are these files
19 on Alec and Barb? Is that what
20 these are on?

21 MR. LANG: Yes.

22 MR. RAY: Okay. We've never been
23 given these in discovery.

24 MR. LANG: You were given these
25 documents. I hand delivered a copy

1 of those two files to counsel when
2 I deposed his clients. And, in
3 fact, a number of the exhibits that
4 he has admitted into evidence bear
5 my Bates stamp number.

6 MR. RAY: Can I take a look at
7 those files?

8 MR. LANG: You can look at them
9 all you want.

10 MR. LYDON: It's just the
11 original file. I mean, I believe
12 you took photocopies out of it.

13 MR. LANG: And, in fact, while
14 Mr. Ray is doing that, Your Honor,
15 I would invite Mr. Ray's attention
16 and The Court's attention to
17 Defendant's Exhibit-Number-Ten
18 which bears the Bates stamp 0106.
19 That's my Bates stamp.

20 THE COURT: Okay. This?

21 MR. LANG: That's correct, Judge.

22 THE COURT: Judge. I see down
23 here.

24 MR. LANG: And a couple more,
25 yes, sir. I can find others, but

1 -- Respondent's
2 Exhibit-Number-Three bears my Bates
3 stamp 0047.

4 THE COURT: Exhibit-Two has got
5 one also, 125.

6 (OFF RECORD)

7 MR. RAY: I ask counsel, is this
8 what you brought when you deposed
9 Barb and Alec in my office? Is
10 this what you brought with you?

11 MR. LANG: Yes.

12 MR. RAY: And nothing has been
13 taken out of here?

14 MR. LANG: Well, I just took two
15 documents out of there, which are
16 Defendants' Exhibits --

17 MR. RAY: Well, I mean, at the
18 time we --

19 MR. LANG: Well, let me finish my
20 answer there, Bob. AmeriCash
21 Exhibit-Number-Thirteen and
22 Exhibit-Number-Fourteen, which is
23 the Notice of Right to Cancel in
24 regard to the \$100,000 loan, and
25 that would be Bates number 0352 and

1 0351. Other than that those files
2 are the same as you got --

3 THE COURT: Gentleman, this is
4 irregular, but let me take a call.

5 MR. LANG: Sure.

6 (OFF RECORD)

7 MR. RAY: No objection.

8 THE COURT: No objection?

9 MR. RAY: Yes.

10 THE COURT: Okay.

11 MR. LANG: And, again, Your
12 Honor, I'm not going to put all
13 this stuff in there.

14 THE COURT: Oh, of course. Yes,
15 I understand that.

16 MR. LANG: He may have to refer
17 to it, and that's the only reason
18 why I laid that foundation and --

19 Q. Mr. Giangrande, let me hand you back
20 these two duplicate files and ask you
21 at some point in time shortly after
22 August 31, 2006 was a second prospector
23 loan file opened?

24 A. Yes.

25 Q. And can you tell from the files that

1 you reviewed why that was?

2 A. Yes.

3 Q. Okay. Can you tell The Court why that
4 was?

5 A. Based on the preliminary conversation
6 and information that was inputted into
7 the computer that AmeriCash received
8 from Lending Tree, the value was -- was
9 actually stated higher than in the
10 actual appraised value, so we had to
11 restructure the transaction.

12 Q. And restructure the transaction how?

13 A. To allow the borrowers to continue to
14 get the amount of cash that they were
15 asking for we had to structure two
16 loans as opposed to just the one loan.
17 Loan to value requirement essentially
18 based on the new values, the reduced
19 values.

20 Q. And was the goal -- or was it a goal
21 for AmeriCash to provide the
22 Bebout/Swaynham with that \$500,000
23 total loan amount?

24 A. Yes. That's what -- what I was able to
25 gather from reading this.

1 Q. Okay. And that the first
2 restructuring, was that what ended up
3 being the final \$400,000 and the
4 \$100,000 loan, or was there an interim
5 attempt based upon a lower value.

6 A. Yeah. You know, I'm not sure. I -- I
7 believe there may have been an interim
8 attempt, but I can't say for certain,
9 but we -- I believe we received the
10 Swaynham's/Bebout's, and put into the
11 computer. I'm not sure who went on
12 line to fill out the application, but I
13 believe they came in with a value north
14 of \$600,000 preliminary. I believe we
15 received a -- a verbal from the
16 appraiser for a lower amount, and then
17 ultimately we received the -- the
18 actual appraisal, and it came in yet
19 lower. So we had -- we had a moving
20 target, so to speak, with the value.

21 Q. And it ultimately wound up -- or did
22 you ultimately wind up with that, a
23 lone structured so that there were two
24 loans, one a first mortgage in the
25 amount of \$400,000, and a second

1 mortgage in the amount of \$100,000?

2 A. Correct.

3 Q. And during that process of moving
4 through the values of the property,
5 does AmeriCash have policies and
6 procedures about the contacts that are
7 made between the loan officer and the
8 borrower?

9 A. Well, it's not normally the loan
10 officer. That's why I was a little
11 surprised with the conversation. The
12 loan officer has some limited
13 conversation, but understanding the
14 call center environment, the loan
15 officer's responsibility is strictly to
16 originate loans. Normally it's the
17 back end folks that would do the
18 communicating once the loan is -- is --
19 is transferred from prospect to
20 borrower. So that would be the
21 processor, or an underwriter, or
22 someone like that.

23 Q. All right. Let me invite your
24 attention back to Exhibit-Number-Ten,
25 and that's that E-mail.

1 A. Okay.

2 Q. Who was Christine Mendoza, who is the
3 "from" person on this E-mail?

4 A. She's a processor with AmeriCash, or
5 was.

6 MR. RAY: She was, I'm sorry,
7 what?

8 THE WITNESS: She was a loan
9 processor.

10 MR. RAY: Okay.

11 Q. And would she have been one of the
12 processors that, according to our
13 policies and procedures, would have
14 been in contact with the borrower?

15 A. Yeah. She would be. I mean, there are
16 instances where borrowers build a
17 relationship with a loan officer and
18 feel that that loan officer could be a
19 go to person, someone with the spirit
20 of, you know, keeping the borrower
21 happy, so to speak. We'll -- we'll
22 allow a certain level of that, but the
23 majority of the work is done by the
24 back end. The "back end" being
25 processing and underwriting once the

1 loan is transferred over to borrower
2 status.

3 Q. And ultimately on the \$400,000 loan and
4 the \$100,000 loan did the
5 Bebout/Swaynghams qualify for that, and
6 was the value there in the real estate
7 to support that loan?

8 A. I believe it was, yes.

9 MR. RAY: I'm sorry. What did
10 you say?

11 THE WITNESS: Yes.

12 MR. RAY: They did qualify?

13 Q. And let me, if I could, invite your
14 attention to I think it's Bates stamp
15 209 in the file 11.

16 A. So I go into here?

17 Q. Yes, sir.

18 A. File 11?

19 Q. And tell me what that document is.

20 It's a Bates stamp 209. We're looking
21 at the credit report?

22 A. Oh, okay.

23 Q. Are you with me?

24 A. You're asking me to go to the credit
25 report?

- 1 Q. Yes.
- 2 A. Okay. I'm on the credit report.
- 3 Q. And how many credit scores are on that
- 4 credit report?
- 5 A. There are three.
- 6 Q. And I think you testified earlier that
- 7 Lending Tree just sends one of the soft
- 8 pull credit scores?
- 9 A. Yes. That's correct.
- 10 Q. And is there any difference in the
- 11 requirement from Lending Tree as
- 12 opposed to the actual lender in terms
- 13 of getting a credit score?
- 14 A. Yeah. We're required as a lender to
- 15 run what we call a "tri merge." In
- 16 other words, a "tri merge" is all three
- 17 credit bureaus formatted into one
- 18 document.
- 19 Q. Okay. And do sometimes these credit
- 20 scores differ in terms of what they
- 21 show?
- 22 A. Yes, they do.
- 23 Q. All right. And in terms of those
- 24 particular three credit scores, do you
- 25 use all three, do you average them, or

1 will pick one?

2 A. The middle of two or -- I'm sorry. The
3 lower of two or the middle of three.

4 Q. Okay. And so that would be the middle,
5 and so the three scores that are on
6 that, would you have used the middle of
7 three?

8 A. We used the middle of three since all
9 three scores were available.

10 Q. All right. And in terms of that
11 particular score, and I don't want you
12 to tell it to me, but in that
13 particular score in 2006, was that a
14 good, average, or below average score?

15 A. It was an average score.

16 Q. Now also does a credit report report
17 outstanding mortgages?

18 A. Yes, it does.

19 Q. Does that credit report report an
20 outstanding mortgages?

21 A. It does.

22 Q. Does it give any of the terms of the
23 mortgage?

24 A. It does.

25 Q. Can you tell The Court what that term

1 was?

2 A. The term reads it's a balloon payment,
3 secured collateral, and it has a due
4 date on the balloon of September 12th
5 -- I'm sorry. The loan was originated
6 in 8 of '02, and it had a five year
7 balloon.

8 Q. And five years from 8 of '02 would have
9 been when?

10 A. 8 of 2008.

11 Q. 2007 is --

12 A. Sorry. I'm sorry. 5 of 2007.

13 Q. And who was the holder of that
14 mortgage?

15 A. It was Peoples.

16 Q. Peoples National?

17 A. Correct.

18 Q. Now when the loan is approved, in other
19 words, you're all set to go, you've
20 underwritten it, it's all ready to go,
21 what does AmeriCash do in terms of
22 producing the documents in question?

23 A. We use a vendor by the name of
24 DocMagic.

25 Q. And what is DocMagic?

1 A. It's a -- it's a highly recognized loan
2 document software package that we input
3 the data, the loan criterias into the,
4 you know, system. It's a web based
5 solution, and it will spit out the loan
6 papers, and it will make certain that
7 we're compliant with whatever state
8 that we're in.

9 Q. And is this vendor a recognized vendor
10 in the mortgage industry?

11 A. Yeah. It's a -- it's a big name in the
12 industry.

13 Q. Okay. Are there any other vendors out
14 there that do that kind of --

15 A. Probably there are, but at the end of
16 the day when we sell the loan off,
17 we're going to rep and warrant that
18 it's compliant, and DocMagic provides
19 us that information that we know it's
20 compliant.

21 Q. So I take it then that your investors
22 will accept a DocMagic mortgage note?

23 A. Yeah. Yes, for sure.

24 Q. Let me invite your attention, Mr.
25 Giangrande, to AmeriCash

1 Exhibit-Number-Seventeen, which is the
2 \$100,000 mortgage, and just as an
3 example in Plaintiff's
4 Exhibit-Number-Two, which is the
5 \$400,000 mortgage. I'll just hand them
6 to you.

7 A. Okay.

8 Q. All right.

9 A. Okay.

10 Q. Are those DocMagic products of those
11 documents?

12 A. Yes.

13 Q. And how do you know that?

14 A. It says it on it.

15 Q. Where?

16 A. Well, Exhibit-Two, Plaintiff's
17 Exhibit-Two, on the bottom right,
18 www.docmagic.com.

19 Q. Now in terms of the processing of the
20 loan I take it you send out the
21 required disclosures?

22 A. Yes, we do.

23 Q. And back in 2006 how did you ordinarily
24 do that?

25 A. Either by US mail or by E-mail.

1 Q. And would you get those disclosures
2 back?

3 A. In some cases we would. In other cases
4 we would not.

5 Q. Were you required back in '06 to get
6 them back signed by the borrower?

7 A. No, we're not. We were just required
8 to send them out.

9 Q. Let me hand you what's been marked
10 Defendant's Exhibit -- or AmeriCash
11 Exhibit-Number-Four, and tell me is
12 this a disclosure?

13 A. Yes.

14 Q. And what's the date on there that says,
15 "Date prepared"?

16 A. I'm having a hard time -- okay. Here
17 we go. "Date prepared: 08/31/2006.

18 MR. RAY: Your Honor, what
19 exhibit is that?

20 THE COURT: AmeriCash
21 Number-Four.

22 Q. And would this have been, at least
23 based upon your review of the document,
24 a copy of one of the disclosures that
25 went out?

- 1 A. Correct.
- 2 Q. Okay. And what's the loan number or
3 application number on that document?
- 4 A. It's ending in 12.
- 5 Q. Okay. Would that be the \$100,000 loan?
- 6 A. Yes.
- 7 Q. All right. Let me hand you what's been
8 marked AmeriCash Exhibit-Number-Five
9 and ask you the same question. What's
10 the document preparation date for that?
- 11 A. 08/31/2006.
- 12 Q. All right. And again, what's the loan
13 number for that one?
- 14 A. The loan number is 11.
- 15 Q. Would that be the \$400,000 loan?
- 16 A. That's correct.
- 17 Q. And these would be, we assume, the
18 initial disclosures?
- 19 A. That's correct.
- 20 Q. And back in those days, and by "those
21 days," I mean 2006, were you required
22 to send out anything but the initial
23 disclosures and then the final
24 disclosures?
- 25 A. That's it.

1 Q. Has that changed now?

2 A. Yes. It's changed.

3 Q. Dramatically?

4 A. Dramatically. Any change of
5 circumstances now affecting the APR
6 we're required to redisclose.

7 MR. RAY: You're required to
8 what?

9 THE WITNESS: Redisclose.

10 MR. RAY: Redisclose. Okay.

11 Q. Let me hand you what's been marked
12 AmeriCash Exhibit-Number-Six, and ask
13 you do you recognize that document?

14 A. I do.

15 Q. And what is it?

16 A. This is part of the doc package.

17 Q. Okay. Is that a DocMagic document?

18 A. Yes. This document was prepared by
19 DocMagic. Previous it was prepared by
20 our loan origination system.

21 Q. Okay. Is that how you can tell that
22 the previous two went out as the
23 initial disclosures?

24 A. That's correct.

25 Q. Let me hand you what's been marked

1 Exhibit-Number-Seven -- let me ask you
2 this: On the one that you had does
3 that have a loan number on it?
4 A. I'm sorry. Which document?
5 Q. The one I just handed you.
6 A. Okay. Does it have a loan number on
7 it?
8 Q. Yes.
9 A. Yeah. Ending in 11.
10 Q. All right. And that would be the
11 \$100,000 loan?
12 A. No. this is the \$400,000 loan.
13 Q. 400..
14 A. Ending in 11.
15 Q. I'm sorry, 11. All right. Let me hand
16 you what's been marked
17 Exhibit-Number-Seven and ask you if you
18 recognize that document?
19 A. I do.
20 Q. And tell me what it is.
21 A. Truth-in -- Truth-in-Lending Disclosure
22 Statement from the DocMagic software
23 package.
24 Q. And what doc -- what loan, rather, does
25 that disclosure refer to?

- 1 A. This refers to the second mortgage.
- 2 Q. The \$100,000 loan?
- 3 A. That's right.
- 4 Q. In terms of this particular loan, what
- 5 kind of income proof did you have or
- 6 would you utilize to underwrite the
- 7 loan in terms of the ability of the
- 8 borrowers to repay it?
- 9 A. Based on my review of the file I saw no
- 10 income documentation in the file, and
- 11 then based on the coding, the internal
- 12 coding that we code our loans, it was a
- 13 stated income loan.
- 14 Q. And what is a "stated income loan"?
- 15 A. The borrowers tells us what their
- 16 income is.
- 17 Q. Was that an unusual kind of loan back
- 18 in 2006?
- 19 A. No, it wasn't unusual at all.
- 20 Q. Was it a routine sort of loan?
- 21 A. It was a daily occurrence.
- 22 Q. And I take it stated income loans could
- 23 be sold on a secondary market?
- 24 A. Yes. They're very popular.
- 25 Q. And upon whom would you rely for the

1 income information?

2 A. The borrower.

3 Q. In South Carolina did you-all originate
4 a lot of loans secured back in '06?

5 A. I wouldn't say a lot. I -- I don't
6 know the exact number, but of our total
7 production is probably three to four
8 percent of our total production.

9 Q. And in regard to appraisers or the
10 utilization of appraisers, do you have
11 an ongoing relationship with a
12 particular appraiser, or how did you
13 pick one?

14 MR. RAY: I'm sorry. I didn't
15 hear that last question.

16 MR. LANG: Right.

17 Q. In terms of appraisers did you have an
18 ongoing relationship with a particular
19 appraiser, or how did you pick one for
20 a loan in South Carolina?

21 A. We utilized the internet and located
22 appraisers in markets where we didn't
23 have a large network of appraisers, so
24 we would go to like appraiser.com and
25 then punch in the county, and some

1 names would come up, and we would
2 contact them and see who was available
3 to do the work.

4 Q. Did it matter to AmeriCash who was
5 available to do the work?

6 A. No. As long as they weren't on a --
7 what we call a "black list" for lack of
8 a better term, but you had to be
9 licensed and in good standing with the
10 state. As long as you're licensed in
11 good standing, then yes, we could -- we
12 could pick whoever.

13 Q. And how about attorneys? Was it the
14 same process with attorneys?

15 A. Yeah. It didn't make any difference to
16 us.

17 Q. Okay. Now in regard to the ratio of
18 debt service to income, is that
19 something that AmeriCash looked at in
20 the underwriting process?

21 A. Absolutely.

22 Q. All right. Can you tell from looking
23 at the file what our reported debt to
24 income ratio was?

25 A. I can find it, but if my memory serves

1 me correct, we're talking about 47
2 percent, I believe.

3 Q. Okay. Well, let me specifically invite
4 your attention to a document.

5 A. I think you're looking at the
6 Transmittal Summary.

7 Q. Okay. Take a look at that Transmittal
8 Summary and tell The Court what the
9 debt -- how we calculated or what we
10 came to when we calculated the debt to
11 income ratio.

12 A. We're looking at 44.690.

13 Q. And was that 44.690, was that an
14 unusually high, unusually low, or --

15 A. No, that's -- that's very reasonable.

16 Q. And does it include just the debt
17 service for the new mortgage, or does
18 it include the debt service for the new
19 mortgage or mortgages and other
20 revolving credit?

21 A. All -- all debt that appears on the
22 credit bureau.

23 Q. Would that debt to income ratio still
24 be acceptable today?

25 A. Yeah. That's actually in compliance

1 with Fannie Mae and Freddie Mac.

2 Q. Today?

3 A. Today.

4 Q. And I take it -- and correct me if I'm

5 wrong, but have those become more

6 strict since 2008?

7 A. Yeah. Yeah. Sure.

8 Q. And I take it then that that debt to

9 income ratio was acceptable back in

10 '06?

11 A. Yes.

12 Q. And it meant Freddie Mac and Fannie got

13 -- did it?

14 A. Yes, it did.

15 Q. Now I take it that you are a mortgage

16 lender?

17 A. That's correct.

18 Q. Are you a mortgage broker?

19 A. No, we're not brokers.

20 Q. And tell us what your understanding a

21 broker is as opposed to a lender.

22 A. A broker generally has no liability to

23 the funds that are used to close the

24 loan. A lender will fund a loan off of

25 the -- off the source of funds in which

1 they have liability, direct liability
2 towards.

3 Q. Okay. And is that something that
4 AmeriCash does?

5 A. AmeriCash has warehouse facilities or
6 credit facilities to fund loans.

7 Q. And is AmeriCash financially
8 responsible or liable for those loans
9 off those credit lines?

10 A. Yes, we are.

11 Q. Is there anything unusual about a
12 mortgage lender having a what is
13 sometimes called a warehouse line of
14 credit? Anything unusual about that?

15 A. For a mortgage lender to have a
16 warehouse line?

17 Q. Yes.

18 A. I -- you know, I think everyone who
19 considers themselves a mortgage lender
20 or mortgage banker by definition has to
21 have a mechanism to fund loans.

22 Q. And I take it brokers don't have that?

23 A. No, they don't.

24 Q. Was there any commission, brokerage
25 commission, collected at the closing of

1 this transaction?

2 A. No.

3 Q. Would there have been?

4 A. If we were brokers?

5 Q. No. In the ordinary course of this
6 particular transaction you, as a
7 lender, would you have collected a
8 broker commission?

9 A. No.

10 Q. Is there anything in your file, the
11 files of AmeriCash, that indicated that
12 AmeriCash either had a signed
13 commitment, or oral commitment, or any
14 commitment to lend the
15 Bebout/Swaynghams \$500,000 first
16 mortgage at a rate of 5.5 percent?

17 A. Is there anything in our files?

18 Q. Yes.

19 A. No. There's nothing in the files.

20 Q. Had such a commitment been made, would
21 you have expected it to be in the files
22 somewhere?

23 A. Yes.

24 Q. You're familiar generally, are you not,
25 with something called a high cost loan?

1 A. I am.

2 Q. Is this a high cost loan?

3 A. No.

4 Q. And how do you know that?

5 A. A couple different methods in
6 determining that. Primarily you -- you
7 -- let me back up. The person
8 preparing the loan documents when you
9 enter the data into the system, you
10 know, the DocMagic, DocMagic
11 automatically runs a compliance check,
12 and then tells you whether you're in
13 compliance or not. So it doesn't --
14 for lack of a better term, it dummy
15 proofs the system. There's no human
16 error. You don't have to input
17 information into the -- into the --
18 into a calculator and come up with it
19 on your own. It will tell you you're
20 in compliance, you're out of
21 compliance. Secondly, when a loan is
22 sold and -- and purchased by the
23 investor, the investor also runs those
24 compliance checks.

25 Q. Would DocMagic have told your loan

1 processor that this was a high cost
2 loan, if it was a high cost loan?

3 A. Oh, absolutely.

4 Q. If it was a high cost loan, and you
5 didn't have all the disclosures
6 required either by South Carolina or by
7 regulation D, Section 32, when you
8 tried to sell the loan, could you have
9 sold it on the secondary loan?

10 A. No, it would be declined for purchase.

11 Q. I'm sorry?

12 A. It would have been declined for
13 purchase.

14 Q. I take it this loan was sold on the
15 secondary market?

16 A. That's right.

17 Q. Anything unusual about that?

18 MR. RAY: I'm sorry. I didn't
19 hear the question.

20 Q. I take it this loan was sold on the
21 secondary market?

22 A. The loan was sold on the secondary
23 market.

24 Q. Anything unusual about it?

25 A. Nothing at all.

1 Q. Do you sell all your loans on the
2 secondary market?

3 A. We do.

4 MR. LANG: Thank you, Mr.
5 Giangrande. I don't have anything
6 else.

7 THE COURT: Mr. Lydon, do you
8 have any questions?

9 MR. RAY: Yes, sir, I do.

10 MR. LYDON: I don't have any.

11 THE COURT: Okay. Go ahead, Mr.
12 Ray.

13 MR. RAY: Okay.

14 CROSS-EXAMINATION

15 BY MR. RAY:

16 Q. I'm going to stand up for a second.
17 Mr. Giangrande, I've got just a few
18 questions here. Earlier we talked
19 about RESPA. You understood that? The
20 duties?

21 A. Yes.

22 Q. Okay. And the disclosure duties?

23 A. Yes.

24 Q. Okay. And you admitted that AmeriCash
25 has or had disclosure duties relative

1 to this loan?

2 A. On all loans. Not only on this loan,
3 on all loans.

4 Q. On all loans. Okay. But you cannot
5 prove the disclosures were made there,
6 can you?

7 A. The only document that I can show you
8 that would satisfy that is the document
9 prepared 8/31. The initial disclosure
10 was prepared on 8/31.

11 Q. You have some other documents. Not the
12 one in the closing? You have some that
13 were sent out on 8/31?

14 A. I'm sorry? All sent out?

15 Q. Yes.

16 A. Are you asking me do I have something
17 --

18 Q. The disclosures disclosing, first of
19 all, attorney preference.

20 A. We just covered that.

21 Q. The change in the loan.

22 A. What change in the loan?

23 Q. Well, I mean, they had asked for a half
24 million at five and a half percent.
25 That's what they understood.

- 1 A. I mean, you can ask for anything. I
2 mean, I can -- I'll go to the bank
3 right now and go apply for a one
4 percent loan and see what will happen.
5 I mean, the loan has to be processed.
6 You have to qualify, and it's subject
7 to verification of information.
- 8 Q. No. If you were told you were getting
9 that loan on numerous occasions --
- 10 A. Based on the information that you
11 entered into the system, which turned
12 out to be erroneous, based on when the
13 appraisal came back in. The appraisal
14 takes time. It doesn't -- it's not
15 something that's generated in five
16 minutes.
- 17 Q. Well, I understand that, but as of --
18 you admitted also that as of September
19 12th, 2006, there were titles on two
20 loans, 100 and 400, as of that date.
- 21 A. Yeah.
- 22 Q. And no disclosures were made to the
23 borrowers relative to those loans. You
24 can't prove that.
- 25 A. I -- I agree. I'm not required by law

1 to redisclose in 2006.

2 Q. But you're required to disclose?

3 A. Initial disclosures.

4 Q. Okay. And if the initial disclosures
5 verbally they were told that they were
6 getting a certain loan, and there was a
7 change, you would have to redisclose?

8 A. No, I didn't. Not in 2006.

9 Q. You didn't have to tell them anything?

10 A. We told them. You're required --
11 you're required to discuss it, and you
12 can tell them. There's --

13 Q. If you said, "You're going to get a
14 half a million at five and a half
15 percent," then that's a disclosure;
16 right?

17 A. Okay.

18 Q. And if you change that, then you had a
19 duty to tell them that.

20 A. And I don't know if we did or we
21 didn't. I --

22 Q. In other words --

23 MR. LANG: Your Honor, again, I
24 have to ask counsel to let the
25 witness finish his answer.

1 A. Why would we be disclosed if we're not
2 required to? I don't understand why
3 you're -- you're asking us to comply
4 with 2011 laws or 2010 laws, when we
5 didn't even know what the laws would be
6 in '06.

7 Q. I'm not saying that.

8 A. It's completely new.

9 Q. If you're changing the terms of the
10 loan from what they were told --

11 A. Yes.

12 Q. -- are you saying you don't have to
13 tell them that?

14 A. Yes, we do. We do have a
15 responsibility to tell them, but do we
16 have a responsibility to redisclose?
17 The answer is "no."

18 Q. Okay. But you had a responsibility to
19 tell them?

20 A. That's correct.

21 Q. Okay. Good. Now You said that you had
22 an "A" rating?

23 A. That's correct.

24 Q. What's the highest rating you can get?

25 A. I'm not positive?

1 Q. Isn't it four "A"?

2 A. I don't know. I mean, you're -- you're
3 BBB may be different than California's
4 BBB. I -- I -- it's either an "A" or
5 an "A" plus.

6 Q. But you're an "A"; right? Okay. Now
7 and also when you're given all this
8 information, you're assuming that
9 everybody did their due diligence here;
10 right?

11 A. Okay.

12 Q. Are you?

13 A. Yes.

14 Q. Okay. And you don't know if they did
15 or didn't?

16 A. It's not my responsibility to do that.
17 We have managers and -- and -- and --
18 and methods in place to -- to make
19 certain that we're in compliance. I
20 don't look at every file that funds
21 every month, and there's hundreds of
22 loans that transact every month, and
23 it's impossible for one individual to
24 verify and look at every single loan
25 file. That's not how our organization

1 is set up.

2 Q. I understand. But you're assuming that
3 what Tamara said was correct?

4 A. I am assuming that.

5 Q. And that everybody else did what they
6 were supposed to do?

7 A. That's correct.

8 Q. Okay. And --

9 A. In the file documents that.

10 Q. Now is the Allonge in those files,
11 those red files, is it in there?

12 MR. LANG: It is. I mean, do you
13 want me to show it to you?

14 A. In these files? In this file?

15 Q. Yes.

16 A. I'm fairly certain I would say "yes."

17 Q. Is it's Bates stamped 0003?

18 A. I-- I don't -- I don't -- I've got to
19 dig it up.

20 MR. LANG: If I could assist,
21 Your Honor.

22 THE COURT: Yes, go ahead.

23 A. 005? 003. Okay. Yeah, this Allonge
24 is in the file.

25 Q. There is an Allonge in there?

1 A. Correct.

2 Q. What's the Bates stamp on it?

3 A. Pardon me?

4 Q. The Bates stamp.

5 A. The date stamp on it?

6 Q. Bate, B-a-t-e. What's the Bates stamp
7 on that Allonge?

8 THE COURT: It should be a
9 little number in the lower right.

10 A. It's triple 03.

11 Q. When did they get put on there?

12 A. This stamp? I'm not even sure who put
13 this on here. You're asking me? I --
14 I don't know.

15 MR. LANG: Judge, I mean, I hate
16 to interrupt, but I put the Bates
17 stamp on there.

18 THE COURT: Yes, you did that.
19 You did.

20 MR. LANG: My office did. I
21 didn't personally do it.

22 THE COURT: Your office did it.

23 MR. LANG: I had a paralegal that
24 did it.

25 MR. RAY: That's what I'm asking.

1 I wanted to know when it got on
2 there.

3 Q. All right. And there's no date on that
4 Allonge. Is that unusual?

5 A. No. It's not unusual, and more to the
6 point the Allonge is part of the note,
7 and the note has the date on it.

8 Q. All right. Let me see. You're saying
9 that the Allonge is part of the note?

10 A. It's attached to the -- it was
11 attached, and so if you look at the
12 top document it has the date on it.

13 Q. Right. Right. Was it on there when
14 they signed the note?

15 A. I -- I can't testify to that. I have
16 no idea.

17 Q. Okay. You're saying it's a part of the
18 note, but you don't know if it was on
19 there when they signed it or not?

20 A. I wasn't there.

21 Q. I know.

22 A. Willoughby's Law Firm was there.

23 Q. The two red files, the ones that you've
24 got your hands on, are those your files
25 or your counsel's files?

1 A. No. These are the files that AmeriCash
2 holds in storage. So these are our
3 files.

4 Q. In California? You keep those in
5 California?

6 A. We keep them in a file, yes, storage.

7 Q. All right. When did the Bates stamps
8 get on the files?

9 A. I didn't do it, so I wouldn't know it.

10 THE COURT: Mr. Lang, tell him
11 when the Bates stamps got on there.

12 MR. LANG: I don't know. Surely

13 --

14 THE COURT: Your office put them
15 on, but you don't know, so --

16 MR. LANG: Right. I don't know.
17 I mean, just so everybody
18 understands --

19 MR. RAY: Well, let's get off of
20 when the Bates stamps got on there.

21 MR. LANG: Okay.

22 THE COURT: Okay.

23 Q. Do you have the original Allonge?

24 A. Do we have it?

25 Q. Yes.

*Says the red
files are
AmeriCash's
original files,
yet Davis
office put
Bates stamps
on them.
Where are
the original
unmarked
Bates stamps?*

1 A. I -- I don't know. I -- I don't know.

2 MR. LYDON: Your Honor, just for
3 the record, The Court previously
4 allowed me to substitute a copy for
5 the original Allonge that I
6 provided Mr. Ray earlier this
7 morning.

8 THE COURT: Yes. You've got the
9 original thing.

10 MR. LYDON: I've got the
11 original, yes.

12 THE COURT: Your own attorney
13 took it. Somebody.

14 MR. LYDON: I am.

15 MR. RAY: Your Honor, I think
16 that's all I've got. You've got to
17 produce some records.

18 THE COURT: Okay.. Got it
19 handled.

20 MR. RAY: Give me just a minute,
21 please.

22 THE COURT: Go ahead.

23 MR. RAY: I don't want to hold
24 you up.

25 Q. A minute ago you were talking about,

1 Mr. Giangrande, about time difference
2 three hours, and it would have been
3 impossible for Tamara Pacak to do this
4 because it would have been 6:00
5 California time or something when the
6 phone call was made; is that right?
7 A. I don't think the word "impossible"
8 ever came out of my mouth, but it was
9 highly unlikely.
10 Q. So is it possible maybe Wyatt
11 Willoughby's office set this up?
12 A. The meeting?
13 Q. Closing.
14 A. Absolutely they did. We don't -- we
15 don't schedule closings.
16 Q. All right. So all that about
17 California, I mean, it was done by
18 Wyatt Willoughby's office, wasn't it?
19 A. That's not what the original question
20 was.
21 Q. I'm sorry?
22 A. I don't believe that was what the
23 original question was.
24 Q. Well, we were just talking about Tamara
25 Pacak setting up the closing.

1 A. She doesn't set up closings. Our --
2 our -- our originators are not
3 permitted to set up closings.

4 MR. RAY: I think that's all we
5 have, Your Honor.

6 THE COURT: Good. Any rebuttal,
7 reply, anything? Any other
8 witnesses?

9 MR. LANG: Your Honor, I have no
10 other witnesses. Mr. Giangrande
11 was my only witness. The only
12 evidence I'm going to put in other
13 than what's already in --

14 THE COURT: Right.

15 MR. LANG: -- is I have provided ,
16 The Court, as well as all counsel,
17 certain deposition designations
18 which, you know, I --

19 THE COURT: Those come in anyway,

20 MR. LANG: Yes, sir. I'd hand
21 up. We can mark them as a group,
22 suits me fine, or individually.

23 THE COURT: Group suits me.

24 MR. LANG: I have the originals.
25 This would be AmeriCash

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) CASE NO: 2010-CP-39-0352

US Bank National Association as Successor)
Trustee to Bank of America National Assoc.,)
Successor by merger to LaSalle Bank National)
Association, as Trustee for Morgan Stanley)
Mortgage Loan Trust 2007-3XS,)

Plaintiffs,)

vs.)

Barbara E. Bebout; Robert Swaynham)
a/k/a Robert Alec Swaynham; Mortgage)
Electronic Registration Systems, Inc.)
(MIN# 1001419-0060908012-1);)
The Peoples National Bank,)

Defendants and)
Third-Party Plaintiffs,)

vs.)

Americash Mortgage Corporation,)

Third-Party Defendants.)

COPY

**THE DEPOSITION OF
WALTER C. CASTRO**

Thursday, February 17, 2011
3:32 p.m. - 4:46 p.m.

The deposition of WALTER C. CASTRO, taken on
behalf of the Defendants and Third-Party Plaintiffs,
Barbara E. Bebout and Robert A. Swaynham a/k/a
Robert Alec Swaynham, at the law offices of McAngus,
Goudelock & Courie, located at 2411 North Oak Street,
Myrtle Beach, SC, on Thursday, February 17, 2011.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
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INDEX

EXAMINATION OF WITNESS: PAGE

WALTER C. CASTRO

Examination by Mr. Ray	5
Examination by Mr. Lang	52
Signature Page	61
Errata Sheet	62
Certificate of Court Reporter	63

EXHIBITS

Deposition Exhibit Number 1	
Typed notes	58
Deposition Exhibit Number 2	
Attorney/Insurance Preference check list	58
Deposition Exhibit Number 3	
South Carolina Notary search	15
Deposition Exhibit Number 4	
Settlement Statement	33
Deposition Exhibit Number 5	
Settlement Statement	33
Deposition Exhibit Number 6	
Settlement Statement	33
Deposition Exhibit Number 7	
Settlement Statement	34
Deposition Exhibit Number 8	
Settlement Statement	58

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1 Q: And you passed the Bar when? When were you a
2 member of the South Carolina Bar?
3 A: I was licensed November 13th, 2006.
4 Q: Did you ever participate in any real estate
5 closings before that time?
6 A: I did not. I was not licensed before that time.
7 Q: Did you ever participate as a witness before that
8 time?
9 A: Not that I recall.
10 Q: All right. And tell me how that would go,
11 working for Mr. Willoughby.
12 A: Mr. Willoughby would contact me and indicate that
13 he had a closing to do, wanted to see what my
14 availability was, and I would simply meet with
15 the homeowners, go through the documentation, the
16 closing documentation, and execute the documents.
17 Q: And when did that practice begin?
18 A: Sometime November -- I can't tell you for
19 certain. I don't recall. It would have to be
20 middle to late November, early December 2006.
21 Q: And where were you doing these real estate
22 closings for Mr. Willoughby?
23 A: I would typically do them at the homeowners'
24 residence.
25 Q: Is that the only place you ever did them?

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1 A: I have 9 and 11 in front of me.
2 Q: Thank you. Could you look at the signature page?
3 Start with Number 9, which would be -- It's the
4 next to the last page and the page before that.
5 A: Okay.
6 Q: Do you recognize your signature on there?
7 A: I do.
8 Q: That's your signature?
9 A: That is my signature.
10 Q: Do you see anybody else's signature on there?
11 A: I see three others on page six.
12 Q: And who does that purport to be?
13 A: Well, starting at the top it's Barbara Bebout,
14 Robert Swaynham and K.B. Sandifer, looks like.
15 Q: Do you know K.B. Sandifer?
16 A: I do.
17 Q: And when was the last time you talked to him?
18 A: A month ago, maybe.
19 Q: Was it about his deposition?
20 A: We talked about this particular matter.
21 Q: And if -- give me your procedure for doing these
22 closings for Mr. Willoughby.
23 A: Mr. Willoughby had a staff of people that worked
24 for him and they would call me and ask for my
25 availability for a date and a time. If I was

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1 able and could schedule it, I would accept the
2 engagement and then they would give me an
3 address, and from what I remember, I'd stop by
4 their office, maybe, and get a stack of documents
5 and then I would take the documents to the
6 closing, having the documents executed, perform
7 the closing and return the documents to his firm.

8 Q: And then what would happen?

9 A: His firm would disburse the money and do all the
10 executions and the mortgage satisfactions, what
11 have you.

12 Q: Did you participate in the disbursement of the money
13 or recording the documents?

14 A: I, typically, did nothing more than call and make
15 sure that had been done.

16 Q: You say you always went by yourself. How would
17 Mr. Sandifer's signature have appeared on Exhibit
18 Number 9?

19 A: Mr. Sandifer closed the transaction.

20 Q: He closed the transaction?

21 A: Correct.

22 Q: You would travel to the person's residence, for
23 instance, or some place and get the documents
24 witnessed; is that correct?

25 A: No. In closings that I performed as the

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1 attorney, ---

2 Q: Right.

3 A: --- I went by myself.

4 Q: Right.

5 A: I performed the closings.

6 Q: Right.

7 A: On this transaction we're talking about here, I
8 went as a witness, and Mr. Sandifer performed the
9 closing.

10 Q: You were by yourself, so you ---

11 A: No.

12 Q: --- had the documents executed?

13 MR. LYDON: OBJECT TO THE FORM.

14 A: No. What I'm saying is when I was the closing
15 attorney on transactions that I was engaged to be
16 the closing attorney on, I would travel to the
17 homeowner and meet them either at their house or
18 wherever they specified and performed the
19 closing. I would return those documents back to
20 Mr. Willoughby's firm. In this particular
21 transaction right here, Kevin Sandifer was the
22 closing attorney. I went along with him. I
23 watched him do it. I witnessed the documents.
24 That was my sole involvement in this particular
25 transaction.

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1 Q: Tell me if I'm wrong, but a minute ago you said
2 you went by yourself.

3 MR. LYDON: OBJECT TO THE FORM.

4 A: No. The, the question you asked me is, do I go
5 by myself, and I said when I go and do closings
6 where I'm engaged as the closing attorney, I go
7 by myself. In this transaction, I was not
8 engaged as the closing attorney. Mr. Sandifer
9 was the attorney. I simply met Mr. Sandifer and
10 witnessed this particular transaction.

11 Q: Okay. Do you remember this particular closing?

12 A: I remember this particular closing, parts of this

13 ---

14 Q: Where did it take place?

15 A: It took place at Stack's, one of the Stack's
16 Restaurants in Greenville.

17 Q: Had you ever been in there before?

18 A: Yes.

19 Q: How many times?

20 A: I would say a good estimate is between 20 or 30
21 times.

22 Q: Had you ever performed a closing in there before?

23 A: No.

24 Q: Have you ever been in there since this closing?

25 A: Possibly.

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1 A: Yes.

2 Q: And why did you choose that particular table?

3 A: I did not choose the table. I think we were
4 probably seated there.

5 Q: How crowded was the restaurant?

6 A: I don't recall, to be quite honest with you.

7 Q: Okay. Are there booths inside that restaurant?

8 A: I don't recall, but we were sitting at a table.
9 I think there are booths there.

10 Q: And so Mr. Swaynham and his wife were at the
11 table; and then you're saying you and Mr.
12 Sandifer were at the table; is that correct?

13 A: That is correct.

14 Q: And then the stack of documents for the closing,
15 correct?

16 A: Correct.

17 Q: Are you saying that these documents were signed
18 in the restaurant?

19 A: Correct.

20 Q: By you and Mr. Sandifer?

21 A: I signed as a witness, and Mr. Sandifer signed
22 wherever he signed.

23 Q: How do you know that Sandifer was the attorney on
24 this particular closing?

25 A: Because I had been licensed a week. I got my

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1 license on the 13th. As the closing occurred on
2 the 20th, I did not have the wherewithal. I was
3 not engaged. I was there simply as a witness.
4 Q: How long was it before you began acting as an
5 attorney for Mr. Willoughby?
6 A: Probably late November, early December.
7 Q: This was late November.
8 A: This is November 20th.
9 Q: Right. So a week later you were acting as an
10 attorney?
11 A: And; and to be quite honest with you, I don't
12 remember. I was trying to comply with my Rule
13 403 engagement rules, and I would not have done
14 anything to run afoul of those rules, so.
15 Q: Right. And you're quite certain Mr. Sandifer was
16 in the restaurant with you?
17 A: I'm absolutely positive Mr. Sandifer was in the
18 restaurant with me.
19 Q: How many other restaurant closings did you do
20 with Mr. Sandifer?
21 A: None, that I recall.
22 Q: How come the Swaynham residence wasn't used for
23 this closing?
24 A: I have no idea.
25 Q: If you could look at Exhibit 11, if we could have

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1 MR. ROBERT: I GOT IT, TOO.

2 MR. LANG CONTINUES:

3 AMERICASH MORTGAGE EXHIBIT NUMBER 3

4 IDENTIFIED.

5 Q: Mr. Castro, let me hand you what's been
6 previously marked Americash Mortgage Exhibit
7 Number 3, and invite your particular attention to
8 the second page of that document and ask you if
9 you can identify a signature on that document?

10 A: I can identify my signature on that document.

11 Q: And did I, just for your convenience, highlight
12 your signature on that?

13 A: You did.

14 Q: And that's the signature you identified as yours?

15 A: That is correct.

16 Q: Any question about that being your signature?

17 A: No.

18 Q: Would you have signed that document as a witness
19 if you were not present when the other folks who
20 signed that document signed it?

21 A: I would not sign as a witness to something I did
22 not witness.

23 Q: Let me hand you, Mr. Castro, what's been marked
24 previously as Americash Exhibit Number 5, which
25 is a one-page document.

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AMERICASH MORTGAGE EXHIBIT NUMBER 5
IDENTIFIED.

MR. LANG: ARE YOU WITH ME, TOMMY?

MR. LYDON: YES.

MR. RAY: LOUIS, I'M HAVING THE SAME
TROUBLE HEARING YOU AS YOU
WERE HAVING HEARING ---

MR. LANG: OKAY..

Q: Mr. Castro ---

MR. LANG: CAN YOU HEAR ME NOW?

MR. RAY: YES.

MR. LANG: OKAY.

Q: Mr. Castro, let me hand you what's been marked
previously as Americash Mortgage Exhibit Number
5, and ask you if you can identify a signature on
that document?

A: Yes.

Q: And is that your signature that I've highlighted
there for you?

A: That is my signature.

Q: And would you have signed that document as a
witness if you were not present when the other
people signed it whose signature you are
witnessing?

A: I would not have signed as a witness unless I

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1 witnessed the signatures of other folks, no.

2 Q: And I take it, on the date that that document was
3 signed, which appears to be November 20, 2003, or
4 '6, rather, you were a licensed attorney,
5 licensed in the State of South Carolina?

6 A: I was.

7 Q: I'm going to retrieve that from you, make sure
8 I'm ---

9 MR. RAY: WHAT WAS THAT DATE, LOUIS?

10 MR. LANG: SAY AGAIN.

11 MR. RAY: WHAT WAS THE DATE?

12 MR. LANG: NOVEMBER 20, 2006.

13 MR. RAY: I THOUGHT YOU SAID 2003.

14 MR. LANG: I DID, BUT I CORRECTED
15 MYSELF.

16 Q: All right. Mr. Castro, let me hand you what's
17 been previously marked as Exhibit Number 9, and
18 you identified your signature on this document,
19 if I'm not mistaken?

20 A: Yes.

21 Q: And this document is a mortgage in the original
22 principal amount of \$100,000 dated November 20,
23 2006, and you signed this document as a witness;
24 is that correct?

25 A: I signed this document as a witness.

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1 Q: And would you have signed that document as a
2 witness if you had not actually seen the
3 principals whose signature you are witnessing
4 sign the document as well?

5 A: No.

6 Q: Let me hand you what's been previously marked as
7 Exhibit Number 11 and ask you the same question.
8 You've identified your signature on this
9 document; is that correct?

10 A: Yes.

11 Q: And you signed as a witness?

12 A: I signed as a witness, correct.

13 Q: And would you have signed that document as a
14 witness if you had not actually seen the people
15 whose signatures you are witnessing sign the
16 document?

17 A: No.

18 Q: Is there any doubt in your mind that you were
19 present at the closing that we've been
20 discussing?

21 A: None whatsoever.

22 Q: Is there any doubt in your mind that Mr. Sandifer
23 was also present at that closing?

24 A: There's no doubt in my mind.

25 Q: And is there any doubt in your mind that the

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1 people or persons whose signature you witnessed
2 at this closing were actually present at the
3 closing when you signed as a witness?

4 A: There's no doubt in my mind.

5 Q: I think that's all I have.

6 MR. LANG: JUST FOR THE RECORD, BOB,
7 YOU HAD SUPPLIED THE COURT
8 REPORTER WITH THREE
9 DOCUMENTS WHICH HAVE THE
10 NUMBERS 1, 2 AND 8 IN THE
11 UPPER RIGHT-HAND CORNER AND
12 YOU'RE NOT GOING TO USE
13 THESE AS EXHIBITS, I TAKE
14 IT?

15 MR. RAY: I'M SORRY, WHAT WAS THE
16 LAST THING YOU SAID?

17 MR. LANG: YOU'RE NOT GOING TO USE
18 THESE THREE DOCUMENTS WHICH
19 YOU'VE MARKED AS 1, 2 AND 8
20 IN THE UPPER RIGHT-HAND
21 CORNER AS EXHIBITS TO THIS
22 DEPOSITION?

23 MR. RAY: I'M NOT GOING TO QUESTION
24 MR. CASTRO ON THEM, BUT
25 JUST GO AHEAD AND MARK THEM

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1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3 COUNTY OF PICKENS)
4 US BANK NATIONAL ASSOCIATION AS)
5 SUCCESSOR TRUSTEE TO BANK OF)
6 AMERICA NATIONAL ASSOC.,) **COPY**
7 SUCCESSOR BY MERGER TO LASALLE)
8 BANK NATIONAL ASSOCIATION, AS) **EXHIBITS**
9 TRUSTEE FOR MORGAN STANLEY)
10 MORTGAGE LOAN TRUST 2007-3XS,)
11 Plaintiffs,) 2010-CP-39-0352
12 vs.)
13 BARBARA E. BEBOUT; ROBERT A.)
14 SWAYNGHAM A/K/A/ ROBERT ALEC)
15 SWAYNGHAM; MORTGAGE ELECTRONIC)
16 REGISTRATION SYSTEMS, INC. (MIN#)
17 1001419-0060908012-1); THE)
18 PEOPLES NATIONAL BANK;)
19 Defendants and)
20 Third-Party Plaintiffs,)
21 Vs.)
22 U.S. BANK, AMERICASH MORTGAGE)
23 CORPORATION AND GREENTREE)
24 MORTGAGE)
25 Third-Party Defendants.)

COPY

EXHIBITS

JUDY COMP & ASSOCIATES, INC.

ROA PAGE 418

CERTIFIED
TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL

MIN: 1001419-0060908011-3

NOTE

Loan Number [REDACTED] 011

NOVEMBER 20, 2006
[Date]

BREA
[City]

CALIFORNIA
[State]

140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 400,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is AMERICASH, A CALIFORNIA CORPORATION (CFL # 603-6182). I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.625 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on JANUARY 1 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 450 APOLLO, SUITE E, BREA, CALIFORNIA 92821

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 2,831.17

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit;

PLAINTIFF'S
EXHIBIT

9/29/11

ROA PAGE 419

and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep

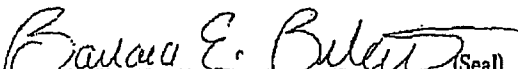
x 683

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
BARBARA E. BEBOUT
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

[Sign Original Only]

ALLONGE

CERTIFIED
TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL

LOAN #: 0060908011

Borrower(s): BARBARA E. BEBOUT

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

Principal Balance: \$400,000.00

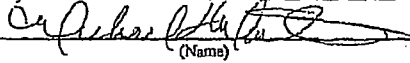
Loan Date: NOVEMBER 20, 2006

PAY TO THE ORDER OF

Without Recourse

Company Name: AMERICASH

By:



(Name)

VICE PRESIDENT

(Title)

MICHAEL MARTIN

Multisate Note Allonge

After Recording Return To:
 AMERICASH
 450 APOLLO, SUITE E
 BREA, CALIFORNIA 92821
 Loan Number: 0060908011

000024671 12/29/2006 04:26:30PM
 Pickens CO, SC
 Register of Deeds
 REC FEE:21.00

[Space Above This Line For Recording Data]

MORTGAGE

MIN: 1001419-0060908011-3

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated NOVEMBER 20, 2006, together with all Riders to this document.
 (B) "Borrower" is BARBARA E. BEBOUT AND ROBERT ALEC SWAYNGHAM

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is AMERICASH

Lender is a CALIFORNIA CORPORATION organized
 and existing under the laws of CALIFORNIA
 Lender's address is 450 APOLLO, SUITE E, BREA, CALIFORNIA 92821

(E) "Note" means the promissory note signed by Borrower and dated NOVEMBER 20, 2006
 The Note states that Borrower owes Lender FOUR HUNDRED THOUSAND AND 00/100
 Dollars (U.S. \$ 400,000.00) plus interest.

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 1, 2036

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

x BCB - RB

PLAINTIFF'S
 EXHIBIT

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Planned Unit Development Rider
☐ Balloon Rider	☐ Biweekly Payment Rider
☐ 1-4 Family Rider	☐ Second Home Rider
☐ Condominium Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the

COUNTY	of	PICKENS
(Type of Recording Jurisdiction)		(Name of Recording Jurisdiction)

BBB

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N.: 5102-00-69-0557

24671 BKM3468 PG97

which currently has the address of

140 OVERLOOK DRIVE

(Street)

PICKENS
(City)

South Carolina

29671
(Zip Code)

("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrowers shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim

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which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree

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in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any

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form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate

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as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entitles or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's

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address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will

BEB RJS

state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 16) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified

In the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in §12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BEB RB

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Barbara E. Bebout (Seal)
BARBARA E. BEBOUT -Borrower

Robert Alec Swayingham (Seal)
ROBERT ALEC SWAYNGHAM -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Walt Chitt (Seal)
WITNESS -Borrower

KB Swayingham (Seal)
Walt Chitt (Seal)
WITNESS -Borrower

Signed, sealed and delivered in the presence of:

Walt Chitt
Witness

KB Swayingham
Witness

[Space Below This Line For Acknowledgment]

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Personally appeared before me WALTER CHRISTOPHER CASTRO

(first witness) and made oath that he/she saw the within named BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM (grantor) sign, seal, and as his/her act and deed, deliver the within written mortgage, and that he/she, with KEVIN B. SANDOZ (second witness), witnessed the execution thereof.

Walter Christopher Castro
Witness

SWORN to before me this 20th day of NOVEMBER 2006

Kevin B. Sandoz (LS)
Notary Public for South Carolina
KEVIN B. SANDOZ

(Seal)

My commission expires: 12-11-2010

BEB MB

EXHIBIT A

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13 containing 20.94 acres, more or less, as shown on that certain plat prepared by C.E. Shehan, Surveying dated January 18, 1988, recorded in the Office of the ROD for Pickens County in Plat Book 35 at page 18.

LESS

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13-A containing 5.15 acres, more or less, as shown on that certain plat prepared for Hayden S. Porter and Patricia M. Porter prepared by Robert E. Threatt, dated May 7, 1994, recorded May 20, 1994 in the Office of the ROD for Pickens County in Plat Book 63 at page 174B. Said tract containing 5.15 acres, more or less, conveyed to Hayden S. Porter and Patricia M. Porter by deed of Joel A. Swaynham and Robert Alex Swaynham dated May 18, 1994, recorded May 20, 1994 in said ROD Office in Book 241 at page 188.

Reference is hereby craved to said plats for a more complete and accurate description. Be all measurements a little more or less.

This being a portion of the identical property conveyed to Joel A. Swaynham and Robert Alec Swaynham by deed of Raymond R. Reinke dated September 3, 1993, recorded September 8, 1993 in the Office of the ROD for Pickens County in Book 213 at page 293. This is also a portion of the identical property conveyed to Robert Alec Swaynham by deed of Joel A. Swaynham dated March 26, 1998, recorded March 26, 1998 in said ROD Office in Book 418 at page 188. This is also the identical property conveyed to Barbara E. Bebout by deed of Robert Alec Swaynham dated July 31, 2001 recorded August 1, 2001 in said ROD Office in Book 625 at page 273.

Property Address: 142 Overlook Drive, Pickens, SC 29671

TMS #: 5102-00-69-0557

BBB RLL

Borrower Signature Authorization

Privacy Act Notice: This information is to be used by the agency collecting it or its assignees in determining whether you qualify as a prospective mortgagor under its program. It will not be disclosed outside the agency except as required and permitted by law. You do not have to provide this information, but if you do not your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38, USC, Chapter 37 (if VA); by 12 USC, Section 1701 et seq. (if HUD/FHA); by 42 USC, Section 1452a (if HUD/CPD); and Title 42 USC, 1471 et seq., or 7 USC, 1921 et seq. (if USDA/FmHA).

Part I - General Information

1. Borrower(s) <i>Robert Alec Swainson</i> <i>BARBAR D. BEBOUT</i>		2. Name and address of Lender/Broker Americash 459 Apollo St, Suite E Brea, CA 92621 TEL: 800-483-6565 FAX: 800-451-2487
3. Date <i>8/31/2006</i>	4. Loan Number	

Part II - Borrower Authorization

I hereby authorize the Lender/Broker to verify my past and present employment earnings records, bank accounts, stock holdings, and any other asset balances that are needed to process my mortgage loan application. I further authorize the Lender/Broker to order a consumer credit report and verify other credit information, including past and present mortgage and landlord references. It is understood that a copy of this form will also serve as authorization.

The information the Lender/Broker obtains is only to be used in the processing of my application for a mortgage loan.

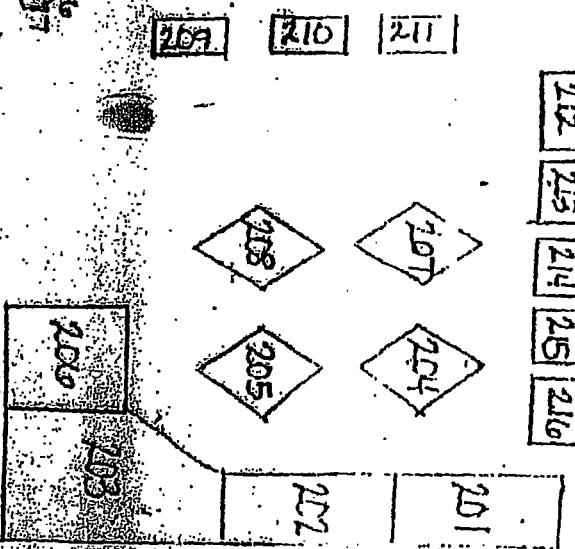
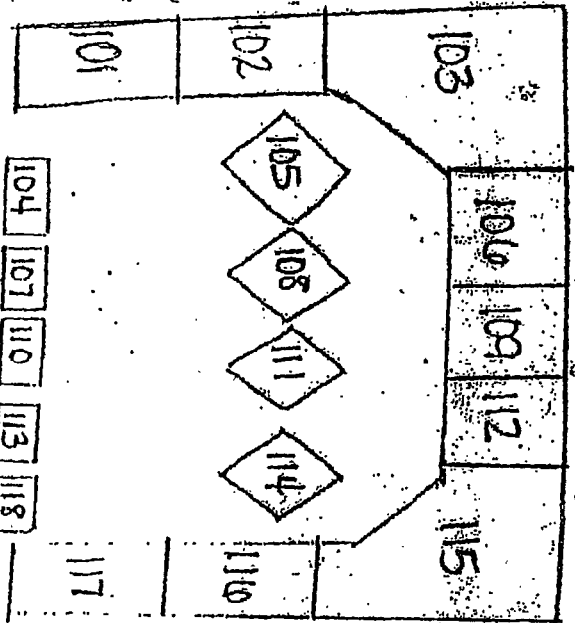
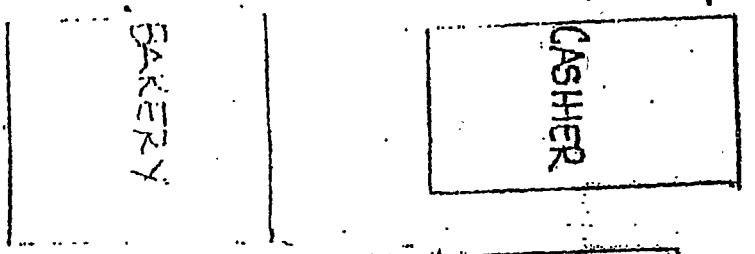
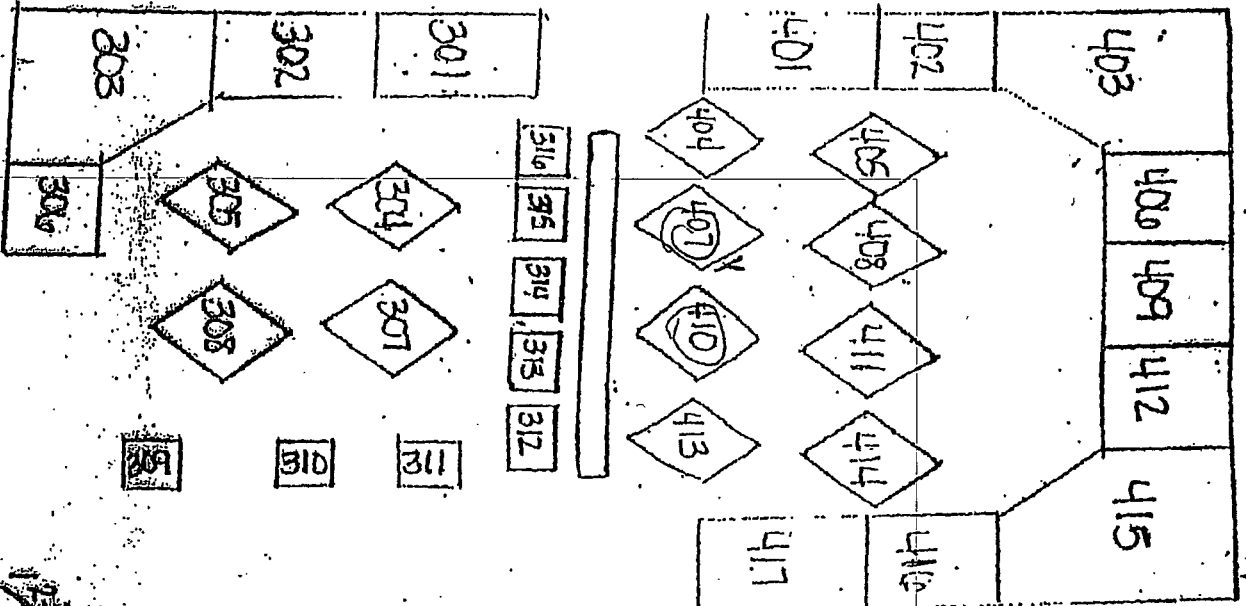
Robert Alec Swainson
Borrower
Barbara Bebout
Borrower

8/31/2006
Date
8/31/06
Date

CALYX Form BSA hp 10/98

**DEFENDANT'S
EXHIBIT**

0229



ATTORNEY/INSURANCE PREFERENCE CHECK LIST

Date: NOVEMBER 20, 2006

Lender: AMERICASH

Borrower(s): BARBARA E. BEBOUT

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of the loan.

(a) I select: _____
Attorney's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

(b) Having been informed of this right, and having no preference, I (we) asked for assistance from the lender and was (were) referred to a list of acceptable attorneys. From the list I select:

WYATT WILSON HAY
Attorney's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required ☒ hazard ☐ flood ☐ other: _____ Insurance in connection with this mortgage transaction.

(a) I select: ALLSTATE - PAT CAMPBELL
Agent's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

DEFENDANT'S EXHIBIT
3 11/29/11 18

Loan Number: [REDACTED]

ATTORNEY/INSURANCE PREFERENCE CHECK LIST

Date: NOVEMBER 20, 2006

Lender: AMERICASH

Borrower(s): BARBARA E. BEBOUT

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of the loan.

(a) I select: _____
Attorney's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

- (b) Having been informed of this right, and having no preference, I (we) asked for assistance from the lender and was (were) referred to a list of acceptable attorneys. From the list I select:

Attorney's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required
☐ hazard ☐ flood ☐ other: _____ insurance in connection with this mortgage transaction.

(a) I select: _____
Agent's Name

Borrower's Signature
BARBARA E. BEBOUT

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

Borrower's Signature

DEFENDANT'S
EXHIBIT
11/29/11
18.

GOOD FAITH ESTIMATE

Applicants: Barbara E. Babout
 Property Addr: 140 Overlook Drive, Pickens, SC 29671
 Prepared By: Americash Ph. 800-483-6666
 450 Apollo St, Suite E, Brea, CA 92821

Application No:
 Date Prepared: 08/31/2006
 Loan Program: FMS360SNNN

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates-actual charges may be more or less. Your transaction may not involve a fee for every item listed. The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 settlement statement which you will be receiving at settlement. The HUD-1 settlement statement will show you the actual cost for items paid at settlement.

Loan Amount \$	400,000	Interest Rate:	7.625 %	Term:	360 / 360 mths
ITEMS PAYABLE IN CONNECTION WITH LOAN					
001	Loan Origination Fee		\$		✓
002	Loan Discount	0.250%		1,000.00	✓
003	Appraisal Fee			350.00	
004	Credit Report			21.68	
005	Lender's Inspection Fee				✓
008	Mortgage Broker Fee				✓
009	Tax Related Service Fee				✓
010	Processing Fee			395.00	✓
011	Underwriting Fee			395.00	✓
012	Wire Transfer Fee				✓
	013 Funding Fee to Americash			350.00	✓
	014 Document Prep. Fee to Americash			195.00	✓
	015 Administration Fee to Americash			500.00	✓
	016 Lending Tree CLO Fee POC by Americash				✓
	017 Flood Cert Fee			16.00	✓
ITEMS PAYABLE AT SETTLEMENT					
1101	Closing or Escrow Fee: First American Title		\$		✓
1105	Document Preparation Fee				✓
1106	Notary Fees				✓
1107	Attorney Fees			450.00	✓
1108	Title Insurance: First American Title.			1,050.00	
	1109 Title Exam & Abstract or Title Search			225.00	✓
	1110 Copy/Courier Fees			50.00	✓
	1111 Title Update & Record			75.00	
	1112 Interim Update			75.00	
ITEMS PAYABLE AT SETTLEMENT - GOVERNMENT/RECORDING & TRANSFER CHARGES					
1201	Recording Fees: Title/County Recorder		\$	33.00	
1202	City/County Tax/Stamp:				
1203	State Tax/Stamp:				
ITEMS PAYABLE AT SETTLEMENT - ADDITIONAL SETTLEMENT CHARGES					
1301	Pest Inspection		\$		
Estimated Closing Costs					
				5,180.66	
ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901	Interest for 4 days @ \$	83.5616	per day	\$	334.25 ✓
902	Mortgage Insurance Premium				✓
903	Hazard Insurance Premium				
904	2006 Property Taxes			4,385.01	
905	VA Funding Fee				✓
ITEMS RESERVES DEPOSITED WITH LENDER					
1001	Hazard Insurance Premiums	months @ \$	132.08	per month	\$
1002	Mortgage Ins. Premium Reserves	months @ \$		per month	✓
1003	School Tax	months @ \$		per month	
1004	Taxes and Assessment Reserves	months @ \$	387.33	per month	
1005	Flood Insurance Reserves	months @ \$		per month	
		months @ \$		per month	
		months @ \$		per month	
Estimated Prepaid Items/Reserves				4,719.26	
TOTAL ESTIMATED SETTLEMENT CHARGES				9,899.92	

TOTAL ESTIMATED FUNDS NEEDED TO CLOSE				TOTAL ESTIMATED MONTHLY PAYMENT	
Purchase Price/Payoff (+)	425,250.00	New First Mortgage (-)		Principal & Interest	2,831.17
Loan Amount (-)	400,000.00	Sub Financing (-)	100,000.00	Other Financing (P & I)	1,009.41
Est. Closing Costs (+)	5,180.66	New End Mtg Closing Costs (+)	1,881.77	Hazard Insurance	132.08
Est. Prepaid Items/Reserves (+)	4,719.26			Real Estate Taxes	387.33
Amount Paid by Seller (-)				Mortgage Insurance	
				Homeowner Ass'n. Dues	
				Other	
Total Est. Funds to you				Total Monthly Payment	4,369.99

The "metes are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD-1 Information Booklet, which is to be provided to you by your mortgage broker or lender. If your application is to purchase residential real property, the lender will take a first lien on the property. The undersigned acknowledges receipt of the booklet "Settlement Costs," and if applicable the Consumer Handbook on ARM Mortgages.

Applicant: Barbara E. Babout Date: 11/20/06 Applicant: _____ Date: _____

Calyx Form g/e2, fmn 11/01

Closing Atty. 0306

DEFENDANT'S EXHIBIT
 5 9/29/11 1 P8

Philip Swicegood, Ph.D.

*Wofford College
429 N. Church Street
Spartanburg, SC 29303
Office (864) 597-4378
Fax (846) 597-4549
SwicegoodPG@Wofford.edu*

September 7, 2010

Robert Ray
Attorney at Law
306-A Mills Avenue
Greenville, SC 29605

Re: Swaynham

Dear Mr. Ray:

At your request I have completed a preliminary determination of the economic impact sustained based on the switched mortgage terms. As I understand the terms, your client requested a \$500,000.00 mortgage for 30 years at a fixed rate of 5.5%. Instead they were offered a pair of mortgages with drastically different terms: (i) \$400,000.00 for 30 years at 7.625% and (ii) \$100,000.00 for 15 years at 11.75%. The total difference in payments over the life of the loans equals **\$178,474.96**. In lump-sum present value terms discounted at the current market rate of 5.5%, the difference in payments over the life of the loans equals **\$122,168.83**.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Philip Swicegood, Ph.D.
*Michael James Family Professor of Finance
Wofford College*

**DEFENDANT'S
EXHIBIT**
9/29/11
18

Loan Number: 0 [REDACTED]

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

You are hereby notified* that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from AMERICASH

to AMERICASH

effective 01/01/07

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before this effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. In this case, the present servicer and the new servicer have combined all necessary information in this one notice.

Your present servicer is AMERICASH

If you have any questions relating to the transfer of servicing from your present servicer call our servicing department at (714) 994-7554 between 8:30 a.m. and 5:00 p.m. on the following days: Monday through Friday.

Your new servicer will be AMERICASH

The business address for your new servicer is: 450 APOLLO , SUITE E, BREA, CALIFORNIA 92821

The toll-free or collect call telephone number of your new servicer is (714) 994-7554 . If you have any questions relating to the transfer of servicing to your new servicer call SERVICING DEPARTMENT at (714) 994-7554 between 8:00 a.m. and 5:00 p.m. on the following days: Monday through Friday.

The date that your present servicer will stop accepting payments from you is 01/01/07

The date that your new servicer will start accepting payments from you is 01/01/07

You should also be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. §2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. §2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

A Business Day is any day, excluding legal public holidays (State or Federal), Saturday and Sunday.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

BORROWER ACKNOWLEDGMENT

I/We have read this disclosure form, and understand its contents, as evidenced by my/our loan signature(s) below.

Barbara E. Bebout 11-20-06
Borrower BARBARA E. BEBOUT Date

Borrower _____ Date

Borrower _____ Date

Borrower _____ Date

Borrower _____ Date

Borrower _____ Date

* This notification is a requirement of section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. §2605).

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS
Reg. X 24 CFR 3500.21 (d)
04/17/06

DocMagic eForm 800-648-1362
www.docmagic.com

0076

ROA PAGE 444

DEFENDANT'S
EXHIBIT
11/20/06
18



450 East Apollo Street, Ste #E
Brea, Ca 92821

Mortgage Bankers

Phone: (800) 483-8565
Fax: (714) 255-8702

FACSIMILE

TO:
DAWN WINNING

FROM:
TRINA REEDUS

COMPANY:
WILLOUGHBY LAW FIRM

DATE:
9-12-06

FAX NUMBER:
*803 254-5161

TOTAL NO. OF PAGES INCLUDING
COVER:

~~4~~ 4

PHONE NUMBER:
*803 254-5151

RE: LETTERS

Bebout - 1st & 2nd

☐ URGENT ☐ FOR REVIEW ☐ PLEASE REPLY ☐ PER YOUR REQUEST

NOTES/COMMENTS:

Paying off - Peoples NTL Acct # 110002360802
\$ 420 -

DEFENDANT'S
EXHIBIT

8 9/21/11
3. PFF.

Trina Dawn ☺

Closing Atty: 0041

ROA PAGE 445

Request for Title Commitment

Part I - Lender Information	
1. To (Name and address of title company) Dawn Winning The Willoughby Law Firm 1116 Blanding Street Columbia, SC 29201 (P) 803-254-5161 / (F) 803-254-5161 (E-Mail) dwinning@thewilloughbylawfirm.com	2. From (name and address) Christine Mendoza Americash 450 Apollo St, Suite E Brea, CA 92821 (P) 800-483-6565 / (F) 888-898-6111

3. Signature of Lender	4. Title Processor	5. Date 09/12/2008	6. Lender's No. 0060908011

7. Name and address of applicant
Barbara Behout
[Redacted Address]

Part II - Property and Loan Information	
8. Occupancy Status ☒ Primary Residence ☐ Second Home ☐ Investment Property	9. Loan Purpose ☐ Purchase ☒ Cash-Out Refi ☐ No Cash-Out Refi
10. Sales Price : \$	11. Loan Amount : \$ 470,000.00
12. Property Address 140 Overlook Drive Pickens, SC 29671 County : Pickens	
13. Legal Description	
14. Home Owner's Name and Phone Number	15. Property Type ☒ Detached ☐ Attached ☐ Condo ☐ PUD ☐ CO-OP
16. Seller	17. Mortgage Lender Case #

Part III - Request for Title Commitment	
18. Attachment ☐ Prior Title Policy ☐ Title Insurance Requirements ☐ Contract ☐ Warranty Deed ☐ Survey	
19. Type of Policy Smart Policy	
20. Estimated Closing Date 09/30/2008	21. Mail Away ☐ Yes ☒ No

Part IV - Special Instructions
LO- tpacak@americashloans.com Proc- cmendoza@americashloans.com

Request for Title Commitment

Part I - Request for Title Commitment			
1. To (Name and address of title company) Dawn Winning The Willoughby Law Firm 1116 Blanding Street Columbia, SC 29201 (P) 803-254-5151 / (F) 803-254-5161 (E-Mail) dwinning@thewilloughbylawfirm.com		2. From (name and address) Christine Mendoza Americash 450 Apollo St, Suite E Brea, CA 92821 (P) 800-483-8585 / (F) 868-898-5111	
3. Signature of Lender	4. Title Processor	5. Date 09/12/2008	6. Lender's No. 0050908012

7. Name and address of applicant
 Barbara Bebout
 [REDACTED]
 [REDACTED]

Part II - Property and Mortgage Information	
8. Occupancy Status ☒ Primary Residence ☐ Second Home ☐ Investment Property	9. Loan Purpose ☐ Purchase ☒ Cash-Out Refi ☐ No Cash-Out Refi
10. Sales Price : \$	11. Loan Amount : \$ 30,000.00
12. Property Address 140 Overlook Drive Pickens, SC 29571 County : Pickens	
13. Legal Description 	
14. Home Owner's Name and Phone Number	15. Property Type ☒ Detached ☐ Attached ☐ Condo ☐ PUD ☐ CO-OP
16. Seller	17. Mortgagee Lender Case #

Part III - Request for Title Commitment	
18. Attachment ☐ Prior Title Policy ☐ Title Insurance Requirements ☐ Contract ☐ Warranty Deed ☐ Survey	
19. Type of Policy Smart Policy	
20. Estimated Closing Date	21. Mail Away ☐ Yes ☒ No

Part IV - Special Instruction
Lo+pacak@americashloans.com Proc-cmendoza@americashloans.com

Borrower Summary

File No. 0060908011

I. Borrower Information

Borrower Name Barbara E. Babout SSN H Phone #
E-Mail Cell / Alt #
Birthday Fax #
Co-Borrower Name SSN H Phone #
E-Mail Cell / Alt # B Phone #
Birthday Fax #
Present Address

II. Property Information

Property Address 140 Overlook Drive
Pickens, SC 29671 County: Pickens
Occupancy Status ☒ Primary Residence Sales Price
☐ Second Home Down Payment/Equity
☐ Investment Property Appraised Value 800,000

III. Mortgage Information

Note Information	Lien Position
Loan Amount <u>400,000</u>	☒ First
Note Rate <u>7.625 %</u>	☐ Second
Term (in months) <u>360</u>	Loan Program: <u>FMS360SNNN</u>
Due (in months) <u>360</u>	Loan Rep: <u>Tamara Pacak</u>
Monthly Payment <u>2,831.17</u>	

IV. Underwriting Information

Qualifying Ratios	Loan-to-Value Ratios	
Primary Housing Expense/Income <u>32.262 %</u>	LTV <u>80.000 %</u>	Total Income <u>14,000.00</u>
Total Obligations/Income <u>44.690 %</u>	Total LTV <u>100.000 %</u>	Total House Exp <u>4,516.66</u>
		Other Payments <u>1,740.00</u>

V. Contact Information

Contact Date	Time	Memo
<u>10/10/2008</u>		<u>unable reach borrower (vacation til 10/16)</u>
<u>10/10/2008</u>		<u>need 2 reach borrower to sell less cash out</u>
<u>10/04/2008</u>		<u>no increase in value given restructuring</u>

Source: 10/31 recieved a doc order and a request to close with The Acker Law Firm See Con Log

Comments:

appraisal came in 90k lower than discussed with appraiser cash out primary goal
waiting on preapproval from morgan 11/2/2008 tp

File Name - 0060908011

Borrower - Barbara E. Babout

Property - 140 Overlook Drive
Pickens, SC 29871

10/31/2006 12:23PM - - - I WAS INFORMED THAT THE BORROWER WANTS TO HAVE THE DOCUMENTS SIGNED BY THE ATTORNEY BELLOW. I CONTACTED THE ACKER LAW FIRM AND WAS INFORMED THAT THEY DO NOT DO SIGNINGS ONLY, THEY MUST TO THE TITLE WORK AND DISBURSE THE LOAN AS WELL. I HAVE INFORMED THE LO TO FIND OUT IF THE BORROWER WANTS ME TO OPEN TITLE WITH THIS ATTORNEY, CM

10/27/2006 1:09PM - - - Borrower requested signing done by The Acker Law Firm and Ken Acker Please contact legal secretary is Miriam 864/878-1184 Pickens, SC

10/05/2006 1:18PM - - - NEEDING APPRAISAL AND DOC ORDER, CM

Borrower Summary

File No. 0060908012

I. Borrower Information

Borrower Name Barbara Bebout SSN H Phone # 8 [REDACTED]
E-Mail Cell / Alt # B Phone # 8 [REDACTED]
Birthday Fax #
Co-Borrower Name SSN H Phone #
E-Mail Cell / Alt # B Phone #
Birthday Fax #
Present Address 140 Overlook Drive
Pickens, SC 29671

II. Property Information

Property Address 140 Overlook Drive
Pickens, SC 29671 County: Pickens
Occupancy Status ☒ Primary Residence Sales Price
☐ Second Home Down Payment/Equity
☐ Investment Property Appraised Value 500,000

III. Mortgage Information

Note Information	Lien Position
Loan Amount <u>100,000</u>	☐ First
Note Rate <u>11.750 %</u>	☒ Second
Term (in months) <u>360</u>	Loan Program: <u>2RE035SNNB</u>
Due (in months) <u>180</u>	Loan Rep: <u>Tamara Pacak</u>
Monthly Payment <u>1,009.43</u>	

IV. Underwriting Information

Qualifying Ratios	Loan-to-Value Ratios	Total Income
Primary Housing Expense/Income <u>31.214 %</u>	LTV <u>20.000 %</u>	<u>14,000.00</u>
Total Obligations/Income <u>43.678 %</u>	Total LTV <u>100.000 %</u>	Total House Exp <u>4,369.99</u>
		Other Payments <u>1,745.00</u>

V. Contact Information

Contact Date	Time	Memo
<u>10/10/2006</u>		<u>unable reach borrower/vacation til 10/16</u>
<u>10/10/2006</u>		<u>need 2 reach 2 sell less cash out</u>
<u>10/04/2006</u>		<u>no increase in value given restructure</u>

Source: 10/31 recieved a doc order and a request to close with The Acker Law Firm See Con Log

Comments:

appraisal 90k less cash out #1 goal

waiting on preapproval from morgan 11/2/2006 tp

File Name - 0060908012

Borrower - Barbara Bebout

Property - 140 Overlook Drive
Pickens, SC 29671

10/27/2006 1:09PM - - - -

Borrower requested signing done by The Acker Law Firm and Ken Acker Please contact
legal secretary is Miriam 864/878-1184 Pickens, SC

Bryce Williams

From: Christine Mendoza (cmendoza@americashloans.com)
Sent: Tuesday, October 31, 2006 12:30 PM
To: 'Tamara Pacak'
Cc: 'Bryce Williams'; 'Greg Amaya'
Subject: Bobout

Tami,

I have these files ready to go to UW to get an OK to doc. We have an issue with the borrower wanting to use their attorney, please see below:

10/31/2006 12:23PM - I WAS INFORMED THAT THE BORROWER WANTS TO HAVE THE DOCUMENTS SIGNED BY THE ATTORNEY BELOW. I CONTACTED THE ACKER LAW FIRM AND WAS INFORMED THAT THEY DO NOT DO SIGNINGS ONLY, THEY MUST DO THE TITLE WORK AND DISBURSE THE LOAN AS WELL. I HAVE INFORMED THE LO TO FIND OUT IF THE BORROWER WANTS ME TO OPEN TITLE WITH THIS ATTORNEY, CM

We would have cancel the open order with The Willoughby Law Firm and open the title with The Ackar Law Firm. I know that this borrower is wanting to sign soon, this would cause a delay. Please speak with the borrower to verify that they still want to close with the Ackar Law Firm. Bryce will have the file.

Thank you,

Christine Mendoza

Americash.

Sr. Processor

Phone (800) 483-8585 ext 303

Fax (714) 235-8702

E-mail: cmendoza@americashloans.com

*ready to go one
title issue is resolved*

10/31/2006

DEFENDANT'S
EXHIBIT

0106

10

9/29/11

1P8

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN				
	1. ☐ FHA	2. ☐ FmHA	3. ☒ CONV. UNINS.	4. ☐ VA	5. ☐ CONV. INS.
	6. FILE NUMBER 06-1175		7. LOAN NUMBER 0060908011		
	8. MORTGAGE INS CASE NUMBER				

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to end by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER Barbara E. Babout and Robert Alec Swaynham	E. NAME AND ADDRESS OF SELLER	F. NAME AND ADDRESS OF LENDER Americash 450 Apollo, Suite E
G. PROPERTY LOCATION 140 Overlook Drive Pickens, SC 29671 Pickens County, South Carolina	H. SETTLEMENT AGENT The Willoughby Law Firm PLACE OF SETTLEMENT 1116 Blanding Street Columbia, SC 29201	I. SETTLEMENT DATE November 20, 2006 Disburse: 11/27/06

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	9,647.56	403.	
104. Payoff first mortgage to The Peoples National Bank	422,173.67	404.	
105.		405.	
Adjustments For Items Paid By Seller in advance		Adjustments For Items Paid By Seller in advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	431,721.23	420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)	400,000.00	502. Settlement Charges to Seller (Line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Funding from 2nd Mortgage	88,128.23	504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes to		511. County Taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	498,128.23	520. TOTAL REDUCT. AMT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120)	431,721.23	601. Gross Amount Due To Seller (Line 420)	
302. Less Amount Paid By/For Borrower (Line 220)	(498,128.23)	602. Less Reductions Due Seller (Line 520)	
303. CASH (FROM) (X TO) BORROWER	88,407.00	603. CASH (TO) (FROM) SELLER	0.00

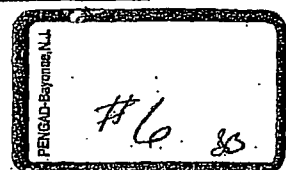
The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Borrower

Barbara E. Babout

Robert Alec Swaynham

Seller



L. SETTLEMENT CHARGES				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price \$ @ 6.0000 %					
Division of Commission (line 700) as Follows:					
701. \$	to				
702. \$	to				
703. Commission Paid at Settlement					
704.	to				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	% to				
802. Loan Discount	0.2500 % to Americash			1,000.00	
803. Appraisal Fee	to Access RELS	POC:B350.00			
804. Credit Report	to Certified Credit			21.66	
805. Administration Fee	to Americash			500.00	
806. Underwriting Fee	to Americash			395.00	
807. Flood Certification Fee	to First American Flood Services			16.00	
808. Processing Fee	to Americash			395.00	
809. Funding Fee	to Americash			350.00	
810. Document Preparation Fee	to Americash			195.00	
811. Yield Spread Premium					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From 11/27/08 to 12/01/08	@ \$ 84.722200/day (4 days 7.5250%)			338.89	
902. Mortgage Insurance Premium months					
903. Hazard Insurance Premium 1.0 years					
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City/Town Taxes	months @ \$	per month			
1004. County Taxes	months @ \$	per month			
1005. Assessments	months @ \$	per month			
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008. Aggregate Adjustment	months @ \$	per month			
1100. TITLE CHARGES					
1101. Settlement or Closing Fee	to				
1102. Abstract or Title Search	to The Willoughby Law Firm			150.00	
1103. Title Examination/Clearance	to The Willoughby Law Firm			75.00	
1104. Title Insurance Binder	to Lawyers Title Insurance Corp.			75.00	
1105. Document Preparation	to				
1106. Copy/Courier Fees	to The Willoughby Law Firm			50.00	
1107. Attorney's Fees	to The Willoughby Law Firm			450.00	
(includes above item numbers:)					
1108. Title Insurance	to A Winning Title, LLC			975.00	
(includes above item numbers:)					
1109. Lender's Coverage	\$ 500,000.00	975.00			
1110. Owner's Coverage	\$				
1111. Title Update & Record	to The Willoughby Law Firm			75.00	
1112. Interim Update	to The Willoughby Law Firm			75.00	
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Deed \$	; Mortgage \$ 21.00;	Releases \$		21.00	
1202. City/County Tax/Stamp: Deed	; Mortgage				
1203. State Tax/Stamp: Deed	; Mortgage				
1204. Record Release Fees	to Pickens County Register of Deeds			5.00	
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to				
1303. 2006 County Property Taxes	to Pickens County Treasurer			4,385.01	
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				9,547.56	

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Certified to be a true copy.

WYATT WILLOUGHBY BY (RSC)
The Willoughby Law Firm
Settlement Agent

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☒ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

Barbara E. Bebout
Borrower Co-Borrower

Mortgage Applied for: ☐ VA ☒ Conventional ☐ Other (explain):		Agency Case Number	Lender Case Number
☐ FHA ☐ USDA/Rural Housing Service			0060908011
Amount \$ 400,000	Interest Rate 7.625 %	No. of Months 360/360	Amortization Type: ☒ Fixed Rate ☐ Other (explain):
			☐ GPM ☐ ARM (type):

Subject Property Address (street, city, state, & ZIP)		No. of Units
140 Overlook Drive, Pickens, SC 29671 County: Pickens		1
Legal Description of Subject Property (attach description if necessary)		Year Built
See Title		1999

Purpose of Loan ☐ Purchase ☐ Construction ☐ Other (explain):	Property will be:
☒ Refinance ☐ Construction-Permanent	☒ Primary Residence ☐ Secondary Residence ☐ Investment

Complete this line if construction or construction-permanent loan.			
Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot
	\$	\$	\$
			(b) Cost of Improvements
			\$
			Total (a+b)
			\$

Complete this line if this is a refinance loan.			
Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance
2002	\$	\$ 418,000	Limited Cash-Out Rate/Term
			Cost: \$
Title will be held in what Name(s)		Manner in which Title will be held	
Barbara E. Bebout		Estate will be held in:	
Robert Alec Swayingham		☒ Fee Simple	
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)		☐ Leasehold (show expiration date)	
Equity from Subject Property			

Borrower's Name (include Jr. or Sr. if applicable)		Co-Borrower's Name (include Jr. or Sr. if applicable)	
Barbara E. Bebout			
Social Security Number	Home Phone (incl. area code)	DOB (mm/dd/yyyy)	Yrs. School
			16
☒ Married ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower)	☐ Married ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Borrower)
☐ Separated	no. ages	☐ Separated	no. ages
Present Address (street, city, state, ZIP)		Present Address (street, city, state, ZIP)	
140 Overlook Drive			
Pickens, SC 29671			
Mailing Address, if different from Present Address		Mailing Address, if different from Present Address	

If residing at present address for less than two years, complete the following:			
Former Address (street, city, state, ZIP)	☐ Own ☐ Rent	Former Address (street, city, state, ZIP)	☐ Own ☐ Rent
	No. Yrs.		No. Yrs.
Former Address (street, city, state, ZIP)	☐ Own ☐ Rent	Former Address (street, city, state, ZIP)	☐ Own ☐ Rent
	No. Yrs.		No. Yrs.

Fannie Mae Form 1003 07/05
CALYX Form Loansapp1.fm 09/05

Page 1 of 5

Borrower *Barbara E. Bebout*
Co-Borrower

Freddie Mac Form 65 07/05

EXHIBIT

9/29/11
3 Americash

0125

ROA PAGE 455

Borrower		IV. EMPLOYMENT INFORMATION		Co-Borrower	
Name & Address of Employer United Healthcare Services, Inc. 15 Brendon Way #200 Greenville, SC 29615		☐ Self Employed	Yrs. on this job 1 yr(s) Yrs. employed in this line of work/profession 24	Name & Address of Employer	
Position/Title/Type of Business Senior Systems Analyst		Business Phone (incl. area code) 864-213-2700		Business Phone (incl. area code)	
If employed in current position for less than two years or if currently employed in more than one position, complete the following:					
Name & Address of Employer 1200 Brookfield Blvd Greenville, SC		☐ Self Employed	Dates (from-to) 11/1997 - 11/2005 Monthly Income \$ 13,000.00	Name & Address of Employer	
Position/Title/Type of Business Senior Systems Analyst		Business Phone (incl. area code) 864-987-5600		Business Phone (incl. area code)	
Name & Address of Employer		☐ Self Employed	Dates (from-to) Monthly Income \$	Name & Address of Employer	
Position/Title/Type of Business		Business Phone (incl. area code)		Business Phone (incl. area code)	
Name & Address of Employer		☐ Self Employed	Dates (from-to) Monthly Income \$	Name & Address of Employer	
Position/Title/Type of Business		Business Phone (incl. area code)		Business Phone (incl. area code)	
Name & Address of Employer		☐ Self Employed	Dates (from-to) Monthly Income \$	Name & Address of Employer	
Position/Title/Type of Business		Business Phone (incl. area code)		Business Phone (incl. area code)	
Name & Address of Employer		☐ Self Employed	Dates (from-to) Monthly Income \$	Name & Address of Employer	
Position/Title/Type of Business		Business Phone (incl. area code)		Business Phone (incl. area code)	

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	\$ 14,000.00	\$	\$ 14,000.00	Rent	\$	
Overtime				First Mortgage (P&I)	3,060.00	\$ 2,831.17
Bonuses				Other Financing (P&I)		1,009.41
Commissions				Hazard Insurance	132.08	132.08
Dividends/Interest				Real Estate Taxes	397.33	397.33
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notes in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	\$ 14,000.00	\$	\$ 14,000.00	Total	\$ 3,589.41	\$ 4,369.99

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income: **Notice:** Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C	Monthly Amount
	\$

so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate statements were completed about a non-applicant spouse or other person, this Statement and supporting schedules must be complete. ☐ Completed ☐ Jointly ☒ Not Jointly

Completed ☐ Jointly ☒ Not Jointly

ASSETS		LIABILITIES	
Description	Cash or Market Value	Monthly Payment & Months Left to Pay	Unpaid Balance
Cash deposit toward purchase held by:	\$		
List checking and savings accounts below			
Name and address of Bank, S&L, or Credit Union		Name and address of Company PEOPLES NTL 1100 GREENVILLE RD EASLEY, SC 29641	\$ Payment/Months \$
Acct. no.	\$	Acct. no. [REDACTED]	* 3,080 /10 425,260
Name and address of Bank, S&L, or Credit Union		Name and address of Company BK OF AMER 9000 SOUTHSIDE BLVD BLDG JACKSONVILLE, FL 32256	\$ Payment/Months \$
Acct. no.	\$	Acct. no. [REDACTED]	701 /40 26,419
Name and address of Bank, S&L, or Credit Union		Name and address of Company FIA MBNA PO BOX 17054 WILMINGTON, DE 19850	\$ Payment/Months \$
Acct. no.	\$	Acct. no. [REDACTED]	486 21,167
Name and address of Bank, S&L, or Credit Union		Name and address of Company DISCOVER FIN SVCS LLC PO BOX 15316 WILMINGTON, DE 19850	\$ Payment/Months \$
Acct. no.	\$	Acct. no. [REDACTED]	133 6,709
Stocks & Bonds (Company name/number description)	\$	Name and address of Company CHASE BANK ONE CARD SERV WESTERVILLE, OH 43081	\$ Payment/Months \$
Life Insurance net cash value	\$	Acct. no. [REDACTED]	213 5,098
Face amount: \$	\$	Name and address of Company DISCOVER FIN SVCS LLC PO BOX 15316 WILMINGTON, DE 19850	\$ Payment/Months \$
Subtotal Liquid Assets	\$	Acct. no. [REDACTED]	85 3,408
Real estate owned (enter market value from schedule of real estate owned)	\$ 500,000	Name and address of Company DISCOVER FIN SVCS LLC PO BOX 15316 WILMINGTON, DE 19850	\$ Payment/Months \$
Vested interest in retirement fund	\$	Acct. no. [REDACTED]	85 3,408
Net worth of business(es) owned (attach financial statement)	\$	Alimony/Child Support/Separate Maintenance Payments Owed to:	\$
Automobiles owned (make and year)	\$	Job-Related Expense (child care, union dues, etc.)	\$
Other Assets (itemize)	\$	Total Monthly Payments	\$ 1,740
Total Assets a.	\$ 500,000	Total Liabilities b.	\$ 493,153

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet)								
Property Address (enter S if sold, FS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income	
140 Overlook Drive Pickens, SC 29871	Subject Property SFR	\$ 500,000	\$ 419,699	\$	\$ 3,080	\$ 529	\$	
	Totals	\$ 500,000	\$ 419,699	\$	\$ 3,080	\$ 529	\$	

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s)		
Alternate Name	Creditor Name	Account Number
See Credit Report		

Fannie Mae Form 1003 07/05
CALYX Form Loanapp3.frm 09/05

Page 3 of 5

Borrower 7268
Co-Borrower _____

Freddie Mac Form 65 07/05

DETAILS OF TRANSACTION		VARIABLES	
a. Purchase price	\$	If you answer "Yes" to any questions a through please use continuation sheet for explanation	
b. Alterations, improvements, repairs			
c. Land (if acquired separately)			
d. Refinance (incl. debts to be paid off)	425,260.00		
e. Estimated prepaid items	4,719.26		
f. Estimated closing costs	4,180.66		
g. PMI, MIP, Funding Fee			
h. Discount (if Borrower will pay)	1,000.00		
i. Total costs (add items a through h)	435,159.92		
j. Subordinate financing	100,000.00		
k. Borrower's closing costs paid by Seller			
l. Other Credits (explain)			
New 2nd Mtg Closing Costs	-1,881.77		
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	400,000.00		
n. PMI, MIP, Funding Fee financed			
o. Loan amount (add m & n)	400,000.00		
p. Cash from/to Borrower (subtract j, k, l & o from i)	-82,958.31		

ACKNOWLEDGEMENT AND AGREEMENT		Borrower	Co-Borrower
		Yes	No
a. Are there any outstanding judgments against you?		☒	☐
b. Have you been declared bankrupt within the past 7 years?		☒	☐
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?		☒	☐
d. Are you a party to a lawsuit?		☒	☐
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment?		☒	☐
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.		☒	☐
g. Are you obligated to pay alimony, child support, or separate maintenance?		☒	☐
h. Is any part of the down payment borrowed?		☒	☐
i. Are you a co-maker or endorser on a note?		☒	☐
j. Are you a U. S. citizen?		☒	☐
k. Are you a permanent resident alien?		☒	☐
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.		☒	☐
m. Have you had an ownership interest in a property in the last three years?		☒	☐
(1) What type of property did you own-principal residence (PR), second home (SH), or investment property (IP)?		PR	
(2) How did you hold title to the home-safely by yourself (S), jointly with your spouse (SP), or jointly with another person (C)?		SP	

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1083, et seq; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated in this application; (6) the Lender, its servicers, successors or assigns may retain the original and/or an electronic record of this application, whether or not the Loan is approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in this application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the Lender, its servicers, successors or assigns may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Acknowledgement. Each of the undersigned hereby acknowledges that any owner of the Loan, its servicers, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate purpose through any source, including a source named in this application or a consumer reporting agency.

Borrower's Signature: Salvatore E. Bellezza Date: 11/20/06 X
 Co-Borrower's Signature: _____ Date: _____

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER	CO-BORROWER
☒ I do not wish to furnish this information	☐ I do not wish to furnish this information
Ethnicity: ☐ Hispanic or Latino ☒ Not Hispanic or Latino	Ethnicity: ☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White	Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex: ☒ Female ☐ Male	Sex: ☐ Female ☐ Male

To be Completed by Interviewer This application was taken by:	Interviewer's Name (print or type)	Interviewer's Signature	Date	Name and Address of Interviewer's Employer
☐ Face-to-face interview ☐ Mail ☒ Telephone ☐ Internet	Tamera Pacak	<u>Tamera Pacak</u>	<u>11/20/06</u>	AmeriCash 460 Apollo St, Suite E Brea, CA 92821 (P) 800-483-6565 (F) 888-275-5096
	Interviewer's Phone Number (incl. area code)			
	800-483-6565 x 414			

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Barbara E. Bebout	
	Co-Borrower:	Lender Case Number:
		0060908011

ASSETS AND LIABILITIES

ASSETS	Cash or Market Value	LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Name and address of Bank, S&L, or Credit Union		Name and address of Company CHASE 800 BROOKSEdge BLVD WESTERVILLE, OH 43081	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED] 2	55	2,798
Name and address of Bank, S&L, or Credit Union		Name and address of Company CITI P.O. BOX 6500 SIOUX FALLS, SD 57117	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]	33	1,913
Name and address of Bank, S&L, or Credit Union		GEMB/BANANA REP PO BOX 29116 SHAWNEE MISSION, KS 66201	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]	14	261
Name and address of Bank, S&L, or Credit Union		Name and address of Company MCYDSNB 9111 DUKE BLVD MASON, OH 45040	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]	5	101
Name and address of Bank, S&L, or Credit Union		Name and address of Company PIER 1/NB 9111 DUKE BLVD MASON, OH 45040	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]	15	21
Name and address of Bank, S&L, or Credit Union		Name and address of Company	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No.		
Name and address of Bank, S&L, or Credit Union		Name and address of Company	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No.		

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

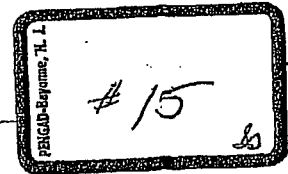
Borrower's Signature: <i>Barbara E. Bebout</i>	Date: 1-28-05	Co-Borrower's Signature:	Date:

TRUTH-IN-LENDING DISCLOSURE STATEMENT

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Applicants: Barbara Babout
 Property Address: 140 Overlook Drive
 Pickens, SC 29671
 Application No: 0060908012

Prepared By: Americash
 450 Apollo St, Suite E
 Brea, CA 92821
 800-483-6568
 Date Prepared: 08/31/2006



ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after making all payments as scheduled
11.953 %	\$ 169,279.24	\$ 97,659.25	\$ 266,938.49

☐ REQUIRED DEPOSIT: The annual percentage rate does not take into account your required deposit
 PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due	Amount of Payments	When Payments Are Due	Amount of Payments	When Payments Are Due
179	1,009.41	01/01/2007	1	86,254.10	12/01/2021	

- ☐ DEMAND FEATURE: This obligation has a demand feature.
☐ VARIABLE RATE FEATURE: This loan contains a variable rate feature. A variable rate disclosure has been provided earlier.

CREDIT LIFE/CREDIT DISABILITY: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. Signature:
Credit Disability		I want credit disability insurance. Signature:
Credit Life and Disability		I want credit life and disability insurance. Signature:

INSURANCE: The following insurance is required to obtain credit:

- ☐ Credit life insurance ☐ Credit disability ☒ Property insurance ☐ Flood insurance

You may obtain the insurance from anyone you want that is acceptable to creditor

- ☐ If you purchase ☐ property ☐ flood insurance from creditor you will pay \$ for a one year term.

SECURITY: You are giving a security interest in: 140 Overlook Drive, Pickens SC 29671

- ☐ The goods or property being purchased ☒ Real property you already own.

FILING FEES: \$ 65.00

LATE CHARGE: If a payment is more than 15 days late, you will be charged 5.000 % of the payment

PREPAYMENT: If you pay off early, you

- ☐ may ☒ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

- ☐ may ☐ may, subject to conditions ☒ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties

- ☐ * means an estimate ☒ all dates and numerical disclosures except the late payment disclosures are estimates.

** NOTE: The Payments shown above include reserve deposits for Mortgage Insurance (if applicable), but exclude Property Taxes and Insurance.

THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COMPLETED COPY OF THIS DISCLOSURE.

Barbara Babout 11-20-06 (Applicant) (Date)

(Applicant) (Date)

(Lender) (Date)



TRUTH-IN-LENDING DISCLOSURE STATEMENT

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

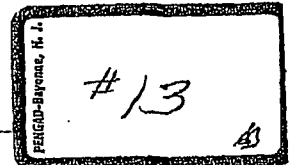
Applicant: Barbara E. Bobout

Prepared By: AmeriCash
450 Apollo St, Suite E
Brea, CA 92821
800-483-6565

Property Address: 140 Overlook Drive
Pickens, SC 29671

Application No: 0060908011

Date Prepared: 08/31/2009



ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after making all payments as scheduled
7.717 %	\$ 625,311.03	\$ 393,917.15	\$ 1,019,228.18

☐ REQUIRED DEPOSIT: The annual percentage rate does not take into account your required deposit
PAYMENTS: Your payment schedule will be:

Payments	Amount	Monthly Beginning	Payments	Amount	Monthly Beginning	Payments	Amount	Monthly Beginning
359	2,831.47	01/01/2007						
1	2,838.15	12/01/2036						

☐ DEMAND FEATURE: This obligation has a demand feature.

☐ VARIABLE RATE FEATURE: This loan contains a variable-rate feature. A variable rate disclosure has been provided earlier.

CREDIT LIFE/CREDIT DISABILITY: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. Signature:
Credit Disability		I want credit disability insurance. Signature:
Credit Life and Disability		I want credit life and disability insurance. Signature:

INSURANCE: The following insurance is required to obtain credit:

☐ Credit life insurance ☐ Credit disability ☒ Property insurance ☐ Flood insurance

You may obtain the insurance from anyone you want that is acceptable to creditor

☐ If you purchase ☐ property ☐ flood insurance from creditor you will pay \$ for a one year term.

SECURITY: You are giving a security interest in: 140 Overlook Drive, Pickens SC 29671

☐ The goods or property being purchased ☒ Real property you already own.

FILING FEES: \$ 65.00

LATE CHARGE: If a payment is more than 15 days late, you will be charged 9.000 % of the payment

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty.

☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

☐ may ☐ may, subject to conditions ☒ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties

☐ * means an estimate ☒ all dates and numerical disclosures except the late payment disclosures are estimates.

* NOTE: The Payments shown above include reserve deposits for Mortgage Insurance (if applicable), but exclude Property Taxes and Insurance.

THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COMPLETED COPY OF THIS DISCLOSURE.

Barbara E. Bobout 11-20-06
Barbara E. Bobout (Applicant) (Date)

(Applicant) (Date)

(Applicant) (Date)

(Applicant) (Date)

(Lender) (Date)

Closing Atty. 0315

EXHIBIT
11-20-06
AmeriCash

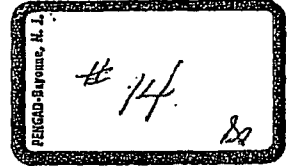
FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Loan Number: [REDACTED]
 Creditor: AMERICASH (DOC # 603-6182)
 Address: 450 APOLLO, SUITE E, BREA, CALIFORNIA 92821

Date: NOVEMBER 20, 2006

Borrower(s): BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

Address: [REDACTED]



Lines containing an "x" are applicable:

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	☐ Total Sale Price The total cost of your purchase on credit including your down-payment of
7.721 %	\$ 622,918.07	\$ 396,310.11	\$ 1,019,228.18	

PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payment **	When Payments Are Due	Number of Payments	Amount of Payment **	When Payments Are Due	Number of Payments	Amount of Payment **	When Payments Are Due
		Monthly Beginning			Monthly Beginning			Monthly Beginning
359	2,831.17	01/01/07						
1	2,838.15	12/01/36						

DEMAND FEATURE: This obligation has a demand feature.

VARIABLE RATE FEATURE: Your loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to you earlier.

INSURANCE: The following insurance is required to obtain credit:

☐ Credit life insurance and credit disability ☒ Property Insurance ☐ Flood Insurance ☐ Mortgage Insurance

You may obtain property insurance from any insurer that is acceptable to the Lender.

SECURITY: You are giving a security interest in: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

☐ The goods or property being purchased ☒ Real property you already own.

FILING FEES: \$33.00

LATE CHARGE: If payment is more than 15 days late, you will be charged 5.000 % of the payment.

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty.

☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

☐ may ☐ may, subject to conditions ☒ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.

☒ "e" means an estimate ☐ all dates and numerical disclosures except the late payment disclosures are estimates.

Each of the undersigned acknowledge receipt of a complete copy of this disclosure. The disclosure does not constitute a contract or a commitment to lend.

Barbara E. Bebout 11/20/06
 Applicant BARBARA E. BEBOUT Date

Robert Alec Swayngam 11/20/06
 Applicant ROBERT ALEC SWAYNGHAM Date

Applicant _____ Date _____

Applicant _____ Date _____

Applicant _____ Date _____

Applicant _____ Date _____

* NO1... payments shown above do not include reserve deposits for taxes, assessments, and property or flood insurance.

EXHIBIT
 9/25/11
 Americash

FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

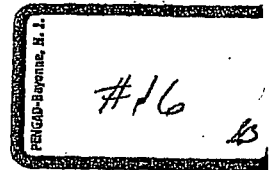
16

Loan Number: 0 [REDACTED]
 Creditor: AMERICASH (DOC # 603-6182)
 Address: 450 APOLLO, SUITE E, BREA, CALIFORNIA 92821

Date: NOVEMBER 20, 2006

Borrower(s): BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

Address: [REDACTED] [REDACTED] [REDACTED]



Lines containing an "x" are applicable:

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	☐ Total Sale Price The total cost of your purchase on credit including your down-payment of \$
12.004 %	\$ 168,642.26	\$ 98,296.23	\$ 266,938.49	

PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payment **	When Payments Are Due	Number of Payments	Amount of Payment **	When Payments Are Due	Number of Payments	Amount of Payment **	When Payments Are Due
		Monthly Beginning			Monthly Beginning			Monthly Beginning
179	1,009.41	01/01/07						
1	86,254.10	12/01/21						

☐ DEMAND FEATURE: This obligation has a demand feature.

☐ VARIABLE RATE FEATURE: Your loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to you earlier.

INSURANCE: The following insurance is required to obtain credit:

☐ Credit life insurance and credit disability ☒ Property insurance ☐ Flood insurance ☐ Mortgage insurance

You may obtain property insurance from any insurer that is acceptable to the lender.

SECURITY: You are giving a security interest in: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

☐ The goods or property being purchased ☒ Real property you already own.

FEES: \$28.00

LATE CHARGE: If payment is more than 10 days late, you will be charged 5.000% of the payment.

PREPAYMENT: If you pay off early, you ☒ may ☐ will not have to pay a penalty. * or \$15.50 (whichever is less)

☒ may ☐ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

☐ may ☐ may, subject to conditions ☒ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.

☒ "e" means an estimate all dates and numerical disclosures except the late payment disclosures are estimates.

Each of the undersigned acknowledge receipt of a complete copy of this disclosure. The disclosure does not constitute a contract or a commitment to lend.

Barbara E. Bebout 11-20-06
 Applicant BARBARA E. BEBOUT Date

Robert Alec Swayngam 11-20-06
 Applicant ROBERT ALEC SWAYNGHAM Date

Applicant _____ Date _____

Applicant _____ Date _____

Applicant _____ Date _____

Applicant _____ Date _____

** NOTE: Payments shown above do not include reserve deposits for taxes, assessments, and property or flood insurance.

EXHIBIT
 11/21/06
 Americash

NOTICE OF RIGHT TO CANCEL

Loan Number: [REDACTED]

Borrowers: BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage, lien or security interest on or in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

1. the date of the transaction, which is NOVEMBER 20, 2006 ; or
2. the date you receive your Truth in Lending disclosures; or
3. the date you receive this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on or in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at
AMERICASH
450 APOLLO, SUITE E
BREA, CALIFORNIA 92821

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of NOVEMBER 24, 2006 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature _____ Date _____
BARBARA E. BEBOUT

ACKNOWLEDGMENT OF RECEIPT

EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THE RECEIPT OF TWO (2) COMPLETED COPIES OF THIS NOTICE OF RIGHT TO CANCEL.

Barbara E. Bebout 11-20-06
BARBARA E. BEBOUT Date

EXHIBIT

8 9/29/11
Americash

**DEFENDANT'S
EXHIBIT**

8

NOTICE OF RIGHT TO CANCEL

Loan Number: [REDACTED]

Borrowers: BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage, lien or security interest on or in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

1. the date of the transaction, which is NOVEMBER 20, 2006 ; or
2. the date you receive your Truth in Lending disclosures; or
3. the date you receive this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on or in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at

AMERICASH
100 APOLLO, SUITE E
FREMONT, CALIFORNIA 94521

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of NOVEMBER 24, 2006 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature _____ Date _____
ROBERT ALEC SWAYNGHAM

ACKNOWLEDGMENT OF RECEIPT

EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THE RECEIPT OF TWO (2) COMPLETED COPIES OF THIS NOTICE OF RIGHT TO CANCEL.

Robert Alec Swayngam 11/20/2006
ROBERT ALEC SWAYNGHAM _____ Date _____

EXHIBIT

9/20/11
Americash

**DEFENDANT'S
EXHIBIT**

Loan Number: [REDACTED]

SOUTH CAROLINA APPLICATION NOTICE

Lender: AMERICASH

Applicant(s): BARBARA E. BEBOUT

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

THE AGENCY DESIGNATED TO RECEIVE COMPLAINTS OR INQUIRIES ABOUT THE ORIGINATION AND MAKING OF THIS LOAN IS:

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
3600 FOREST DRIVE, 3RD FLOOR
P.O. BOX 5757
COLUMBIA, SOUTH CAROLINA 29250
(803) 734-4200 or (800) 922-1594 (toll free in S.C.)

By signing below, you acknowledge that you have received and read this Notice. This Notice is neither a contract nor a commitment to lend.

Barbara E. Bebout
Applicant BARBARA E. BEBOUT Date Applicant Date

Applicant Date Applicant Date

Applicant Date Applicant Date

SOUTH CAROLINA APPLICATION NOTICE
09/10/03

DocMagic eDocs 800-649-1362
www.docmagic.com

EXHIBIT
10 9/21/11
Americash

0046

ROA PAGE 466

NOTICE OF RIGHT TO CANCEL

Loan Number: [REDACTED]

Borrowers: BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage, lien or security interest on or in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

1. the date of the transaction, which is NOVEMBER 20, 2006 ; or
2. the date you receive your Truth in Lending disclosures; or
3. the date you receive this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on or in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at
AMERICASH
450 APOLLO, SUITE E
BREA, CALIFORNIA 92821

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of NOVEMBER 24, 2006 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature _____ Date _____
ROBERT ALEC SWAYNGHAM

ACKNOWLEDGMENT OF RECEIPT

EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THE RECEIPT OF TWO (2) COMPLETED COPIES OF THIS NOTICE OF RIGHT TO CANCEL.

 11/20/06
ROBERT ALEC SWAYNGHAM Date

NOTICE OF RIGHT TO CANCEL

Loan Number: [REDACTED]

Borrowers: BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

Property Address: 140 OVERLOOK DRIVE, PICKENS, SOUTH CAROLINA 29671

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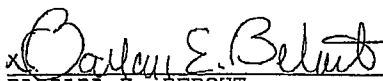
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Consumer's Signature _____ Date _____
BARBARA E. BEBOUT

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 11/20/06
BARBARA E. BEBOUT Date

NOTICE OF RIGHT TO CANCEL/RESCISSION MODEL FORM H-8 (GENERAL)
03/17/06

DocMagic eForming 800-849-1382
www.docmagic.com

EXHIBIT

9/20/11
14 Americas

0351

ROA PAGE 468

W
WILLOUGHBY

1116 Blanding Street
First Floor
Columbia, South Carolina 29201

LAW FIRM

Telephone: 803-254-5151
Facsimile: 803-254-5161
info@thewilloughbylawfirm.com

DATE November 20, 2006

RE: Engagement Letter and Waiver of Conflict of Interest

Borrowers: Barbara E. Bebout

Robert Alec Swaynham

Dear Borrower(s),

This letter is to confirm that you have retained Willoughby Law Firm to perform certain services regarding your real estate transaction and to oversee your transaction to ensure that it is properly performed in accordance with the laws of the State of South Carolina.

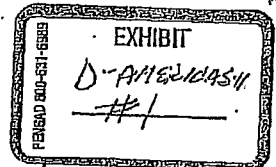
Willoughby Law Firm represents both you and your lender. Under such a circumstance, the potential for a conflict of interest arises. Willoughby Law Firm is required to disclose this dual-representation and may not continue with your transaction without your informed consent to do so. In the event of a dispute between you and your lender Willoughby Law Firm would be required to withdraw and all parties must then obtain separate counsel to represent their respective interests.

Sincerely,

Wyatt Willoughby

Wyatt Willoughby

Notes: _____



Agreed and accepted on 11/20/06

Barbara Bebout
Borrower Signature

Robert Alec Swaynham
Borrower Signature



Funds Due? Y / N

Two Loans Y / N

14



5 9/29/11
Americash

1/8 Sande
Closing Attorney Signature

#200
15/2/2006

8 TRIP fee
Closing Atty. 0007

Alec Swaynham
Barbara E. Bobout

UNIT
Account: [REDACTED]
Account SSN: [REDACTED]
Phone: [REDACTED]

Date (01/11/2009)

ASC
Budget Information
Fax: 866-590-8910, 866-453-6315

To Account Services Representative:

We are behind on our expenses due to the loss of Barbara's income after she had a heart attack early in the year. Our medical expenses have been abnormally high for the last eighteen months.

Below is the latest summary of our income, expenses and outstanding balances for your review in finding a solution to help us refinance our loan.

Monthly Gross Income:

Alec Salary	\$12,308
Barbara Salary	\$0
Total	\$12,308

Monthly Payroll Expenses:

Payroll Taxes	\$2,940
Deductions	\$1,463
Total 2010	\$4,403

Monthly Net Income 2010: \$7,905

Monthly Home Expenses 2010:

ASC Mortgage	\$3,000
Greentree Mortgage	\$1,009
Home Owners Insurance	\$415
Property Taxes	\$253
Utilities - Avg	\$600
Phone/Satellite	\$380
Total	\$5,549

7 70% Net Income
7 45% Gross Income

Monthly Auto Expenses 2010:

Auto Insurance	\$134
Auto Fuel - Average	\$400
Auto Loans	\$0
Auto Maintenance	\$100
Auto Property Tax	\$37
Total	\$671

EXHIBIT

9/21/11
16 American

01/25/2010 10:35AM (GMT-07:00)

ROA PAGE 470

Barbara E. Babout and Alec Swaynham Account: #1

Monthly Medical Expenses:

Doctors - Estimated Out of Pocket	\$350
Pharmacy - Out of Pocket 2010	\$500
Total 2010	\$850

Doctors Out of Pocket 2009
doctors and labs

\$ Unknown, primarily docs from hospitals.

Pharmacy Out of Pocket 2009
pharmacies

\$1-1,000 Plus some info from two more

Outstanding Bills (Estimated as of 01/11/2010) Changes Weekly:

Hospitals	\$15,032
Laboratories	\$150
Ambulance Services	\$950
Doctors	\$1,500
Other	
Property Taxes	\$3,500
Property Insurance	\$3,500
Credit Accounts	\$7,000
Total Other	\$14,000
Total	\$33,932

Thank you for your assistance.

Sincerely,

Alec Swaynham

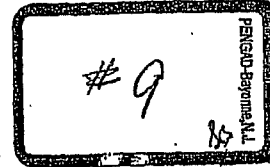
Phone:

Email:

01/11/2010

Alec Swaynham
1/11/2010

Barbara E. Babout
1/25/2010



After Recording Return To:

AMERICASH
450 APOLLO, SUITE E
BREA, CALIFORNIA 92821
Loan Number: 0060908012

24672 BKM3468 PG110

000024672 12/29/2006 04:27:41PM
Pickens CO, SC
Register of Deeds
REC FEE:18.00

[Space Above This Line For Recording Data]

MORTGAGE

MIN: 1001419-0060908012-1

THIS MORTGAGE is made this 20th day of NOVEMBER, 2006, between the
Mortgagor, BARBARA E. BEBOUT AND ROBERT ALEC SWAYNGHAM

(herein "Borrower"),
and the Mortgagee, Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as
hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of
Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
AMERICASH, A CALIFORNIA CORPORATION
is organized and existing under the laws of CALIFORNIA and has an address of
450 APOLLO, SUITE E, BREA, CALIFORNIA 92821

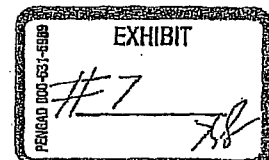
(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 100,000.00
which indebtedness is evidenced by Borrower's note dated NOVEMBER 20, 2006 and extensions and
renewals thereof (herein "Note"), providing for monthly installments of principal and interest; with the balance of
the indebtedness, if not sooner paid, due and payable on DECEMBER 1, 2021

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon;
the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of
this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower
does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors
and assigns) and to the successors and assigns of MERS the following described property located in the County of
PICKENS, State of South Carolina:

EXHIBIT

17 9/29/11
Americash



SOUTH CAROLINA - SECOND MORTGAGE - 1/80
3841 - AS AMENDED FOR MERS

Page 1 of 7

DocMagic eForms 800-549-1362
www.docmagic.com

Closing Atty. 0022

ROA PAGE 472

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N.: 5102-00-69-0557

24672 BKM3468 PG111

THIS SECURITY INSTRUMENT IS SUBORDINATE TO AN EXISTING FIRST
LIEN(S) OF RECORD.

which has the address of

140 OVERLOOK DRIVE

[Street]

PICKENS
[City]

, South Carolina

29671
[Zip Code]

(herein "Property Address");

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Mortgage; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or cancelling this Mortgage.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without

charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other

terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in

full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 20 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

18. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collections of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. **Release.** Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void, and Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. **Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property.

22. **Waiver of Right of Appraisal.** Borrower hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgement obtained by Lender against Borrower in the event of foreclosure under this Mortgage.

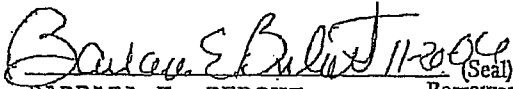
23. The following Riders are to be executed by Borrower [check box as applicable]:

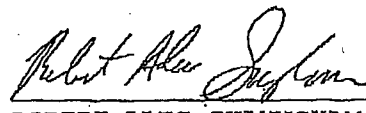
☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☒ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s) [specify]
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed and acknowledges receipt of 1 through 6 of this Mortgage.


BARBARA E. BEBOUT (Seal)
-Borrower


ROBERT ALEC SWAYNGHAM (Seal)
-Borrower

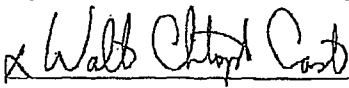
(Seal)
-Borrower

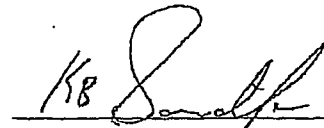
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Signed, sealed, and delivered in the presence of:


Witness


Witness

[Space Below This Line For Acknowledgment]

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Personally appeared before me WALTER CHRISTOPHER CASTRO(first witness) and made oath that he/she saw the within named BARBARA E. BEBOUT, ROBERT ALEC SWAYNGHAM

(grantor) sign, seal, and as his/her act and deed, deliver the within written mortgage, and that he/she, with

KEVIN B. SANDOZ
(second witness), witnessed the execution thereof.Walt Christopher Castro
WitnessSWORN to before me this 20th day of NOVEMBER 2006KB Sandoz (LS)
Notary Public for South Carolina

(Seal)

My commission expires: 12-11-2010

EXHIBIT A

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13 containing 20.94 acres, more or less, as shown on that certain plat prepared by C.E. Shehan, Surveying dated January 18, 1988, recorded in the Office of the ROD for Pickens County in Plat Book 35 at page 18.

LESS

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, situate, lying and being in the County of Pickens, State of South Carolina, being more fully shown and designated as Tract No. 13-A containing 5.15 acres, more or less, as shown on that certain plat prepared for Hayden S. Porter and Patricia M. Porter prepared by Robert E. Threatt, dated May 7, 1994, recorded May 20, 1994 in the Office of the ROD for Pickens County in Plat Book 63 at page 174B. Said tract containing 5.15 acres, more or less, conveyed to Hayden S. Porter and Patricia M. Porter by deed of Joel A. Swaynham and Robert Alex Swaynham dated May 18, 1994, recorded May 20, 1994 in said ROD Office in Book 241 at page 188.

Reference is hereby craved to said plats for a more complete and accurate description. Be all measurements a little more or less.

This being a portion of the identical property conveyed to Joel A. Swaynham and Robert Alec Swaynham by deed of Raymond R. Reinke dated September 3, 1993, recorded September 8, 1993 in the Office of the ROD for Pickens County in Book 213 at page 293. This is also a portion of the identical property conveyed to Robert Alec Swaynham by deed of Joel A. Swaynham dated March 26, 1998, recorded March 26, 1998 in said ROD Office in Book 418 at page 188. This is also the identical property conveyed to Barbara E. Bebout by deed of Robert Alec Swaynham dated July 31, 2001 recorded August 1, 2001 in said ROD Office in Book 625 at page 273.

Property Address: 142 Overlook Drive, Pickens, SC 29671

Mailing Address: [REDACTED]

TMS #: 5102-00-69-0557



Closing Atty. 0029

1 that you obtained from the AmeriCash?

2 A. That I obtained?

3 MR. RAY: Your Honor, excuse me.

4 Which document is she --

5 MR. LANG: We don't know what he
6 gave her up there.

7 MR. LYDON: I said I was giving
8 her Plaintiff's-One-and-Two.

9 THE COURT: Note and Mortgage?

10 MR. LYDON: Yes.

11 THE COURT: Okay.

12 MR. RAY: Thank you, Your Honor.

13 MR. LANG: You gave her the one
14 with the Allonge on it?

15 MR. LYDON: Yes.

16 MR. LANG: All right.

17 A. The day of the closing?

18 Q. Yes, ma'am. Is that the Promissory
19 Note and Mortgage that were signed at
20 the closing for --

21 A. My initials are on it, but I did not
22 see anything from here up.

23 Q. Okay.

24 A. I don't recall that note.

25 Q. You don't recall signing the Promissory

1 Note?

2 A. No.

3 Q. Okay.

4 A. It wasn't explained to me.

5 Q. It wasn't explained to you. Okay. But

6 you signed some documents at the

7 closing?

8 A. Yes.

9 Q. Okay. And after the closing you

10 started making mortgage payments to

11 somebody?

12 A. Yes.

13 Q. Who did you make the payments to?

14 A. AmeriCash.

15 Q. Okay.

16 A. ASC? Is that what it's called?

17 Q. ASC?

18 A. I don't know the -- there's a lot of

19 names, so I --

20 Q. There are a lot of names.

21 A. I do know it's AmeriCash.

22 Q. I'm sorry?

23 A. I do know that it was AmeriCash.

24 Q. Well, did you make your payments to

25 AmeriCash or to ASC?

1 A. I don't know the specific. I just --
2 AmeriCash is the name that I recall.
3 Q. I was thinking probably --
4 A. I'm not sure if that's specifically the
5 name that was on the check.
6 Q. But you don't remember who --
7 A. My husband wrote the checks.
8 Q. He wrote the checks?
9 A. Yes.
10 Q. Okay. So you made payments on the
11 \$400,000 loan?
12 A. Yes.
13 Q. All right. And you don't know who you
14 sent them to?
15 A. I didn't write the actual name down. I
16 know it was AmeriCash.
17 Q. Well, either you --
18 A. Yes. I mean, I didn't -- you're asking
19 if I'd seen what was written on the
20 check. I did not.
21 Q. Okay. But you said there were payments
22 made to ASC?
23 A. I didn't say that.
24 Q. I'm sorry.
25 A. I did not see it.

1 Q. Okay. All right. Well, who is ASC?
2 A. ASC, I thought, owned -- but they --
3 they're the ones that have it now.
4 Q. Okay. When did you start dealing with
5 ASC, do you recall?
6 A. Well, they're still sending me stuff,
7 so it had to be towards the end of it.
8 Q. Okay.
9 A. From this Mortgage.
10 Q. When you were trying to get a
11 modification were you dealing with ASC?
12 A. I believe so.
13 Q. All right. And you said that ASC is
14 still sending you stuff?
15 A. I -- yes, quite a few now. Some mail
16 correspondence now.
17 Q. Related to this loan?
18 A. Yes.
19 Q. Okay. Do you get correspondence from
20 anybody other than ASC related to this
21 loan?
22 A. There was Greentree.
23 Q. And that was on the second mortgage;
24 right?
25 A. Yes.

1 Q. Okay. On this \$400,000 first mortgage
2 do you get correspondence from anybody
3 other than ASC?
4 A. It's all supposed to go to my lawyer so
5 would think the correspondence would be
6 through him, but I have received some.
7 Q. From who?
8 A. ASC.
9 Q. Okay. Are you getting any
10 correspondence from anybody other than
11 ASC regarding this loan?
12 A. I'm not certain. I don't know. My
13 husband gets a lot of this --
14 Q. Okay.
15 A. -- correspondence as well.
16 Q. But just for clarification, you are the
17 borrower. You're the only one on the
18 note; right?
19 A. Yes, I am. And I was not aware of that
20 until the day of the closing.
21 Q. Okay. So is anybody other than ASC
22 contacting you to try and get you to
23 pay this note or mortgage?
24 A. Didn't you just ask me that? I said I
25 --

1 Q. I just want to make sure. Is there
2 anybody else out there that's calling
3 you or sending you letters --

4 A. Nobody is calling me.

5 Q. Okay. Is anybody sending you letters
6 trying to get you to pay this loan
7 other than ASC?

8 A. I -- I remember seeing letters from
9 ASC.

10 Q. Okay.

11 MR. LYDON: That's all the
12 questions I have. Thank you.

13 MR. RAY: Your Honor, I just
14 reserve the right to call her back
15 --

16 THE COURT: Sure. Of course.

17 MR. RAY: -- on the Counterclaim.

18 THE COURT: Yes. Of course.

19 MR. RAY: Okay.

20 MR. LANG: I don't have any
21 cross, Your Honor. I may have some
22 in the --

23 THE COURT: Later on.

24 MR. LANG: -- Third-Party
25 Claimant's case in chief.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS
R. Murray Hughes, Special Referee

Case No. 2010-CP-39-0352
Appellate Case No. 2012-211187

Us Bank National Association, et al, ... Respondents,
v.

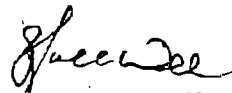
Barbara E. Bebout, and
Robert A. Swaynham, et al,
Of whom,

Barbara E. Bebout, and
Robert A. Swaynham, are Appellants.

CERTIFICATE

I certify that the Record on Appeal contains all material proposed to
be included by any of the parties and not any other material.

Respectfully submitted,



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(864) 271-6035 (facsimile)
Counsel for Appellants

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
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Barbara E. Bebout, and
Robert A. Swaynham, et al,
Of whom,

Barbara E. Bebout, and
Robert A. Swaynham, are Appellants.

CERTIFICATE OF SERVICE

I certify that on May 8, 2013, I served the Record on Appeal on the
Respondents by placing a copy of same in the United States Mail, first class
postage prepaid, addressed to counsel of record and others as indicated
below:

Louis H. Lang
Callison Tighe & Robinson, LLC
PO Box 1390
Columbia, SC 29202-1390
Counsel for Americash

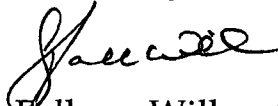
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MAY 13 2013

SC Court of Appeals

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Respondents,

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